

**BROOKLYN BRIDGE PARK CORPORATION  
CONSTRUCTION CONTRACT  
FOR THE PROVISION OF GENERAL CONSTRUCTION SERVICES  
FOR PIER 3 LANDSCAPE**

***CONSTRUCTION CONTRACT***

**BROOKLYN BRIDGE PARK CORPORATION  
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- PART I      SPECIFIC TERMS AND CONDITIONS**
- PART II     GENERAL TERMS AND CONDITIONS**
- PART III    APPENDICES**
- PART IV    PROPOSAL DOCUMENTS**
- PART V     SCOPE OF WORK DOCUMENTS**
- PART VI    DRAWINGS AND DESIGN SPECIFICATIONS**

**BROOKLYN BRIDGE PARK CORPORATION  
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**PART I  
SPECIFIC TERMS AND CONDITIONS**

Brooklyn Bridge Park Corporation (the “Owner”) and the Contractor identified below, in consideration of the mutual covenants contained in this Contract (as defined below) and other valuable and good consideration, do hereby agree to (i) the Specific Terms and Conditions (Part I) set forth immediately below, (ii) the general terms and conditions set forth in Part II of this Contract (the “General Terms and Conditions”), which are annexed hereto and made a part hereof, and (iii) all of the other Contract Documents that are identified in Section 1.1 below, which are annexed hereto and made a part hereof.

**1. The Contract.**

**1.1 This Contract:** This Contract consists of the following:

1.1.1 These Specific Terms and Conditions (Part I);

1.1.2 General Terms and Conditions (Part II);

1.1.3 Appendices (Part III);

1.1.4 Proposal Documents (Part IV):

1.1.4.1 Invitation for Proposals (Part IV.A); and

1.1.4.2 Contractor’s Proposal (Part IV.B) including, without limitation, all reports, certifications, forms and other documents submitted therewith;

1.1.5 Scope of Work Documents (Part V):

1.1.5.1 General Requirements (Part V.A);

1.1.5.2 Specific Requirements and Scope (Part V.B);

1.1.5.3 Conceptual Schedule (Part V.C);

1.1.5.4 Site Logistics Plans (Part V.D);

1.1.5.5 List of Drawings and Design Specifications (Part V.E);

1.1.5.6 Addenda (Issued Prior to Contract Execution) (Part V.F);

1.1.6 Drawings and Design Specifications (Part VI).

**1.2 Contract No.:**

**1.3 Contract Date:** The date of the Contract is as of \_\_\_\_\_

**1.4 Commencement Date:** “The date set forth in a Notice to Proceed and, if no date is listed therein, within forty-eight hours of Contractor’s receipt of a Notice to Proceed.”

**1.5 Contract Term: Reference Part V Article 1**

- 1.6 **Completion Date: Reference Part V Article 1**
- 1.7 **Maximum Contract Price:**
  
- 1.8 **Liquidated Damages Rate: N/A**
- 1.9 **Retainage: Ten (10%) percent, as described in greater detail in Section 4.2.5 of the General Terms and Conditions (Part II)**
- 1.10 **Retainage Payment Date: subject to the provisions of Article 4 of the General Terms and Conditions (Part II)**
- 1.11 **M/WBE Program Percentages:**
  - 1.11.1 **Target Subcontracting Percentage: 20%**
  - 1.11.2 **Participation Goal: 20%**

2. **Parties.**

- 2.1 **The Owner:** Brooklyn Bridge Park Corporation d/b/a Brooklyn Bridge Park , 334 Furman St, Brooklyn, NY 11201
- 2.2 **The Contractor:**
  - 2.2.1 **Exact Legal Name:**
  - 2.2.2 **State of Organization:**
  - 2.2.3 **Type of Business Entity:**
  - 2.2.4 **Business Address:**
  
  - Attn:
  - 2.2.5 **Contractor's Principal:**
  - 2.2.6 **Tax Identification Number:**

3. **Contract Work.**

- 3.1 **Project:** Brooklyn Bridge Park
- 3.2 **Project Site:** Brooklyn Bridge Park in the Borough of Brooklyn
- 3.3 **Work Site:** Pier 3
- 3.4 **The Work: General Construction Services**, as more specifically described in the Scope of Work Documents and the Drawings and Design Specifications

4. **Not Used**

5. **The Owner's Other Consultants.**

- 5.1 **The Architect ("Architect"):**
  - 5.1.1 **Exact Name of Architect:** MVVA, Inc
  - 5.1.2 **Exact Street Address:** 16 Court St, 11<sup>th</sup> Floor, Brooklyn, NY 11241
  - 5.1.3 **Architect's Principal:** Paul Seck

5.2 **The Environmental Consultant (“EC”):**

5.2.1 **Exact Name of EC:** AKRF

5.2.2 **Exact Street Address:** 440 Park Ave South, 7<sup>th</sup> Floor, New York, NY 10016

5.2.3 **EC’s Principal:** Claudia Clooney, Vice President

5.3 **The Owner’s Representative (“OR”):**

5.3.1 **Exact Name of OR:** Gardiner & Theobald, Inc

5.3.2 **Exact Street Address:** 535 5<sup>th</sup> Avenue, 3<sup>rd</sup> Floor, New York, NY 10017  
**Attn:** Jon Mitchell

5.3.3 **OR’s Principal:** Andrew Mann

5.4 The Owner may at any time change the identity of any of the Owner’s Other Consultants or their principal representatives on Notice to the Contractor without need for formal amendment to this Contract.

6. **Notices: Parties and Addresses.**

6.1 **Notices to the Contractor:**

6.1.1 **Exact Name of Contractor:**

6.1.2 **Exact Street Address<sup>SS</sup>:**

**Attn:**

6.2 **Notices to the Owner:**

Brooklyn Bridge Park Corporation, 334 Furman Street, Brooklyn, NY 11201

7. **Not Used**

8. **Not Used**

9. **Defined Terms.** All capitalized terms in the Contract Documents shall have the meaning(s) set forth in Appendix A to the General Terms and Conditions (Part II) unless otherwise defined or the context otherwise requires. The singular shall include the plural and vice versa as the context may dictate. The gender used in this Contract shall be deemed to refer to the masculine, feminine or neuter gender, as the context of the identity of the persons being referred to may require.

10. **Execution.** This Contract may be executed in counterparts, all of which counterparts, when taken together, shall be deemed a fully-executed instrument. The Contractor acknowledges that it has carefully examined the entire Contract and thoroughly understands the same.

**IN WITNESS WHEREOF**, the Parties hereto have caused this Contract to be duly executed as of the Contract Date hereinabove written.

**BROOKLYN BRIDGE PARK  
CORPORATION**

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

**CONTRACTOR**

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

**BROOKLYN BRIDGE PARK CORPORATION  
CONSTRUCTION CONTRACT  
FOR THE PROVISION OF GENERAL CONSTRUCTION SERVICES  
FOR PIER 3 LANDSCAPE**

**PART II  
GENERAL TERMS AND CONDITIONS**

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**ARTICLE 1**  
**THE CONTRACT WORK**

1.1 The Contract Work. The Contract Work is specified in Section 3.4 of the Specific Terms and Conditions (Part I) of this Contract. The Contractor shall promptly perform and furnish all of the labor, Materials and Equipment and all other items necessary or appropriate for the prosecution and completion of all aspects of the Contract Work pursuant to the terms of the Contract and in furtherance of the Project. The Contractor shall prosecute and complete the Contract Work in strict accordance with the Scope of Work Documents, the Drawings and Design Specifications and all other Contract Documents. The Contractor, as a part of the Contract Work, shall also pay all fees, charges and taxes due on or incidental to the Contract Work. The Contractor shall make no change in the Contract Work of any nature whatsoever without first having obtained the Owner's written approval of the proposed change. The Contract Work shall be performed in accordance with all Legal Requirements.

1.2 The Work Site. The Work Site is identified in Section 3.3 of the Specific Terms and Conditions (Part I) of this Contract. The Owner makes no representations whatsoever as to any condition of the Work Site. The Contractor assumes all responsibility and liability for all conditions at the Work Site that could have been discovered by reasonable examination or inquiry.

1.3 Means and Methods of Construction. Unless otherwise expressly provided in the Contract Documents, the means and methods of construction shall be such as the Contractor may choose within trade and industry standards, subject, however, to the provisions of this Contract including, without limitation, the Scope of Work Documents (Part V) and the Drawings and Design Specifications (Part VI) of this Contract, and subject to the right of the Owner to reject means and methods proposed by the Contractor that will, in the opinion of the Owner:

- 1.3.1 violate any Legal Requirement;
  - 1.3.2 constitute or create a hazard to the Contract Work, or to persons or property;
  - 1.3.3 not produce finished Contract Work in accordance with the terms of this Contract; or
  - 1.3.4 be detrimental to the overall progress of the Contract Work or the Project.
- 1.3.5 The Owner's approval of the Contractor's means and methods of construction, or its failure to exercise its right to reject such means or methods, shall not relieve the Contractor of its obligation to complete performance in accordance with this Contract, nor shall the exercise of such right to reject create a cause of action for damages against the Owner, the City or their respective Representatives.

1.4 Coordination of Contract Work by the Contractor

1.4.1 Except as otherwise expressly provided for herein, the Contractor shall be entirely responsible for the coordination of the Contract Work within its Contract. The



Contractor shall perform the Contract Work at such times and in such manner so as not to delay the Project. If any dispute arises regarding possible or alleged interference among the various subcontractors, which dispute may retard the progress of the Project, the same shall be settled by the Contractor, whose decision shall be binding and conclusive upon all of the subcontractors.

1.4.2 The Owner has retained the Owner's Representative to coordinate the overall schedule of construction activities that take place at the Work Site, to assist the Owner in administering the Contract Work, and to insure that the commencement and completion of construction activities at the Project Site is on schedule. Contractor shall comply with all instructions given by the Owner's Representative pursuant to this Contract.

1.5 The Owner's Representative.

1.5.1 Subject to review of the Owner, the Contractor shall have the power, in the first instance, to inspect, supervise, guide and manage the performance of the Contract Work. The Owner's Representative's authority is more specifically enumerated in Article 17.

1.5.2 The Contractor shall not, however, have the power to issue a Change Order unless the Owner has provided written authorization to the contrary. All Change Orders must be issued by the Owner in accordance with Article 5 of these General Terms and Conditions, unless the Owner has provided written authorization to the contrary.

1.6 The Owner's Other Consultants. The Owner has retained the consultants identified in Section 5 of the Specific Terms and Conditions (Part I) of this Contract. Contractor shall comply with all instructions given by the Owner's Other Consultants pursuant to this Contract.

1.7 City. The City shall be a third party beneficiary of this Contract and shall have a direct cause of action against the Contractor in the event that any claim be made or any cause of action be brought against the Owner or City or if the Contractor breaches this Contract.

**ARTICLE 2**  
**TIME OF PERFORMANCE; SCHEDULES;**  
**LIQUIDATED DAMAGES; EXTENSION OF TIME**

2.1 Commencement of Contract Work. The Contractor shall commence performance of the Contract Work on the Work Site on the Commencement Date set forth in Section 1.4 of the Specific Terms and Conditions (Part I).

2.2 Prosecution of the Work.

2.2.1 The Contractor shall proceed with the Work and every part and detail thereof in a prompt and diligent manner and shall do the several parts thereof at such times and in such order as the Owner's Representative and the Owner may direct and in accordance with Project Schedule.

2.2.2 Where the dates for the commencement and completion of any portion of the Work or for deliveries of Material and Equipment are not specified, the Contractor shall commence such Work or make such deliveries within the time set forth in a Notice from the

Owner or Owner's Representative to do so, but in no event later than three (3) days after receipt of such Notice if no time period is set forth in such Notice. Such work or deliveries shall be prosecuted and completed with all possible diligence, or as otherwise directed by the Owner's Representative or the Owner.

2.2.3 The Contractor shall prosecute and complete the Work:

2.2.3.1 in strict accordance with the Contract Documents;

2.2.3.2 in such manner as may be necessary to maintain the progress of construction on the Project;

2.2.3.3 in accordance with the Project Schedule and any other time schedules, starting dates, completion dates and milestones established by the Owner or the Owner's Representative for any portion of the Work;

2.2.3.4 to the full satisfaction of the Owner; and

2.2.3.5 no later than the Completion Date.

2.2.4 The Contractor agrees to supply all necessary Materials and Equipment, labor, and all other items required, in the quantities, and at the times necessary, to complete the Contract Work in accordance with the Project Schedule and all Work Schedules approved by the Owner.

### 2.3 Time for Completion.

2.3.1 The Contractor agrees to complete all stages of the Contract Work in such a timely fashion as to allow it and other contractors, including Subcontractors to meet the deadlines and milestones set forth in the Project Schedule and all Work Schedules approved by the Owner.

2.3.2 The Contractor shall not be obligated to complete the Work prior to the Completion Date unless the Owner's Representative and the Owner puts the Project on a Fast-Track basis as provided for in Section 2.6.6 below.

### 2.4 Time of the Essence. **CONTRACTOR ACKNOWLEDGES AND AGREES THAT TIME IS OF THE ESSENCE IN THE COMMENCEMENT, PROSECUTION AND COMPLETION OF THE WORK.**

### 2.5 Liquidated Damages. Not Applicable

### 2.6 Delays and Extensions of Time.

2.6.1 The Contractor shall provide the requisite labor and sufficient Materials and Equipment to maintain the Project Schedule and in particular, that portion of the Project Schedule applicable to the Contractor's Work. If the Contractor's Work is delayed by reason of its or its Subcontractors' or its Vendors' acts, the Contractor shall, at the Owner's

Representative's direction, increase the number of workers, the number of shifts, the days of work and, to the extent permitted by law, institute overtime operations, all at the Contractor's sole cost and expense, in order to regain any time loss and maintain the Project Schedule and the Overall Contract Schedule. All costs of all standby trades will be charged to the Contractor when such corrective measures are required.

2.6.2 The Contractor shall not cause any hindrance or delay to other contractors on the Project. In addition to and without in any way limiting the Contractor's indemnification and other obligations under Article 8 of this Contract, the Contractor shall be solely responsible and shall indemnify and hold harmless the Owner, the City, all other Additional Insureds, and the Other Interested Parties, from all claims, including costs and reasonable attorneys' fees, related to any and all damages sustained by any other contractor having or who shall hereafter have a contract with the Owner for the performance of work upon the Work Site or the Project due to any act or omission of the Contractor including, without limitation, costs incurred due to the Contractor's failure to coordinate work with other contractors or due to delays caused to other contractors by the Contractor. The Contractor agrees to reimburse each such other contractor for all such damages. In addition to the foregoing, the Owner's Representative and the Owner shall have the right, after three (3) days' written Notice to the Contractor, to provide any such labor, additional labor, overtime labor and Materials and Equipment necessary to remedy such hindrance or delay to each such other contractor's work, and the Owner may, in its sole discretion, in addition to any other remedy it may have under this Contract, or at law or equity, deduct the costs thereof from any moneys then due or thereafter to become due to the Contractor, or to require the Contractor to pay for such costs on demand. In the event the Owner intends to extend any such other contractor's time to complete that contractor's work due to delays caused by the Contractor, such extensions of time shall not be construed as a waiver of the Owner's or the Owner's Representative's right to be compensated by the Contractor for all damages, losses, costs and expenses, including attorneys' fees and disbursements, resulting from such delay.

2.6.3 If the Contractor has been delayed and as a result will be unable to complete performance fully and satisfactorily within the time fixed therefor, the Contractor may be granted an extension of time fixed for performance equal to the period the Contractor was actually and necessarily delayed upon submission of evidence of the causes of the delay, subject to the written approval of the Owner in its sole discretion, provided that:

2.6.3.1 the Contractor has submitted a written claim to the Owner's Representative and the Owner within three (3) working days after the commencement of the alleged cause of the delay, hindrance or obstruction;

2.6.3.2 Contractor demonstrates that it did not in any way cause and could not have anticipated or avoided such delay, hindrance or obstruction;

2.6.3.3 Contractor has used all available means to minimize the consequences thereof; and

2.6.3.4 the Owner and the Owner's Representative determine that such an extension has been substantiated and is warranted under the circumstances.

The decision of the DRB as to the granting of the extension and its length shall be binding upon the Contractor.

2.6.4 Subject to the Owner's determination and approval, the Owner may extend the time or times for performance of the Work where such performance has been substantially obstructed, hindered or delayed by reason of one or more of the following limited circumstances:

2.6.4.1 acts of Force Majeure;

2.6.4.2 any act, neglect, delay or default of the Owner's Representative, the Owner, the Engineer or Environmental Consultant;

2.6.4.3 changes ordered in the Work not resulting from the actions, omissions or negligence of the Contractor;

2.6.4.4 rules, orders or regulations of any Applicable Agency that affect the supply or availability of Materials and Equipment or labor; or

2.6.4.5 if Contractor is barred from access to the Work Site by individuals or entities not associated with the Owner or by court order.

2.6.5 The Contractor shall have no claim against the Owner or the Owner's Representative for any loss or damage sustained by the Contractor nor for any extra compensation in the form of an increase in the Maximum Contract Price, or otherwise, through delay, hindrance, obstruction, disruption, suspension, stoppage, interruption or acceleration of the Contractor's Work caused or directed by:

2.6.5.1 the Owner's Representative or the Owner in order to meet the Project Schedule, or to accommodate Fast-Tracking of the Project as described in greater detail in and subject to the provisions of Sections 2.7.1 and 2.7.2;

2.6.5.2 the circumstances set forth in Section 2.6.4;

2.6.5.3 any other foreseen or unforeseen reasons or circumstances; or

2.6.5.4 any other contractor.

Subject to the provisions of Section 5.5 regarding Protest Work, the Contractor hereby waives all claims for damages, including all costs direct and indirect, and increased costs for labor and Materials and Equipment, incurred on account of any delay, hindrance or cause whatsoever, and the Contractor agrees that its sole right and remedy for any delay, hindrance or cause shall be that the Contractor shall be entitled to an extension of the Contract period, which is acknowledged to be adequate and full consideration to the Contractor for all delays, hindrances, or causes.

2.6.6 The Contractor acknowledges that the Project may be constructed on a Fast-Track basis if applicable, represents that it has expertise in the Fast-Track method of construction and hereby agrees to waive any and all rights and remedies it may otherwise have at law or in

equity for claiming extra compensation, an increase in the Maximum Contract Price, or damages of any kind by reason of schedule changes ordered in the progress of the Work or made in the Project Schedule or Overall Contract Schedule to accommodate construction of the Project on a Fast-Track basis. In furtherance of the foregoing, the Contractor shall furnish first class, professional and efficient Work and use its best efforts, skill and judgment to complete its Work in the best and soundest way and in the most expeditious and economical manner consistent with the interests of the Owner and consistent with Fast-Track construction, the Project Schedule, the Overall Contract Schedule and the Contract Documents.

2.6.7 Subject to the provisions of Sections 2.7.1 and 2.7.2 regarding “Overtime” and Section 5.5 regarding “Protest Work”, Contractor shall perform Work, as directed and as is customarily performed by the Contractor's respective trade, at no additional cost so long as overtime work beyond originally planned is not required.

2.6.8 Contractor shall perform punch-list work only at times as, in the judgment of the Owner's Representative and the Owner, will not unreasonably interfere with the activities of any other contractors, entities or individuals at the Site.

## 2.7 Overtime.

2.7.1 The Owner's Representative shall have the right to expedite the Work and, with the prior written consent of the Owner, to direct the Contractor to work overtime in furtherance thereof.

2.7.2 Upon the receipt of such directive, the Contractor shall work such overtime as directed by the Owner's Representative. In such event the Owner will reimburse the Contractor for the actual additional wages paid by the Contractor in connection with such overtime work, provided that:

2.7.2.1 The Owner has approved such overtime work in advance and in writing;

2.7.2.2 The Owner has determined that the Contractor is not behind in the Work;

2.7.2.3 The Contractor is not otherwise in default in any of its obligations under this Contract or in any of the terms and conditions of this Contract;

2.7.2.4 The Contractor has, on a daily basis, submitted to the Owner's Representative's representative at the Site time slips covering said additional wages for verification and approval.

2.7.3 The Contractor shall not be entitled to any payment on account of overhead or profit with respect to such additional wages.

2.7.4 If the Owner determines that the Contractor is:

2.7.4.1 behind in the Work;

2.7.4.2 delaying the progress of the Project, the work of other contractors, or its own Work under this Contract, or at variance with the Project Schedule; or

2.7.4.3 otherwise in default,

then the Contractor shall, at its sole cost and expense, perform such overtime work with such additional personnel as the Owner or the Owner's Representative may deem necessary for the Contractor to conform to the Project Schedule and otherwise keep abreast with the general progress of the Work at the Project.

2.7.5 Each and every refusal by the Contractor to commence overtime work as required by this Contract shall constitute an Event of Default.

## 2.8 Expediting.

2.8.1 The Contractor shall act immediately to procure and furnish all requisite Materials and Equipment necessary for the Contractor to commence deliveries and start the Work at the Project immediately upon the Commencement Date. The Contractor shall make deliveries of all such Materials and Equipment to the Project Site at such times (including overtime days or hours if necessary) so as to avoid delays to the Work or the Project.

2.8.2 The Contractor shall furnish and shall direct its Subcontractors to furnish such information to the Owner and the Owner's Representative as the Owner and the Owner's Representative may require regarding deliveries and production and in connection with the expediting of the Project.

## 2.9 Contract Completion.

2.9.1 The Contractor shall deliver a written Notice to the Owner to inspect the Contract Work when the Contractor believes that the Contract Work is complete. If the Owner determines that the Contract Work is incomplete, the Owner or the Owner's Representative may, at the Owner's sole discretion, provide the Contractor with an Inspection Report.

2.9.2 If, after the inspection, the Owner or the Owner's Representative provides the Contractor with an Inspection Report, the Contractor shall promptly complete and/or correct all items listed in the Inspection Report.

2.9.3 The Contractor shall remain fully responsible to perform all Contract Work to the Owner's full satisfaction whether or not an Inspection Report is provided to the Contractor by the Owner's Representative or the Owner.

2.9.4 The Contractor shall continue to perform all work and services necessary until such time as the Contractor has completed the Work to the full satisfaction of the Owner. The Owner shall have no liability or obligation as a result of the inspection, and the Contractor shall not be relieved of any of its obligations or duties under this Contract as a result of the conduct of any inspection or any acceptance resulting therefrom.

2.9.5 Final Completion of the Contract Work shall not be deemed to have occurred until:

2.9.5.1 all required training has been provided to the Owner's satisfaction;

2.9.5.2 all as-builts, operations and maintenance manuals, guarantees and warranties are submitted to and approved by the Owner; and

2.9.5.3 the Owner issues a written statement that the Contract Work is complete to its full satisfaction, as determined by the Owner, in its sole discretion.

2.10 Occupation, Use or Possession Prior to Completion.

2.10.1 If prior to Final Completion, the Owner determines that it is necessary or advisable for the Owner or the City to take over, occupy, take possession of, operate or otherwise use all or any part of the completed Contract Work, or any partially completed Contract Work, the Owner and the City shall have the right to do so. The Owner will Notify the Contractor in writing of such determination and will specify the date of commencement of such use in such Notice.

2.10.2 Immediately prior to such use, the Owner will inspect the part of the Contract Work to be so used and advise the Contractor in writing as to the Contract Work still to be done on such part, if any. The Owner's or the City's failure to list any item of Work not completed shall not relieve the Contractor of responsibility to complete such Work or otherwise comply with all other terms and conditions of this Contract with respect thereto, except as may otherwise be provided in Section 2.10.3 below. The Owner's or the City's possession or use of any Work, whether completed or incomplete, shall not be deemed an acceptance of any Work under the Contract.

2.10.3 Notwithstanding the terms of Section 21.1 of these General Terms and Conditions (Part II) regarding "Risk of Loss" and Section 3.3 of the General Requirements of the Scope of Work Documents (Part V.A) regarding "Permits and Legal Requirements," the Contractor shall be relieved of the responsibility for the loss of or damage to that portion of the Work that the Owner or the City has in its possession or is using resulting from the Owner's or the City's possession or use thereof, but only for loss or damage occurring during such time as the Owner or the City has such possession or use. If prior possession or use by the Owner or the City delays the progress of the Work or causes additional expense to the Contractor, the Owner may, in its sole discretion, extend or make an equitable adjustment to the Contractor's time to complete the Work or any portion thereof.

2.10.4 If any part of the completed or partly completed Contract Work is taken over for use by the Owner or the City, the Owner may issue a Certificate of Substantial Completion for said part so taken over. The Contractor's guarantee on that part of the Contract Work placed into use shall begin on the date set forth in the written Notice issued pursuant to Section 2.10.1.

2.11 The Contractor shall not interfere with or object to such use by the Owner or the City and such use shall not give rise to any claim for damages or other cause of action by the Contractor against the Owner, the City or any of their respective Representatives or assigns.

### **ARTICLE 3 WORK HOURS**

The Contractor shall perform the Contract Work between the hours of 7:00 a.m. to 5:00 p.m., Monday through Friday, except as otherwise specified in the Contract Documents or otherwise directed by the Owner or the Owner's Representative. Notwithstanding the foregoing, in an emergency or when the Contractor is required to complete the Work in accordance with job progress, the Contractor may perform Contract Work at other hours, but only upon the Owner's written consent thereto. The Contractor shall not be entitled to any extra compensation for any overtime charges or additional expenses for performance of Contract Work during hours other than the normal working hours set forth above or elsewhere in the Contract Documents unless the Owner shall have authorized such overtime charges or additional expenses in advance and in writing.

### **ARTICLE 4 COMPENSATION AND PAYMENT**

4.1 Maximum Contract Price. In consideration for the Contractor's performance of the Contract Work to the full satisfaction of the Owner, the Owner agrees to pay to the Contractor, and the Contractor agrees to accept as full consideration therefor the Maximum Contract Price set forth in Part I of this Contract. The Maximum Contract Price includes all consumable Materials and Equipment which will become part of the finished structure and all other costs of installation, including labor and consumable supplies which will not become a permanent part of the finished structure, the Maximum Contract Price includes the Contractor's General Conditions, Fee and General Liability Insurance. Any unit prices and cost breakdowns submitted as part of the Contractor's Proposal attached at Part IV.B of this Contract shall be considered part of this Contract. The Contractor shall note that this Project is subject to Prevailing Wage. The Contractor should note that the first \$100,000 of Change Orders will not result in an increase of General Conditions or Fee (or Overhead and profit). For clarification, this includes any Overhead and Profit for the Contractor on this amount. This is the Change Order Limit.

4.2 Progress Payments.

4.2.1 As the Contract Work progresses, and provided that the Contractor is not in default of this Contract, but not more than once per month, at regular intervals as may be designated by the Owner, the Contractor may request a Progress Payment.

4.2.2 Each request for a Progress Payment must be submitted to the Owner's Representative and the Owner's **Accounts Payable Department** and must include the following Progress Payment Documents or such other forms as may be approved by the Owner:

4.2.2.1 Contractor's Progress Payment Requisition (Appendix F1);



4.2.2.2 Contractor's Partial Release and Receipt (Appendix F2);

4.2.2.3 Subcontractor's Partial Releases from each Subcontractor performing work as of the date of the Progress Payment Requisition (Appendix F3);

4.2.2.4 Payroll Reports from the Contractor and each of its Subcontractors performing Work as of the date of the Progress Payment Requisition (Appendix F10); and

4.2.2.5 M/WBE Compliance Reports containing the information required under Section 18.6, if M/WBE Program Percentages are applicable to this Contract;

4.2.2.6 A representation and warranty that, except as set forth in the Requisition, the representations and warranties made by the Contractor in Article 12 of the Contract are true and correct as of the date of the Requisition as if made on the date of the Requisition; and

4.2.2.7 such other statements, records, reports, data, information and documentation, in any format now known or hereafter to become known, pertaining to this Contract as the Owner may require.

4.2.3 Each Requisition submitted to the Owner by the Contractor shall constitute a representation that, except as specifically set forth in the Requisition, as of the date of the Requisition, all representations and warranties made by the Contractor in Article 12 are true, complete and accurate as if made as of the date of the submission of the Requisition.

4.2.4 All Progress Payment Documents must be in proper form, complete and duly executed. If the Owner's Representative or the Owner are not satisfied with the accuracy or completeness of the Progress Payment Documents, the Owner's Representative shall return the Progress Payment Documents to the Contractor together with a statement listing inaccurate and incomplete items. No further Progress Payments shall be due to the Contractor until the Contractor shall submit new Progress Payment Documents in accordance with the Owner's Representative's statement nor until the Owner's Representative and the Owner shall have approved such Progress Payment Documents in writing.

4.2.5 When the Owner's Representative and the Owner are satisfied that the Progress Payment Documents are accurate and complete, the Owner will authorize payment to the Contractor of the amount set forth in the approved Progress Payment Documents, less the Retainage identified in Part I, Section 1.9. If the Owner determines that the Contractor's progress with the Work is satisfactory after the Contractor has completed fifty (50%) percent of the Contract Work, or at any time thereafter, then the Owner may, in its sole discretion, reduce the Retainage amount. The Owner's rights under Part II, Section 4.5 or any other provision of the Contract shall not be abrogated by, but shall be in addition to the Owner's rights to retain the Retainage identified in Part I, Section 1.9. Upon satisfaction of the conditions to payment of the Retainage, the Owner will pay the Retainage to the Contractor by the Retainage Payment Date identified in Part I, Section 1.10, less any amount retained pursuant to Part II, Section 4.5 of the Contract.

#### 4.3 Final Payment.

4.3.1 Upon Final Completion of the Contract Work, the Contractor shall submit to the Owner's Representative and the Owner's **Accounts Payable Department** the following Final Payment Documents, or such other forms as may be approved by the Owner, in proper form, complete and duly executed and listing all Contract Work completed and the final balance claimed due:

4.3.1.1 Payment Requisition (Appendix F4);

4.3.1.2 Contractor's Final Release (Appendix F5);

4.3.1.3 Subcontractor's Final Releases (Appendix F6) from each Subcontractor that performed Work or services in connection with this Contract;

4.3.1.4 Affidavit of Payment (Appendix F8);

4.3.1.5 Affidavit of Release of Liens (Appendix F9);

4.3.1.6 Payroll Reports from the Contractor and from each of its Subcontractors that performed Work or services in connection with this Contract (Appendix F10); and

4.3.1.7 M/WBE Compliance Reports including, without limitation, a final cumulative report, containing the information required under Section 18.6;

4.3.1.8 A representation and warranty that, except as set forth in the Requisition, the representations and warranties made by the Contractor in Article 12 of the Contract are true and correct as of the date of the Requisition as if made on the date of the Requisition; and

4.3.1.9 such other statements, records, reports, data, information and documentation in any format, now known or hereafter to become known, pertaining to this Contract as the Owner may require.

4.3.2 If the Owner's Representative or the Owner are not satisfied with the accuracy of or completeness of the Final Payment Documents, the Owner's Representative shall promptly return the Final Payment Documents to the Contractor, together with a statement listing inaccurate, questionable and incomplete items. The statement from the Owner's Representative shall be conclusive and binding upon the Contractor as to the amount due and all other items included therein. No payment shall be due to the Contractor until the Contractor shall submit new Final Payment Documents in accordance with the Owner's Representative's statement nor until the Owner's Representative and the Owner shall have approved such documents in writing.

4.3.3 The Owner will not be obligated to make Final Payment to the Contractor unless and until:

4.3.3.1 the Contractor has completed all of the Contract Work to the full satisfaction of the Owner's Representative and the Owner; and

4.3.3.2 the Contractor has provided all necessary training and furnished all guarantees, warranties, manuals, training, and as-builts required under the Plans and Specifications and other Contract Documents.

4.3.4 When the Owner determines that Final Completion has been achieved, that all training has been completed and that all the conditions to making the Final Payment set forth in Sections 4.3.1, 4.3.2 and 4.3.3 have been met, the Owner will authorize payment to the Contractor of the amount set forth in the approved Final Payments Documents, less the Retainage.

4.3.5 Final Payment by the Owner shall not act as an estoppel against the Owner or prevent the Owner from enforcing any right under this Contract or any rights that may accrue or have already accrued at law or in equity.

4.4 Payments for Certain Materials and Equipment. The Contractor may request payments for Materials and Equipment not incorporated in the Contract Work but delivered and suitably stored at the Work Site or some other location agreed upon in advance in writing, if:

4.4.1 The Contractor has requested such an arrangement and the Owner has approved the same in advance and in writing; and

4.4.2 the Contractor has submitted to the Owner in form and substance satisfactory to the Owner:

4.4.2.1 bills of sale or such other documentation that establishes the Owner's title to such Materials and Equipment;

4.4.2.2 proof of insurance covering such Materials and Equipment;

4.4.2.3 proof of acceptable and safe means of transporting such Materials and Equipment stored off the Work Site to the Work Site; and

4.4.2.4 such other documentation as the Owner may require to protect its interests in and title to such Materials and Equipment.

4.5 Deductions from Payments.

4.5.1 The Owner may withhold payment of any amount otherwise due and payable to the Contractor hereunder:

4.5.1.1 If the Owner shall have reasonable grounds for believing that:

4.5.1.1.1 the Contractor will be unable to perform the Work or any portion thereof fully and satisfactorily in accordance with the project Schedule or any approved Work Schedule; or

4.5.1.1.2 a meritorious claim exists or will exist against the Owner, the City, the Additional Insureds, or the Other Interested Parties, or any of their respective Representatives arising out of the act, omission or negligence of the Contractor or the Contractor's breach of any provision of this Contract; or

4.5.1.2 as may be authorized pursuant to the terms and conditions of this Contract including, without limitation, amounts to cover the following:

- 4.5.1.2.1 Retainage (Section 4.2.5);
- 4.5.1.2.2 Liquidated Damages (Section 2.5);
- 4.5.1.2.3 deductions pursuant to Change Orders (Section 5.4);
- 4.5.1.2.4 costs related to "Terminations for Cause" (Section 7.7);
- 4.5.1.2.5 security for warranted Materials and Equipment and labor (Section 11.3);
- 4.5.1.2.6 discharge of liens and claims (Article 16);
- 4.5.1.2.7 costs of cleanup and rubbish removal (Section 3.8.2 of the General Requirements of the Scope of Work Documents (Part V.A));
- 4.5.1.2.8 costs incurred due to the Contractor's failure to coordinate its work with other contractors (Section 2.6.2);
- 4.5.1.2.9 costs incurred due to delays caused to other contractors by the Contractor (Section 2.6.2);
- 4.5.1.2.10 costs incurred due to inspection, testing and correction of Work (Article 2 of the General Requirements of the Scope of Work Documents (Part V.A));
- 4.5.1.2.11 amounts necessary to indemnify the Owner pursuant to Article 8 and any other relevant indemnification provisions of this Contract; or
- 4.5.1.2.12 amounts retained or paid to Subcontractors pursuant to Section 6.1.6; or
- 4.5.1.2.13 amounts incurred to complete the Project satisfactorily in accordance with the Owner's M/WBE Program and in order to meet the Participation Goal set for the Contract (Section 18.10.2).

4.5.2 Any amount so withheld may be deducted from the Maximum Contract Price, or retained by the Owner for such period as it may deem advisable to protect the Owner and the City against any loss and may, after written Notice to the Contractor, be applied in satisfaction of any claim herein described.

4.5.3 The Contractor shall, at its sole cost and expense, within five (5) days of written request therefor, file with the Owner's Representative and the Owner, a verified statement, in a form satisfactory to the Owner's Representative and the Owner, certifying:

4.5.3.1 the amounts then due and owing for labor performed and Materials and Equipment furnished under this Contract; and

4.5.3.2 the names and amounts due each Subcontractor that remains unpaid to date.

4.6 Payment Subject to Receipt of Insurance Policies/Endorsements. Unless otherwise agreed to in writing by the Owner, no payments shall be made to the Contractor more than one hundred twenty (120) days after the Commencement Date unless:

4.6.1 the Contractor has submitted to the Owner copies of all Insurance Policies and Endorsements required by this Contract; and

4.6.2 the Owner has determined that such Policies and Endorsements are acceptable.

4.7 Miscellaneous Payment Provisions.

4.7.1 Nothing contained in this Article 4 shall relieve the Contractor of its obligation to give Notice of claims pursuant to any other provision of this Contract.

4.7.2 The Contractor's acceptance of Final Payment from the Owner is a specific waiver and release of any and all claims the Contractor may have against the Owner or the City on account of or arising out of the Contract Work.

4.7.3 All payments due under this Contract in excess of \$100,000 may be made by Electronic Funds Transfer. Upon execution of this Contract, and in no event later than its submission of its first Requisition, the Contractor shall complete and submit to the Owner the "EFT Vendor Payment Enrollment Form" annexed as Appendix F11. The Contractor shall update such information to the extent necessary for EFT payments to be made. The Owner shall not be obligated to make any payment in excess of \$100,000 unless such information is provided and shall be entitled to rely solely on the information provided by the Contractor.

4.7.4 All payments by the Owner may be:

4.7.4.1 in the form of one or more separate checks and/or EFTs which together total the amount due; and

4.7.4.2 made payable, at the option of the Owner, either to the Contractor, to the Contractor and one or more of its Subcontractors, or directly to its Subcontractors.

If the Owner issues checks or makes EFTs to any parties other than or in addition to the Contractor, said checks and EFTs shall have the full payment value as presented on the face of the checks or as recorded for the EFTs in satisfaction of the Owner's obligation to pay the Contractor that the checks and EFTs would have if they were made payable only to the Contractor.

4.7.5 All payments hereunder shall be subject to all applicable City, State and Federal laws, regulations, requirements and practices.

4.7.6 Any monies the Contractor shall receive in payment for the Contract Work shall be received in trust and used by the Contractor to discharge all of its financial obligations with respect to the Contract Work.

4.7.7 Payments to the Owner shall be made by check unless the Contractor is Notified to make payments by EFT.

#### 4.8 Payment Records.

4.8.1 In addition to and notwithstanding any other obligations under this Contract or as a matter of law related to the Contractor's records, the Contractor agrees that its Payment Records shall be subject to examination, audit and post audit at any time during or after the performance of the Contract, by the following entities, individuals and/or their respective Representatives:

4.8.1.1 the Owner;

4.8.1.2 the City Comptroller;

4.8.1.3 the City of New York

4.8.1.4 DSBS;

4.8.1.5 the State of New York

4.8.1.6 the United States; and

4.8.1.7 any other entity entitled under any Applicable Statutes or Applicable Agreements.

4.8.2 The Contractor hereby grants its consent to all such audits. The Contractor shall maintain all such records and all such other documents and records required by the Owner and by this Contract at its business premises for a period of at least six (6) years from the date of Final Payment. The maintenance of such documents and records is a material part of the Contract Work.

4.8.3 In the event that an audit shall disclose that the Contractor has not strictly complied with the terms of this Contract or shall disclose any discrepancy in the Contract Work, then the Contractor shall immediately return to the Owner any monies overpaid to the Contractor as determined by said audit, plus any damages that may be or have been incurred by the Owner as a result thereof.

4.9 Tax Exempt Status. Pursuant to Section 1115(a)(15) of the New York State Tax Law, purchases of tangible personal property by the Contractor or its Subcontractors arising out of this Contract are exempt from the sales and use tax imposed by Article 28 of the New York State Tax Law, to the extent that such property

4.9.1 is used to alter, maintain or improve, and becomes an integral component part of, the real property which is improved under this Contract; or

4.9.2 remains tangible personal property and is installed on such real property.

This exemption does not apply to tools, machinery, equipment or other property leased by the Contractor or its Subcontractors, or to Materials and Equipment or other property that are consumed in the course of construction or for any other reason not incorporated into the real property which is improved under this Contract.

4.10 Exclusion of Tax from Maximum Contract Price. The Contractor represents and warrants that state and local sales tax has been excluded from the Maximum Contract Price, to the extent applicable. The Contractor and its Subcontractors shall be responsible for and shall pay any and all applicable taxes, including sales and use taxes imposed upon leased tools, machinery, equipment, and upon all other Materials and Equipment other supplies or property not incorporated on the Work Site as provided by law. The Maximum Contract Price shall be deemed to include full payment and consideration for the sale of all Materials and Equipment necessary for the performance of the Contract.

4.11 Tax Exempt Certificates. The Contractor shall obtain and shall cause its Subcontractors and material suppliers to obtain all necessary tax exempt certificates including, without limitation, Contractor Exempt Purchase Certificates (Form ST-120.1), and shall furnish and shall cause its Subcontractors to furnish the same to all persons or entities from which they purchase Materials and Equipment for the performance of the Contract Work.

4.12 Taxes.

4.12.1 The Contractor agrees to pay and hereby assumes full and exclusive liability for the payment of any and all contributions or taxes imposed by the laws of the United States or by the laws of any state or city and which are measured by the wages, salaries, or other remuneration paid to persons employed by the Contractor on the Contract Work or by Material and Equipment costs.

4.12.2 The Contractor shall furnish the Owner's Representative and the Owner with such payroll information or employment records including, without limitation, Payroll Reports in the form annexed hereto as Appendix F10, and as may be necessary to assist the Owner in complying with any law imposing such contributions or taxes.

4.12.3 The Contractor agrees to reimburse the Owner for the entire amount of contributions, taxes or penalties that the Owner may be required to pay because of the failure of the Contractor to furnish such information or records, or because of the failure of the Contractor to pay such contributions or taxes.

4.13 Payments Subject to Receipt of Funds. In the event payments to be made to the Contractor by the Owner pursuant to this Contract are to be from funds made available to the Owner by any Federal, State or City entity pursuant to any Applicable Statute or any Applicable Agreement, then, notwithstanding anything to the contrary in this Contract, the Owner shall be under no obligation to make any such payments except when, and to the extent, such funds are available.

## **ARTICLE 5**

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

#### 5.1 Changes in the Work.

5.1.1 The Owner shall have the right and authority to make interpretations of the Plans and Specifications and/or to order minor changes in the Contract Work, if those changes do not involve any adjustment in the Maximum Contract Price. The Contractor shall promptly comply with any such interpretation or order.

5.1.2 The Contractor shall notify the Engineer and Owner's Representative of any changes in the work caused by events in the Field within a reasonable time of discovering the issue but not more than 14 days later. The Contractor is expected to issue a Request for Information (RFI) if the Contractor finds that additional pile repair work is necessary or if the Contractor believes that an alternative Pile Repair Type should be considered. Such RFI's should be issued within 14 days to enable a response to be provided by the Engineer before the work is completed. Change Orders for pile repair work will not be accepted unless an RFI has been issued.

#### 5.2 Change Orders.

5.2.1 During the course of the Contract Work, the Owner may require a significant portion of the Contract Work to be changed, added to or deleted. The Contractor shall perform all Change Order Work as directed and only if ordered to do so by the Owner or the Owner's Representative pursuant to a written Change Order in the form annexed hereto at Appendix F7, or such other form as may be promulgated or adopted for use by the Owner or the Owner's Representative. Neither oral directives nor any writing not designated by the Owner as a Change Order shall constitute a Change Order.

5.2.2 Upon receipt of a Change Order from the Owner or the Owner's Representative, the Contractor shall act promptly to carry out the instructions set forth in the Change Order.

5.2.3 If a Change Order adds or deletes the work or services of the Contract Work, then the amount of the price to be paid or the credit to be taken for said Change Order Work shall be determined in one or more of the following ways, as may be applicable but note there will be



no increase in General Conditions or Fee (or Overhead and Profit) on the first \$100,000 of change orders:

5.2.3.1 If the Contractor and the Owner agree upon a lump sum amount or an amount based on a unit price value to increase or decrease the Maximum Contract Price for the Change Order Work, which amount shall be stated in the Change Order, the Maximum Contract Price shall be changed by such amount; and/or

5.2.3.2 If this Contract and/or the Proposal of the Contractor is based upon or shall contain unit prices which are applicable to the type of work or services involved in the Change Order Work, then said unit prices shall be used to set the value of the increase or decrease to the Maximum Contract Price for the Change Order Work; and/or

5.2.3.3 If the value of the Change Order Work cannot be determined pursuant to Section 5.2.3.1 or Section 5.2.3.2 and prior to the performance of the Change Order Work and such Change Order Work is Additional Work, then the Contractor shall be paid for the performance of such Change Order Work in an amount equal to either of the following:

5.2.3.3.1 with respect to Change Order Work performed by a Subcontractor, the sum of:

5.2.3.3.1.1 Subcontractor's Actual Costs;

5.2.3.3.1.2 Subcontractor's Additional Costs – the Overhead (calculated at the rate of ten (10%) percent of the Subcontractor's Actual Costs); and

5.2.3.3.1.3 Subcontractor's Profit (calculated at the rate of five (5%) percent of the sum of the Subcontractor's Actual Costs and Subcontractor's Additional Costs); and

provided that the total of the mark-ups described in Sections 5.2.3.3.1.1-3, inclusive shall not exceed fifteen (15%) percent of the Subcontractor's Actual Costs.

5.2.3.4 If the value of the Change Order Work cannot be determined pursuant to Sections 5.2.3.1 or Section 5.2.3.2 and such Change Order Work is Deleted Work, then the amount of the credit to the Owner shall not be less than the sum of the value of the Actual Costs, Additional Costs and Profits that the Contractor and all Subcontractors would have earned if the Deleted Work had been performed.

5.2.4 If the value of the Change Order Work cannot be determined under Sections 5.2.3.1, 5.2.3.2 or 5.2.3.3 above, then the Contractor agrees that it shall nevertheless immediately perform or delete the Change Order Work and the price to be paid or the credit to be taken for said Change Order Work shall be determined by the Owner based upon the current market value for said Change Order Work, but in no event shall such value exceed the Actual Costs of

performing said Change Order Work. The determination of actual market value shall be made by the Owner and shall be binding upon the Contractor.

5.2.5 When both debits and credits are involved in any one Change Order, the allowance for Additional Costs and profit, if any, shall be based upon the net increase resulting from the Change Order, if any.

### 5.3 Payment for Change Orders.

5.3.1 Payments for Change Orders shall not become due and payable to the Contractor until:

5.3.1.1 the Contractor has performed the Change Order Work to the full satisfaction of the Owner;

5.3.1.2 the Contractor has submitted a complete and fully executed Change Order Form that sets forth the Contractor's agreement to and acceptance of the Change Order including, without limitation, the value and scope of the Change Order Work (Appendix F7) or such other form as may be acceptable to the Owner, plus any other documentation the Owner may require.

5.3.1.3 The Contractor shall submit the Change Order Form to the Owner's **Accounts Payable Department** with the next succeeding Progress Payment Requisition submitted by the Contractor after completion of the Change Order Work.

5.3.2 The Owner may, in its sole discretion, make payments to the Contractor on account of any Change Order Work before the Change Order Work is complete, but payment will be limited to no more than eighty (80%) percent of the total cost of the Change Order Work completed to date, exclusive of any and all mark-ups for Profit and Additional Costs, provided that a Change Order Form for the full price of the Change Order Work has been signed by all Parties. The balance of such payments shall be made upon completion of the Change Order Work to the full satisfaction of the Owner.

5.4 Debits for Change Orders. If the Change Order results in a credit to the Owner, the Owner shall, as applicable, apply the deduction for said Change Order immediately upon the issuance of said Change Order against any funds due or to become due under this Contract and/or any other Change Orders.

5.5 Protest Work. If the Contractor claims that any work or services requested by the Owner or being performed by the Contractor constitutes Change Order Work for which no Change Order has been issued, the Contractor must, before commencing such Work or services, and in no event any later than within sixty (60) calendar days of the Contractor having actual or constructive knowledge of the claim or the cause thereof, submit a written Notice of Claim/Change Order Protest to the Owner. If the Contractor fails to submit a Notice of Claim/Change Order Protest to the Owner prior to the commencement of the alleged Change Order Work and within sixty (60) calendar days of the Contractor having actual or constructive knowledge of the claim or the cause thereof, the Contractor shall be deemed to have waived and shall be estopped from protesting such work or services as Change Order Work and the

Contractor will be deemed to have acknowledged such work or services as part of the Contract Work. Notwithstanding any such claim or protest, the Contractor shall proceed to diligently perform the work or services in question, unless the Owner notifies the Contractor in writing not to perform such work or services.

5.6 Records for Change Order Work or Protest Work. During the course of its performance of any Change Order Work or any Protest Work, the Contractor shall furnish to the Owner and the Owner's Representative on a daily basis for each day that Contractor is performing such Change Order Work or Protest Work a written statement listing the following information:

- 5.6.1 the name and social security number of each worker employed on such work;
- 5.6.2 the number of hours each such worker has worked;
- 5.6.3 the type of work each such worker has performed;
- 5.6.4 the nature and quantity of any Materials and Equipment furnished or used in connection with such work; and
- 5.6.5 the identity of each individual or entity from whom such Materials and Equipment have been purchased or rented.

The Contractor's failure to comply with the requirements of this Section 5.6 shall be deemed a waiver of any claim for payment for such work or services as Change Order Work or Protest Work.

5.7 Contractor Allowances. The Allowances included in the Bid can only be expended with the prior authorization of the Owner/OR. Any balance remaining at the end of the Project shall be returned to the Owner via a credit Change Order.

## **ARTICLE 6** **SUBCONTRACTS**

6.1 Subcontracts in General.

6.1.1 The Contractor may enter into one or more Subcontracts with Subcontractors for the purpose of performing the Contract Work, subject to the prior written approval of the Owner to:

- 6.1.1.1 each Subcontractor;
- 6.1.1.2 the scope of work or services to be performed by each Subcontractor;
- 6.1.1.3 the compensation to be paid to each Subcontractor,
- 6.1.1.4 the principal or other member(s) of the Contractor's staff responsible for supervising the performance of each Subcontractor's activities; and

6.1.1.5 subject to any other applicable provisions of this Contract including, without limitation, those set forth in this Article 6.

The Owner/Director will not unreasonably withhold its approval of any proposed Subcontractor. The Contractor has identified and intends to use the Subcontractors listed in the Subcontractor Utilization Report annexed at Appendix J. The Contractor shall Notify the Owner in writing of any changes to the information contained in Appendix J and submit an amended Subcontractor Utilization Report to the Owner for its approval prior to the commencement of the Contract Work to be performed by any Subcontractor not previously approved by the Owner in writing and listed on a Subcontractor Utilization Plan submitted to and accepted by the Owner for such Contract Work.

6.1.2 The Contractor shall not enter into Subcontracts totaling in amount more than fifty (50%) percent of the Maximum Contract Price without the prior written approval of the Owner.

6.1.3 The Contractor, and not the Owner, is responsible for each Subcontractor's work, acts and omissions. Neither this Contract nor any Subcontract shall create any relationship or obligation on the part of the Owner to any Subcontractor.

6.1.4 In addition to any other right the Owner may have under this Contract in the event this Contract is subject to DBE Requirements, the Owner may reject, and it shall be reasonable for the Owner to withhold approval of, any Subcontractor proposed by the Contractor if acceptance of the proposed Subcontractor would result in the diminution of the DBE Requirements.

6.1.5 The Contractor shall pay any Subcontractor approved by the Owner for work that has been satisfactorily performed no later than thirty (30) days from the date of Contractor's payments from the Owner.

6.1.6 The Contractor is solely responsible for the payments to the Subcontractors. Notwithstanding the foregoing, the Owner reserves the right, after three (3) calendar days prior written Notice, to retain any money due the Contractor and to pay Subcontractors directly for Materials and Equipment, labor, tools, services and all other obligations of the Contractor and to deduct the amount of any such direct payments from any payments or amounts then due or thereafter to become due to the Contractor.

6.1.7 The Contractor shall inform all Subcontractors fully of the terms and conditions of this Contract and shall include in every Subcontract, and enforce, all such terms and conditions, as applicable.

6.1.8 All Subcontracts shall contain the following provisions:

6.1.8.1 there is no privity of contract between the Subcontractor and the Owner or the City;

6.1.8.2 neither the Owner nor the City will incur any liability by virtue of any act, omission, negligence, or obligation of the Subcontractor or the Contractor;

6.1.8.3 the Subcontractor shall indemnify, defend and hold harmless the Owner and the City and their Representatives against any and all claims, judgments or liabilities to which they may be subject (including, without limitation, any and all claims for injuries to persons (including death) and damage to property) because of any negligence or any fault or default of the Subcontractor and/or its Representatives or the breach of the Subcontractor's obligations under the Subcontract;

6.1.8.4 the Subcontractor's Requisitions shall comply with the requirements and include the representations, warranties and agreements set forth Section 4.2.2 and 4.2.3;

6.1.8.5 the "Events of Default" set forth in Section 7.3.2 as grounds for termination for cause shall be "Events of Default" and grounds for termination of the Subcontractor for cause;

6.1.8.6 the Subcontract may be assigned without the written consent of the Subcontractor to the Owner, to the City or to any agency or instrumentality of the City having authority to accept the assignment;

6.1.8.7 all work or services under the Subcontract shall strictly comply with the requirements of this Contract; and

6.1.8.8 a representation and warranty that the Subcontractor currently has no interest, and shall not acquire any interest, that would directly or indirectly conflict in any manner or degree with the performance of its work and no person having any such conflicting interest shall be employed in the performance of the Subcontract. Any such interest on the part of the Subcontractor, its employees, agents or assigns must be fully disclosed to the Owner.

6.1.9 If the Contractor fails to include the provisions set forth in this Article 6 in any Subcontract, the Contractor hereby agrees to indemnify and hold harmless the Owner and the City and their respective Representatives against any and all claims, damages, awards, judgments, liabilities, expenses, fines, penalties, costs and/or fees incurred by or imposed upon the Owner and the City and their respective Representatives, including reasonable attorneys' fees, as a result of said failure.

6.2 Investigation Forms for Subcontractors. The Contractor shall provide the Owner with a list of all Subcontractors employed for the performance of the Contract Work whose Subcontract amount totals \$25,000 or more. The Contractor will furnish each such Subcontractor whose Subcontract amount totals less than \$100,000 with the Owner's internal qualification and background investigation forms. The Contractor will furnish each such Subcontractor whose Subcontract amount totals \$100,000 or more with the Mayor's Office of Contracts ("MOC") Investigations Forms. These forms will be provided by the Owner to the Contractor. All NYCEDC, MOC and other questionnaires, disclosure forms, qualification and background investigation forms required in connection with the Contract are collectively referred to as "Investigation Forms". The Contractor shall cause each Subcontractor to fill out and complete the Investigation forms in a timely fashion but in no event later than the commencement of the Contract Work performed by such Subcontractor pursuant to its Subcontract.

6.3 Indemnification against Subcontractor's Liens. The Contractor shall indemnify and hold harmless the Owner and the City, and their respective Representatives against any and all Subcontractors' liens which may be filed. If the Contractor shall fail to promptly discharge all Subcontractors' liens, the Owner shall have no obligation to make any payment to the Contractor, and shall have the right to discharge any liens which may be filed by any Subcontractor of any tier in accordance with the provisions of Article 16.

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

## **ARTICLE 7** **SUSPENSION OR TERMINATION**

7.1 Delay, Postponement or Suspension of Work.

7.1.1 The Owner shall have the right to delay, postpone or suspend the Contract Work, or any portion thereof, immediately or upon a specified date, for a period of not more than one-hundred and twenty (120) days, upon written Notice to the Contractor and for any reason deemed by the Owner to be in its interest. The Contractor and all of its Subcontractors and Representatives shall cease all Contract Work, or any portion thereof, immediately or as of the date specified in the Notice.

7.1.2 Any such delay, postponement or suspension shall not give rise to any cause of action for damages against the Owner or the City, but the Contract Term specified in Part I of this Contract and the Contractor's time for performance of the Contract Work shall be extended for the period of the delay, postponement or suspension.

7.1.3 In the event the Owner delays, postpones or suspends the Contract Work for more than one-hundred and twenty (120) days, the Owner, after consultation with the Contractor, may:

7.1.3.1 Terminate the Contract; or

7.1.3.2 Extend the Contract Term specified in Part I of this Contract and increase the Maximum Contract price set forth in Part I of this Contract to include any additional mobilization or other costs incurred by the Contractor as a direct result of such delay, postponement or suspension; or

7.1.3.3 Negotiate a new contract with the Contractor.

7.1.4 The Contractor shall be solely responsible for securing the Contract Work, removing or correcting all hazardous conditions and ensuring that the Work Site is made safe

and maintained in a safe condition to the Owner's satisfaction during any period of delay, postponement or suspension.

7.1.5 The Contractor shall resume the Contract Work upon the date specified in the Notice or upon such other date as the Owner may thereafter specify in writing.

7.2 Termination for Convenience. The Owner shall have the right to terminate the Contract Work, or any portion thereof, immediately or upon a specified date, upon written Notice to the Contractor and for any reason deemed by the Owner to be in its interest.

7.3 Defaults and Termination for Cause.

7.3.1 In addition to any other right that the Owner may have, upon the occurrence of an Event of Default, the Owner shall have the right to declare the Contractor in default and terminate this Contract, in whole or in part, for cause, by giving Notice in writing to the Contractor of the cause and the date of such termination.

7.3.2 An "Event of Default" shall be deemed to have occurred if:

7.3.2.1 the Contractor becomes insolvent, files for bankruptcy or is adjudged a debtor under the U.S. Bankruptcy Code;

7.3.2.2 the Contractor fails to perform the Contract Work in the method and manner required hereunder;

7.3.2.3 the Contractor fails to complete the Contract Work, or any portion thereof, within the time limits provided in this Contract or any schedule approved by the Owner;

7.3.2.4 the Contractor fails to assign workers, order Materials and Equipment or enter into Subcontracts in a manner sufficient to permit completion of the Contract Work, or any portion thereof, within the time limits provided in this Contract or in accordance with any schedule approved by the Owner;

7.3.2.5 the Contractor voluntarily, or by operation of law, assigns, transfers, conveys or otherwise disposes of its interest in this Contract or its right to receive funds hereunder without the prior written consent of the Owner;

7.3.2.6 the Contractor violates any term, covenant or provision of this Contract;

7.3.2.7 the Contractor fails to comply with any Legal Requirement including, without limitation, any Applicable Statutes or any Applicable Agreements;

7.3.2.8 any representation or warranty made by the Contractor in Article 12, in any other Article in this Contract or in any other Contract Document shall prove to be untrue, or be otherwise breached;

7.3.2.9 in the judgment of the Owner, the conduct of the Contractor is such that the interests of the Owner are likely to be impaired or prejudiced; or

7.4 Effects of Termination for Convenience or for Cause.

7.4.1 The Contract, or such portion of the Contract described in the written Notice of termination, shall terminate as of the termination date set forth in such Notice, or immediately if no date is listed.

7.4.2 Upon receipt of a written Notice of termination, the Contractor, its Subcontractors and its Representatives shall cease any or all Contract Work, immediately or on the date specified, in accordance with the terms of the Notice, and take all steps necessary to remove or correct all hazardous conditions and make the Work Site safe.

7.4.3 Termination, whether for convenience or for cause, shall not give rise to any cause of action for damages against the Owner or the City.

7.4.4 Within ten (10) days after the effective date of termination, the Consultant shall surrender and turn over to the Owner all Work Product and any other materials related to this Contract requested by the Owner including, without limitation, all Materials and Equipment purchased by the Contractor in connection with this Contract.

7.4.5 If the termination was for cause, the Owner may, in its sole discretion, have the Contract Work completed by another contractor or elect not to complete the Contract Work.

7.5 Review of Costs Upon Termination. Upon termination with or without cause, the Contractor shall promptly present to the Owner a verified statement of all costs actually incurred prior to the date of termination, together with all documents in the Contractor's possession related thereto that the Owner may demand in order to verify such statement of costs including, without limitation, canceled checks, Subcontracts, and paid receipts and bills from Subcontractors. The Owner will promptly review the statement of costs and review or audit any supporting documentation provided by or in the Contractor's possession. The Owner will Notify the Contractor in writing of the results of such review and audit and the amount approved for payment.

7.6 Submission of Final Payment Documents. Upon receipt of the Owner's Notice pursuant to Section 7.5 above, the Contractor shall submit to the Owner, in proper form, all Final Payment Documents, plus such other documentation as the Owner may require.

7.7 Payment Following Termination for Cause. If the termination was for cause, the Contractor shall receive such equitable compensation for such Work as shall, in the judgment of the Owner, have been satisfactorily performed by the Contractor up to the date of the termination, such compensation to be fixed by the Owner, subject to any rights of audit provided herein, and subject to set-off by the Owner for any additional expenses the Owner incurs to complete the Work satisfactorily, including the expenses of engaging another contractor, the costs set forth in Section 18.10.2 and all incidental expenses incurred by the Owner as a result of the termination for cause including, without limitation, all actual legal fees and accounting fees. The sum of (i) such additional expenses incurred to the Owner for the completion of the Work,



and (ii) payments made to the Contractor prior to the termination of the Contract shall hereafter be referred to as the “Contract Completion Costs”.

7.7.1 If the Owner elects to have the Contract Work completed by another contractor, the following shall apply:

7.7.1.1 If the Contract Completion Costs exceed the Maximum Contract Price, Contractor shall pay such difference to the Owner, as described in Section 7.7.1.3 below.

7.7.1.2 If the Contract Completion Costs are less than the Maximum Contract Price, provided that the Contractor has provided all information and documentation required by this Section, the Owner will pay to the Contractor, an amount equal to the lesser of (a) the difference between the Maximum Contract Price and the Contract Completion Costs, or (b) such amount, when added to sums previously paid to Contractor, equitably compensates Contractor for Services satisfactorily performed up to the date of termination. Such payment will be made as further described in Section 7.7.1.3 below.

7.7.1.3 The Owner will, upon full completion of the Work, deliver a written Notice to the Contractor advising the Contractor that the Work has been completed and setting forth the Contract Completion Costs. If the Contract Completion Costs exceed the Maximum Contract Price, the Contractor shall promptly pay such difference to the Owner upon receipt of such Notice. If the Contract Completion Costs are less than the Maximum Contract Price, then, subject to (i) the Contractor’s providing to the Owner all information and documentation required by this Section, and (ii) any other applicable provisions of this Contract including, without limitation, Sections 7.7.3, 7.7.4 and 7.7.5 hereof, the Owner will pay the Contractor the amount described in Section 7.7.1.2. Such payment shall constitute full and Final Payment to the Contractor.

7.7.2 If the Owner elects not to complete the Contract Work, the Owner shall deduct from the Maximum Contract Price the sum of:

7.7.2.1 the value of the Contract Work not completed, as determined by the Owner, in its sole judgment; and

7.7.2.2 any credit due the Owner under the Contract; and

7.7.2.3 all incidental expenses incurred by the Owner as a result of the termination for cause including, without limitation, all actual legal fees and accounting fees.

7.7.3 The Owner need not wait until the completion of the Contract Work to seek the enforcement of its rights against the Contractor if there has been a termination for cause, but no monies shall be due or payable to the Contractor terminated for cause until the Contract Work is completed or the Contract Work is abandoned.

7.7.4 Notwithstanding any provision in this Contract to the contrary, the Contractor may not recover as part of its costs any unearned or anticipated overhead or profit for itself or for its Subcontractors as a result of any termination, whether for convenience or for cause.

7.7.5 The provisions of this Section 7.7 shall be in addition to any other rights the Owner may have under this Contract, any Applicable Statute, any Applicable Agreement, or otherwise, in law or in equity.

7.8 Termination or Suspension Related to Unavailability of Funds. In addition to any other right to postpone, delay suspend or terminate the Work or the Contract set forth in this Contract, if, pursuant to the Applicable Statutes or Applicable Agreements or otherwise, there shall be a suspension, termination or reduction of the Funds funding this Contract as a result of which Funds are not available for some or all payments under this Contract, the Owner shall so Notify the Contractor and the Contractor shall, and agrees to, cease to perform the activities specified in the Notice (permanently or temporarily, as specified in the Notice) on the date set forth therein, which may be immediately. The Contractor shall assume no further binding obligations in connection with any Contract Work specified in the Notice to be stopped, after the date set forth in the Notice, except that such cessation need only be for the period of suspension if the specified Work is suspended rather than terminated. The award of Funds funding this Contract may be suspended or terminated if the Contractor materially fails to comply with any term of such award. The award may also be terminated for convenience in accordance with the Applicable Statutes and Applicable Agreements.

7.9 Release. Termination of this Contract, whether by expiration of its term or otherwise, shall not release the Contractor from any liability to the Owner or from the Contractor's indemnification and other obligations pursuant to Article 8 of these Terms and Conditions.

## **ARTICLE 8** **INDEMNIFICATION AND CLAIMS**

8.1 Indemnification. Notwithstanding anything to the contrary contained herein, the Contractor shall be solely responsible for all injuries to persons, including death, or damage sustained during its operations and performance of the Contract Work, resulting from any act, omission, negligence, fault or default of the Contractor or its Representatives. The Contractor agrees to defend, indemnify and hold harmless the Owner, the City, the Additional Insureds, the Other Interested Parties, and each of their respective Representatives from any and all losses, claims, damages, expenses, judgments, liabilities and causes of action, including, but not limited to, claims, judgments and liabilities which they or any of them may become subject on account of any negligence, fault or default of the Contractor or its Representatives or on account of any statute or at common law or otherwise, and from any claims against, or liability incurred by, the Owner or the City or the Additional Insureds, the Other Interested Parties, or their respective Representatives by reason of claims of the Contractor or the Contractor's Representatives for any matter whatsoever in connection with work or services performed under this Contract or the breach of the Contractor's obligations under the Contract. The Contractor agrees to reimburse the Owner, the City and the Additional Insureds, the Other Interested Parties, for any and all costs, fees and expenses incurred in connection with the above including, without limitation, attorneys' fees and expenses. The indemnity agreements contained in this Section 8.1 are in addition to any liability which the Contractor may otherwise have to the Owner, the City or the Additional Insureds, the Other Interested Parties, and shall be deemed to include, but not be limited to or by, the Contractor's other indemnification obligations may be specifically set forth elsewhere in the General Terms and Conditions of this Contract.

## 8.2 Claims or Actions Against the Owner.

8.2.1 The Contractor shall look solely to the Funds appropriated to the Owner by the City for this Contract for the satisfaction of any claim or cause of action the Contractor may have against the Owner in connection with this Contract or the failure of the Owner to perform any of its obligations hereunder. In no event shall the Owner's aggregate liability hereunder in connection herewith or related to the performance of the Contract Work exceed the Maximum Contract Price. The Contractor acknowledges and agrees that it will be adequately compensated by money damages alone for any act or omission of the Owner and therefore specifically waives any and all rights that it may have for equitable relief, including injunctive relief, in connection with this Contract.

8.2.2 Upon the Contractor's acceptance of Final Payment, the Contractor agrees that it shall be deemed to have released the Owner from any and all claims, causes of action and liability to the Contractor, its Representatives, successors and assigns, in connection with this Contract or the performance of the Contract Work.

8.2.3 The Owner's and the City's Representatives shall have no personal liability in connection with this Contract or any failure of the Owner to perform its obligations hereunder.

8.2.4 No person or entity shall have any right or claim against the Owner, the City or any of their respective Representatives by reason of the failure of the Owner to withhold money pursuant to any provision of this Contract permitting the Owner to do so.

8.2.5 The Contractor agrees that it shall have no claim against the Owner for damages, or in any action or proceeding at law or in equity, unless the Contractor shall give the Owner Notice of the existence of the claim within sixty (60) days after the cause of action arose, or the damages first became ascertainable, whichever shall occur first. The Notice of claim must strictly comply as to form with all of the provisions required by law regarding claims against a municipal Owner with service of the same to be made by personal delivery upon an officer or agent of the Owner. Serving the Notice of claim in strict accordance with this Article shall be a necessary and non-waivable jurisdictional element of any claim by the Contractor.

8.2.6 Any action or proceeding by the Contractor against the Owner must be commenced within sixty (60) days after the service of the Notice of claim described in Section 8.2.5 above, but not before thirty (30) days after the service of the Notice of claim.

8.2.7 The filing of a Notice of Appeal by the Owner in any judicial proceeding shall stay the enforcement of any judgment against the Owner, pending a resolution and final determination of that appeal, without the Owner posting any security and without any court order being obtained.

8.2.8 In addition to any other contractual statute of limitations set forth herein, the Contractor agrees that no action against the Owner shall lie or be maintained if the Owner is barred by any statute or time limitation whatsoever at the time the Contractor institutes its suit or for twenty (20) days thereafter, from maintaining, prosecuting or instituting any claim against the City, the State, the United States Government, any insurance company which may be liable, any

of them, or any other party, based upon the same facts alleged by the Contractor against the Owner, either as a third-party plaintiff or in a plenary action.

8.2.9 If any claim is made or any action brought relating to this Contract or the Contract Work, whether or not the Contractor is a party, the Contractor shall diligently render to the Owner any and all assistance which the Owner may require of the Contractor, without compensation.

8.2.10 The provisions of this Section 8.2 shall not wave, limit or in any way prejudice any other right of the Owner or the City.

### 8.3 Contractor As Independent Contractor.

8.3.1 Notwithstanding anything contained herein to the contrary including, without limitation, the provisions of Section 22.2 hereof, it is specifically understood and agreed that in the performance of the terms, covenants and conditions of this Contract, the Contractor its Subcontractors and Representatives shall not be deemed to be acting as agents, servants or employees of the Owner or the City by virtue of this Contract or by virtue of any approval, permit, license, grant, right, or other authorization given by the City or the Owner or any of their respective Representatives in connection with this Contract, but shall be deemed to be independent contractors performing construction work and services for the Owner, and shall be deemed solely responsible for all acts taken by them pursuant to this Contract.

8.3.2 The Contractor, its Subcontractors and Representatives shall not make any representation that they are agents, servants or employees of the Owner or the City by virtue of this Contract or by virtue of any approval, permit, license, grant, right or authorization given by the Owner or the City or any of their respective Representatives.

8.3.3 The Contractor is solely responsible for the work, direction, compensation and personal conduct of its Subcontractors and Representatives.

## **ARTICLE 9 INSURANCE AND BONDS**

9.1 Insurance. The Contractor agrees to comply with all of the Insurance Requirements set forth in Sections 1 – 5, inclusive of Appendix B of this Contract.

9.2 Bonds. The Contractor agrees to comply with all of the Bond Requirements set forth in Section 6 of Appendix B of this Contract.

## **ARTICLE 10 MATERIALS AND EQUIPMENT AND LABOR**

### 10.1 Materials and Equipment.

10.1.1 All Materials and Equipment used in the Work and/or to be permanently installed on the Work Site shall be new and of the best quality of the kind specified and

approved, except as may be specified in the Plans and Specifications or otherwise approved by the Owner.

10.1.2 Notwithstanding the foregoing, the Owner encourages the use of recycled products where practicable. The Contractor shall obtain the prior written consent of the Owner to the use and permanent installation of recycled products on the Work Site.

10.1.3 The Contractor shall furnish satisfactory evidence of the kind and quality of all Materials and Equipment upon demand. If required by the Owner's Representative or the Owner, the Contractor shall obtain and deliver to the Owner the manufacturer's written recommendation that the Materials and Equipment are designed and appropriate for the use intended for this Contract.

10.1.4 Contractor shall not use, but shall replace, at its sole cost and expense, any Materials and Equipment or Work that become damaged in any way during storage and delivery. Completed Work shall be free of dents, tool marks, warpage, buckling, open joints and any and all other defects.

10.1.5 The Contractor shall deliver and distribute Materials and Equipment as needed for the uninterrupted and speedy progress and completion of the Project and so as not to unreasonably encumber the Work Site, and in such manner as the Owner's Representative may direct. In furtherance thereof, at the Owner's Representative's direction, the Contractor shall cause the Materials and Equipment to be:

10.1.5.1 manufactured in advance;

10.1.5.2 warehoused either at the factory or elsewhere;

10.1.5.3 delivered to the Site promptly when so instructed;

10.1.5.4 relocated; or

10.1.5.5 with respect to excess or defective Materials and Equipment, removed from the Site at the Contractor's sole cost and expense.

10.1.6 In addition to and without limiting the provisions of Section 2.11 of these General Terms and Conditions, the Contractor shall not overload any parts of the Work Site including, without limitation, floors, roofs, scaffolding and other installations, or any part thereof.

10.1.7 Materials and Equipment delivered at the Work Site that will form a part of the Work shall not be removed without the prior consent of the Owner's Representative or the Owner.

10.1.8 If the Owner or the Owner's Representative determine that any Materials and Equipment, or any portion thereof, are faulty or defective in any respect, such Materials and Equipment or portion thereof, shall be replaced, at the Contractor's sole cost and expense, within five (5) days after receipt or written Notice to such effect from the Owner's Representative or the

Owner. All subcontracts, agreements, guarantees, or warranties executed or delivered in connection with Materials and Equipment which are pre-purchased by the Contractor under this Contract and as provided in the Contract Documents shall contain a provision identical or substantially similar to the preceding sentence.

10.2 Labor. All labor performed on the Work Site shall be performed by skilled workers experienced in their respective trades and shall be of first class quality in accordance with the standards of the construction industry and the particular trade for the New York City Statistical Metropolitan Area, as the Owner may deem appropriate and acceptable.

10.3 Evidence of Title/Absence of Encumbrances. All Materials and Equipment furnished or installed by the Contractor shall be free of all claims, liens and encumbrances including, without limitation, conditional bills of sale, security agreements, financing statements or chattel mortgages. At the request of the Owner, the Contractor shall furnish to the Owner such properly executed, acknowledged and delivered bills of sale and other instruments as may be required by the Owner to assure the Owner and/or the City of title to such Materials and Equipment, free of claims, liens and encumbrances. The Contractor shall mark or otherwise identify all such Materials and Equipment as the property of the Owner and/or the City, as the Owner may direct.

10.4 Title to and Responsibility Towards Materials and Equipment. Title to all Materials and Equipment to be sold by the Contractor to the Owner shall immediately vest in the Owner and/or City upon delivery of such Materials and Equipment to the Work Site and prior to their becoming a part of a permanent structure. Notwithstanding such transfer of title, the Contractor shall, without cost to the Owner, and until such time as the Contract Work is fully accepted by the Owner have full and continuing responsibility with respect to such Materials and Equipment including, without limitation, the following responsibilities:

- 10.4.1 to install them accordance with the provisions of this Contract;
- 10.4.2 to protect them;
- 10.4.3 to maintain them in a proper condition;
- 10.4.4 to forthwith repair, replace and make good any damage thereto or any theft or disappearance thereof;
- 10.4.5 to furnish additional Materials and Equipment in their place of any that may be lost, stolen or rendered unusable; and
- 10.4.6 any of the Contractor's other obligations hereunder.

10.5 Effect of Rejection. In the event that the Owner determines that any Materials and Equipment are defective or otherwise unsatisfactory and rejects them after title has passed to the Owner and/or the City, the Owner and/or the Owner's Representative will Notify the Contractor of the same in writing and title to all such Materials and Equipment shall be deemed to have been transferred back to the Contractor as of the date set forth in such Notice.

**ARTICLE 11**  
**WARRANTIES AND GUARANTIES**

11.1 Materials and Equipment. The Contractor shall obtain and deliver to the Owner all manufacturer's warranties and guarantees on all Materials and Equipment required by this Contract. The Contractor shall comply with all requirements related to all such warranties and guaranties. All such warranties and guarantees shall be

11.1.1 in the name of the Owner and assignable to the City; or

11.1.2 in the name of the Owner and the City; or

11.1.3 in such name or names as the Owner may otherwise direct.

11.2 Contract Work. Unless otherwise specifically set forth in the Plans and Specifications or elsewhere in this Contract, the Contractor fully warrants and guarantees its Contract Work for a period of at least one (1) year from the date of Final Completion against any and all defects whether latent or patent in the Contract Work including, without limitation, all Materials and Equipment permanently installed on the Work Site. The Contractor shall promptly repair, replace, rebuild or restore, as the Owner may direct, all defective work and all defective Materials and Equipment during the applicable warranty period and shall pay all costs for all labor and all Materials and Equipment necessary to correct such defects. Upon the Contractor's failure to promptly repair, replace, rebuild or restore any such defect, the Owner may cause the same to be repaired, replaced, rebuilt or restored at the Contractor's expense and the Contractor shall promptly pay to the Owner all costs incurred by the Owner in connection therewith.

11.3 Retainage of Security for Warrantied Materials and Equipment and Labor. As security for the Contractor's faithful performance of its obligations under this Article 11, the Owner may deduct any payment due the Contractor upon Substantial Completion and/or upon Final Completion an amount equal to one (1%) percent of the Maximum Contract Price, or such other amount as may be fixed in the Plans and Specifications or other Contract Documents.

11.4 Payment of Retainage. If at the expiration of the applicable warranty period, the Owner determines that the Contractor has faithfully performed all its obligations hereunder to the Owner's full satisfaction, the Owner will certify the same to the Contractor within twenty (20) days after the expiration of the applicable warranty period. Within thirty (30) days of such certification, the Owner will pay, without interest, any Retainage retained by the Owner as security for warrantied Materials and Equipment and labor.

11.5 Application of Retainage. In the event the Owner determines that any of the Contract Work is damaged or defective and requires repair, replacement, rebuilding or restoration upon the expiration of the applicable warranty period, the Owner will Notify the Contractor of the same within ten (10) days of the expiration of the applicable warranty period and the Contractor shall promptly take such action as directed in the Notice to remedy the damaged or defective Contract Work described in the Notice. If the Contractor fails to repair, replace, rebuild or restore such defective or damaged Contract Work promptly after receiving such Notice, the Owner shall have the right to have such work done by others in the same manner as provided for the completion of a contract under Article 7 hereof and to deduct the cost thereof from any Retainage retained pursuant to this Article 11. The balance, if any, shall be returned to the Contractor without interest. If the amount so deposited is insufficient to cover the cost of such work, the Contractor shall be liable to pay such deficiency to the Owner on demand. The Owner's certificate setting forth the fair and reasonable cost of repairing, replacing, rebuilding or restoring any damaged or defective Contract Work when performed by anyone other than the Contractor shall be binding and conclusive upon the Contractor.

## **ARTICLE 12**

### **REPRESENTATIONS AND WARRANTIES**

12.1 In General. The Contractor represents, warrants and covenants as follows:

12.1.1 The Contractor is duly organized or formed, validly existing and in good standing under the laws of its jurisdiction of organization or formation, and has all requisite power and authority to authorize, execute, deliver and perform this Contract in accordance with its terms. The Contractor is authorized to do business in the City.

12.1.2 The execution and delivery of this Contract, and compliance with the provisions hereof, do not and will not conflict with or constitute a violation of or default under any statute, indenture, mortgage, deed of trust or other agreement or instrument to which the Contractor is bound, or, to the knowledge of the Contractor, any order, rule or regulation of any court or governmental agency or body having jurisdiction over the Contractor or any of its activities or properties.

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

12.1.4 The Contractor has not employed any person to solicit or procure this Contract, and has not made and shall not make, except to full-time employees of the Contractor, any payment or any agreement for the payment of any commission, percentage, brokerage, contingent fee or any other compensation in connection with the procurement of this Contract.

12.1.5 The Contractor has not acquired nor will it acquire any interest of any nature, direct or indirect (including any interest in land in an area related to the Work or any interest in any Owner, partnership, or other entity with any such interest), which would conflict in any manner or degree with the performance of the Work. The Contractor further represents and



covenants that in the performance of this Contract no person having any such conflicting interest shall be employed by the Contractor in the performance of this Contract.

12.1.6 The Contractor is not in arrears to the City upon any debt, contract or taxes and is not in default, as surety or otherwise, upon any obligation to the City, and has not been declared not responsible, or disqualified, by any agency of the City, nor is there any proceeding pending relating to the responsibility or qualification of the Contractor to receive public contracts. The Contractor represents that it has paid all applicable New York City income, excise and other taxes for all years it has conducted business activities in New York City.

12.1.7 All questionnaires and/or disclosure forms delivered by the Contractor to the Owner (including any disclosure forms by or relating to the Contractor's principals and affiliated persons or entities) to date are, to the best of the Contractor's knowledge, true and correct in all material respects; no material change has occurred in the circumstances of the Contractor, or any of its principals or affiliated persons or entities since the respective dates upon which such disclosure forms were executed which would otherwise require disclosure on such forms; and such disclosure forms do not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make any statement contained in such form not misleading.

12.1.8 The Contractor warrants and agrees that all Materials and Equipment it utilizes and incorporates in the Contract Work shall be free of any and all liens, claims, chattel mortgages, security interests, encumbrances and conditional sales agreements in favor of the Contractor, any of its Subcontractors or any other person or entity.

12.1.9 The Contractor represents and warrants that it has reviewed and understands the Contract Documents and has experience and expertise in the Contract Work described therein.

12.2 Compliance with Administrative Code Section 6-114. The Contractor represents, warrants and covenants that neither it nor any substantially owned and affiliated company thereof is now participating, nor shall participate during the Contract Term, in an international boycott in violation of the provisions of the Export Administration Act of 1969, as amended, or the regulations promulgated thereunder. Upon the final determination by the United States Department of Commerce or any other agency of the United States as to conviction of the Contractor or any substantially-owned affiliated company thereof for participation in an international boycott in violation of the provisions of the Export Administration Act of 1969, as amended, or the regulations promulgated thereunder, the Owner may, at its option, declare a default under this Contract.

12.3 Site Conditions. By executing this Contract, the Contractor represents and warrants that it:

12.3.1 has visited the Work Site;

12.3.2 familiarized itself with the local conditions under which the Work is to be performed;

12.3.3 correlated its observations with the requirements of the Contract Documents;

12.3.4 understands that the Work may be done in a congested area and has calculated its price and time schedule accordingly;

12.3.5 shall coordinate deliveries of Materials and Equipment with the Owner's Representative promptly and in a manner so as not to interfere with neighboring operations at the Project;

12.3.6 shall confine operations at the Project to areas permitted by applicable Legal Requirements, permits and the Contract Documents and shall not unreasonably encumber the Site with any Materials and Equipment;

12.3.7 shall coordinate all of its operations with and secure approval from the Owner's Representative before using any portion of the Site.

### **ARTICLE 13** **LEGAL REQUIREMENTS**

13.1 The Contractor shall, at its sole cost expense, perform the Contract Work in strict conformity with all applicable Legal Requirements including, without limitation, all Applicable Statutes and Applicable Agreements specifically referred to in this Article or elsewhere in the Contract Documents. Failure by the Contractor to abide by any Legal Requirement, Applicable Statute or Applicable Agreement shall be a material default under this Contract.

13.2 Without limiting the generality of the foregoing, the Contractor agrees that it shall comply with the following:

13.2.1 Anti-Boycott Provisions. The Contractor shall comply with the provisions of Section 6-114 of the City's Administrative Code and the rules and regulations issued by the City Comptroller thereunder.

13.2.2 Executive Order No. 50 (1980) ("E.O. 50").

13.2.2.1 The Contractor shall comply with the applicable provisions of the Equal Employment and Affirmative Action Compliance for Construction Contracts Addendum (the "Executive Order No. 50 (1980) Construction Rider) attached hereto as Part III, Appendix C and such provisions shall be attached to and made a part of any Subcontract entered into by the Contractor pursuant to this Contract which exceeds \$750,000 or as may otherwise be required by E.O. 50.

13.2.2.2 The Contractor shall, and shall require all Subcontractors to, complete and submit Employment Reports as may be required by E.O. 50 in the forms annexed at Part VI of the IFB (Part IV.A of this Contract), as applicable. Such Employment Reports shall be submitted to the Owner's Contract Administration and Procurement Department prior to commencement of work or services and prior to the purchase of the Materials and Equipment by the Contractor or by any Subcontractor.

13.2.2.3 The Contractor and any Subcontractors that provide any on-site construction activity shall complete and submit Payroll Reports to the Owner in the form annexed in Part III of this Contract as Appendix F10.

13.2.2.4 The provisions of this Section 13.2 shall be deemed supplementary to, and not in lieu of, or in substitution for, the applicable provisions of the New York State Labor Law relating to non-discrimination, or any other applicable Legal Requirements.

13.2.3 Other Equal Employment Opportunity Laws.

13.2.3.1 The Contractor shall comply with and cooperate with the Owner with respect to the Owner's obligations arising pursuant to all other Legal Requirements relating to non-discrimination and equal employment opportunities including, without limitation, those set forth in the following Appendixes:

13.2.3.1.1 Appendix C - Executive Order 50 (1980) Construction Rider;

13.2.3.1.2 Appendix D - Applicable Statutes; and

13.2.3.1.3 Appendix E – Applicable Agreements.

13.2.3.2 The Contractor shall give consideration to employing City residents who are economically disadvantaged or are eligible under any applicable Legal Requirements including, without limitation, the Workforce Investment Act of 1998, and who have qualifications and skills commensurate with the requirements for the position available. To the greatest extent feasible, the Contractor shall give opportunities for training and employment to lower income persons in the Project area.

13.2.4 Minimum Wage Laws. Except for any employees whose prevailing wage is required to be fixed pursuant to Section 220, et seq. and Section 230, et seq. of the New York State Labor Law, which employees shall be paid such prevailing wage, all persons employed by the Consultant or 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 minimum hourly rate required by law, unless a higher amount is required pursuant to any other provision of this Contract.

13.2.5 MacBride Principles. The MacBride Principles regarding the City's policies in relation to contracts with entities doing business in Northern Ireland.

13.2.6 Noise Control Provisions. The Contractor shall comply with all of the applicable provisions of the City's Administrative Code regarding noise control including, without limitation, the following:

13.2.6.1 Section 24-216(b) which provides, in relevant part, that devices and activities which will be operated, conducted, constructed or manufactured pursuant to the Contract and which are subject to the provisions of the City's Administrative Code will be operated, conducted, constructed or manufactured without causing a violation of said code; and

that such devices and activities shall incorporate advances in the art of noise control developed for the kind and level of noise emitted or produced by such devices and activities, in accordance with regulations issued by the Commissioner of DEP; and

13.2.6.2 Section 24-219 of the City's Administrative Code and the rules implemented by DEP and codified at 15 Rules of the City of New York ("RCNY") Section 28-100, *et. seq.*, for Citywide Construction Noise Mitigation (the "DEP Rules"). The Contractor shall prepare and post at each Work Site a Construction Noise Mitigation Plan (as defined in the DEP Rules). The Construction Noise Mitigation Plan shall contain a certification by the Contractor 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 a DEP-approved Alternative Noise Mitigation Plan (as defined in the DEP Rules). The Contractor's certified Construction Noise Mitigation Plan is subject to inspection by DEP in accordance with 15 RCNY §28-101. No Contract Work may take place at the Project Site 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.

Regulations and rules promulgated pursuant to Section 24-216 and Section 24-219 after the execution of this Contract shall apply, but shall not otherwise alter the terms, conditions and specifications of this Contract.

13.2.7 ADA Requirements. The Contractor shall comply with Title II of the Americans with Disabilities Act, the rules and regulations promulgated thereunder, and any state and local laws establishing construction requirements with respect to access for disabled persons, and any amendments thereto.

13.2.8 Tropical Hardwoods. The Contractor shall comply with Section 165 of the New York State Finance Law, which prohibits the use of tropical hardwoods (as defined in Section 165 of the New York State Finance Law) in the performance of the Contract, except as expressly permitted.

13.2.9 Asbestos Removal. The Contractor shall comply with the Federal Environmental Protection Agency (EPA) and Occupational Safety and Health Administration (OSHA) regulations and applicable state and local government regulations concerning the removal of asbestos.

13.2.10 Safety Laws. The Contractor shall comply with all applicable laws related to safety including, without limitation, those referred to in Article 21.

13.2.11 Outside Funding Requirements.

13.2.11.1 If this Contract is funded in whole or in part with Federal and/or State Funds, the Contractor shall comply with the provisions of the Applicable Statutes and Applicable Agreements contained in Appendix D and Appendix E.

13.2.11.2 In the event any provision set forth in Appendix D and Appendix E conflicts with any other provisions of this Contract, the provision with the greater requirements shall govern. In the event any provisions in Appendix D and Appendix E conflict with one another, the provision with the more stringent requirements shall govern.

13.2.12 Other Applicable Statutes. The Contractor shall comply with all other Applicable Statutes including, without limitation, the Applicable Statutes listed in Section 7.4 of Part I of this Contract.

13.3 Subcontractor Compliance. The provisions of this Article 13 and the Appendixes and other Legal Requirements referenced herein shall be annexed to and made a part of any Subcontract entered into by the Contractor pursuant to this Contract, and shall be binding on any Subcontractor.

13.4 Modification Required By Law.

13.4.1 The Parties agree that each and every provision of federal or state or local law, rule, regulation or order, required to be inserted in this Contract, is deemed by this reference to be so inserted in its correct form, and upon the application of either party, this Contract shall be amended by the express insertion of any such provision not so inserted or so inserted incorrectly so as to comply strictly with the law, without prejudice to the rights of either party.

13.4.2 If any clause, provision or section of this Agreement be ruled invalid by any court of competent jurisdiction, the invalidity of such clause, provision or section shall not affect any of the remaining provisions hereof.

## **ARTICLE 14** **GOVERNING LAW AND VENUE**

14.1 New York Law Governs. The Contract shall be governed by and construed in accordance with the laws of the State of New York.

14.2 Venue. The Parties agree that any and all claims asserted by or against the Owner arising under this Contract or related hereto shall be heard and determined either in the Federal Courts, located in the City or in the New York State Courts located in the City and County of New York. To effect this agreement and intent, the Contractor agrees as follows:

14.2.1 If the Owner initiates any action against the Contractor in Federal Court or in New York State Court, service of process may be made on the Contractor in person, wherever the Contractor may be found, or by registered mail addressed to the Contractor at its Notice Address as set forth in Section 6.1 of Part I of this Contract, or to such other address as the Contractor shall have provided to the Owner in writing.

14.2.2 With respect to any action between the Owner and the Contractor in New York State Court, the Contractor hereby expressly waives and relinquishes any rights it might otherwise have

14.2.2.1 to move to dismiss on grounds of forum non conveniens;

14.2.2.2 to remove to Federal Court; and

14.2.2.3 to move for a change of venue to a New York State Court outside New York County.

14.2.3 With respect to any action between the Owner and the Contractor in Federal Court located in the City, the Contractor expressly waives and relinquishes any right it might otherwise have to move to transfer the action to a Federal Court outside the City.

14.2.4 If the Contractor commences any action against the Owner in a court located other than in the City and State of New York, then, upon request of the Owner, the Contractor shall either consent to a transfer of the action to a court of competent jurisdiction located in the City and State of New York or, if the court where the action is pending will not or cannot transfer the action, the Contractor shall consent to dismiss such action without prejudice and may thereafter reinstitute the action in a court of competent jurisdiction in the City.

## **ARTICLE 15** **INVESTIGATIONS**

15.1 The Contractor agrees to cooperate fully and faithfully with any investigation, audit or inquiry conducted by a State or City governmental agency or authority that is empowered, directly or by designation, to compel the attendance of witnesses and to examine witnesses under oath, or conducted by the Inspector General of a governmental agency that is a party in interest to the transaction, , submitted proposal, contract, lease, permit, or license that is the subject of the investigation, audit or inquiry.

15.2 If:

15.2.1 any person who has been advised that her or his statement, and any information from such statement, will not be used against her or him 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 PANYNJ, or the Owner, or any local development Owner within the City, or any public benefit Owner organized under the laws of the State of New York, or

15.2.2 any person refuses to testify for a reason other than the assertion of her or his 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 the Owner, or any local development Owner within the City,

then the commissioner or agency head (each of which is hereinafter referred to as the “Commissioner”) whose agency is a party in interest to the transaction, submitted Proposal, submitted proposal, contract, lease, permit, or license involved in such investigation, audit or inquiry 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.

15.3 If any non-governmental party to the hearing convened in accordance with the final clause of Section 15.2 requests an adjournment, the Commissioner who convened the hearing or the Owner may, upon the Commissioner granting the adjournment, suspend any contract, lease, permit, or license pending the final determination pursuant to Subsection 15.4.3 below without the City or the Owner incurring any penalty or damages for delay or otherwise.

15.4 The Owner or the City may impose the following penalties after a final determination by the Commissioner that penalties should attach for the failure of a person to testify:

15.4.1 the disqualification for a period not to exceed five (5) years from the date of an adverse determination of any person, or any entity of which such person was a member at the time the testimony was sought, from submitting Proposals for, or transacting business with, or entering into or obtaining any contract, lease, permit or license with or from the City or the Owner, as the case may be; and/or

15.4.2 the cancellation or termination of any and all such existing City or Owner contracts, leases, permits or licenses that the refusal to testify concerns and that have not been assigned as permitted under this Contract, nor the proceeds of which pledged, to an unaffiliated and unrelated institutional lender for fair value prior to the issuance of the Notice scheduling the hearing, without the City or the Owner 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 or the Owner, as the case may be.

15.4.3 The Commissioner shall consider and address, in reaching her or his determination, and the Owner and the Commissioner shall consider and address, in assessing an appropriate penalty, the factors in Subsections 15.4.3.1 and 15.4.3.2 below. The Commissioner and the Owner may also consider, if relevant and appropriate, the criteria established in Subsections 15.4.3.3 and 15.4.3.4 below in addition to any other information which may be relevant and appropriate:

15.4.3.1 The entity’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.

15.4.3.2 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.

15.4.3.3 The nexus of the testimony sought to the subject entity and its contracts, leases, permits or licenses with the City or the Owner.

15.4.3.4 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 Section 15.4 above), 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 Section 15.2 above gives Notice and proves that such interest was previously acquired. Under either circumstance the party or entity must present evidence at the hearing demonstrating the potential adverse impact a penalty will have on such person or entity.

## **ARTICLE 16** **LIENS AND CLAIMS**

16.1 The Contractor shall not file, cause to be filed, or allow any person claiming by or through the Contractor to file any lien in any way related to this Contract without first giving the Owner and the Owner's Representative ten (10) calendar days advance written Notice of the prospective lienor's intent to file such lien and the basis upon which a right of lien is claimed, including an express statement of the dollar amount of any claim pursuant to which it is claimed such right of lien arises.

16.2 The Owner or the Owner's Representative shall have the right to cause any such lien to be canceled and discharged by bonding or otherwise in either of the following events:

16.2.1 If the Contractor, or any person claiming by or through the Contractor, files or causes to be filed a lien without giving proper advance Notice to the Owner and the Owner's Representative as required as set forth above; or

16.2.2 If any Subcontractor or any person or entity claiming by or through such Subcontractor shall file or cause to be filed any lien, or the Contractor, upon Notice from the Owner or the Owner's Representative, fails to cause such lien to be canceled and discharged within ten (10) calendar days from such Notice.

16.3 Any expense so incurred by the Owner's Representative or the Owner in connection with such cancellation or discharge, including the premiums upon any bond furnished for such cancellation and discharge and reasonable attorneys' fees and disbursements, shall be paid by the Contractor upon demand or, at the option of the Owner, shall be deducted from any payment then due or thereafter becoming due to the Contractor.

## **ARTICLE 17** **CONTRACT ADMINISTRATION**

17.1 Contractor. The Owner has employed the Contractor to coordinate the prosecution and completion of the Contract Work and all other work related to the Project

17.2 Contractor's Responsibilities. Contractor acknowledges that in addition to any obligations and responsibilities the Contractor may have pursuant to the Contractor's contract



with the Owner, or as a matter of law, and without limiting said obligations and responsibilities, the Contractor shall:

- 17.2.1 provide an overall schedule for the Contract Work;
- 17.2.2 coordinate the performance of all other contractors at the Site, and act as a liaison between such contractors in order to minimize and/or resolve any conflicts that may arise between the Contractor's activities and any other planned activities at the Work Site or otherwise in connection with the Project;
- 17.2.3 maintain a full-time construction supervisor at the Site for the coordination of the Contractor's Work and the work of other contractors at the Site;
- 17.2.4 establish on-site organization and lines of authority in order to carry out overall plans of the Owner and the Owner's Other Consultants in all phases of the Contract Work and the Project on a totally coordinated basis;
- 17.2.5 establish and implement procedures for, and maintain coordination among the Owner, the City, the Owner's Other Consultants, or any other Additional Insured, the Contractor, other contractors on the Site and the Owner's Representative with respect to all aspects of the Project;
- 17.2.6 review progress schedules and forward such schedules to the Owner;
- 17.2.7 communicate any changes to the Contractor's Progress Schedules required by the Owner after the Owner's Project Schedule has been established and during the progress of the Contract Work;
- 17.2.8 hold regularly scheduled job meetings to discuss procedures, progress, problems, scheduling and open items;
- 17.2.9 keep and draft the minutes of such meetings and arrange for their typing and distribution;
- 17.2.10 implement the Owner's procedure for processing of Change Orders, including applications for extensions of time, with respect to the Contract Work;
- 17.2.11 forward to the Owner all Contractor requests for Change Orders;
- 17.2.12 maintain the Owner's Project Schedule, coordinate and inspect the Contract Work and the work of all other contractors until Final Completion, including a comprehensive final inspection to assure that:
  - 17.2.12.1 all Materials and Equipment and all Contract Work comply with all requirements of the Contract Documents;
  - 17.2.12.2 the Contract Work is progressing on schedule; and

17.2.12.3 the Contractor has arranged for and received all necessary sign-offs for all inspections required by all applicable Agencies, including controlled inspections and laboratory inspections;

17.2.13 in the event the interpretation of the meaning and intent of the Contract Documents or any portion thereof becomes necessary during construction, consult with the Engineer and the Owner and transmit the Engineer's and the Owner's interpretations to the appropriate Subcontractor;

17.2.14 give constant attention to the adequacy and to the number of Contractor's personnel and equipment and the availability of all Materials and Equipment;

17.2.15 establish and coordinate a comprehensive Project safety program;

17.2.16 make recommendations and render assistance as necessary for the development and administration of an effective labor relations program for the Project and for the avoidance of labor disputes during construction;

17.2.17 coordinate and establish procedures to be followed for expediting the processing of Shop Drawings, Coordination Drawings, Product Data, Samples and other Work Product and the scheduling of material requirements;

17.2.18 with respect to portions of the Contract Work to be performed by Change Order or otherwise on a time and materials, unit cost or similar basis:

17.2.18.1 require the keeping of records and computation therefrom; and

17.2.18.2 maintain cost accounting records in accordance with the Owner's requirements;

17.2.19 make recommendations to the Owner regarding the approval of Subcontractors and Vendors;

17.2.20 review and forward to the Owner all Requisitions and supporting documentation submitted by Contractor pursuant to Article 4 of the Contract and make recommendations to the Owner for approval thereof, in accordance with the Owner's established procedures;

17.2.21 coordinate and schedule preparation of composite drawings;

17.2.22 jointly inspect the Contract Work with the Engineer and the Owner's Other Consultants, as may be required, and furnish the Owner with a detailed report of observed discrepancies and deficiencies applicable to any guarantees provided for the Contract;

17.2.23 control and coordinate all pedestrian and vehicular traffic both on and off the Site including areas of parking, trailer locations, loading and unloading; and

17.2.24 call for and organize mandatory meetings of the Contractor, its Subcontractors, other contractors, subcontractors and materialmen as necessary for the proper coordination of the Contract Work and other work at the Project, which shall be held at the Site on regular working days, during regular working hours, unless otherwise directed by the Owner.

17.3 No Release. In no event shall any act or omission on the part of the Owner's Representative relieve or release Contractor of its responsibilities and obligations under this Contract.

## **ARTICLE 18**

### **M/WBE PARTICIPATION**

18.1 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 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, to increase competition for City business and to lower contract costs. The Owner endorses these goals and participation by MBEs and WBEs in the provision of the Work. The following goals and provisions are integral to achieve these goals. The Contractor shall comply with all requirements of the Owner's M/WBE Program applicable to this Contract.

18.2 Minority and Women -Owned Business Enterprises. In order to be considered M/WBEs for purposes of this Contract, the M/WBEs must have received certification as such by DSBS.

18.3 Target Subcontracting Percentage. The Target Subcontracting Percentage is the percentage of the total Contract that the Owner anticipates that the Contractor would in the normal course of business award to one or more Subcontractors for amounts under \$1 million. The Target Subcontracting Percentage applicable to this Contract is set forth in Part I, Section 1.11.1. The Contractor shall be subject to said Target Subcontracting Percentage.

18.4 Participation Goal. The Participation Goal is expressed as a percentage that represents the total dollar value of Subcontracts under this Contract for amounts under \$1 million to be performed by M/WBEs compared to the total dollar value of all Subcontracts under this Contract for amounts under \$1 million. The Participation Goal applicable to this Contract is set forth in Part I, Section 1.11.2. The Contractor shall be subject to the Participation Goal, unless the Owner grants a modification of this goal pursuant to Section 18.8.

18.5 Contractor's M/WBE Utilization Plan.

18.5.1 The M/WBE Utilization Plan for this Contract is annexed hereto as Appendix H.

18.5.2 In the event that the Owner does not approve a Subcontractor proposed by the Contractor, the Contractor shall have a reasonable time to propose alternate Subcontractors.

18.5.3 If this Contract is a multi-year contract, the Contractor shall submit an updated M/WBE Utilization Plan to the Owner's Chief Contracting Officer 30 days prior to the anniversary of the Commencement Date in each subsequent year during the Contract Term. The Contractor's updated M/WBE Plan shall be subject to the Owner's approval and must set forth:

18.5.3.1 the percentage of work the Contractor intends to subcontract;

18.5.3.2 the percentage of work the Contractor intends to award to Subcontractors for amounts under \$1 million;

18.5.3.3 the identity of all proposed Subcontractors to which the Contractor intends to award Subcontracts;

18.5.3.4 in cases where the Contractor 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

18.5.3.5 the time frames in which such work by MBEs and/or WBEs is scheduled to begin and end.

#### 18.6 M/WBE Compliance Reports.

18.6.1 The Contractor shall provide the Owner with written statements ("M/WBE Compliance Reports"), certified under penalty of perjury, reporting the status of the Contractor's compliance with its M/WBE Utilization Plan as set forth in this Section 18.6.

18.6.2 The Contractor shall submit a M/WBE Compliance Report to the Owner:

18.6.2.1 with each Progress Payment Requisition and with the Final Payment Requisition; and/or

18.6.2.2 on a periodic basis as the Owner may require.

18.6.3 Each M/WBE Compliance Report shall set forth the following for the period covered by the report:

18.6.3.1 the total amount paid to Subcontractors (including Subcontractors that are not MBEs or WBEs);

18.6.3.2 the names, addresses and contact numbers of each MBE or WBE hired as a Subcontractor pursuant to such plan as well as the dates and amounts paid to each MBE or WBE.

18.6.4 In addition to the foregoing, the Contractor shall submit a final, cumulative M/WBE Compliance Report to the Owner with its Final Payment Requisition. The Contractor shall set forth in such final report the information required by Section 18.6.3 in connection with all Work rendered by the Contractor and its Subcontractors during the entire Contract Term.

18.7 Change Orders. If the Contractor requests a Change Order having a value that exceeds 10 percent of the Contract, the Owner will establish an M/WBE participation goal for the Work to be performed pursuant to the Change Order.

18.8 Modification of the Contractor's M/WBE Utilization Plan.

18.8.1 The Contractor may request modification of its M/WBE Utilization Plan after the award of the Contract. The Owner may grant such request if it determines that the Contractor has established, with appropriate documentary and other evidence, that the Contractor has made all reasonable, good faith efforts to meet the Participation Goal set for the Contract. In making such determination, the Owner will consider, along with any other relevant factors, evidence submitted by the Contractor showing that the Contractor has, without limitation, and as applicable:

18.8.1.1 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;

18.8.1.2 provided notice of specific opportunities to participate in the Contract, in a timely manner, to minority and women's business organizations;

18.8.1.3 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;

18.8.1.4 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 Contractor's M/WBE Utilization Plan, and for which the Contractor claims an inability to retain MBEs or WBEs;

18.8.1.5 held meetings with MBEs and/or WBEs prior to the date its proposal was due, for the purpose of explaining in detail the scope and requirements of the work for which its proposals was solicited;

18.8.1.6 made efforts to negotiate with MBEs and/or WBEs as relevant to perform specific Subcontracts;

18.8.1.7 submitted timely written requests for assistance to the Owner's M/WBE liaison officer and to DSBS;

18.8.1.8 submitted a statement as to how recommendations made by DSBS and the Owner 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.

18.8.2 The Owner will provide written notice to the Contractor of the determination.

18.9 Compliance Audits. This Contract may be audited by the Owner, DSBS and the City Comptroller to determine the Contractor's compliance with the requirements of the Owner's M/WBE Program and the Contractor's M/WBE Utilization Plan.

18.10 Enforcement. In the event the Owner determines that the Contractor or its Subcontractors have violated the requirements of the Owner's M/WBE Program or the M/WBE Utilization Plan including, without limitation, a determination that the Contractor has made payments to or awarded work to M/WBE Subcontractors in amounts less than the amounts specified in the Contractor's M/WBE Utilization Plan (unless the Owner has permitted the Contractor to modify the Contractor's M/WBE Utilization Plan in accordance with Section 18.8), the Owner may:

18.10.1.1 terminate the Contract;

18.10.1.2 assess actual and consequential damages for and/or exercise its right to set off any additional expenses the Owner incurs to complete the Project satisfactorily in accordance with the Owner's M/WBE Program and in order to meet the Participation Goal set for the Contract including, without limitation, the actual and administrative costs of:

18.10.1.2.1 meeting the Participation Goal through additional procurements;

18.10.1.2.2 payments made to any other Contractor retained to complete the Work; and

18.10.1.2.3 investigation and enforcement;

18.10.1.3 file an advice of caution form for inclusion in VENDEX as caution data; or

18.10.1.4 assert any other right or remedy it has under the Contract.

18.11 Statements. Statements made in any instrument submitted to the Owner in connection with the Owner's M/WBE Program shall be submitted under penalty of perjury and any false or misleading statement or omission shall be grounds for the application of any applicable criminal and/or civil penalties for perjury.

18.12 Evaluations. The Contractor's record in implementing its M/WBE Utilization Plan shall be a factor in the evaluation of its performance.

## **ARTICLE 19**

### **MISCELLANEOUS PROVISIONS**

19.1 Unlawful Provisions Deemed Stricken. If this Contract contains any provision which is found to be unlawful and that provision is not an essential part of this Contract, then that provision shall be deemed to have no effect and shall be stricken from this Contract without affecting the remainder of this Contract.

19.2 Assignment. This Contract is intended to secure the services of the Contractor. The Contractor shall not assign, convey, subcontract, sublet or transfer this Contract or the Contractor's rights hereunder without the written consent of the Owner, which the Owner may grant or deny in its sole and absolute discretion. The Owner shall have the right to assign, convey, sublet or transfer this Contract or the Owner's rights hereunder without the written consent of the Contractor to the City or any other Owner, agency or instrumentality having authority to accept the assignment.

19.3 Right to Inspect. The Owner, the City Comptroller, the Inspectors (as identified in Part I, Section 7.3), and any other individual or entity authorized under any Legal Requirement shall have the right at all times to inspect the operations and records of the Contractor and its Subcontractors relating to this Contract.

19.4 Maintenance of Records. In order to facilitate any audit provided herein, the Contractor agrees to maintain accurate, readily auditable records and accounts with supporting documentation in accordance with sound accounting principles of the Work performed by it, its employees, and its Subcontractors under this Contract and of all financial accounts and transactions maintained or undertaken in connection with this Contract, including, but not limited to, time cards and records reflecting the nature of the Work performed and time consumed, bank statements, cancelled checks, bills and receipts, Requisitions, and deposit slips, and to have such records available for inspection and audit by the Owner, the City, the Inspectors and any other individual or entity authorized under any Legal Requirement upon reasonable Notice. Said records shall be maintained for a period of six (6) years after termination of this Contract.

19.5 Modification in Writing. No modification, amendment, waiver or release of any provision of this Contract or of any right, obligation, claim or cause of action arising hereunder shall be valid or binding for any purpose unless in writing and duly executed by the party against which the same is asserted.

19.6 Captions. The table of contents and captions of this Contract are for convenience of reference only and in no way define, limit or describe the scope or intent of the Contract or in any way affect this Contract.

19.7 Completeness. This Contract 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 either of the parties hereto.

19.8 Notices.

19.8.1 Each written Notice, demand, request or other communication in connection with this Contract shall be either:

19.8.1.1 served in person, with delivery of service acknowledged in writing by the party receiving the same;

19.8.1.2 sent by overnight delivery, courier delivery or facsimile; or

19.8.1.3 deposited in the U.S. mails, first class mail, postage prepaid, and addressed to the respective Notice Address herein set forth in Part I, Section 6 or to such other address as may be specified by written Notice sent in accordance herewith.

19.8.2 Every Notice, demand, request or other communication hereunder shall be deemed to have been given:

19.8.2.1 at the date of receipt by the respective party in the case of personal delivery, overnight delivery, courier delivery or facsimile; and

19.8.2.2 five (5) business days after the date of deposit in the U.S. mails in the case of mail delivery.

19.9 Non-Waiver. Failure of the Owner or its Representatives to enforce or otherwise require the performance of any of the terms and conditions of this Contract, at the time or in the manner that said terms and conditions are set forth herein, shall not be deemed a waiver of any such terms or conditions by the Owner and the same may be selectively enforced or raised as a basis of a claim or cause of action at the option of the Owner.

19.10 No Political Activity. The Contractor agrees that there shall be no political activity or any activity to further the election or defeat of any candidate for public, political or party office as a part of or in connection with this Contract, nor shall any of the funds provided under this Contract be used for such purposes.

19.11 Contract Interpretations. If, after execution, any interpretation of this Contract is needed, or if any actual or apparent conflict between any two or more provisions of the Contract is discovered, then the Contract or such conflict shall be interpreted by the Owner's President and that interpretation shall be conclusive and binding. In the event of any dispute between the Owner and the Contractor as to whether or not the Contract Work is completed, the most recent Inspection Report shall be considered binding, final and conclusive.

19.12 Contractor Performance Evaluation Provisions. The Owner may, in its sole discretion, perform Interim Evaluations and/or a Final Evaluation of the Contractor's performance. In the event the Owner performs a Final Evaluation, the Owner will send a copy of the Final Evaluation to the Contractor not later than sixty (60) calendar days after Final Completion. The Contractor may respond in writing to the Final Evaluation not later than fifteen (15) calendar days after receipt of a copy of the Final Evaluation. The Contractor's response, if any, will be affixed to the Final Evaluation. The Contractor's failure to respond may result in the Contractor's responses to any future procurements in connection with this Project or any other of the Owner's projects, if any, being reviewed by the Owner without the benefit of the Contractor's response to such Final Evaluation.

19.13 Rights not Exclusive. The Owner's rights and remedies specified in this Contract, including in these General Terms and Conditions, are not exclusive, but shall be in addition to any other rights that the Owner may have under this Contract, at law or in equity.



**ARTICLE 20**  
**CONTRACT DOCUMENTS, CORRELATION AND INTENT**

20.1 In General.

20.1.1 The Contract Documents shall be read together as complementary and the rights and obligations thereunder shall be deemed cumulative.

20.1.2 The Contract Documents describe a scope of work and services to be performed, and the Contractor is expected to include in the Contract Work all items required in order to carry out the intent of the Contract Documents for a complete and functional system whether or not shown or described in the Contract Documents.

20.2 Indicated and Inferable Work and Services. The Contractor shall, without any additional compensation, as part of the Contract Work, perform all work and services that are indicated on or inferable from any of the Contract Documents including, without limitation, any of the following:

20.2.1 work or services indicated on the Drawings and Design Specifications but not called for in the other parts of the Contract Documents;

20.2.2 work or services called for in other parts of the Contract Documents but not indicated on the Drawings and Design Specifications;

20.2.3 work and services that are customary, standard construction practices or otherwise essential to perform the Contract properly; or

20.2.4 any other matters not expressly included in the Contract Documents, but which are reasonably inferable therefrom as being necessary to produce the intended results.

20.3 Contract Work Construed. Contractor understands and agrees that the payment of the Maximum Contract Price is predicated on the Contractor's completion of all Contract Work in a first-class workmanlike manner. Accordingly, notwithstanding anything to the contrary, the Contract Work shall be construed to include any and all items normally required to provide a complete and first-class job in every detail for maximum quality, serviceability and appearance.

20.4 Effect of Contractor's Proposal. Qualifications or exclusions contained in any of the Contractor's Proposals shall not be deemed accepted or agreed to by the Owner unless such qualifications or exclusions have been accepted in writing by the Owner and are specifically set forth in the Contractor's Proposal and incorporated into this Contract at Part IV.B.

20.5 Drawing References. Drawing references are for the Contractor's convenience and shall in no way limit the scope of the Contract Work.

20.6 Common Technical and Trade Terms. Words used in the Contract Documents that have well known technical or trade meanings shall be construed according to their customary meaning within the building industry in the New York City Statistical Metropolitan Area.

## 20.7 Errors, Omissions and Inconsistencies.

20.7.1 The Contractor shall promptly report to the Owner and the Owner's Representative any error, omission, inconsistency, defect, discrepancy or non-compliance with any Legal Requirement or function that Contractor may discover in Drawings and Design Specifications or any other Contract Document. The Contractor shall cooperate in good faith with the Owner and the Owner's Representative to resolve such error, omission, inconsistency or defect in a manner so as to avoid any increase in the Maximum Contract Price or any delay to the progress of the Contract Work.

20.7.2 Prior to its commencement of the Work, the Contractor shall allow sufficient time to and shall inspect the prior work of other contractors on the Project Site, if any. Should the Contractor discover any discrepancies between such work and the Contract Documents, the Contractor shall promptly Notify the Owner's Representative and the Owner so that corrective action can be taken.

20.8 Conflicts. To the extent the Contractor becomes aware of any direct conflict among or within any of the Contract Documents, the Contractor shall promptly inform the Owner's Representative and the Owner of such conflict. If at any time a direct conflict among or within any Contract Documents is identified, then the conflict shall be submitted to the Owner's Representative and the Owner which, in consultation with any of the Owner's Other Consultants, shall make a determination as to the resolution of such conflict. The Owner's decision shall be final and binding upon the Parties and the Contractor shall proceed with the Contract Work in accordance with such determination. Any of the Contractor's Work performed prior to such resolution shall be done at Contractor's sole risk, cost and expense.

## 20.9 Precedence of Contract Documents.

Except as may otherwise be required under these General Terms and Conditions, the Contract Documents shall have precedence in the following order, the first item listed having the highest priority:

- 20.9.1 Approved Change Orders;
- 20.9.2 Contract Addenda (Issued After Contract Execution);
- 20.9.3 Specific Terms and Conditions (Part I);
- 20.9.4 General Terms and Conditions (Part II);
- 20.9.5 Appendices (Part III)
- 20.9.6 Proposal Documents (Part IV)
  - 20.9.6.1 Invitation For Proposals (Part IV.A)
  - 20.9.6.2 Contractor's Proposal (Part IV.B)

- 20.9.7 Scope of Work Documents (Part V);
  - 20.9.7.1 General Requirements (Part V.A)
  - 20.9.7.2 Specific Requirements and Scope (Part V.B)
  - 20.9.7.3 Conceptual Schedule (Part V.C)
  - 20.9.7.4 Site Logistics Plans (Part V.D)
  - 20.9.7.5 List of Drawings and Design Specifications (Part V.E)
  - 20.9.7.6 Addenda (Issued Prior to Contract Execution) (Part V.F)

20.9.8 Drawings and Design Specifications (Part VI), as follows:

- 20.9.8.1 Full size drawings shall have precedence over scale drawings;
- 20.9.8.2 Large scale plans and details shall have precedence over small plans and details;
- 20.9.8.3 Figured dimensions shall have precedence over scaled dimensions; and
- 20.9.8.4 Details shall have precedence over plans and specifications.

**ARTICLE 21**  
**SAFETY AND PROTECTION OF PERSONS AND PROPERTY**

21.1 Risk of Loss. The Contractor assumes the risk of loss or damage, whether direct or indirect and of whatever nature, to the Work or to any Materials and Equipment furnished, used, installed or received by the Owner, the Owner's Representative, materialmen or workmen in preparation for and in performing the Work. The Contractor shall bear such risk of loss or damage until Final Completion or until final installation or removal of such Materials and Equipment from the Site, whichever event occurs last. Notwithstanding the status of any actual or potential recovery or claim under any insurance policy, in the event of any loss or damage to the Work, Contractor shall immediately repair, replace or make good any such loss or damage.

21.2 Protection of Property and Persons. The Contractor shall protect its Work and all Materials and Equipment through Final Completion in accordance with standard industry methods so that the work or workers of other trades will not mar it during installation. The Contractor shall have full responsibility to install, protect and maintain all Materials and Equipment in proper condition and forthwith repair, replace and make good any damage thereto until Final Completion. The Contractor shall also temporarily protect any permanently installed work that may be damaged during the course of Contractor's Work. The Contractor, and not the Owner's Representative or the Owner, shall be responsible for any loss or damage that shall or may happen to the Work or any part or parts thereof or for any of the Materials and Equipment or other things used and employed in finishing and completing the Work, or for injury to any person or persons, whether workers or members of the public, or for damage to property

resulting from the acts, omissions, fault or default of the Contractor in connection with its obligations hereunder. The Contractor shall properly remedy all damage or loss to any property caused in whole or in part by the Contractor, any of its Subcontractors or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. The foregoing obligations are in addition to the Contractor's indemnification obligations set forth elsewhere herein and in Article 8 of the Contract.

21.3 Protection Against Vandalism, Theft and Fire Damage. The Contractor shall take all necessary steps to protect and secure its Work, including all materials, tools, scaffolding, buildings, trailers, work shacks and other Materials and Equipment from vandalism, theft and fire damage, and the Owner and the Owner's Representative shall not be responsible for losses or damages to such items.

21.4 Compliance with Safety Laws. The Contractor shall be responsible for compliance with all Federal, State and local Legal Requirements related to safety, traffic, highway, fire, health and environmental protection including, but not limited to those listed below, all as may be amended from time to time, and all standards, rules and regulations which have been or shall be promulgated by the parties or agencies which administer the same:

21.4.1 Construction Safety Act of 1969;

21.4.2 The Williams-Steiger Occupational Safety and Health Act of 1970;

21.4.3 the relevant provisions of the City Administrative Code; and

21.4.4 all applicable Legal Requirements with respect to the use or storage of explosives or other hazardous materials or equipment, with respect to which, the Contractor shall exercise the utmost care and shall conduct under the supervision of properly qualified personnel.

In addition to and without limiting any other indemnification and other obligations the Contractor may have under the Contract Documents, or as a matter of law or equity, the Contractor shall indemnify and hold harmless the Owner, the City and the Additional Insureds, the Other Interested Parties, and their respective Representatives from and against any and all costs and expenses incurred by the aforesaid parties including, but not limited to fines, penalties, attorneys' fees and expenses, work stoppages and corrective measures that may result from the acts or omissions by the Contractor, its Subcontractors and their respective Representatives in failing to comply with the Legal Requirements or any other safety requirements set forth herein. The amount of such costs and expenses shall be charged to the Contractor's account. The provisions of this section are intended, and shall be construed, to emphasize rather than substitute for or contradict the provisions of the Contract relating to compliance with Legal Requirements and indemnification.

## **ARTICLE 22** **WORK PRODUCT**

22.1 Approval of Publicity.

All materials publicizing the Contractor's Work hereunder must be:

22.1.1 approved in writing by the Owner before any publication as to Contractor's work shall be considered accepted and before any distribution;

22.1.2 revised by the Contractor in accordance with the directions of the Owner prior to approval; and

22.1.3 prepared so as not to violate any Legal Requirement.

## 22.2 Work Product.

22.2.1 All Work Product is the exclusive property of the Owner. The Owner may use any Work Product prepared by the Contractor in such manner, for such purposes, and as often as the Owner may deem advisable, in whole, in part or in modified form, in all formats now known or hereafter to become known, without further employment of or additional compensation to the Contractor.

22.2.2 The Contractor shall not use, transmit, display, publish or otherwise license such Work Product without the Owner's prior written consent.

22.2.3 The Work Product shall be considered "work-made-for-hire" within the meaning and purview of Section 101 of the United States Copyright Act, 17 U.S.C. § 101, and the Owner is the copyright owner thereof and of all aspects, elements and components thereof in which copyright protection might subsist. To the extent that the Work Product does not qualify as a "work-made-for-hire", the Contractor hereby irrevocably transfers, assigns and conveys exclusive copyright ownership in and to the Work Product to the Owner, free and clear of any liens, claims or other encumbrances. The Contractor shall retain no copyright or other intellectual property interest in the Work Product.

22.2.4 To the extent that the Work Product does not qualify as a "work-made-for-hire", Contractor acknowledges the existence, if any, of its statutory moral rights as those rights are described in 17 U.S.C. § 106A(a), and knowingly executes this Contract on the following terms:

22.2.4.1 this waiver applies to the Work Product and to any promotional materials connected with the Work Product; and

22.2.4.2 the Contractor hereby expressly and forever waives any and all rights under 17 U.S.C. § 106A, and any rights arising under U.S. federal or state law or under the laws of any other country that conveys rights of the same nature as those conveyed by 17 U.S.C. § 106A, or any other type of moral right or *droit moral*.

22.2.5 The Contractor represents and warrants that, except for material which is in the public domain and non-original material that meets the requirements of Section 22.2.6, the Work Product

22.2.5.1 shall be wholly original material not published elsewhere;

22.2.5.2 shall not violate any copyright, trademark or other applicable law;  
and

22.2.5.3 shall not, to the best of Contractor's knowledge, constitute a defamation or invasion of the right of privacy or publicity, or an infringement of any kind, of any rights of any third party.

22.2.6 The Contractor represents and warrants that to the extent that the Work Product incorporates non-original material, the Contractor shall obtain and provide the Owner with copies of all necessary permissions and clearances, in writing, for the use of such non-original material under this Contract. Since some licenses for materials may be for a limited duration, the Contractor shall provide and/or specify the following to the Owner with respect to all non-original materials included in its Work Product:

22.2.6.1 all information as to any durational limitations on use;

22.2.6.2 any requirement that a notice be displayed in connection with display, including the specific owner of the rights to be credited, and any limitation on the use under the Contractor's license; and

22.2.6.3 a statement certified by the Contractor verifying the foregoing in the form annexed hereto as Appendix G.

22.2.7 Any requirement that a notice be displayed in connection with the display of non-original materials in the Work Product shall also be specified in Appendix G, including the specific owner of the rights to the non-original materials to be credited, and any limitation on the use of such materials under the Contractor's license. Contractor will update the foregoing information and promptly provide such updates to the Owner during the Contract Term.

22.2.8 The Contractor acknowledges that the Owner or the City may, in their sole discretion, register copyright in the Work Product with the U.S. Copyright Office or any other government agency authorized to grant registrations to copyright. The Contractor will cooperate in this effort, and agrees to provide any further documentation necessary to accomplish this.

22.2.9 The Contractor agrees that the Owner and the City may use the Contractor's name in advertising and promotion related to the Work Product, and in any and all ancillary products related to the Work regardless of the format in which such use occurs.

22.2.10 Prior to acceptance of any Work Product by the Owner, upon the Owner's request and within a reasonable time following delivery of the Work Product, the Contractor shall submit revised Work Product incorporating any revisions, changes or alterations reasonably requested by the Owner. If the original Work Product or the revised Work Product is not acceptable to the Owner, the Owner shall have the right to use the Work Product, to prepare or finalize the Work Product or to commission a third party to do so without further employment of or compensation to the Contractor.

22.2.11 The Contractor acknowledges that the decision to accept the Work Product for use, inOwner, transmission, display or publication is within the sole discretion of the Owner.

22.2.12 Contractor agrees that it will cooperate in providing any other documentation necessary to effectuate the intent of this Section of the Contract.

22.2.13 The Contractor shall not make any unauthorized use of copyrighted, trademarked or other protected materials or intellectual property and agrees to defend, indemnify and hold harmless the Owner and the City and their respective officers, officials, agents, members, directors, and employees against any damage or liability arising out of the Contractor's infringement or unauthorized use of any such material or property.

### 22.3 Confidential Information.

22.3.1 The Contractor shall hold all Confidential Information provided by the Owner in the strictest confidence. Contractor agrees to:

22.3.1.1 use the Confidential Information solely for evaluation and the performance of the Work under this Contract;

22.3.1.2 not disclose the Confidential Information outside of its Subcontractors that have agreed in advance in writing to be bound by the terms of this Section 22.3 and its employees

22.3.1.3 limit dissemination to only those Subcontractors and employees who have a need to know the Confidential Information in order to accomplish the Work;

22.3.1.4 execute any confidentiality agreements required by any governmental or other entities or individuals which provide any information, records, data, materials, documents or electronic files to Contractor for use in performance of the Work; and

22.3.1.5 not disclose the Confidential Information for three (3) years following Final Completion.

22.3.2 Contractor represents that it has adequate safeguards and procedures to protect the confidentiality of records and information and to limit dissemination only to authorized employees as necessary for the performance of the Work. All Confidential Information provided to Contractor shall remain the property of the Owner.

22.3.3 Contractor agrees that money damages would not be a sufficient remedy in the event of any breach of this Section 22.3 and that, in addition to all other remedies which may be available, the Owner shall be entitled to specific performance and injunctive or other equitable relief as a remedy for any such breach. Contractor shall hold harmless and indemnify the Owner for any and all claims, losses, expenses and/or damages arising out of breach of this Section 22.3 or unauthorized use of the Confidential Information.

### 22.4 Signs.

22.4.1 The Contractor agrees not to display any sign, trademark or other advertisement on or about the Project Site, except as may be approved or directed by the Owner in advance and in writing.

22.4.2 Unless otherwise directed by the Owner in writing, the Contractor shall, at no additional cost to the Owner, erect a sign at the Project Site in the form and containing the information set forth in the sample sign appended as Appendix I in Part III of the Contract.



**BROOKLYN BRIDGE PARK CORPORATION  
CONSTRUCTION CONTRACT  
FOR THE PROVISION OF GENERAL CONSTRUCTION SERVICES  
FOR PIER 3 LANDSCAPE**

**PART III  
APPENDICES**

- APPENDIX A    DEFINITIONS
- APPENDIX B    INSURANCE AND BOND REQUIREMENTS
- APPENDIX C    EXECUTIVE ORDER 50 CONSTRUCTION RIDER
- APPENDIX D    APPLICABLE STATUTES
- APPENDIX E    APPLICABLE AGREEMENTS
- APPENDIX F    PAYMENT FORMS
- APPENDIX G    FORM OF CERTIFIED STATEMENT REGARDING USE OF NON-  
ORIGINAL MATERIALS
- APPENDIX H    CONTRACTOR'S M/WBE UTILIZATION PLAN
- APPENDIX I    SAMPLE SIGN
- APPENDIX J    SUBCONTRACTOR UTILIZATION REPORT

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**PART III - APPENDICES**

**APPENDIX A**

**DEFINITIONS**

The defined terms below shall have the following corresponding meanings in the annexed Contract (as defined herein) unless otherwise defined or the context otherwise requires, and, together with the Specific Terms and Conditions defined in Part I, and all other Contract Documents (as defined in Section 1.1 or the General Terms and Conditions (Part III) shall be deemed to be and are hereby made a part of the Contract. The singular shall include the plural and *vice versa* as the context may dictate. The gender used in the annexed contract shall be deemed to refer to the masculine, feminine, or neuter gender, as the context or the identity of the persons being referred to may require.

“Actual Costs”	Means	The base wages paid to laborers, including all insurance, welfare and other fringe benefits and payments to labor organizations; the costs of Materials and Equipment purchased, including transportation costs and credit for all discounts; the actual cost of additional insurance necessitated by the Change Order Work; the cost of installation, dismantling maintenance and operation of plant and equipment necessitated by the Change Order Work, (including transportation to and from the Work Site) and the rental cost thereof (or rental value of Contractor-owned plant and equipment, but not tools); all as documented to the Owner’s reasonable satisfaction.
“Additional Costs”	Means	10% of the Actual Costs, as compensation for all other costs related to Change Order Work, including, without limitation, field and home office overhead and small tool costs.

“Additional Insured(s)”	Means	All individuals and entities listed in Appendix B.
“Additional Work”	Means	A significant addition to the Work that the Owner or Owner’s Representative has directed the Contractor to perform pursuant to a written Change Order as described in Part II, Section 5.2.
“Affidavit of Payment”	Means	A form required for Final Payment as described in Part II, Section 4.3 and annexed at Appendix F8.
“Affidavit of Release of Liens”	Means	A form required for Final Payment as described in Part II, Section 4.3 and annexed at Appendix F9.
“Agencies”	Means	Any agencies, bureaus, departments, offices, or other discrete entities of The City of New York, the State of New York or the United States that have jurisdiction over any activities carried out in respect of the Work and/or the Project including without limitation, those listed as Other Interested Parties in Part I, Section 8.1, plus the City Community Board(s) that may have an advisory role. The Agencies may include the following: The Art Commission, BPO, DCAS, DCP, DEP, DOB, DOS, DOT, DSBS, FDNY, FHWA, FTA, LPC, MOC, NYCIDA, NYC Parks, NYCTA, NYPD, NYSDEC, NYSDOH, NYSDOT, OMB, OPRHP, PANYNJ, USACOE, USCG, USDOD, USDOT.
“Applicable Agreements”	Means	Various governing agreements related to the Funds, the Project and/or this Contract, including, without limitation, any specific “Applicable Agreements” identified in Part I, Section 7.5 and/or Appendix E and any other governing agreement or MOU with the City, State and/or federal governments, or any agency thereof
“Applicable Statutes”	Means	Any and all federal, state and local laws, statutes, rules, regulations and orders applicable to this Contract, the Funds or the Project, including, without limitation, any specific “Applicable Statutes” identified in Part I, Section 7.4 and/or

Appendix D.

“Art Commission”	Means	The Art Commission of The City of New York.
“BBP”	Means	Brooklyn Bridge Corporation
“Proposal Documents”	Means	The documents described in Part I, Section 1.1.4 and annexed to the Contract as Part IV.
“Bond Requirements”	Means	Specific requirements with respect to Contractor’s obligations to obtain bonds as set forth in Appendix B6.
“Borough”	Means	The City borough where the Project is located.
“BPO”	Means	The Borough President’s Office for the City Borough where the Project is located.
“Certificate of Substantial Completion”	Means	A certificate described in Part II, Section 2.10.4 that may be issued by the Owner to Notify the Contractor of the Owner’s determination that Substantial Completion of the Work or a portion thereof has been achieved.
“Change Order Form”	Means	The form described in Part II, Section 5.3.1.2 and annexed at Appendix F7.
“Change Order Work”	Means	Changed, deleted and/or additional work that the Owner may require the Contractor to perform during the course of the Contract Work pursuant to a written Change Order, as described in Part II, Section 5.2.
“Change Orders”	Means	As defined in Part II, Section 5.2.1.
“City”	Means	The City of New York.
“City Comptroller”	Means	Comptroller of the City or his or her designee.

“Commencement Date”	Means	As defined in Part I, Section 1.4.
“Completion Date”	Means	As defined in Part I, Section 1.6.
“Comptroller General”	Means	The United States Comptroller General.
“Confidential Information”	Means	Any and all information, records, data, materials, documents, electronic files or Work Product provided by BBP and/or the City or any of its agencies to the Contractor except that which (i) shall have otherwise become publicly available through no fault of Contractor or its Representatives; (ii) becomes available to the Contractor on a nonconfidential basis from a source other than BBP, the City or any of its agencies; or (iii) is known by the Contractor prior to its receipt from BBP, the City or any of its agencies without any obligations of confidentiality with respect thereto.
“Contract”	Means	The Contract between the Contractor and the Owner to which this Appendix A is annexed, as defined in Part I, Section 1.1.
“Contract Completion Costs”	Means	As defined in Part II, Section 7.7.
“Contract Date”	Means	The date of this Contract, as stated in Part I, Section 1.3.
“Contract Documents”	Means	All of the documents that are listed in Part II, Section 1.1 and more particularly identified in Part V.E, and all other

documents, drawings, specifications created by the Owner's Other Consultants and/or the Owner in connection with the Project.

“Contract Work”	Means	The Work, as specified in Part I, Section 3.4, Part V & Part VI.
“Contractor”	Means	As identified in Part I, Section 2.2.
“Contractor’s Proposal”	Means	The documents submitted by the Contractor in response to the Invitation for Proposals for this Contract, as described in Part I, Section 1.1.4.1 and annexed at Part IV.
“Contractor’s Final Release”	Means	A form required for Final Payment as described in Part II, Section 4.3 and annexed at Appendix F5.
“Contractor’s Partial Release”	Means	A form required for a Progress Payment as described in Part II, Section 4.2 and annexed at Appendix F2.
“Subcontractor’s Profit”	Means	As defined in Part II, Section 5.2.3.3.1.3.
“Contractor’s Progress Schedule”	Means	As defined in Part V, Section 1.1.1.
“Coordination Drawings”	Means	Drawings, diagrams, schedules and other data specially prepared by the Contractor and one or more other contractors or Subcontractors coordinating one or more construction trades related to the Project.
“Owner”	Means	Brooklyn Bridge Park Corporation d/b/a Brooklyn Bridge Park
“Owner’s Other Consultants”	Means	Collectively, those consultants with whom the Owner has contracted to perform consulting or professional services (other than construction management and resident engineering services) in connection with the Project, as identified in Part I, Section 5.

“CPL”	Means	Contractor Pollution Liability Insurance.
“CPM”	Means	Critical Path Method.
“DBEs”	Means	Disadvantaged Business Enterprises.
“DCP”	Means	The New York City Department of City Planning.
“Deleted Work”	Means	A significant deletion to the Work that the Owner has directed the Contractor <b>not</b> to perform pursuant to a written Change Order, as described in Part II, Section 5.2.1.
“DEP”	Means	The New York City Department of Environmental Protection.
“Director”	Means	The President, Vice President or any delegatee of the Owner.
“DCAS”	Means	The New York City Department of Citywide Administrative Services.
“DCP”	Means	The New York City Department of City Planning.
“DEP”	Means	The New York City Department of Environmental Protection.
“DOB”	Means	The New York City Department of Buildings.
“DOS”	Means	The New York City Department of Sanitation.

“DOT”	Means	The New York City Department of Transportation.
“Drawings and Design Specifications”	Means	The drawings and design specifications for the Project incorporated by reference as Part VI of this Contract, and all amendments thereto.
“DSBS”	Means	The New York City Department of Small Business Services.
“EC”	Means	The Environmental Consultant.
“EC’s Principal”	Means	The individual for whom the Owner has contracted to act as the principal representative of the Environmental Consultant for the Project, as identified in Part I, Section 5.2.3.
“Electronic Funds Transfer (EFT)”	Means	Any transfer of funds, other than a transaction originated by check, draft or similar paper instrument, that is initiated through an electronic terminal, telephonic instrument or computer or magnetic tape so as to order, instruct or authorize a financial institution to debit or credit an account
“E.O. 50”	Means	Executive Order No. 50 (April 25, 1980), as amended or revised from time to time.
“Employment Report”	Means	Required by Executive Order No. 50, these reports are to be completed and submitted to the Owner in the form annexed as Part VI of the IFB for this Contract.
“Endorsements”	Means	Endorsements to Insurance Policies required under the Contract, as described in greater detail in Appendix B.
“Architect”	Means	The entity or person contracted by the Owner as the lead Architect, engineer or design professional for the Project as identified in Part I, Section 5.1.
“Architect’s Principal”	Means	The individual for whom the Owner has contracted to act as the principal representative of the Landscape Engineer for



the Project, as identified in Part I, Section 5.1.3.

“Entity”	Means	The term “entity” as used in Article 15 shall be defined as any firm, partnership, Owner, 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.
“Environmental Consultant”	Means	The entity or person contracted by the Owner to perform environmental consulting services for the Project, as identified in Part I, Section 5.2.1.
“Event of Default”	Means	As defined in Part II, Section 7.3.2.
“Fast-Track”	Means	An accelerated means of construction, as discussed in Part II, Section 2.6.6.
“FDNY”	Means	The New York City Fire Department.
“Federal Courts”	Means	United States Federal Courts located in New York City.
“FHWA”	Means	The United States Federal Highways Administration.
“Final Completion”	Means	The performance of all Work contemplated in the Contract, as defined in Part II, Section 2.9.5.
“Final Evaluation”	Means	Evaluation of the Contractor’s Work upon Final Completion, as described in Part II, Section 19.12.
“Final Payment”	Means	The last payment by the Owner to the Contractor under the Contract upon Final Completion or as provided in Part II, Sections 4.3 and 7.7.1.3, subject to any Retainage.
“Final Payment Documents”	Means	Documents the Contractor must submit to the Owner in order to receive Final Payment, or as provided in Part II, Section 4.3.1

“Final Payment Requisition”	Means	A form required for Final Payment as described in Part II, Section 4.3.1 and annexed at Appendix F4.
“Force Majeure”	Means	Any of the following acts and events that occur without the negligence or fault, and beyond the reasonable control, of the Contractor and that of any of its successors, heirs, assigns, and/or Representatives and of which Contractor has given the Owner express written notice within three (3) days after the commencement of the alleged cause of the delay, hindrance, or obstruction: governmental preemption in connection with a national emergency, war or act of war, insurrection, riot, act of public enemy, terrorist acts, labor disputes, accidents, mechanical failure and acts of God (including fire, flood, or abnormal adverse weather conditions not reasonably anticipatable).
“FTA”	Means	The United States Federal Transit Administration.
“Funding Agencies”	Means	The City of New York and any other governmental agency or entity including, without limitation, as identified in Part I, Section 7.2.
“Funds”	Means	City Capital Budget funds and any other funds provided by any other Funding Agency including, without limitation, the funds identified in Part I, Section 7.1.
“General Terms and Conditions”	Means	Part II of this Contract.
“IFP”	Means	Invitation for Proposals.
“Inspection Report”	Means	A punch list, a list of incomplete or incorrect work, a list of defective, unsuitable, non-complying or improperly installed Materials and Equipment, or any other list compiled by the Owner, the Owner’s Representative, any of the Owner’s Other Consultants, any Agency, any Inspector or Other Interested Party, any individual or entity entitled under any Legal Requirement or any of their respective Representatives or independent contractors as a result of an inspection of the Contract Work, as described in Part II, Section 2.9.1.

“Inspector General”	Means	An individual conducting an investigation, audit or inquiry by a State or City government, agency or authority, as referred to in Article 15.
“Inspectors”	Means	As identified in Part I, Section 7.3.
“Insurance Policies”	Means	Insurance Policies required under the Contract, as described in greater detail in Appendix B.
“Insurance Requirements”	Means	Specific requirements with respect to Contractor’s obligations to obtain insurance, as set forth in Sections 1-5, inclusive of Appendix B.
“Insurer”	Means	Any insurance company retained by the Contractor pursuant to Part II, Section 9.1 and Part III, Appendix B.
“Interim Evaluation”	Means	Evaluation of the Contractor’s Work during the progress of the Work conducted for internal evaluation purposes only, as described in Part II, Section 19.12.
“Investigation Forms”	Means	The forms described in Part II, Section 6.2.
“Invitation for Proposals”	Means	The method by which and/or the documents described in Part I, Section 1.1.4.1 and annexed at Part IV, pursuant to which the Contract was procured.
“Landmarks Preservation Commission”	Means	The City of New York Landmarks Preservation Commission.
“Legal Requirements”	Means	All applicable laws, rules and regulations of all federal, state and local governmental authorities, agencies, departments or bureaus having jurisdiction over and which affect the Work under this Contract including, without limitation, all “Applicable Statutes” and all “Applicable Agreements”.
“License”	Means	As used in Article 15, a license, permit, franchise or

concession not granted as a matter of right.

“Liquidated Damages”	Means	As used in Part II, Section 2.5.
“Liquidated Damages Rate”	Means	As defined in Part I, Section 1.8
“LPC”	Means	City of New York Landmarks Preservation Commission.
“MacBride Principles”	Means	Those principles relating to nondiscrimination in employment and freedom of work place opportunities that requires employers doing business in Northern Ireland to comply with specific terms set forth in Section 6-115.1 of the City’s Administrative Code.
“Materials and Equipment”	Means	All materials, manufacturing, manufacturing plants and facilities, storage containers, storage space, warehouses, warehouse space, tools, supplies, schedules, scaffolds, appliances, equipment, utilities, photographs, surveys, permits, licenses, training, transportation and all other items (other than labor) necessary or appropriate for the prosecution and completion of all aspects of the Contract Work.
“Maximum Contract Price”	Means	The maximum amount that may be paid to the Contractor for the Work under the Contract, as stated in Part I, Section 1.7.
“MBEs”	Means	Minority-owned Business Enterprises
“Member”	Means	Any person associated with another person or entity as a partner, director, officer, principal or employee.
“M/WBE Compliance Reports”	Means	As described in Part II, Section 18.6.
“M/WBEs”	Means	MBEs and WBEs, collectively.

“M/WBE Utilization Plan”	Means	As described in Part II, Section 18.5.
“MOC”	Means	The City Mayor’s Office of Contracts.
“MOU”	Means	Memorandum of Understanding.
“New York State Courts”	Means	Courts of the State of New York in the City and County of New York.
“Notarized Certificates”	Means	Certificates of compliance furnished by the Contractor to verify that Materials and Equipment conform to the required standards, as may be described in Part V.
“Notice”	Means	Any written notice, demand, request, instruction, advice, directive or other communication in connection with this Contract to be delivered to a party designated in Part I, Section 2, or any other entity or individual including, without limitation, those listed in Part I, Sections 4, 5, 6 and 8, respectively, for the receipt of notice in the manner set forth in Part II, Section 19.8.
“Notice of Claim/Change Order Protest”	Means	As described in Part II, Section 5.5.
“Notice to Proceed”	Means	Written Notice from the Owner to the Contractor to proceed with the Work or any portion thereof, as defined in the Contract.
“Notify”	Means	To give a Notice pursuant to Part II, Section 19.8
“NYCEDC”	Means	The New York City Economic Development Corporation.
“NYCIDA”	Means	The New York City Industrial Development Agency.
“NYC Parks”	Means	The New York City Department of Parks and Recreation.

“NYCTA”	Means	The New York City Transit Authority.
“NYPD”	Means	The New York City Police Department.
“NYSDEC”	Means	The New York State Department of Environmental Conservation.
“NYSDOT”	Means	The New York State Department of Transportation.
“NYSHPO”	Means	The New York State Historic Preservation Office.
“OMB”	Means	The New York City Office of Management and Budget.
“OPRHP”	Means	New York State Office of Parks, Recreation and Historic Preservation.
“OR”	Means	The Owner’s Representative.
“OR’s Principal”	Means	The individual for whom the Owner has contracted to act as the principal representing the Owner’s Representative for the Project, as identified in Part I, Section 5.3.3.
“Other Interested Parties”	Means	As identified as Part I Section 8.1.
“Outside Funding”	Means	As identified in Part I, Section 7.
“Overall Contract Schedule”	Means	The Owner’s schedule and milestones for the Contract Work and/or that portion of the Project Schedule applicable to the Contractor’s Work.
“Owner’s Representative”	Means	The entity or person contracted by the Owner to assist the Owner in its management of the Project, as identified in Part I, Section 5.3.
“PANYNJ”	Means	The Port Authority of New York and New Jersey.

“Participation Goal”	Means	The Owner’s goal for M/WBE participation related to the Contract, as defined in Part II, Section 18.4.
“Parties”	Means	The parties to the Contract, NYCEDC and the Contractor, as identified in Part I, Section 2.
“Payment Records”	Means	All documents related to, or submitted or maintained by the Contractor and/or its Subcontractors in order to obtain payments from the Owner in connection with the Contract including, without limitation, all Progress Payment Documents, all Final Payment Documents, all documents submitted with all Progress Payments and Final Payment Documents, all Payroll Reports and payroll records, and all other statements, records, reports, data, information and documentation in any format now known or hereinafter to become known pertaining to this Contract.
“Payroll Report”	Means	The form that the Contractor and any Subcontractor that provides any on-site construction activity must complete and submit as referred to in Part II, Section 4.12.2 and annexed at Appendix F10.
“Permit”	Means	As used in Article 15, shall be defined as a license, permit, franchise or concession not granted as a matter of right.
“Person”	Means	As used in Article 15, 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.
“Plans and Specifications”	Means	Collectively, all specifications, drawings, and scope of work documents related to the Contract Work and the Project including, without limitation, all Scope of Work Documents, included in part V and all Drawings and Design Specifications included in Part VI.
“PLL”	Means	Pollution Legal Liability Insurance.
“President”	Means	The President of the Owner or his or her designee.

“Prevailing Wage”	Means	Pursuant to labor law 202 and 203 the Contractor is required to pay it’s employees, who perform the contract work, wages and supplemental benefits equal to or greater than the applicable Prevailing Wage. Please visit the NYC comptroller’s website at <a href="http://comptroller.nyc.gov/general-information/wage-schedules">http://comptroller.nyc.gov/general-information/wage-schedules</a> / for the latest published prevailing wage schedule
“Principal”	Means	The individual responsible for overseeing the Project on behalf of the Contractor, the Owner’s Representative or any of the Owner’s Other Consultants, as identified in Part I.
“Product Data”	Means	Illustrations, standard schedules and other data specially prepared for the Work by the Contractor or its Subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.
“Profits”	Means	Contractor’s Profit and Subcontractor’s Profit, collectively,
“Progress Payment Documents”	Means	Those documents the Contractor must submit in order to obtain a Progress Payment, as identified in Part II, Section 4.2.2.
“Progress Payment Requisition”	Means	One or more of the forms of Progress Payment Document required under Part II, Section 4.2 and annexed at Appendix F.
“Progress Payments”	Means	Partial payments made to the Contractor by the Owner in accordance with Part II, Section 4.2
“Progress Reports”	Means	Reports which the Contractor is obligated to prepare that show the status of the Work in accordance with the Project Schedule or any other Progress Schedule.
“Progress Schedule”	Means	Any schedule issued or approved by the Owner for the performance of the Work, including, without limitation, Project or Work milestones, deadlines or delivery dates.



“Project”	Means	As defined in Part I, Section 3.1
“Project Safety Program”	Means	A safety program established at the Project Site initiated and supervised by the Owner’s Representative.
“Project Safety Representative”	Means	As described in Part V.A, Section 2.9
“Project Schedule”	Means	The Owner’s schedule and milestones for the entire Project.
“Project Site”	Means	As identified in Part I, Section 3.2.
“Protest Work”	Means	As described in Part II, Section 5.5.
“RAP”	Means	Remedial Action Plans.
“RE”	Means	Resident Engineer.
“RE’s Principal”	Means	The individual for whom the Owner has contracted to act as the principal representative of the Resident Engineer for the Project, as identified in Part I, Section 4.2.3.
“Reporting Period”	Means	The one (1) month period commencing on the Commencement Date and each month thereafter during the term of the Contract, for which period the Construction Manager or Resident Engineer shall report to the Owner on the status of the Project.
“Representatives”	Means	The employees, agents, servants, officers, directors, members, independent contractors and subcontractors of a person or entity.
“Request for Information (RFI)”	Means	A request for additional information or clarification to be provided by the Contractor. Such request should be made within appropriate time to allow an answer to be provided by the Consultant before the work takes place.

“Requisition”	Means	A request for payment, to be submitted to the Owner’s <b>Accounts Payable Department</b> by the Contractor not more than once per month, setting forth in detail, for the billing period for which partial payment is requested, the amount requested and Work performed during the billing period.
“Resident Engineer”	Means	The entity or person contracted by the Owner to perform construction supervision services for the Project as identified in Part I, Section 4.2.
“Retainage”	Means	Any sum withheld from any payment to the Contractor including, without limitation, any set percentage identified in Part I, Section 1.9, subject to the provisions of Part II, Article 4 and Part II, Article 11.
“Retainage Payment Date”	Means	The date identified in Part I, Section 1.10, by which any Retainage identified in Part I, Section 1.9 will be paid to the Contractor, subject to the provisions of Part II, Article 4 and Part II, Article 11.
“Samples”	Means	Physical examples which illustrate Materials and Equipment or workmanship and establish standards by which the Work will be judged, all as more specifically set forth in the Drawings and Design Specifications.
“Schedule Control”	Means	As defined in the Scope of Work Documents and/or included in the Drawings and Design Specifications.
“Scope of Work”	Means	The scope of the Contract Work, as set forth in the Scope of Work Documents (Part V) and the Drawings and Design Specifications (Part VI).
“Scope of Work Documents”	Means	The documents referred to in Part I, Section 1.1.5 and annexed at Part V.
“Shop Drawings”	Means	Drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or its Subcontractor, manufacturer, supplier or distributor to

illustrate some portion of the Work.

“SHPO”	Means	State Historic Preservation Officer.
“Site”	Means	The Project Site and/or the Work Site, as the context may require.
“Specific Terms and Conditions”	Means	Part I of this Contract.
“State”	Means	The State of New York.
“Subcontract(s)”	Means	Any agreement entered into by the Contractor with any Subcontractor (as defined herein) to provide any services, work, labor or Materials and Equipment in connection with the Contract or the Work.
“Subcontractor(s)”	Means	Any person or entity including, without limitation, contractors, consultants and subcontractors of such persons or entities, but excluding Vendors, employed or retained by the Contractor to perform services, work or labor in connection with the Contract or the Work.
“Subcontractor’s Final Releases”	Means	A form required for Final Payment, as described in Part II, Section 4.3 and annexed at Appendix F6.
“Subcontractor’s Partial Releases”	Means	A form required for a Progress Payment, as described in Part II, Section 4.2 and annexed at Appendix F3.
“Subcontractor’s Profit”	Means	As described in Part II, Section 5.2.3.3.2.3.
“Subcontractor Utilization Report”	Means	A form required to identify and report use of Subcontractors by the Contractor, as described in Part II, Section 6.1 and annexed as Appendix J.
“Submittals”	Means	Plans and specifications for detailed procedures regarding Shop Drawings, Coordination Drawings, Product Data,

Samples and Notarized Certificates.

“Substantial Completion”	Means	The stage in the progress of the Work when the Work or a designated portion thereof is sufficiently complete in accordance with the Contract Documents, as determined by the Owner, to enable the Owner to occupy or utilize the Work for its intended use.
“Target Subcontracting Percentage”	Means	As defined in Part II, Section 18.3.
“Term” or “Contract Term”	Means	As defined in Part I, Section 1.5.
“USACOE”	Means	The United States Army Corps of Engineers.
“USCG”	Means	The United States Coast Guard.
“USDOD”	Means	The United States Department of Defense.
“USDOT”	Means	United States Department of Transportation.
“UST”	Means	Underground storage tank.
“Utilities”	Means	Any and all private or public utilities affected by or otherwise interested in the Project.
“Vendor(s)”	Means	Any person or entity including, without limitation, subcontractors of such persons or entities, that does not actually perform any Contract Work, but merely supplies materials or equipment in connection with the Contract or the Work including, without limitation, any Materials and Equipment fabricated to a special design.
“WBEs”	Means	Women-owned Business Enterprises.
“Work ”	Means	All aspects of the work required to be performed by the Contractor pursuant to the terms of the Contract, as in Part

I, Section 3.4.

“Work-Made-For-Hire”	Means	As defined in Section 101 of the United States Copyright Act, 17 U.S.C. § 101.
“Work Product”	Means	All reports, plans, studies, surveys, data, databases, programs, processes, systems, drawings, tracings, blueprints, computer drawings, schematics, specifications, log books, correspondence, models, studies, permits approvals, designs, deliverables, samples, presentation materials, analyses, punch lists, submissions, filings, applications, schedules, documents and materials, including, without limitation, those related to inspections, tests and test results, in all formats now known or hereinafter known, prepared or furnished by the Contractor pursuant to this Contract.
“Work Schedule”	Means	Any schedule approved by the Owner with respect to the Work or its progress.
“Work Site”	Means	As identified in Part I, Section 3.3.

**BROOKLYN BRIDGE PARK CORPORATION  
CONSTRUCTION CONTRACT  
FOR THE PROVISION OF GENERAL CONSTRUCTION SERVICES  
FOR PIER 3 LANDSCAPE**

**PART III – APPENDICES**

**APPENDIX B**

**INSURANCE AND BOND REQUIREMENTS**

1. General Insurance Requirements
2. Required Insurance Policies and Amounts
3. Additional Insureds
4. Required Insurance Provisions
5. Sample Form of Insurance Certificate
6. Bond Requirements

**PART III – APPENDICES**

**APPENDIX B**

**INSURANCE AND BOND REQUIREMENTS**

**1. General Insurance Requirements.**

- 1.1 At all times during the performance of the Contract Work or for such other time periods as the Owner may require, the Contractor, at its sole cost and expense, shall purchase and maintain the insurance described in this Appendix B, as may be applicable and as may be required by the Owner.
- 1.2 Contractor shall purchase and maintain insurance with insurance companies that:
- 1.2.1 are acceptable to the Owner;
  - 1.2.2 are rated A:X or better by A.M. Best Company; and
  - 1.2.3 are licensed to issue such insurance by the New York State Department of Insurance.
- 1.3 The insurance policies purchased and maintained by the Contractor shall:
- 1.3.1 be in form and substance satisfactory to the Owner;
  - 1.3.2 be in the minimum face policy amounts set forth in Section 2 of this Appendix B;
  - 1.3.3 list all individuals and entities identified in Section 3 of this Appendix B as Additional Insureds except in the case of any workers' compensation, U.S. Harbor Workers' Long Shoremen's Compensation Act, automobile liability and professional liability policies required to be maintained hereunder; and
  - 1.3.4 contain the provisions set forth in Section 4 of this Appendix B.
- 1.4 Coverage for the individuals and entities identified in Section 3 of this Appendix B as Additional Insureds shall be written into those policies set forth in Section 1.3.3 above as an endorsement at least as broad as ISO Form CG 20 10 (07/04 ed.).
- 1.5 The Contractor shall make and maintain timely premium payments for all policies required hereunder.
- 1.6 The Contractor shall require that each of its Subcontractors, prior to the commencement of their work, purchase and maintain, or be covered by, at no cost or expense to the Owner or the City, the same types and amounts of insurance and meet all of the same requirements as required of the Contractor as set forth in this Appendix B. The Contractor hereby covenants and warrants that its Subcontractors shall purchase and maintain the Policies required by this Appendix B in the amounts and for the periods required by this Appendix B.
- 1.7 Prior to the commencement of the Contract Work the Contractor shall forward to the Owner's Contract Administration and Procurement Department at least three (3) original certificates of insurance for each Policy required for compliance with this Contract, for itself and its Subcontractors substantially as set forth in Section 5 of this Appendix B. The Contractor shall also provide an original certificate of insurance to each of the Additional Insureds.

1.8 The Contractor shall provide the Owner and the Additional Insureds written confirmation of the renewal of any policy required hereunder at least thirty (30) days prior to the expiration of any such policy.

1.9 Unless otherwise agreed to in writing by the Owner, the types of insurance to be purchased and maintained by the Contractor and its Subcontractors are as follows:

1.9.1 ***Workers' Compensation, Disability Benefits, and Employer's Liability Insurance.*** The Contractor shall purchase and maintain and shall require each of its Subcontractors to purchase and maintain workers' compensation, disability benefits insurance in statutory amounts, and employer's liability insurance in the amounts set forth in Section 2 to this Appendix B, for all of its employees engaged in at the Work Site or in connection with the Contract Work. The failure of the Contractor to comply with this Section 1.9.1 shall make this Contract voidable at the option of the Owner.

1.9.2 ***Commercial General Liability.*** The Contractor shall purchase and maintain commercial general liability insurance, including owner's protective liability insurance, to protect the Owner, the City and the Additional Insureds, the Contractor and its Subcontractors against any and all claims for property damage, personal injury and death arising out of the Contract Work performed by the Contractor and its Subcontractors, and any work incidental thereto. The certificate of insurance must indicate that such insurance is on a "per occurrence" and a "per project" basis. The commercial general liability policy shall be in a form at least as broad in coverage as ISO Form CG 00 01 (10/01). The liability policy(ies) certificate of insurance must indicate cross-liability coverage providing severability of interests so that, except with respect to the limits of insurance, and any rights or duties specifically assigned to the first named insured, coverage will respond as if separate policies were in force for each insured. If at any time the commercial general liability policy should be canceled, terminated, or modified so that the insurance is not in effect as above required, then the Contractor shall suspend performance of the Contract Work at the Work Site if the Owner shall so direct. If the Contract is so suspended, no extension of time shall be due on account thereof. If the Contract is not suspended, whether or not because of omission of the Owner to order suspension, then the Owner may, at its sole option, obtain insurance affording coverage equal to that required hereunder, the cost of such insurance to be payable by the Contractor to the Owner.

1.9.3 ***Automobile Liability Insurance.*** The Contractor shall purchase and maintain automobile liability insurance covering all automobiles used in connection with the Contract Work whether owned, non-owned or hired automobiles.

1.9.4 ***Umbrella/Excess Liability Coverage.*** The Contractor shall purchase and maintain umbrella/Excess liability insurance specifically listing the Contractor's commercial general liability, comprehensive automobile liability and employer's liability as primary coverages, to protect the Owner, the City, the Additional Insureds, the Contractor and its Subcontractors from any and all claims in excess of the underlying policy limits for such primary coverages. The certificate of insurance must indicate that such insurance afforded by this Section 1.9.4 is on a "per occurrence" basis and an aggregate basis.



1.9.5 If applicable, *any additional policies* as may be described in Section 2 of this Appendix B.

1.10 As a condition precedent to payment of any amounts owing to the Contractor by the Owner, the Contractor shall, unless otherwise expressly agreed to in writing by the Owner, provide to the Owner the original certificates of insurance required under this Contract and shall on demand provide true copies of Policies and Endorsements showing compliance with the insurance requirements set forth in this Appendix B.

1.11 The policies to be maintained by the Contractor hereunder that are subject to the Additional Insured requirements set forth in Section 1.3.3 above shall constitute the primary coverage for claims arising out of this Contract, and shall state that insurance, if any, carried by the Owner, the City or the Additional Insureds will not be called upon to contribute to a loss that would otherwise be paid by the Contractor's insurer. The Contractor shall comply with the provisions of all policies required pursuant to this Contract, and shall give the insurer, the Owner, the City and the Additional Insureds due and timely Notice of all claims, accidents and losses promptly upon its acquiring knowledge of the same.

1.12 The insurance provisions of this Appendix B shall be in addition to any rights that the Owner, the City and the Additional Insureds may have under any hold harmless and indemnification provisions of this Contract and any other right provided by this Contract or by law. The Contractor shall not violate or permit to be violated any term or condition of the policies.

**PART III – APPENDICES**

**APPENDIX B**

**INSURANCE AND BOND REQUIREMENTS**

**2. Required Policies and Amounts**

<u>Workers' Compensation/ Disability Benefits:</u>	In statutory amounts
<u>Employer's Liability:</u>	The greater of statutory amounts or \$1,000,000
<u>Commercial General Liability (including Owner's Protective Liability):</u>	A minimum of \$1,000,000 per occurrence, with an annual aggregate of not less than \$2,000,000 in the aggregate  The maximum deductible or self-insured retention (“SIR”) for the Commercial General Liability policy shall be \$10,000
<u>Automobile Liability:</u>	\$1,000,000 combined single limit per occurrence
<u>Umbrella/Excess Liability:</u>	\$10,000,000 on a per occurrence and aggregate basis, and shall be excess of primary general, automobile and employer’s primary liability limits
<u>Builders Risk:</u>	<input type="checkbox"/> <b>Not Required.</b>

If the Contractor or its Subcontractors use floating equipment, barges or floats, or performs marine-related construction, the Contractor and as applicable, its Subcontractors, shall purchase and maintain additional insurance of the following types and in the following amounts in connection with the performance of the Contract Work:

<u>U.S. Harbor Workers' Long Shoremens' Compensation Act:</u>	In statutory amounts
<u>Marine Protection and Indemnity:</u>	\$25,000,000 per occurrence, but if an annual aggregate is applicable to the policy not less than \$25,000,000 in the aggregate per year

If the Project is adjacent to or includes an existing railroad or subway line, the Contractor, or its Subcontractors, shall purchase and maintain the following insurance in the

following amounts in connection with the performance of the Contract Work by the Contractor and its Subcontractors, and any work incidental thereto:

Railroad Protective Liability: \$2,000,000 per occurrence, but if an annual aggregate is applicable to the policy not less than \$6,000,000 in the aggregate

If the Contractor or any of its Subcontractors is performing asbestos or other toxic or hazardous materials remediation, removal, abatement, storage or disposal work including, without limitation, related demolition work, the Contractor or its Subcontractors shall purchase and maintain additional insurance of the following types and in the following amounts in connection with the performance of the Contract Work and any work incidental thereto:

Contractor Pollution Liability (“CPL”) Policy and, as applicable, Asbestos Abatement Liability Policy, Lead Abatement Contractors Liability Policy, Stop Loss Policy, Professional Services Policy, Pollution Legal Liability (“PLL”) Policy, Transportation Coverage and <u>Non-Owned Disposal Site Coverage:</u>	\$5,000,000 combined single limit per occurrence for bodily injury or death, and property damage, but if an annual aggregate is applicable to the policy not less than \$5,000,000 in the aggregate per year dedicated to this Project, on an “occurrence” basis, with a term of not less than ten (10) years
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Such CPL and PLL policies shall be for a term of not less than ten (10) years, on an “occurrence” basis, and any aggregate applicable to such policies shall be dedicated to this Project. In addition, such policies shall include, without limitation, and as applicable, (a) bodily injury and defense coverage for asbestos and lead; (b) coverage for unknown UST’s; (c) a definition of “property damage” that includes diminution in value of third-party properties; (d) a statement that such insurance is primary and over any surety contracts or bonds covering the Services; (e) a statement that the insured’s rights will not be prejudiced if there is a failure to give notice due to the insured’s belief that the occurrence was not covered; (f) coverage for products brought onto the work site where Services are being performed; (g) a definition of “stop loss” or “cleanup cost cap” that includes monitoring activities; (h) a definition of “cleanup costs” that includes any costs associated with natural resources damages; and (i) a statement that exclusions for modifications of remedial action plans (“RAP”) shall not include changes required by regulatory agencies (either via a change in regulations or as a result of governmental entity oversight, increased levels or quantities of pollutants within the boundary of the RAP, discovery of pollutants not identified in the exclusion, and amendments to the RAP because of a change in technological approach).

If the Contractor or any of its Subcontractors is performing professional services in its capacity as a professional, including as may be evidenced by a license to practice that profession, the Contractor or its Subcontractors shall purchase and maintain additional insurance of the following type and in the following amount in connection with the performance of the Contract Work and any work incidental thereto:

Professional Liability/Errors & Omissions Insurance:

Professional liability (“PL”) and/or errors and omissions (“E & O”) insurance policies shall be written with a minimum amount of \$1,000,000 per claim and \$2,000,000 in the aggregate.

If the Contractor cancels its PL or E & O policy during, or lets its PL or E & O policy coverage lapse after, the policy period in which the term for services under the Contractor Contract ends, the Contractor must obtain tail coverage, or an extended reporting period endorsement, that extends coverage of the professional liability insurance for a period of at least three years

**BUILDERS RISK REQUIREMENTS**

To be provided by Owner

**PART III – APPENDICES**

**APPENDIX B**

**INSURANCE AND BOND REQUIREMENTS**

**3. Additional Insureds.**

For the purposes of this Contract and the requirements of Section 1 of this Appendix B including, without limitation, Section 1.3.3, the term “Additional Insureds” shall include the following individuals and entities:

Brooklyn Bridge Park Corporation  
Brooklyn Bridge Park Development Corporation  
Empire State Development Corporation  
The City of New York  
Michael Van Valkenburgh Associates  
CH2M Hill  
D’Onofrio General Contractors Corporation  
Gardiner & Theobald, Inc

and such other entities and individuals as the Owner may direct from time to time

**PART III – APPENDICES**

**APPENDIX B**

**INSURANCE AND BOND REQUIREMENTS**

**4. Required Provisions.**

The Policies required by Section 2 of this Appendix B shall contain the following provisions, if available:

“A. Notices from the insurer (the “Insurer”) to the Brooklyn Bridge park Corporation (the “Owner”) and The City of New York (the “City”), in connection with this policy, shall be addressed to the Brooklyn Bridge Park Corporation, 334 Furman Street, Brooklyn, NY, 11201;

B. The Insurer shall accept notice of accident from the Owner or the City, within 120 days after receipt by an official of such Additional Insured (as identified in Section 3 of Appendix B of the Contract between the Owner and the Contractor to which this policy applies) of notice of such accident as valid and timely notice under this policy;

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

D. Notice of accident or claim to the Insurer by the Contractor, the Owner or the City shall be deemed notice by all under this policy;

E. This policy shall not be canceled, terminated or modified by the Insurer or the Contractor unless 30 days prior written notice is sent by registered mail to the Owner or the City;

F. The presence of engineers, inspectors or other employees or agents of the Contractor, the Owner or the City at the site of any Work performed by the Contractor shall not invalidate this policy of insurance; and

G. Violation of any of the terms of any other policy issued by the Insurer to the Contractor or a subcontractor of the Contractor shall not inviolate this policy; and

H. Insurance, if any, carried by the Owner, the City or the Additional Insureds will not be called upon to contribute to a loss that would otherwise be paid by the Insurer.”

**PART III – APPENDICES**

**APPENDIX B**

**INSURANCE AND BOND REQUIREMENTS**

**5. Sample Form of Insurance Certificate.**

**Certificate Holder should Read 'Brooklyn Bridge Park Corporation, 334 Furman Street, Brooklyn, NY 11201 Attention: General Counsel'**



**PART III – APPENDICES**

**APPENDIX B**

**INSURANCE AND BOND REQUIREMENTS**

**6. Bond Requirements.**

6.1 General Requirements. The Contractor shall secure, as a part of the Contract Work, and keep in full force at all times during the performance of the Contract Work, payment and performance bonds, each in the face amount of not less than the Maximum Contract Price. The bonds shall be provided by surety companies licensed to do business and in good standing in the State of New York and registered with the New York State Department of Insurance, and otherwise approved by the Owner. The bonds shall each be executed in a form and amount approved by the Owner and delivered to the Owner at least 10 days before any Contract Work is performed under this Contract. The cost of said bonds is included in the Maximum Contract Price.

6.2 Supporting Documents. Each executed bond must be accompanied by the following:

6.2.1 appropriate acknowledgments of the respective parties;

6.2.2 an appropriate duly certified copy of Power of Attorney or other certificate of authority where the bond is executed by an agent, officer or other representative of the principal and/or the surety;

6.2.3 a duly certified extract from the by-laws or resolutions of the principal and/or the surety under which the Power of Attorney or other certificate of authority of its agent, officer or representative was issued; and

6.2.4 a duly certified copy of the latest published financial statement of the assets and liabilities of the surety.

**BROOKLYN BRIDGE PARK CORPORATION  
CONSTRUCTION CONTRACT  
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FOR PIER 3 LANDSCAPE**

**PART III – APPENDICES**

**APPENDIX C**

**EQUAL EMPLOYMENT AND AFFIRMATIVE ACTION**

**COMPLIANCE FOR CONSTRUCTION CONTRACTS  
[EXECUTIVE ORDER NO. 50 (1980) CONSTRUCTION RIDER]**

[Note: for purposes of this rider, the “contractor” means the Contractor identified in this Contract]

This contract is subject to the requirements of Executive Order No. 50 (April 25, 1980) (§10-14) ("E.O. 50") and the Rules and Regulations promulgated thereunder. No contract will be awarded unless and until these requirements have been complied with in their entirety. By signing this contract, the contractor agrees that it:

- (1) will not discriminate unlawfully against any employee or applicant for employment because of race, creed, color, national origin, sex, age, handicap, marital status, sexual orientation or citizenship status with respect to all employment decisions including, but not limited to recruitment, hiring, upgrading, demotion, downgrading, transfer, training, rates of pay or other forms of compensation, layoff, termination, and all other terms and conditions of employment;
- (2) will not discriminate in the selection of subcontractors on the basis of the owner's, partners' or shareholders' race, color, creed, national origin, sex, age, handicap, marital status, sexual orientation or citizenship status;
- (3) will state in all solicitations or advertisements for employees placed by or on behalf of the contractor that all qualified applicants will receive consideration for employment without regard to race, creed, color, national origin, sex, age, handicap, marital status, sexual orientation or citizenship status or is an equal employment opportunity employer;
- (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 (§10-14) and the rules and regulations promulgated thereunder;
- (5) will furnish before the contract is awarded all information and reports including an Employment Report which are required by E.O. 50 (§10-14) the rules and regulations

promulgated thereunder, and orders of the Director of the Office of Labor Services ("Division"). Copies of all required reports are available upon request from the contracting agency; and

(6) will permit the Division to have access to all relevant books, records and accounts by the Division for the purposes of investigation to ascertain compliance with such rules, regulations, and orders.

The contractor understands that in the event of its noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, such noncompliance shall constitute a material breach of the contract and noncompliance with E.O. 50 (§10-14) and the rules and regulations promulgated thereunder. After a hearing held pursuant to the rules of the Division, the Director may direct the imposition by the contracting agency head of any or all of the following sanctions:

- (i) disapproval of the contractor;
- (ii) suspension or termination of the contract;
- (iii) declaring the contractor in default; or
- (iv) in lieu of any of the foregoing sanctions, the Director may impose an employment program.

The Director of the Division may recommend to the contracting agency head that a contractor who has repeatedly failed to comply with E.O. 50 (§10-14) and the rules and regulations promulgated thereunder be determined to be nonresponsible.

The contractor agrees to include the provisions of the foregoing paragraphs in every subcontract or purchase order in excess of the small purchase limit established by rule of the Procurement Policy Board to which it becomes a party unless exempted by E.O. 50 (§10-14) and the rules and regulations promulgated thereunder, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Director of the Division of Labor Services as a means of enforcing such provisions including sanctions for noncompliance.

The contractor further agrees that it will refrain from entering into any contract or contract modification subject to E.O. 50 (§10-14) and the rules and regulations promulgated thereunder with a subcontractor who is not in compliance with the requirements of E.O. 50 (§10-14) and the rules and regulations promulgated thereunder.

**BROOKLYN BRIDGE PARK CORPORATION  
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**PART III – APPENDICES**

**APPENDIX D**

**APPLICABLE STATUTES**

**INTENTIONALLY DELETED**

**BROOKLYN BRIDGE PARK CORPORATION  
CONSTRUCTION CONTRACT  
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**PART III – APPENDICES**

**APPENDIX E**

**APPLICABLE AGREEMENTS**

**INTENTIONALLY DELETED**

**BROOKLYN BRIDGE PARK CORPORATION  
CONSTRUCTION CONTRACT  
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**PART III – APPENDICES**

**APPENDIX F**

**PAYMENT FORMS**

Appendix F1 - Contractor's Progress Payment Requisition

Appendix F2 - Contractor's Partial Release

Appendix F3 - Subcontractor's Partial Release

Appendix F4 - Contractor's Final Payment Requisition

Appendix F5 - Contractor's Final Release

Appendix F6 - Subcontractor's Final Release

Appendix F7 - Change Order Form

Appendix F8 - Affidavit of Payment

Appendix F9 - Affidavit of Release of Liens

Appendix F10 - Payroll Report Form

Appendix F11 - EFT Vendor Payment Enrollment Form

**APPENDIX F1**

**CONTRACTORS REQUISITION FOR PROGRESS PAYMENTS**

The Contractor shall utilize the AIA Forms G702 & G703 for Requisitions. Change orders shall be shown in a separate column on the G703 so that the impact of change orders is reflected against individual Subcontractor trade lines.

**APPENDIX F2**

**CONTRACTOR'S PARTIAL RELEASE AND RECEIPT**

TO WHOM IT MAY CONCERN:

\_\_\_\_\_ (the "Contractor"), in consideration of the receipt from Brooklyn Bridge Park Corporation ("the Owner") of all monies due to the Contractor as of the date hereof under the Contract hereinafter described, releases and discharges the Owner and The City of New York, their successors and assigns from all actions, debts, claims, mechanics' liens, public improvement liens and demands whatsoever, in law or equity, which the Contractor, its successors and assigns ever had, as of the date hereof arising from or related to the Contract (the "Contract") dated \_\_\_\_\_ between the Owner and the Contractor for **(DESCRIBE WORK AND SITE)** \_\_\_\_\_ including all change orders thereto.

This PARTIAL RELEASE may only be changed by written modification signed by all parties to the Contract.

IN WITNESS WHEREOF, the Contractor has caused this PARTIAL RELEASE to be executed by its duly authorized officers and its corporate seal to be hereunto affixed on \_\_\_\_, 20\_\_.

(SEAL)

CONTRACTOR

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

Name:

Office:

STATE OF NEW YORK    )  
  ) ss:  
COUNTY OF                )



On \_\_\_\_\_, 20\_\_\_\_, before me personally came \_\_\_\_\_, to me known, who, being by me duly sworn, did depose any say that he or she resides at \_\_\_\_\_; that he or she is the of the Contractor, the Owner described in and which executed the foregoing PARTIAL RELEASE; that he or she knows the seal of said Owner; that the seal affixed to the PARTIAL RELEASE is the Corporate seal; that it was affixed by order of the directors of said Owner; and that he or she signed his or her name thereto by like order.

---

NOTARY PUBLIC

APPENDIX F3

SUBCONTRACTOR'S PARTIAL RELEASE

TO WHOM IT MAY CONCERN:

\_\_\_\_\_ (the "Subcontractor"), in consideration of the receipt of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) received from \_\_\_\_\_ (the "Contractor") ("the Owner "), and being all monies due to the Subcontractor as of the date hereof under the Subcontract hereafter described, the receipt of which is hereby acknowledged, releases and discharges the Owner and The City of New York, their successors and assigns from all actions, debts, claims, mechanics' liens, public improvement liens and demands whatsoever, in law or equity, which the Subcontractor, its successors and assigns ever had, now have or hereafter may have in respect of the work done by the Subcontractor as of the date hereof under the Subcontract (the "Subcontract") dated \_\_\_\_\_ between the Subcontractor and the Contractor, for **(describe work and site)** \_\_\_\_\_.

This PARTIAL RELEASE may not be changed orally.

IN WITNESS WHEREOF, the Subcontractor has caused this PARTIAL RELEASE to be executed by its duly authorized officers and its corporate seal to be hereunto affixed on \_\_\_\_, 20\_\_.

(SEAL)

SUBCONTRACTOR

By: \_\_\_\_\_  
Name:  
Office

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

On \_\_\_\_\_, 20\_\_, before me personally came \_\_\_\_\_, to me known, who, by me duly sworn, did depose and say that he or she resides at \_\_\_\_\_; that he or she is the \_\_\_\_\_ of the Subcontractor, the Owner described in and which executed the foregoing PARTIAL RELEASE; that he or she knows the seal of said Owner; that the seal affixed to the PARTIAL RELEASE is a corporate seal; that it was affixed by order of the directors of said Owner; and that he or she signed his or her name thereto by like order.

\_\_\_\_\_  
NOTARY PUBLIC

**APPENDIX F4**

**CONTRACTOR'S REQUISITION FOR FINAL PAYMENT**

The Contractor shall utilize the AIA Forms G702 & G703 for the Final Requisition. This shall be clearly marked 'FINAL'.

APPENDIX F5

CONTRACTOR'S FINAL RELEASE

TO WHOM IT MAY CONCERN:

\_\_\_\_\_ (the "Contractor"), in consideration of the receipt from Brooklyn Bridge Park Corporation ("the Owner ") of all monies due to the Contractor under the Contract hereinafter described, releases and discharges the Owner and The City of New York, their successors and assigns from all actions, debts, claims, mechanics' liens, public improvement liens and demands whatsoever, in law or equity, which the Contractor, its successors and assigns ever had, now have or hereafter may have arising from or related to the Contract (the "Contract") dated \_\_\_\_\_ between the Owner and the Contractor for (**describe work and site**) \_\_\_\_\_ including all change orders thereto.

This FINAL RELEASE may not be changed orally.

IN WITNESS WHEREOF, the Contractor has caused this FINAL RELEASE to be executed by its duly authorized officers and its corporate seal to be hereunto affixed on \_\_\_\_, 20\_\_.

(SEAL)

CONTRACTOR

By: \_\_\_\_\_  
Name:  
Office:

STATE OF NEW YORK    )  
                                  ) ss:  
COUNTY OF            )

On \_\_\_\_\_, 20\_\_, before me personally came \_\_\_\_\_, to me known, who, by me duly sworn, did depose and say that he or she resides at \_\_\_\_\_; that he or she is the \_\_\_\_\_ of the Contractor, the Owner described in and which executed the foregoing FINAL RELEASE; that he or she knows the seal of the said Owner; that the seal affixed to the FINAL RELEASE is the corporate seal; that it was affixed by order of the directors of said Owner; and that he or she signed his or her name thereto by like order.

\_\_\_\_\_  
NOTARY PUBLIC

APPENDIX F6

SUBCONTRACTOR'S FINAL RELEASE

TO WHOM IT MAY CONCERN:

\_\_\_\_\_ (the "Subcontractor"), in consideration of the receipt of all monies due to the Subcontractor under the subcontract hereinafter described from \_\_\_\_\_, (the "Contractor") releases and discharges the Owner and The City of New York, their successors and assigns from all actions, debts, claims, mechanics' liens, public improvement liens and demands whatsoever, in law or equity, which the Subcontractor, its successors and assigns ever had, now have or hereafter may have in respect of the work done by the Subcontractor under the Subcontract dated \_\_\_\_\_ between the Subcontractor and the Contractor for **(describe the work site)** \_\_\_\_\_.

This FINAL RELEASE may not be changed orally.

IN WITNESS WHEREOF, the Subcontractor has caused this FINAL RELEASE to be executed by its duly authorized officers and its corporate seal to be hereunto affixed on \_\_\_\_\_, 20\_\_.

(SEAL)

SUBCONTRACTOR

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

Name:

Office:

STATE OF NEW YORK    )

ss.:

COUNTY OF    )

On \_\_\_\_\_, 20\_\_, before me personally came \_\_\_\_\_, to me known, who, by me duly sworn, did depose and say that he or she resides at \_\_\_\_\_; that he or she is the \_\_\_\_\_ of the Subcontractor, the Owner described in and which executed the foregoing FINAL RELEASE; that he or she knows the seal of said Owner; that the seal affixed to the FINAL RELEASE is a corporate seal; that it was affixed by order of the directors of said Owner; and that he or she signed his or her name thereto by like order.

\_\_\_\_\_  
NOTARY PUBLIC

**APPENDIX F7**  
**CHANGE ORDER FORM**

**[INSERT PDF]**

**APPENDIX F8**  
**AFFIDAVIT OF PAYMENT**





STATE OF NEW YORK    )  
  ) ss:  
COUNTY OF                    )

On \_\_\_\_\_, 20\_\_\_\_, before me personally came \_\_\_\_\_, to me known, who, by me duly sworn, did depose and say that he or she resides at \_\_\_\_\_; that he or she is the \_\_\_\_\_ of the Contractor, the Owner described in and which executed the foregoing AFFIDAVIT OF PAYMENT; that he or she knows the seal of the said Owner; that the seal affixed to the AFFIDAVIT OF PAYMENT is the corporate seal; that it was affixed by order of the directors of said Owner; and that he or she signed his or her name thereto by like order.

\_\_\_\_\_  
NOTARY PUBLIC

**APPENDIX F9**

**AFFIDAVIT OF RELEASE OF LIENS**



On \_\_\_\_\_, 20\_\_\_\_, before me personally came \_\_\_\_\_, to me known, who, by me duly sworn, did depose and say that he or she resides at \_\_\_\_\_; that he or she is the \_\_\_\_\_ of the Contractor, the Owner described in and which executed the foregoing AFFIDAVIT OF RELEASE OF LIENS; that he or she knows the seal of the said Owner; that the seal affixed to the AFFIDAVIT OF RELEASE OF LIENS is the corporate seal; that it was affixed by order of the directors of said Owner; and that he or she signed his or her name thereto by like order.

\_\_\_\_\_  
NOTARY PUBLIC

**APPENDIX F10**  
**PAYROLL REPORT FORMS**

**APPENDIX F11**

**EFT VENDOR PAYMENT ENROLLMENT FORM**

**BROOKLYN BRIDGE PARK CORPORATION  
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**PART III – APPENDICES**

**APPENDIX G  
FORM OF CERTIFIED STATEMENT REGARDING USE OF NON-ORIGINAL  
MATERIALS**







**APPENDIX H**

**CONTRACTOR'S M/WBE UTILIZATION PLAN**

**CONTRACTOR'S M/WBE UTILIZATION PLAN**

IDENTIFY ALL MBE OR WBE SUBCONTRACTORS TO BE HIRED UNDER SUBCONTRACTS FOR LESS THAN \$1,000,000 [LIST FIRM NAME & ADDRESS (include city, state, & zip code)]	MBE OR WBE?	TRADE TO BE PERFORMED OR MATERIALS TO BE SUPPLIED	PHONE NUMBER	TIME FRAME (START DATE & END DATE)	FAX NUMBER	EIN NUMBER	M/WBE PARTICIPATION DOLLAR VALUE	PERCENTAGE OF PARTICIPATION AMONG SUBCONTRACTS LESS THAN 1,000,000

TOTAL PERCENTAGE OF WORK TO BE PERFORMED BY SUBCONTRACTORS: \_\_\_\_\_

TOTAL DOLLAR VALUE OF WORK TO BE PERFORMED BY SUBCONTRACTORS: \$ \_\_\_\_\_

TOTAL PERCENTAGE OF WORK TO BE PERFORMED BY SUBCONTRACTORS FOR LESS THAN \$1,000,000: \_\_\_\_\_

TOTAL DOLLAR VALUE OF WORK TO BE PERFORMED BY SUBCONTRACTORS FOR LESS THAN \$1,000,000: \$ \_\_\_\_\_

TOTAL PERCENTAGE OF SUBCONTRACTS LESS THAN \$1,000,000 TO BE PERFORMED BY M/WBEs: \_\_\_\_\_

TOTAL DOLLAR VALUE OF SUBCONTRACTS LESS THAN \$1,000,000 TO BE PERFORMED BY M/WBEs: \$ \_\_\_\_\_

OVERALL DOLLAR VALUE OF PROPOSAL: \$ \_\_\_\_\_

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

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

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

**APPENDIX I**  
**SAMPLE SIGN**

**APPENDIX J**  
**SUBCONTRACTOR UTILIZATION REPORT**

**APPENDIX J**

**SUBCONTRACTOR UTILIZATION REPORT**

CONTRACT #: \_\_\_\_\_

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

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

Trade: \_\_\_\_\_

The Subcontractors listed below are intended to be utilized under this Contract.

<b>Subcontractor</b>	<b>Work To Be Performed per Specifications</b>	<b>Trade</b>	<b>M/WBE (Y/N)</b>	<b>DBE (Y/N)</b>	<b>Existing Contract (Y/N)</b>	<b>Total Amount Intended for Subcontract</b>
<b>TOTAL:</b>						
<b>REMARKS:</b>						

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

Print Name: \_\_\_\_\_ Title: \_\_\_\_\_

**BROOKLYN BRIDGE PARK CORPORATION  
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**PART IV  
PROPOSAL DOCUMENTS**

- A. REQUEST FOR PROPOSAL
- B. CONTRACTOR'S PROPOSAL

**PART IV – PROPOSAL DOCUMENTS**

**A. REQUEST FOR PROPOSAL**



**PART IV – PROPOSAL DOCUMENTS**

**B. CONTRACTOR'S PROPOSAL**

**BROOKLYN BRIDGE PARK CORPORATION  
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**PART V  
SCOPE OF WORK DOCUMENTS**

- A. GENERAL REQUIREMENTS
- B. SPECIFIC REQUIREMENTS AND SCOPE
- C. CONCEPTUAL SCHEDULE
- D. SITE LOGISTICS PLANS
- E. LIST OF DRAWINGS AND DESIGN SPECIFICATIONS
- F. ADDENDA (ISSUED PRIOR TO CONTRACT EXECUTION)

## **PART V – SCOPE OF WORK DOCUMENTS**

### **A. GENERAL REQUIREMENTS**

#### **ARTICLE 1** **SCHEDULING OF THE WORK**

Contractor shall comply with the provisions of the Specific Requirements and Scope (Part V.B) entitled “Schedule Control”, with respect to the processes and requirements for scheduling of its Work and the submission and approval of Work Schedules pursuant to this Contract including, without limitation, any progress schedule (the “Contractor’s Progress Schedule”) described in said provisions.

##### **1.1 Initial Schedule Submittal.**

1.1.1 Within (15) calendar days of the Notice to Proceed, the Contractor will submit a progress schedule (the “Contractor’s Progress Schedule”) to the Owner’s Representative indicating the full scope of the Contract Work within the time allotted for Final Completion. Such schedule will additionally conform to the intermediate milestone requirements, if any, of the Contract;

1.1.2 Within (5) days of such schedule submittal, the Contractor will meet with the Owner’s Representative to discuss the schedule and the Owner’s Representative’s or the Owner’s comments and proposed changes thereto including, without limitation, the schedule format and the schedule contents.

1.1.3 The Contractor will revise and resubmit the schedule in accordance with Owner’s Representative’s and the Owner’s comments within (5) calendar days of the above-described meeting.

1.1.4 The Contractor shall continue to revise and resubmit the proposed schedule within (5) calendar days of receiving the Owner’s and Owner’s Representative’s comments until such time that the Owner and Owner’s Representative approve the Contractor’s Progress Schedule.

1.1.5 No work shall begin and no Progress Payments will be made, unless and until the Owner and Owner’s Representative approve the Contractor’s Progress Schedule.

**[SEE ALSO SECTION 3.11 SITE SCHEDULES]**

## 1.2 Preparation Guidelines.

1.2.1 The Contractor shall prepare the Contractor's Progress Schedule using the CPM technique and format as a time scaled network diagram indicating all Contract Work activities including, but not limited to preparation of Submittals, review time of Submittals, procurement activities and deliveries, field activities and punch-list work.

1.2.2 The Contractor's Progress Schedule will clearly indicate the planned start and completion dates of all activities in addition to activity duration in working days. Non-work periods such as weekends and holidays will be indicated.

1.2.3 The Contractor's Progress Schedule will be used to indicate the logical sequence and inter-dependence of all Contract activities. The number and selection of activities must be established so as to permit a clear understanding of the scope of work within each activity. Activity descriptions will be equally specific and should not include phrases such as "start" or "complete". Activity durations will be less than (15) working days each so as to permit accurate monthly monitoring of field progress.

1.2.4 Activities will be assigned codes to indicate Project areas.

1.2.5 The Contractor's Progress Schedule shall be cost loaded with specific contract values placed against specific schedule activities. The total of all cost loaded schedule activities shall equal the total contract amount. Each activity will also be resource loaded with manpower and equipment required to complete the activity.

1.2.6 The approved cost loaded CPM progress schedule shall form the basis for monthly progress payments to the Contractor.

## 1.3 Progress Schedule Updates.

1.3.1 Each Progress Payment Requisition shall be accompanied by a copy of the Contractor's Progress Schedule. The date will be drawn over such schedule as a vertical line and areas of progress will be annotated to show work accomplished in the monthly periods, subsequent to the previous Requisition. The progress indicated on such cost loaded schedule will have a direct correlation to the requisitioned amount.

1.3.2 Payment may not be made for work performed out of sequence unless the Contractor provides a written explanation to the Owner's Representative and the Owner indicating the specific reasons for the deviation from the Contractor's Progress Schedule. This may require a revision to the Contractor's Progress Schedule.

## 1.4 Schedule Revisions.

1.4.1 The Contractor's Progress Schedule represents an agreed upon approach to the execution of all Contract activities. Once approved, it may not be revised without the prior written consent of the Owner's Representative and the Owner in response to a written request for permission to make a revision that includes an explanation of the changes to be made and the reasons therefor.

1.4.2 Should Change Order Work be required, the Contractor will submit a revised progress schedule which clearly indicates the Change Order Work and its interrelationship to the pre-existing Contract Work. The Contractor must submit a request for permission to revise the Contractor's Progress Schedule as described in Section 1.4.1 above with any Change Order on such schedule change and Change Order approval by the Owner and the Owner's Representative before any payment for Change Order Work will be made.

**ARTICLE 2**  
**INSPECTION, TESTING, CORRECTION AND COMPLETION OF THE CONTRACT**  
**WORK**

2.1 Inspections in General. All Contract Work, including all Materials and Equipment (whether incorporated in the Contract Work or not) and all methods of construction, shall at all times be subject to inspection by the Owner, the Owner's Representative, any of the Owner's Other Consultants, any Agency, any individual or entity entitled under any Legal Requirement, any Inspector, or any of their respective Representatives or independent contractors. In the event any of the Contract Work fails to meet the approval of the Owner or any of the foregoing entities and individuals, such Contract Work, Material and Equipment or method of construction shall be immediately changed, corrected, replaced and made good, at the Contractor's sole cost and expense. The Owner shall be the final judge of the quality and suitability of the Contract Work, Materials and Equipment, and methods of construction. Acceptance of any Contract Work, Materials and Equipment or method of construction shall not relieve the Contractor from any of its obligations under this Contract.

2.2 Inspection and Correction of the Work. The Contractor shall:

2.2.1 provide, both in the shops and at the Site, sufficient, safe and proper facilities for the inspection of the Work by the Owner's Representative, the Owner and all of the Owner's Other Consultants at all times;

2.2.2 within twenty-four hours after receiving written Notice from the Owner's Representative or the Owner:

2.2.2.1 proceed to remove from the Site all Materials and Equipment rejected by the Owner's Representative or the Owner as not complying with the Contract Documents whether worked or unworked; and

2.2.2.2 take down all portions of the Work which the Owner's Representative and the Owner reject as unsound or improper or as in any way failing to conform to the Contract Documents;

2.2.3 promptly correct, reconstruct, make good or replace all Work rejected as defective or as failing to conform to the Contract Documents whether observed before or after Substantial Completion and whether or not fabricated, installed or completed;

2.2.4 bear all costs in connection with the foregoing rejected Work, including, without limitation, additional costs incurred by and compensation due the Owner's Representative and all of the Owner's Other Consultants in connection with the additional

services made necessary thereby and costs incurred by other contractors whose work is destroyed or damaged by such corrective work; and

2.2.5 remain liable for and shall not be relieved from its obligations to perform the Work in accordance with the Contract Documents either by the activities or duties of the Owner's Representative or all of the Owner's Other Consultants in their administration of this Contract or by any inspections, tests or approvals required of or performed by others.

### 2.3 Special Inspection and Testing.

2.3.1 The Owner or the Owner's Representative may perform or may direct the Owner's Other Consultants to conduct special inspections or testings of the Work or its individual components, whether or not such Work is then fabricated, installed, covered or completed, and the costs thereof shall be paid by the Owner, except that the Contractor shall bear all costs and expenses as set forth in Section 2.2.4 above if such testings or inspections:

2.3.1.1 are specifically required under the other Contract Documents; or

2.3.1.2 reveal a test failure as a result of the acts or omissions of the Contractor.

2.3.2 In the event any portion of the Work fails any inspection or test, the Owner may perform or may direct the Owner's Representative or the Owner's Other Consultants to perform further inspections or testings of any or all of the other similar items of the Work at the Owner's sole cost and expense except that the Contractor shall bear all costs and expenses as set forth in Section 2.2.4 above if:

2.3.2.1 such testing or inspection is specifically required by the other Contract Documents;

2.3.2.2 the test failure prompting such additional testing or inspection was a result of the acts or omissions of the Contractor; or

2.3.2.3 such additional testing or inspection results in a test failure which results from the acts or omissions of the Contractor.

2.3.3 In the event that any special inspections or tests shall necessarily result in a delay in the performance of the Work, then the Completion Date shall be appropriately extended by a Change Order, unless such special inspections or tests:

2.3.3.1 are specifically required by the other Contract Documents;

2.3.3.2 were required by the Owner, the Owner's Representative, or the Owner's Other Consultants as a result of a test failure which was a result of the acts or omissions of the Contractor; or

2.3.3.3 resulted in a test failure which was a result of the acts or omissions of the Contractor.

## 2.4 Uncovering of the Work.

2.4.1 If, contrary to the Contract Documents or any specific request or directive from the Owner, the Owner's Representative or the Owner's Other Consultants, any portion of the Work should be covered or concealed, the Contractor shall, at its sole cost and expense, upon Notice from the Owner:

2.4.1.1 uncover such Work for examination, inspection or testing;

2.4.1.2 replace such Work at the Contractor's sole cost and expense; and

2.4.1.3 if thereafter any inspections or test results are below specified minimums, uncover and replace such Work until such Work passes subsequent examinations, inspections or tests.

2.4.2 If any other portion of the Work has been covered or concealed in accordance with the Contract Documents or specific directive from the Owner or from the Owner's Representative or the Owner's Other Consultants at the Owner's directive, and no specific request to examine, inspect or test such Work has been made prior to its being covered, the Contractor, upon written Notice from the Owner, shall uncover such Work for examination, inspection and testing and replace the same all at the Owner's cost and expense, by an appropriate Change Order, provided that the Owner, the Owner's Representative or the Owner's Other Consultants determine that such Work is in accordance with the Contract Documents, provided, however, that if the Owner, the Owner's Representative or the Owner's Other Consultants determine that such Work is not in accordance with the Contract Documents, the Contractor shall pay all such costs and expenses.

## 2.5 Defective Work.

2.5.1 If, in the Owner's judgment, the nature of any defect in any particular portion of the Work is such that it is not expedient to have the Work corrected, the Owner may, at its sole option, determine a sum that constitutes a fair and reasonable remuneration for the difference in value of the Work as furnished from that as specified or that represents the damage to the completed Work, and either demand that the Contractor pay such sum to the Owner or, in the alternative, deduct such sum from the Maximum Contract Price.

2.5.2 In addition to any other of its obligations under this Contract, the Contractor shall indemnify, defend and hold harmless the Owner, the Owner's Representative or Owner's Other Consultants from and against any and all claims, actions, suits or proceedings arising out of the performance of defective Work under this Contract, and any and all liability, damages, judgments, costs or expense, including attorneys fees and disbursements, arising out of or in connection therewith.

## 2.6 Defective Work of Others.

2.6.1 Should the proper, workmanlike and accurate performance of any portion or all of the Work depend in any way upon the proper, workmanlike or accurate performance of any work by any other contractor on the Project, the Contractor agrees to use all means reasonably

necessary to discover any defects in such other contractor's work and to report the same in writing to the Owner's Representative and the Owner before proceeding with its Work or such portion thereof as is so dependent. The Contractor shall allow the Owner's Representative and the Owner a reasonable time to permit for the remediation of such defect, it being the intention of the parties hereto that the entire work on the Project shall be properly performed in workmanlike manner.

2.6.2 Before installation of any Materials and Equipment at the Site, the Contractor shall examine the Materials and Equipment to which its Materials and Equipment are to be applied and shall Notify the Owner's Representative and the Owner in writing of all defects which would affect the quality and appearance of the Work.

2.6.3 The Contractor's proceeding with the Work and/or its installation of Materials and Equipment without having provided written Notice to the Owner and the Owner's Representative for the reasons stated in Sections 2.6.1 and 2.6.2 or otherwise, shall be deemed to mean and shall constitute the Contractor's full acceptance of the existing conditions at the Site and its acknowledgement and agreement that such existing conditions meet all requirements for the proper performance of its Work and installation of Materials and Equipment.

2.7 Project Safety Program. The Contractor shall comply with all applicable terms and conditions of the Project Safety Program put into effect by the Owner's Representative, as such program may be amended from time to time.

2.8 Contractor's Safety Precautions and Programs. In addition to and as part of its obligations to comply with the Legal Requirements related to safety and the Project Safety Program established by the Owner's Representative, the Contractor shall be responsible for initiating, maintaining and supervising safety precautions and programs to prevent damage, injury or loss to:

2.8.1 all Contractor's employees and all other persons on or near the Work Site who may be affected by the Contractor's operations;

2.8.2 all the Work and all Materials and Equipment to be incorporated therein, whether in storage on or off the Work Site, under the care, custody or control of the Contractor or any of the Contractor's Subcontractors or anyone else;

2.8.2.1 other property at the Work Site or adjacent thereto; and

2.8.2.2 the Work of other contractors.

2.9 Project Safety Representative. The Contractor shall designate a responsible, experienced Project Safety Representative at the Work Site whose duties shall include:

2.9.1 prevention of accidents;

2.9.2 enforcement of all Legal Requirements related to safety and health;

2.9.3 compliance with the Contractor's Work Site safety program;



2.9.4 compliance with the Project Safety Program;

2.9.5 attendance at all regular and special meetings regarding safety scheduled by the Owner's Representative of the Owner; and

2.9.6 monitoring the Contractor's compliance with the Work Site safety requirements of the Department of Buildings of the City of New York including, without limitation, compliance with Chapter 26, Article 1900 (recodified effective as of September 1, 1987 as Title 27, Chapter 1, Subchapter 19) of the City Administrative Code.

Unless otherwise agreed to in writing by the Owner, the Project Safety Representative shall be the Contractor's most senior foreman at the Work Site.

2.10 Safety Devices. The Contractor shall include, provide, erect, maintain and promptly and properly replace, as necessary, all reasonable, necessary or required safety devices for its employees and flagmen. Such devices shall include, without limitation, proper barricades and other safeguards around its Work and danger signs and other warning devices where warranted by the nature of the existing condition of the Work.

2.11 Loading. The Contractor shall not load or permit any part of the Work or the Project to be loaded so as to endanger its safety or the safety of any persons. The Project is designed to support the loads of the finished Project only. No provision is included for stresses or loads imposed by construction operations.

2.12 Emergencies. The Contractor shall immediately Notify the Owner's Representative and the Owner of any emergency situation that threatens to or is already affecting the safety of persons or property and shall promptly act to prevent or mitigate such damage, injury or loss.

2.13 Subcontractors'/Suppliers' Compliance. The Contractor shall be responsible for seeing that its suppliers and Subcontractors of all tiers comply with the requirements of this Article.

2.14 Settlement of Claims. In addition to the Contractor's obligations under Article 8 or otherwise under the Contract, Contractor shall promptly attempt to settle any claim in the event the Contractor shall have caused damage to the work or property of any other contractor or third party.

2.15 Liquidated Damages. In addition to any other remedies the Owner may have under this Contract or as a matter of law, the Owner may assess the Contractor Liquidated Damages pursuant to Part II, Section 2.5 of this Contract, in the event Contractor fails to fulfill any of its obligations under Article 2 of this Part V.A.

**ARTICLE 3**  
**CONTRACTOR'S RESPONSIBILITIES**

3.1 Supervision. The Contractor shall use its best skill and attention for the proper administration, coordination and supervision of the Contract Work. In furtherance thereof, the Contractor shall:

3.1.1 keep on Site a competent representative acceptable to the Owner to receive Notices, orders and instructions;

3.1.2 report the general progress of the Contract Work at the Site when required by the Owner's Representative or the Owner;

3.1.3 cause a competent and responsible representative to attend such job meetings as are called by the Owner's Representative or the Owner;

3.1.4 employ an appropriate number of full-time foremen and assistants, as the Owner deems necessary, which foremen shall be:

3.1.4.1 in attendance at the Site during the progress of the Contract Work;

3.1.4.2 subject to the Owner's and the Owner's Representative's reasonable approval; and

3.1.4.3 retained and not be changed without the prior consent of the Owner and the Owner's Representative, unless the foreman proves to be unsatisfactory to the Contractor or ceases to be in its employ.

3.2 Labor.

3.2.1 The Contractor shall furnish and maintain an adequate staff and work force of skilled, competent, experienced, reliable and honest workers at the Site to carry out the Contract Work in an efficient and timely manner until Final Completion. The Contractor shall enforce strict discipline and order among Contractor's employees and shall not employ on the Contract Work any unfit person or anyone not properly skilled or trained in the task to which he or she is assigned.

3.2.2 In order to prevent the Contract Work and the Project from being interrupted by labor disputes, the Contractor shall employ on the Contract Work only such labor as, to the satisfaction of the Owner and the Owner's Representative, will perform their respective services in harmony with other trades on the Project.

3.2.3 The manufacture, installation and delivery of all Materials and Equipment utilized in the Contract Work shall be performed by workmen whose trade affiliations shall not cause strikes or work stoppages on the Project. The Contractor shall employ the proper tradesmen per applicable union jurisdiction for all Contract Work and shall take whatever measures may be necessary to settle any labor disputes and insure job continuity including, without limitation, disputes stemming from questions of union jurisdiction. When such

questions of union jurisdiction arise and are finally determined, the Contractor shall use such labor as may be determined to have jurisdiction at no additional cost. Should the Contractor fail to take expeditious action to settle any labor dispute, the Contractor shall be responsible for any time lost because of delays arising from such disputes.

### 3.3 Permits and Legal Requirements.

3.3.1 The Owner, with the assistance of the Owner's Representative, will secure and pay for the building permit for the Project.

3.3.1.1 The Contractor, at its sole cost and expense, shall, as may be necessary for the proper execution and completion of the Contract Work and for compliance with all applicable Legal Requirements, secure, maintain, renew and pay for:

3.3.1.1.1 all other permits, governmental fees, licenses and inspections;  
and

3.3.1.1.2 all affidavits, instruments or supporting data required in connection therewith including those required for the issuance of any Temporary or Permanent Certificate of Occupancy.

3.4 Cutting, Fitting, Patching and Protection of Contract Work. The Contractor shall do all cutting, fitting, patching and protection that may be required to the Contract Work to make its several parts come together properly and to fit it to receive or be received by the work of other trades shown upon or reasonably implied by the Contract Documents. The requirements to cut, fit, patch or protect shall be determined by the Contractor provided, however, that structural elements of the Project shall not be cut, patched or otherwise altered or repaired without prior written authorization of both the Owner's Representative and the Engineer.

### 3.5 Handling and Hoisting of Tools, Equipment and Materials.

3.5.1 The Contractor is responsible for the handling and distribution of its own Materials and Equipment. The Contractor shall confine its Materials and Equipment and its operations to areas permitted by all applicable Legal Requirements or as directed by the Owner's Representative or the Owner.

3.5.2 The Contractor shall organize and coordinate, well in advance of the time required, the procurement and delivery of all necessary Materials and Equipment so that they will be available at the Site as needed for timely completion of the Contract Work.

3.6 Layout of Work. All layout shall be performed by the Contractor. The Contractor shall be solely responsible for establishing and maintaining the layout, line and grade tolerances required for its Work. The Contractor shall verify all established baselines prior to use and shall Notify the Owner's Representative and the Owner of any discrepancies.

3.7 Temporary Facilities. The Contractor shall place and relocate its field offices and shanties when and where directed by the Owner's Representative and shall provide all necessary

facilities for its workers. The Contractor shall be responsible for the acquisition, maintenance, relocation and subsequent removal of all utility, sprinkler and telephone services required for its field offices and shanties. Each structure Contractor maintains at the Work Site must be of fire-resistant construction and must contain a minimum of one (1) 20 lb. dry ABC Fire Extinguisher and shall otherwise comply with all applicable fire codes or other Legal Requirements related to such structures.

### 3.8 Cleaning and Rubbish Removal.

3.8.1 The Contractor shall clear all rubbish created by its operations on a daily basis and shall collect and deposit the same in a container or rubbish chute which it shall provide and as directed by the Owner's Representative.

3.8.2 In the event of the Contractor's failure to clear and collect rubbish created by its operations, the Owner's Representative or the Owner may do so upon Notice to the Contractor and all costs of performing such work shall be immediately due and owing to the Owner and charged to the Contractor's account. In such event, the Owner may avail itself of any remedies it may have under this Contract or as a matter of law or equity including, without limitation, deducting such amount from monies then due or next becoming due from the Owner to the Contractor. If no such monies are due, then the Contractor shall pay such amounts to the Owner on demand.

3.8.3 In the event of a dispute between the Contractor and other contractors on the Site as to which contractor is responsible for cleaning and removing rubbish from the Site, the Owner's Representative or the Owner may do so and the Owner may charge the cost thereof to the contractor or contractors responsible therefor, including the Contractor, as the Owner, in consultation with the Owner's Representative, shall reasonably determine to be fair and equitable in the same manner as stated above.

3.8.4 On or before Substantial Completion, Contractor shall:

- 3.8.4.1 collect all debris, rubbish, rubble, discarded equipment or spillage of solid waste resulting from its Work;
- 3.8.4.2 deposit same in containers or a rubbish chute which it shall provide;
- 3.8.4.3 and remove all tools, construction equipment, machinery and surplus Materials and Equipment from the Work Site.

3.8.5 If the Project or the Work Site are damaged in the course of such collection or removal, Contractor shall, at its sole cost and expense, and to the Owner's satisfaction, promptly repair such damage and restore the Project and the Work Site to their condition immediately prior to such damage.

### 3.9 Substitutions.

3.9.1 The Materials and Equipment of manufacturers referred to in the Contract Documents are intended to establish the standard of quality and design required by the Owner.

Notwithstanding anything contained in the Contract Documents to the contrary, Materials and Equipment of manufacturers other than those specified may be used only with the express prior written approval of the Owner

3.9.2 When only one product is specified in the Contract Documents for an item of Work and the term "or equal" is used in connection with such product, the Owner will consider approval of a substitute product only after the Owner is satisfied that the product offered as a substitute meets all of the requirements set forth in Paragraphs 3.9.3.1 through 3.9.3.5, inclusive, herein below.

3.9.3 The Contractor offering a substitution shall submit a written application to the Engineer and to the Owner (through the Owner's Representative) in sufficient time (taking into account the progress of the Work, the period of delivery of the goods concerned and adequate time for the Engineer's and the Owner's review), setting forth and fully identifying the proposed substitute, together with substantiating data, samples, brochures and other supporting documentation of the substitute item proposed, including without limitation, evidence that the proposed substitution:

- 3.9.3.1 is equal in quality and serviceability to the specified item;
- 3.9.3.2 will not entail changes in detail, schedule and construction or related Work;
- 3.9.3.3 conforms with the design of the Project and its artistic intent;
- 3.9.3.4 will not require changes in other parts of the Work or the work of others; and
- 3.9.3.5 either will not result in an increase in the Maximum Contract Price or will result in a decrease in the Maximum Contract Price in the amount indicated.

3.9.4 Contractor shall support any request for a substitution with sufficient evidence to permit the Engineer to make a fair and equitable recommendation to the Owner and the Owner's Representative on the merits of the Contractor's Proposal.

3.9.5 When only one product is specified in the Contract Documents for an item of Work and the term "or equal" is not used in connection with such product, the Owner, in its sole discretion, may reject any substitution proposed by the Contractor.

3.9.6 For the purposes of this Contract, any item having a manufacturer, brand name, or model number, size or generic species other than as cited in the Contract Documents shall be considered a substitution.

3.10 Site Conditions. If its Work is being performed adjacent to active facilities and existing buildings that are in service, the Contractor shall take all necessary steps to avoid damage to the existing structures and/or other improvements and/or interference with such

services. Any damages caused by the Contractor will be repaired by the Contractor at its sole cost and expense.

### 3.11 On-Site Reports and Schedules.

3.11.1 The Contractor shall, within ten (10) days of a request from the Owner's Representative or the Owner, provide a proposed schedule for the submission of Shop Drawings (with appropriate cross references to applicable sections of the Specifications) and a proposed schedule for deliveries of Materials and Equipment to the Site. The Contractor shall provide periodic status reports with respect to the submission and delivery of such Shop Drawings and Materials and Equipment within seven (7) days of a request by the Owner's Representative or the Owner for same.

3.11.2 Each morning upon the commencement of work for the day, the Contractor shall report to the Owner's Representative:

3.11.2.1 the number of workers, a description of the aspects of the Work to be performed; and

3.11.2.2 the equipment on the Work Site for that day.

3.11.3 The Contractor shall Notify the Owner and the Owner's Representative immediately, and in writing, of any accidents, injury or other damages to persons or property at the Work Site or otherwise in any way related to the Contractor's Work under this Contract.

3.11.4 The Contractor shall maintain the following at the Site:

3.11.4.1 a current set of Contract Documents;

3.11.4.2 record drawings updated on a current basis and as the Work progresses showing "as-built" conditions of the Work;

3.11.4.3 all permits, signs and other documents or data required by all Applicable Agencies or pursuant to all Legal Requirements including, without limitation, DOB work permits.

### 3.12 Coordination With Other Trades.

3.12.1 The Contractor is responsible for the complete coordination of the Work with the work of other contractors and of other trades and in such manner as the Owner's Representative and the Owner shall direct. The Contractor shall afford other contractors reasonable opportunity for the installation, execution and storage of their respective work, Materials and Equipment. The Contractor shall attend coordination meetings as scheduled and required by the Owner's Representative or the Owner. The Contractor shall perform all preparation of its Work required in order to receive the work of other trades. The Contractor shall advise other contractors of any preparation of its Work required in order to received the work of other trades, and shall advise other contractors of any preparation in their work required

for receipt of the Contractor's Work and shall provide those other contractors with location plans and items to be built-in to their work in a timely manner.

3.12.2 If the Owner or the Owner's Representative shall determine that the Contractor is failing to coordinate its Work with the work of other contractors as directed, the Owner may, in addition to any other rights it may have under this Contract or as a matter of law or equity:

3.12.2.1 withhold any payment otherwise due hereunder until such directions are complied with by the Contractor;

3.12.2.2 direct others to perform portions of the Work and deduct the cost thereof from the Maximum Contract Price; or

3.12.2.3 terminate this Contract.

3.13 Project Meetings. The Contractor shall, as directed by the Owner's Representative or the Owner, attend and participate in all regular, progress and special meetings called by the Owner's Representative or the Owner in connection with the Work, this Contract or the Project.

#### **ARTICLE 4**

### **SHOP DRAWINGS, COORDINATION DRAWINGS, PRODUCT DATA, SAMPLES AND CERTIFICATES**

#### 4.1 General Requirements.

4.1.1 In addition to and without limiting the provisions of Part II, Section 22 regarding Work Product, the Contractor shall, at its sole cost and expense, prepare and submit to the Owner's Representative all Shop Drawings, Coordination Drawings, Product Data and Samples required by the Contract Documents, as follows:

4.1.1.1 promptly and in accordance with agreed schedules for submissions;

4.1.1.2 in such sequence as to cause no delay in the Contractor's Work or the work of or services performed by the Owner's Representative, the Owner's Other Consultants, all other lessees, licensees, permit holders and invitees of the Owner and the City having a right to occupy or use the Work Site or any portion thereof, or of any other contractor. The Contractor shall not be granted any extension of time in the event the Contractor fails to have Shop Drawings, Coordination Drawings, Product Data and Samples submitted in ample time to allow for the proper review and processing of the same. By approving and submitting Shop Drawings, Coordination Drawings, Product Data and Samples, the Contractor warrants that it has determined and verified all Materials and Equipment, field measurements, and field construction criteria related thereto and has checked and coordinated the information contained within such submittal with the requirements of the Work and of the

Contract Documents and with the requirements of other sections or trades related thereto as may be required for the proper and complete installation of the Work.

4.1.2 The Owner's Representative will forward Shop Drawings, Coordination Drawings, Product Data and Samples to the Engineer, Environmental Consultant, or the Owner's Other Consultants, as applicable. If the Owner's Representative, the Engineer, the Environmental Consultant, or the Owner's Other Consultants find them not to be complete or in proper form, the Owner's Representative may return them or direct the Owner's Other Consultants to return them to the Contractor for immediate correction or completion. In such event, the Contractor shall immediately correct or complete same, and resubmit same to the Owner's Representative, as directed. The Contractor shall be solely responsible for any and all delays in the Contractor's Work or the work or services of the Owner's Other Consultants or any other contractor resulting from such incomplete or incorrect submissions. The Contractor shall not be deemed to have satisfied its obligations hereunder until all submissions required hereunder have been submitted in correct, complete and proper form and accepted by the Owner and the Owner's Other Consultants.

4.1.3 The Contractor shall not be relieved of responsibility for any deviation in the Shop Drawings, Coordination Drawings, Product Data or Samples from the requirements of the Contract Documents, or from any errors or omissions therein, by reason of the Owner's Representative's forwarding Shop Drawings, Coordination Drawings, Product Data or Samples to any of the Owner's Other Consultants, or by any of the Owner's Other Consultants approval thereof unless the Contractor has given written Notice of such deviation or such errors or omissions to the Owner, the Owner's Representative, and any of the Owner's Other Consultants, as applicable, at the time of submission and the Owner's Representative and the Owner have given Contractor written approval to the specific deviation.

4.1.4 The Contractor shall direct specific attention, in a manner satisfactory to the Owner's Other Consultants, on all resubmitted Shop Drawings, Coordination Drawings, Product Data or Samples, to any and all revisions and shall highlight, in particular, in a manner satisfactory to the Owner's Other Consultants, any revision other than those requested by the Owner's Representative, any of the Owner's Other Consultants, or the Owner.

4.1.5 No portion of the Work requiring submission of Shop Drawings, Coordination Drawings, Product Data or Samples shall be commenced until the submittal has been approved in writing by the Owner, the Owner's Representative or the Owner's Other Consultants. All such portions of the Work shall be performed strictly in accordance with approved submittal.

4.1.6 The Contractor shall prepare composite Shop Drawings and installation layouts, when required, to depict proposed solutions for tight field conditions. These composite Shop Drawings and field installation layouts shall be coordinated in the field by the Contractor and its Subcontractors for proper relationship to the work of all other trades, based on field conditions.

4.1.7 The Owner's Other Consultants, as directed by the Owner, will review Shop Drawings, Coordination Drawings, Product Data and Samples with reasonable promptness and,



once approved, the Contractor shall comply with the approved Shop Drawings, Coordination Drawings, Product Data and Samples. The Contractor shall Notify the Owner the Owner's Representative of any notations by the Owner's Other Consultants that it believes will result in an increase in the Maximum Contract Price or require an extension of the Completion Date or any interim milestone before the Contractor proceeds with the Work.

4.1.8 The Contractor shall furnish to the Owner's Representative detailed Shop Drawings and Coordination Drawings or other design drawings for the Work for the Owner's Other Consultants' approval prior to their use in the Work and shall process and return ("turn around") Coordination Drawings within forty-eight (48) hours after receipt. The Owner's Other Consultants' approval of any design drawing or manufacturer's drawing shall not relieve the Contractor of any responsibility for execution of the Work in strict accordance with the requirements of the Contract Documents or the manner in which the Work performs when completed.

4.1.9 The Owner's Other Consultants may, from time to time, furnish to the Contractor such further drawings or explanations as may be necessary to detail and illustrate the Work, and the Contractor shall conform its Work to the same as part of this Contract without additional cost.

4.1.10 All Shop Drawings, Coordination Drawings, Submittals, Samples and Product Data and other Work Product used in connection with this Contract are and will remain the property of the Owner. The Contractor shall exercise the utmost diligence to obtain in a timely manner all drawings and other Work Product or information necessary to complete the Work. The Contractor shall Notify the Owner's Representative if, at any time, drawings or other Work Product or information is necessary for the completion of the Work. The Contractor shall, from time to time and at frequent intervals, inform the Owner's Representative in writing as to what drawings or other Work Product or information it may require to complete the Work within the time specified and the sequence in which it will need such drawings or other Work Product or information.

#### 4.2 Specific Requirements.

Contractor shall comply with the provisions of the Specific Requirements and Scope (Part V.B), entitled "Submittals", with respect to procedures regarding Shop Drawings, Coordination Drawings, Product Data, Samples, and Notarized Certificates.

4.2.1 Upon the award of the Contract, the Owner will supply one set of paper sepias and one set of Drawings and Design Specifications to the Contractor. If more Drawings and Design Specifications or sepias are needed, the Owner will supply them to the Contractor at the Contractor's sole cost and expense.

4.2.2 Within ten (10) working days after the receipt of a Notice to Proceed with the Work, the Contractor shall submit to the Owner's Representative a schedule indicating when Shop Drawings, catalog cuts and Samples are to be submitted. The schedule shall include

information concerning the number of such Shop Drawings, catalog cuts and Samples to be submitted.

4.2.3 The Contractor shall prepare and submit to the Owner's Representative such Shop Drawings, literature and Samples as may be necessary to describe completely the details and construction of the Contract Work. At a minimum, the Contractor shall submit the following:

- 4.2.3.1 One (1) sepia and four (4) prints of each Architural and structural Shop Drawing;
- 4.2.3.2 Two (2) sepias and six (6) prints of each mechanical/electrical Shop Drawing;
- 4.2.3.3 Six (6) copies of manufacturer's literature including catalog cuts, brochures, charts, test data and other similar information;
- 4.2.3.4 Four (4) samples of Materials and Equipment to be used in the Contract Work together with:
  - 4.2.3.4.1 a transmittal form properly filled out listing each sample submitted;
  - 4.2.3.4.2 the listing of any American Society for Testing and Materials Federal or other standard reference specified as applicable to such sample; and
  - 4.2.3.4.3 any additional information as may be required by the Specifications for the Materials and Equipment being submitted. Any deviation from the Contract requirements shall be so stated on the above form or attached to it.
    - 4.2.3.4.3.1 One (1) sepia and four (4) blueline prints of all as-built drawings. Such drawings shall be clearly marked as-built.

4.2.4 The Owner's Representative will assign a Shop Drawing number system to the Contractor which will consist of a four digit number identifying the Contractor's trade, followed by the consecutive number of the Shop Drawing.

4.2.5 The Owner's, the Owner's Representative's or the Owner's Other Consultants' review of such Shop Drawings, literature and samples by and/or the Engineer shall not relieve the Contractor of its obligation to perform the Contract Work in strict accordance with the Plans and Specifications, the Contract and the other Contract Documents, or of its responsibility for the proper matching and fitting of the Contract Work with contiguous work.

### 4.3 Shop Drawing Requirements.

4.3.1 Shop Drawings shall show design, materials (kind, thickness and finish), dimensions, assembly, attachments, connections, and other details necessary to insure that they accurately interpret the Contract Documents and also show adjoining work in such detail as required to provide proper connection with same. Shop Drawings shall be numbered consecutively and insofar as possible shall be uniform in size.

4.3.1.1 All Shop Drawings shall be identified with the following:

4.3.1.1.1 name of the Project;

4.3.1.1.2 the Engineer's name;

4.3.1.1.3 the Owner's Representative's name;

4.3.1.1.4 the Owner 's name;

4.3.1.1.5 date of submittal;

4.3.1.1.6 drawing number;

4.3.1.1.7 revision number and date of each revision, if any;

4.3.1.1.8 the Specification section under which the Work is to be performed;

4.3.1.1.9 the drawing and detail numbers that relate to the Shop Drawings; and

4.3.1.1.10 other information required by any submittal procedures required by the Owner's Representative.

4.3.2 All Shop Drawings, cuts and brochures shall be accompanied by a letter of transmittal from the Contractor setting forth the same identification as required in the foregoing paragraph. The Contractor shall number transmittals consecutively and shall indicate the submittal procedure being followed. Transmittal shall also indicate if the Shop Drawing is being resubmitted and note the Engineer's file number for original submittal.

4.3.3 The Contractor shall obtain and provide such number of prints of the transparency for any Shop Drawings as determined by the Contractor for his field distribution. Contractor shall have copies of all Shop Drawings at the Project Site at all times and shall make them available to the Engineer's representatives. Shop Drawings marked "REJECTED" shall not be kept at the Project Site.

4.3.4 The Contractor shall be solely responsible for and shall pay all charges in connection with the delivery of Shop Drawings to the Owner's Representative's office or as otherwise directed by the Owner's Representative or the Owner.

#### 4.4 Sample Requirements.

4.4.1 Where possible, all Samples required for a particular Specification section shall be submitted together. The Contractor shall furnish, for the approval of the Engineer, all such Samples, as it may require from time to time and all workmanship, and all Materials and Equipment furnished hereunder shall be in strict accordance with said approved Samples. Samples shall be submitted from the same source which will supply the actual job. Samples shall be of the adequate size to show quality, type, color, range, finish, texture and the specified characteristics. Samples of Materials and Equipment or products which are normally furnished in containers or packages, which bear descriptive labels and/or application or installation instructions, shall be submitted with such labels and/or instructions.

4.4.2 All Samples shall be labeled, tagged or otherwise clearly identified. Labels or tags shall set forth:

- 4.4.2.1 the name of the Project;
- 4.4.2.2 the Engineer;
- 4.4.2.3 the Owner's Representative;
- 4.4.2.4 the Owner, Contractor and/or supplier;
- 4.4.2.5 the name of the manufacturer, fabricator or processor;
- 4.4.2.6 the trade designation;
- 4.4.2.7 grade and quality of the material or product;
- 4.4.2.8 the date of submittal;
- 4.4.2.9 specific identification of each Sample;
- 4.4.2.10 a precise reference to the Specification section, article and paragraph wherein the material, product or element of the Work is specified;
- 4.4.2.11 such other information as the Owner's Representative, the Owner or the Owner's Other Consultants may require;
- 4.4.2.12 sufficient clear space to permit the application of the review stamps of the Owner, the Owner's Representative and the Owner's Other Consultants.

4.4.3 All Samples shall be accompanied by a letter of transmittal from the Contractor setting forth the same identification information as required in the foregoing paragraph. The Contractor shall number transmittals consecutively in sequence with the Shop Drawing transmittals. Where appropriate, test data and/or manufacturers' certificates shall be

referenced in and forwarded with the letter of transmittal. Samples without accompanying certificates or test data will be returned without any review or other action being conducted.

4.4.4 When Samples are returned, the Contractor shall retain such Samples in a suitable place at the Site for use by the Contractor, its Subcontractors, the Owner's Representative, the Owner's Other Consultants and their respective Representatives to insure that all Work is being installed in accordance with approved Samples. The remaining approved Samples will be retained by the Engineer. Samples marked "REJECTED" shall not be kept at the Project Site.

**The Contractor shall be solely responsible for and shall pay all charges in connection with the delivery of Shop Drawings to the Owner's Representative's office or as otherwise directed by the Owner's Representative or the Owner.**

## **ARTICLE 5**

### **DISPUTE RESOLUTION**

#### 5.1 General Approach.

5.1.1 Undertaking and successfully completing a project of this complexity and size requires the development of effective working relationships among the Owner, the Owner's Representative, the Owner's Other Consultants (all of the foregoing collectively, the "Client Project Management Team" or "CPMT") and the Contractor and its Subcontractors to promote cooperation and trust, and to achieve common and individual objectives on a non-confrontational basis. The CPMT will endeavor to provide an environment that encourages the development of effective working relationships between all parties involved with the Project. To achieve this goal, the CPMT encourages the use of partnering techniques

5.1.2 Every effort will be made to resolve Contractor Claims (as described in Section 5.2) and Disputes (as described in Section 5.4) at the lowest level and at the earliest opportunity in order to avoid any negative impact to the Project, the Project Schedule or the Project budget. In furtherance thereof, the CPMT may establish special procedures to handle Claims ("Claims Management Procedures") and Disputes ("Dispute Resolution Procedures"), including, without limitation, the establishment of a Dispute Review Board ("DRB"), as more fully described in Section 5.4.8.

5.2 Claims. For the purposes of this Article, a "Claim" may include any issue raised by the Contractor related to the Contract Work, the Contract or any of the other Contract Documents for which a resolution procedure has not already been specifically set forth in the General Terms and Conditions (Part II) or any other Contract Document.

#### 5.3 Claims Management Procedures.

5.3.1 Claims Management Procedures will be designed to avoid Claims and provide a discussion mechanism to ensure that

- 5.3.1.1 Contractor-suggested design changes are for the benefit of the Project; and
- 5.3.1.2 the effect of any directive issued by any member of the CPMT is fully understood before implementation.

5.3.2 The Owner's Representative may develop specific Claims Management Procedures consistent with the requirements of each Project contract in order to establish guidelines to be followed by Contractors asserting a Claim and the forms to be used to ensure compliance therewith. The Owner's Representative will work closely with the Contractor to insure documentation is complete and processed in a timely manner.

5.3.3 The Owner's Representative will issue and Notify the Contractor and the other members of the CPMT in writing of its final determination with respect to any Claim.

#### 5.4 Disputes.

5.4.1 A Claim will be deemed a Dispute if the Contractor disagrees with the Owner's Representative's final determination of a Claim and provides written Notice to the Owner of such disagreement as set forth in Section 5.4.4. The Contractor and the CPMT shall meet and attempt to resolve Disputes. If the Dispute is not resolved it shall be referred to the Contractor's and CPMT's senior executives. They shall meet and attempt to resolve the Dispute. If the senior executives do not resolve the Dispute, the Contractor may file a written request for a meeting with and review of the Dispute by a DRB.

5.4.2 For the purposes of this Article, a "Dispute" may include, without limitation, any unresolved Claim that may require:

- 5.4.2.1 interpretation of the Scope of the Work;
- 5.4.2.2 interpretation of any other Contract Document;
- 5.4.2.3 the amount to be paid for Change Order Work or Protest Work;
- 5.4.2.4 conformity of the Contractor's Work to the requirements of the Contract Documents; or
- 5.4.2.5 the acceptability and quality of the Contractor's Work.

5.4.3 Except as may otherwise be set forth in the General Terms and Conditions (Part II) of this Contract or any other Contract Document, Disputes may be resolved in accordance with the Dispute Resolution Procedures set forth in this Article 5.

5.4.4 The Contractor shall Notify the Owner's Representative of its Dispute by submitting a written Notice thereof (the "Notice of Dispute") to the Owner's Representative and the Director within ten (10) days of receiving the Owner's Representative's written notice of the determination or action that is the subject of the Dispute. This requirement shall not be deemed to replace any other Notice requirements contained in the Contract. The Notice of Dispute shall

include a detailed written statement that sets forth all the facts, evidence, documents or other basis upon which the Contractor relies in support of its position pertaining to the Dispute, as well as a detailed computation demonstrating how any amount of money claimed by the Contractor in the Dispute was calculated. The Director shall have the sole right to determine the timeliness, appropriateness and forum for determination of a Dispute including, without limitation, whether the Engineer or DRB should determine the Dispute, and shall Notify the Contractor and other members of the CPMT accordingly.

5.4.5 In the event the Director determines that a Dispute requires a determination by the Engineer, the Contractor and the Owner's Representative shall submit to the Engineer all materials they deem pertinent to the Dispute. The Engineer shall examine the material and may, in its discretion, convene an informal conference with the Contractor and the Owner's Representative to resolve the issue by mutual consent prior to reaching a determination. The Engineer may seek such technical or other expertise as he or she shall deem appropriate, including the use of neutral mediators, and require any such additional material from either or both parties as he or she deems fit. The Engineer's ability to render, and the effect of, a decision hereunder shall not be impaired by any negotiations in connection with a Dispute presented whether or not the Engineer participated therein. Any party to the Dispute or the Engineer may compel the participation of any other contractor with a contract related to the Project, and that contractor shall be bound by the decision of the Engineer. Any contractor thus brought into the Dispute Resolution Proceeding shall have the same rights to make presentations and to seek review as the Contractor initiating the Dispute.

5.4.6 The Engineer shall render its decision and Notify the Contractor and all members of the CPMT in writing of its determination.

5.4.7 The Engineer's decision shall be final and binding on both parties, unless the Contractor Notifies the Director and the Owner's Representative in writing by means of a petition (the "Petition") that it wishes to appeal the Engineer's determination and the Director determines that the Engineer's determination is unreasonable under the circumstances and should be reviewed by the DRB. The Petition must include the following:

- 5.4.7.1 A brief written statement of the substance of the Dispute and the reason(s) the Contractor contends the Dispute was wrongly decided;
- 5.4.7.2 A copy of the written determination; and
- 5.4.7.3 Copies of all materials previously submitted by the Contractor in support of its Claim.

5.4.8 In the event the Director determines that a Dispute does not require a determination by the Engineer, the Director may either (1) reject the Notice of Dispute for any reason including without limitation, that the Notice of Dispute is untimely, unsubstantiated or unwarranted, or (2) refer the Dispute to the DRB.

5.4.9 The DRB shall be composed of:

- 5.4.9.1 The Owner's Chief Procurement Officer, or his or her designee; who shall chair the DRB;
- 5.4.9.2 The Director, or his or her designee; and
- 5.4.9.3 A neutral person with appropriate expertise, who will be selected by the foregoing DRB members.

5.4.10 The DRB shall develop and follow rules of operation, which shall be kept flexible and may be modified by the DRB to adapt to the individual circumstances presented by the Contract or a particular Dispute. The DRB may initiate new rules or modifications whenever it deems it appropriate. All DRB rules of operation and modifications thereto shall be submitted to the Owner's Representative for review and must be approved by the Director.

5.4.11 The DRB members shall keep currently informed as to construction developments and the progress of the Work and the Project as a whole, and shall be provided with copies of Monthly Progress Reports. Site visits and meetings with the CPMT and the Contractor shall be held at regular intervals. The frequency and scheduling of Site visits shall depend on the progress of the Work.

5.4.12 Disputes arising out of the same circumstances or involving similar factual or legal issues may be consolidated. The DRB shall bifurcate a dispute into a determination first as to its merits and secondly a determination as to any amount by which the Maximum Contract Price, Contract Term or Progress Schedule should be changed.

5.4.13 The DRB shall establish rules and procedures for its meetings. The DRB shall conduct its meetings and reach its decision in a manner it considers appropriate. It shall meet jointly with representatives of both the CPMT and the Contractor and shall review the status of any pending Disputes.

5.4.14 The DRB chairperson shall be responsible for directing the course of the meetings. To the extent practicable, DRB meetings shall be conducted at the office facilities of the CPMT at the time of regularly scheduled site visits or as otherwise directed by the DRB.

5.4.15 Documents and oral statements by a party concerning the Dispute shall be presented in the order, manner and degree of detail considered efficient and probative. Those documents relating to the Dispute may be required to be exchanged by all parties in advance of any meeting. Similarly documents or witnesses may be needed or presented at any meeting.

5.4.16 The DRB members shall control the meetings and guide the discussion of issues. The DRB may permit questioning of one party by another party only if it would facilitate the presentation or clarification of an issue in the dispute. Either party may have present at DRB meetings legal counsel, independent experts and other persons having knowledge of any factual issues presented by the Dispute.

5.4.17 The DRB chairperson shall be responsible for maintaining the records of the DRB. The DRB records shall include the following:



5.4.17.1 All submissions of the parties in connection with any Dispute referred to the DRB;

5.4.17.2 Minutes of the meetings on Disputes, which shall record the persons present, a summary of the parties' presentations, the subject of the DRB's questions and the parties' responses thereto and the documents submitted to and considered by the DRB; and

5.4.17.3 The DRB's findings and recommendations on any Disputes.

5.4.18 The DRB shall not be obligated to consider any documentation or other material which was not previously presented by the Contractor to the Engineer or the Owner's Representative, unless the Contractor can establish that it has uncovered new and vital information that would have clearly impacted the Engineer or Owner's Representative's determination.

5.4.19 The DRB shall render and Notify the Contractor and all members of the CPMT in writing of its determination with respect to the Dispute. Its determination shall be final and binding on the Contractor.

5.4.20 Termination, cancellation, or an alleged breach of the Contract prior to or during the pendency of any Claim or Dispute shall not affect or impair the ability of the Engineer, the Director or the DRB to make a binding and final determination with respect thereto.

## 5.5 Subcontractor Claims.

5.5.1 A Subcontractor's claim shall include any claim by a Subcontractor (including any pass-through claims by a lower tier subcontractor) against the Contractor that may be asserted by the Contractor against the Project in connection with the Contract. The Contractor shall identify clearly in all submissions the portion of it Claim or the Dispute that involves a Subcontractor Claim.

5.5.2 The Contractor shall include in all Subcontracts that all its Subcontractors of any tier agree to submit their claims to the Contractor in a proper form and in sufficient time to allow the Claim to be timely asserted by the Contractor and that all Subcontractor Claims be processed in accordance with the terms of this Contract.

5.5.3 Subcontractor representatives that attend DRB meetings must be the authorized representatives of such Subcontractor with knowledge of the pertinent facts underlying the Claim.

5.5.4 This Section 5.5 shall not apply to any Subcontractor claim between a subcontractor and the Contractor that is not actionable by the Contractor against the Project, based on remedies expressly created by statute, covered by insurance or that are actionable only against a bonding company.

5.6 Work During Disposition of Claims/Disputes. At all times during the disposition of a Claim or Dispute including, without limitation, from the time the Claim or Dispute arises through the issuance of a determination with respect to the Claim or Dispute, the terms of the Contract shall remain in full force and effect and the Contractor shall continue to perform the Work in accordance with the Contract Documents and as directed by Owner and the Owner's Representative. Contractor acknowledges and agrees that any failure by the Contractor to continue the Work shall constitute a waiver by the Contractor of any and all Claims and Disputes being presented pursuant to this Article 5 and shall constitute an Event of Default.

## PART V – SCOPE OF WORK DOCUMENTS

### B. SPECIFIC REQUIREMENTS AND SCOPE

The following scope of services is to be provided by the General Contractor. The General Contractor understands this list is not exhaustive and other tasks may be required at no additional cost.

1. Establish site mobilization plan including the position and size of any on-site compound. The GC shall include in its Proposal all costs associated with the set up and removal of the compound and associated offices/trailers including all utility hook ups and utility usage, cleaning, health and safety requirements, pest control and maintenance and shall be fully responsible for any clean up at the end of the Project. **GC shall submit a Site Logistics Plan with its Proposal showing its intended site set up, method of accessing the site and any temporary conditions to deal with Stormwater protection.**
2. Establish site security and safety plans. The GC is responsible for all Site Security costs. Security shall cover not only the area under construction but any temporary site area utilized by the GC.
3. Maintain a clean and safe work environment; provide exterminator services as necessary for the Site.
4. Determine availability of trades and materials and identify long lead items.
5. Develop a critical path management program, resource schedules and other necessary detailed schedules. The schedules shall identify all project activities and will be integrated into the Owner's Representative's master schedule. The General Contractor's schedule remains however the contractual schedule for construction and for the General Contractor's activities.
6. Develop a schedule that considers the in-water moratorium restriction as stipulated by the Department of Environmental Conservation and Army Corps of Engineers, which is effective from November 1<sup>st</sup> to April 30<sup>th</sup>.
7. Develop suitable access and egress plans for review by BBP and the Owner's Representative, taking into consideration the completed park areas on the uplands and the pier that will remain open during all months of proposed construction. The plan should consider all materials, plant & personnel accessing the site through this condition.
8. Develop a logistics and construction plan to ensure no disruption to the water taxi landing area or travel corridor on the south side of the pier. Work in this area should be scheduled for hours that the water taxi landing area is not in operation or be given special consideration to the way work in this area are to be completed.

9. Assist in value engineering.
10. Assume overall responsibility for managing, supervising and coordinating all aspects of construction.
11. Maintain full-time, on-site experienced Superintendent(s) and Project Manager(s).
12. Coordinate scope of work as depicted in the attached contract drawings and specifications.
13. Assure that only quality workmanship and materials are being used.
14. Obtain all required permits. BBP will prepare and apply for the following filings and approvals:
  - NYC Department of Small Business Services - Construction Permit
  - Public Design Commission City of the City of New York (if required)
  - NYCT Approval (if required)
  - Department of Environmental Conservation and Army Corps of Engineers Permits and Approvals.
15. Ensure compliance with all building standards and requirements.
16. Inspect the work daily to ensure BBP's objectives are being carried out in accordance with the working drawings, specifications, all other contract documents and local laws, ordinances and regulations.
17. Recommend courses of action to BBP when requirements of a contract are not being fulfilled and the non-performing party will not take satisfactory corrective action.
18. Schedule the work in advance of actual construction operations to assure that trade contractors are utilized to their fullest extent.
19. Attend and provide minutes of weekly progress meeting with BBP, Owner's Representative, and engineers to assure that all relevant matters of construction are being considered.
20. Establish and maintain safety procedures, risk management, OSHA and other programs necessary for the safe and expeditious execution of the work.
21. Arrange for delivery, storage, protection and security of all purchased items and equipment, which are part of the project until they are incorporated into the project as necessary.
22. Establish and maintain procedures for processing shop drawings and material samples, as defined by project specifications.

23. Maintain daily records covering manpower, work in progress, accidents and field observations.
24. Maintain at the project site, on a current basis, a record copy of all contracts, drawings, specifications, addenda, change orders and other modifications, in good order and marked to record all changes made during construction, shop drawings, samples, product dates and all related documents and revisions. This is essential in order to enable a complete set of "As-Built" documents to be prepared at the end of the project.
25. It shall be the General Contractor's task to manage the process for change orders resulting from, but not limited to field conditions, and scope changes to the work as defined by project specifications. Upon discovery of a potential change order the GC shall advise in writing to the Owner's Representative, within 3 working days, the nature of the change order and its origin, if approved, within a further 7 working days (10 working days in total) the GC shall submit a formal change order for approval. Change orders submitted after this time period shall be accepted or denied at the sole discretion of BBP and Owner's Representative.
26. Allowances and a Contingency are included within this proposal and shall be added to the Proposal. These can only be expended with the prior approval of the BBP and any funds remaining at the end of the Project shall be returned to BBP
27. Negotiate with subcontractors all change orders as deemed appropriate by client. Update and submit change order logs to the Owner's Representative on a weekly basis.
28. Receive subcontractors', vendors' and suppliers' applications for payment, review and adjust same, and issue an application for payment to the Owner's Representative and Resident Engineer for review and approval.
29. Receive and maintain partial and final waivers of liens, which will be turned over to the Owner's Representative with monthly requisitions.
30. Comply with all local legal requirements as defined in the attached contract draft as well as building standards and requirements as to methods and means of construction and safety.
31. Maintain all insurance required by the Contract for itself, including payment [and performance] bonds, and ensure that all trade contractors, suppliers and vendors maintain required insurance. Provide BBP with full details of all insurance policies carried by you, relevant to your role as GC/C e.g. worker compensation, general liability, etc. Add Brooklyn Bridge Park Corporation, Brooklyn Bridge Park Development Corporation, The City of New York, Michael Van Valkenburgh Associates, Architecture Research Office (ARO), Sherwood Design Engineers, AECOM, and Gardiner & Theobald, Inc. as additional insureds on all insurance policies of GC, trade contractors, suppliers and vendors.

32. Railroad Protective Liability-

If Work is within 50 feet of the railroad or affects any railroad property including but not limited to tracks, bridges, tunnels, and switching, the contractor (and subcontractors, if appropriate) shall purchase a railroad protective liability policy. Insurance should be issued to, and in the name of the railroad for the limits specified by the railroad. The Proposal should include any fees imposed by the MTA and include the costs of liaising with the MTA as necessary.

33. Prepare site for substantial completion and staged occupancy and provide for all required testing.
34. Provide closeout reports including guarantees, warranties, "As-Built" drawings, and maintenance and procedures manuals for new equipment and provide sign-offs by authorities having jurisdiction over the project. GC is required to submit all close out documents and sign off as directed by the Owner's Representative. GC will be responsible to update the project completion checklist on a weekly basis and issue the same to the Owner's Representative.
35. Resolve any disputes between trade subcontractors.
36. Coordinate preparation of punch-lists, and complete punch-lists in a timely fashion previously agreed with owner's Representative.
37. Obtain all jurisdictional signoffs and special inspections.
38. Coordinate with subcontractors, the delivery, installation and connections for any client purchased items.
39. GC shall discharge any mechanic's lien filed against the Real Property for work claimed to have been done for, or for materials claimed to have been furnished in connection with the project by any Person claiming by, through or under GC within thirty (30) days after GC has received notice thereof, at GC's expense, by payment or filing the bond required by law.
40. GC is expected to work on a price and proceed basis for change orders. This schedule is aggressive and the Project will NOT be held up while waiting for signature.
41. Pursuant to labor law 220 and 230, the successful GC is required to pay its employees, who perform the contract work, wages and supplemental benefits equal to or greater than the applicable Prevailing Wage. Please visit the NYC comptroller's website at <http://www.comptroller.nyc.gov/bureaus/bll/schedules.shtml> for the latest published prevailing wage schedule.
42. General Contractor will be responsible to maintain harmony and or resolve disputes that may arise from unions.

**PART V – SCOPE OF WORK DOCUMENTS**

**C. CONTRACT MILESTONE SCHEDULE**

**PART V – SCOPE OF WORK DOCUMENTS**

**D. SITE LOGISTICS PLANS**



**PART V – SCOPE OF WORK DOCUMENTS**

**E. LIST OF DRAWINGS AND DESIGN SPECIFICATIONS**

**PART V – SCOPE OF WORK DOCUMENTS**

**F. ADDENDUM 1**

**RFI RESPONSES DURING RFP PROCESS**

The following information was confirmed to GCs to incorporate in the Final pricing