

NEW YORK CITY HOUSING AUTHORITY



INSTRUCTIONS TO BIDDERS

and

GENERAL CONDITIONS

1991 EDITION

(CONSOLIDATED AMENDMENTS)

N.Y.C.H.A. CONTRACTS

IMPORTANT DOCUMENT

I N S T R U C T I O N S T O B I D D E R S

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SECTION 1 - SUBMISSION OF PROPOSALS

- (a) Bidders will be furnished on request with a copy of the Contract Documents, and four copies of the Form of Proposal. THREE COPIES OF THE FORM OF PROPOSAL EACH COMPLETELY FILLED OUT AND EXECUTED AS INDICATED THEREON SHALL BE SUBMITTED TO THE AUTHORITY AS AND FOR THE BIDDER'S PROPOSAL FOR THE CONTRACT.

Each proposal must be filled out in blue or black ink or typed.

- (b) The three executed copies of the Form of Proposal must be enclosed in a sealed opaque envelope, plainly marked on the outside with the name and address of the Contractor, the Contract number, the Description of the Work, and the name of the Development, as follows: "Bid Proposals for Contract No. _____ for _____ at _____." If printed bid envelopes are furnished to bidders by the Authority, such envelopes may be used by bidders to safeguard against the possibility of inadvertent premature opening. The Proposals must be verified by oath in writing by the party or parties making it, that the several matters stated therein are in all respects true.

SECTION 2 - EXAMINATION OF SITE; EXAMINATION OF CONTRACT DOCUMENTS BY BIDDER

- (a) Each bidder must visit and carefully examine the work site to become fully acquainted with existing conditions and the nature of the work to be done and must make such investigations as are necessary and required to fully understand the cost, facilities, difficulties and restrictions involved in the execution of the work. All measurements, layouts and the exact conditions of the work must be verified by each bidder.
- (b) If the bidder's examination reveals that site conditions differ from those set forth in any Contract Document, the bidder must promptly so notify the Authority in writing, prior to the bid opening. Except for Conditions that are not discoverable upon a careful examination of the site, if site conditions differ from conditions as shown in any Contract Document, and the bidder has not so notified the Authority, the bidder shall be deemed to have agreed to perform the Contract under existing conditions without claim for any extra

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compensation, but the Authority shall not thereby have waived any right that the Authority may have to a credit.

- (c) Each bidder will be conclusively presumed to have knowledge of any and all conditions in, on, about, below or above the work site that may in any way relate to or affect the cost or the performance of the Contract work and that were observed by the bidder or should have been observed by a reasonably prudent bidder.
- (d) Before bidding, bidders must examine carefully all of the Contract Documents, including the specifications, any drawings, and all instructions. If the bidder finds any inconsistency, ambiguity, omission or error in the specifications, drawings, instructions, or any other Contract Document, or if the bidder is in doubt as to the meaning of any term or condition of the Contract, the bidder must promptly so notify the Authority, in writing, prior to the bid opening. The failure of the bidder to notify the Authority, prior to the bid opening of any inconsistency, ambiguity, omission or error that the bidder actually found, or that should have been discovered by a reasonably prudent bidder, will preclude acceptance of the bidder's claim for a bid release or for extra compensation based upon any such inconsistency, ambiguity, omission or error.
- (e) If the Authority receives a notification from a bidder of a differing site condition or an inconsistency, ambiguity, omission or error in the Contract Documents, the Authority will, as it deems necessary or desirable, issue a written interpretation or correction to the Contract Documents as an addendum to the Contract Documents, and any such addendum will be sent by mail or delivered to each person that received a copy of the original Contract Documents, as reflected in the records of the Authority, and any such addendum will also be available at the place where the Contract Documents are available for inspection by prospective bidders. Upon such mailing or delivery, such addendum shall become part of the Contract Documents and shall be binding on all bidders, whether or not they have had actual notice of such addendum.

SECTION 3 - INTERPRETATIONS AND ADDENDA

No interpretation given as to the meaning of any of the Contract Documents shall be binding in any way or effective to modify any of the provisions of the Contract Documents, unless and until such

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interpretation is issued in writing by the Authority to all bidders and is expressly denominated as an addendum to the Contract.

SECTION 4 - INCORPORATION OF CONTRACT DOCUMENTS

By submission of this proposal the bidder represents to having received and examined the latest Edition of the Instructions to Bidders, the latest Edition of the General Conditions, the Specifications the Plans and Drawings, if any, and all amendments and addenda, if any, for the Work of the Contract for which this proposal is tendered as if the same were physically attached thereto at the time of submission of the proposal. Further, by such submission the bidder makes each and every representation and warranty to be made by the Contractor as set forth in the Contract Documents. All such documents are hereby incorporated by reference and made part of this proposal. It is the responsibility of the bidder to secure copies of all these documents from the Authority prior to the submission of his/her proposal.

SECTION 5 - BIDDERS' QUALIFICATIONS

- (a) In order to qualify as a Contractor satisfactory to the Authority, each bidder, in addition to the other requirements herein provided, must be prepared, upon demand of the Authority, to prove to the satisfaction of the Authority that the bidder has the skill and experience, as well as the necessary facilities and ample financial resources, to do the Work in a satisfactory manner and within the time specified.
- (b) A "responsive" bid is one that conforms in all respects to the requirements of this solicitation. A "responsible" contractor is one that has the capability in all respects to perform fully the contract requirements and the business integrity to justify the award of public funds. Authority Standard Procedure 002:94:1 sets forth some, but not all, of the factors that the Authority may take into account in determining whether a bid is responsive or whether a contractor is responsible. Copies of this Standard Procedure may be picked up at the Division of Capital Projects and Development, Administration, Procurement Section, Bid/Contract Reception Area on the 11th floor at 90 Church Street, New York, New York 10007.
- (c) The bidder must be prepared to prove to the satisfaction of the Authority the possession of net liquid assets available

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for the proposed Contract in an amount equal to 15% of the bid up to \$100,000.00 and 7 1/2% of the amount over \$100,000.00.

- (d) Each bidder must comply within 10 days with all requests for information or to appear for examination, and must actively cooperate with the Authority in its efforts to determine whether the bidder is qualified to receive an award under all of the requirements hereof. Any request for such information from a bidder shall not be construed as an acceptance of such bidder's proposal. Failure to submit such proof within this period, or within any extension, or extensions thereof, will be deemed a default, entitling the Authority to exercise its remedies, as described more fully in Section 9 (d) below, and permitting an award to another bidder or the solicitation of new bids.

- (e) If more than one bid submitted by a bidder is under consideration by the Authority for award, and the Authority determines that the bidder is able to meet the qualifications for the award of some, but not all, of the contracts on which it has bid, the Authority will determine which bid or bids should be rejected for failure to meet such qualifications. The Authority may also take into consideration contracts already awarded to the bidder and the extent of their completion as affecting the bidder's qualifications for the award of additional contracts.

- (f) A bidder that is a corporation or unincorporated association must submit to the Authority with its Form of Proposal a certificate evidencing the fact that it is authorized to do business in the State of New York. A bidder conducting business under an assumed name must submit to the Authority with its Form of Proposal a County Clerk's certificate evidencing the filing with such Clerk of a certificate to conduct business under such assumed name. A bidder conducting business as a partnership must submit to the Authority with its Form of Proposal a County Clerk's certificate evidencing the filing with such Clerk of a certificate of partnership.

SECTION 6 - BID SECURITY

(a) BIDS \$100,000 OR LESS

Unless otherwise provided, all references in the contract documents to bid security or Performance and Payment Bonds are inapplicable where the bidder's Proposal for the work of the

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contracts is \$100,000 or less. No bid security or Performance and Payment Bonds will be required in such case.

(b) BIDS OVER \$100,000

Where the Contract for which a proposal is submitted exceeds \$100,000, bid security and Performance and Payment Bonds will be required. Bid security shall be delivered with the proposal or submitted no later than the time fixed for the opening of bids.

(c) AGGREGATE BIDS

Bid Security and Performance and Payment Bonds will also be required where the proposal for the work of the Contract involves more than one base bid or is a combined base bid comprising a number of base bids aggregating, more than \$100,000. In such event, the sum of the base bids or the amount of the combined bid, whichever is greater, shall determine the amount of the bid security.

(d) AMOUNT OF BID SECURITY

Bid Security shall be in the form of either a certified check made out to the Housing Authority for five percent (5%) of the amount of the proposal or a bid bond, which shall be in the form prescribed by the Authority and which shall insure the Authority to the extent of ten (10%) of the amount of the proposals for State Funded Contracts, or five percent (5%) of the amount of the proposals for all other contracts.

SECTION 7 - RECEIPT AND MODIFICATION OF PROPOSALS; OPENING OF PROPOSALS

An officer of the Authority will decide when the bid due date has arrived, and no proposal received thereafter will be considered. Proposals received prior to the time of physical opening of Proposals will be securely kept unopened. The officer whose duty it is to open them will decide when to open the bids.

SECTION 8 - WITHDRAWAL OF PROPOSALS

(a) Each bid/proposal constitutes a binding offer by the bidder to perform the Contract at the bid price. No bids/proposals may be withdrawn within a period of 120 days after the date of

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opening of the bids. This 120-day period, as it applies to a particular bidder, shall be extended, day for day, by the period of any delay caused by or attributable to, the bidder, including, without limitation, (i) any delays resulting from the Authority's investigation of an (unsuccessful) request by the bidder for a bid release; and (ii) any delays by the bidder in submitting the insurance, performance bonds, or payment bonds required by the Contract or in providing any information requested by the Authority.

- (b) After the opening of bids, requests for the withdrawal of a bid can be made by the Contractor on the grounds that there was an arithmetic or clerical error in the bid submitted. A bidder seeking a bid release must submit a written, dated and signed request for release from the bid ("Release Request") to the Department of the Authority that issued the solicitation of the bids (the "Originating Division"). The bidder's signature on the Release Request must be duly acknowledged and witnessed by a notary public. The Release Request must set forth the reasons for the release and should be accompanied by any supporting documentation. Any additional information reasonably requested by the Originating Division must be submitted within the time period reasonably established by the Originating Division in order to expedite consideration of the Release Request. Failure of a bidder to comply with a request for information within the specified time period may result in a resolution of the Release Request without the consideration of any information subsequently submitted by the bidder in an untimely manner. Requests for withdrawal may be granted by the Authority in any case where the Authority deems the claim of mistake is justified or where the grant of such request is otherwise in the best interest of the Authority.
- (c) In the case of a bidder's first Release Request in any twelve-month period, no administrative charge shall be imposed. If the Release Request is granted, the bidder will be advised in writing that if a second request for release is made within twelve months after the date on which the first request was received by the Authority, the bidder may, in the discretion of the Director/Program Administrator of the Originating Division, be disqualified from bidding on any Authority contract for up to a maximum of one year after the second Release Request is received by the Authority. In the case of the bidder's second Release Request in any twelve month period, whether or not such Release Request is granted, the Director/Program Administrator of the Originating Division may disqualify the bidder for up to a maximum of one year from the

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date the second Release Request is received by the Authority, and may impose an administrative charge of up to \$500.00 against the bidder.

- (d) A bidder submitting a Release Request may be deemed to have made a second Request Release for the purposes of Section 8 (c) above if it is a successor, assignee, subsidiary or affiliate of a previously released bidder; or if any of the bidder's officers, directors, partners shareholders, joint venture participants, principals or other persons substantially involved in its contracting activities was also an officer, director, partner, shareholder, joint venture participant, principal or other person substantially involved in the contracting activities of the previously released bidder; or if it was organized or established or operates in a manner designed to evade the purpose of this Section 8, any Authority procedure, or any other law, rule, regulation or Authority procedure relating to the procurement or performance of a contract. In addition, in determining the number and timing of Release Requests submitted by a bidder, the Authority will consider Release Requests submitted by the bidder to any construction manager performing construction management services for the Authority.

SECTION 9 - AWARD OF CONTRACT; REJECTION OF PROPOSALS

- (a) The Contract will be awarded, to the lowest responsible bidder complying with the conditions of the Contract Documents, provided the Proposal is reasonable and it is to the interest of the Authority to accept it. The bidder to whom the award is made will be notified at the earliest possible date of the acceptance of the Proposals. The Authority, however, reserves the right to reject any and all Proposals for any reason or to waive any informality in Proposals received whenever such rejection or waiver is in the interest of the Authority. The Authority may but need not consider any Proposal on which there is an alteration of or departure from the Contract Documents.
- (b) Prior to award of the Contract the successful bidder will be notified in writing that its proposal has been found acceptable, and directed to submit evidence of insurance coverage as called for in Sections 17 and 18 of the General Conditions, and, if required by the Contract Documents, performance and payment bonds as called for in Section 10 of the Instructions to Bidders, as amended. The insurance and

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bonds (if required) shall be submitted within fifteen (15) working days of notification. Upon approval of such insurance and bonds, the Contractor will receive a Letter of Award signed by a duly authorized officer of the Authority, or a copy of the Contract Documents bearing an acceptance of the proposal in either case mailed to or delivered at the office of the bidder designated in the proposals.

- (c) By submitting a bid the bidder represents that it will cooperate with the Authority. Cooperation includes providing to the Authority in a timely manner any information or documentation requested by the Authority (including, without limitation, the Statement of Contractor's Qualification for Consideration of Award and the Section 3 Hiring Summary), any form which may be requested on behalf of any agency funding any part of the Work, or any evidence relating to the obligations of others interested in the progress of the Work (such as insurance companies, sureties and subcontractors). The bidder agrees that cooperation may include providing to the Authority in a timely manner information or documentation related to bidder's organization or to its obligations under this Contract. This representation shall survive the expiration of the bid and, as to the bidder awarded the Contract, this representation shall be incorporated into the Contract and survive the termination of the Contract.
- (d) The bidder agrees that if at any time it fails to abide strictly by the terms of the representation set forth in Section 9 (c) the authority may find the bidder in breach of such representation. The bidder acknowledges and consents to the Authority's prompt use of any one or more of its several different types of remedy in the event of such breach or in the event the bidder fails to supply required bonds in accordance with Section 10. One remedy may be payment by the bidder to the Authority upon demand of an amount of money that may be as much as the difference between the bidders bid price and the price at which the Contract is awarded. The bidder agrees that the Authority may collect such an amount from any monies due the bidder by the Authority under the Contract or any other contract. Another remedy may be the collection by the Authority of all sums due under any applicable bid bond or other sums securing the bid. In addition to, and not in limitation of, all other remedies available to the Authority, the Authority may treat the bidder as if it has sought a second bid release within a twelve month period and may disqualify the bidder for up to a maximum of one year and

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impose an administrative charge of up to \$500.00 against the bidder.

SECTION 10 - PERFORMANCE AND PAYMENT BOND

- (a) In the event performance and payments bonds are to be furnished as heretofore provided, the successful bidder shall, within fifteen (15) working days after written notification from the Authority that its proposal has been found acceptable, deliver to the Authority an executed bond in an amount equal to one hundred percent (100%) of the Contract Price to secure the faithful performance of the Contract and an executed bond in an amount equal to one hundred percent (100%) of the Contract Price as security for the payment of all persons performing labor or furnishing materials in connection with this Contract, prepared on the forms of bonds authorized by the Authority, and having as surety thereunder such surety company or companies as are approved by the Authority. The surety company that issues performance and payment bonds must be included on the current list of the Treasury Department and authorized to do business in the State of New York where an Authority Contract is funded by federal money ONLY. For all other Authority Contracts, unless otherwise specified, the surety company needs only to be authorized to do business in the State of New York.
- (b) A successful bidder who fails to supply the required bonds within fifteen (15) working days of notification, or such extended period as the Authority may grant (based on reasons determined adequate by the Authority), shall be deemed non-responsive, and the Authority may either award the Contract to the next lowest responsible bidder or re-advertise for bids, and may charge against the bidder the difference between the amount of the bid and the amount for which a Contract for the work is subsequently executed, irrespective of whether the amount thus due exceeds the amount of the bid guaranty. In the recovering of such difference, the Authority may proceed against the surety on the bid bond or on the bidder's check as the case may be, or take such other action as it sees fit.

SECTION 11 - UNIT PRICES

Bidders shall quote Unit Prices for all the items set forth in the Unit Prices listed, if any, in the Form of Proposal, except for such Unit Prices as may have been established by the Authority therein. In submitting the proposal, the successful bidder agrees to all Unit Prices established by the Authority. As to Unit Prices

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which are quoted by the bidder, the Authority may reject any unit prices or, by agreement with the successful bidder, modify the same. In the absence of such rejection or modification, quoted Unit Prices shall be deemed accepted.

SECTION 12 - EQUAL EMPLOYMENT OPPORTUNITY - AFFIRMATIVE ACTION

It is the policy of the Authority, pursuant to Presidential Executive Order 11246 as amended, to prohibit discrimination in employment because of race, color, religion, sex, or national origin in all aspects of its operations, and to promote the full realization of equal employment opportunity for all qualified persons by means of a continuing program of compliance through affirmative actions.

Affirmative Action means that the contractor and subcontractor must do more than merely support non-discrimination. It means taking positive steps to recruit, employ and develop qualified or qualifiable candidates, including minority group members and women, in all job categories of work and advancement.

(a) PRE-AWARD CONFERENCES

Prior to the award of each Contract to the low bidder, such bidder, if requested by the Authority's Department of Equal Opportunity, shall attend a pre-award meeting to be held in its Office, for the purpose of acquainting such bidder with the statutory and contractual requirements of this Policy and those specific measures which shall constitute the implementation of a Program of Affirmative Action.

The low bidder shall be required to discuss at the pre-award conference the specific steps under way for providing members of minority groups and women with equal opportunity in training, apprenticeship programs, journeyperson recruitment and all other aspects of employment. The result shall be to assure that to the extent feasible there are minority group members and women employed person in all trades and all phases of the Contract, as well as in the company.

(b) PROGRAM OF AFFIRMATIVE ACTION

The term "Program of Affirmative Action" (hereinafter referred to as P.A.A.) means a written plan on a form prepared by the Authority formulated by the Contractor which includes an analysis of employment of the work force for the Contract and

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which sets forth goals of minority and women employment by the Contractor and subcontractors insofar as they can be projected. The P.A.A. shall also contain an acceptable Equal Opportunity Statement of Policy.

(c) SPECIFIC STEPS FOR AFFIRMATIVE ACTION

Examples of affirmative action steps that a prospective contractor, and subcontractor, is expected to pursue shall include but not be limited to the following:

1. Develop and subscribe to an Equal Employment Opportunity Program.
2. Notify and thoroughly inform all responsible employees (e.g., foreperson and other supervisory personnel) that the firm is an EQUAL OPPORTUNITY EMPLOYER and that they are required to comply with the firm's policies concerning Equal Employment Opportunity.
3. Designate an officer or top-level representative of the firm as Equal Employment Opportunity Compliance Officer, whose responsibilities will include:
 - a. Consulting with union officials and/or industry representatives and reviewing bargaining agreements in order to ensure equal employment opportunity.
 - b. Cooperating with civil rights groups, community organizations and other interested sources in order to include the recruitment of minority group workers and women for apprentice and journeyperson entrance into employment and into the various craft unions under contract with the firm and its subcontractors.
 - c. Providing liaison with the NYCHA Department of Equal Opportunity, reporting on the firm's progress, etc.
4. Notify sources of recruitment in writing that the firm is an Equal Opportunity Employer and solicits referral of qualified candidates including minority group applicants and women for all jobs, including blue collar and white collar classifications.

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5. Promote apprenticeship and trainee programs as a member of a joint apprenticeship committee or as an individual, and request the building trades to give public notice that apprenticeship programs are open to everyone. Copies of such notices shall be submitted to the Authority's Department of Equal Opportunity as an example of the company's affirmative action compliance program.
6. Advertise for personnel in all categories through media most likely to reach minority groups and women or other local publications, radio, etc. and submit to the Department of Equal Opportunity copies of advertising or news releases used to accomplish this.
7. Hire minority group members and women from other sources in the event that the unions with whom the prime contractor has collective bargaining agreements are unable or unwilling to supply them.

(d) SUBCONTRACTORS

1. Encourage the solicitation of bids to include, but not be limited to:
 - a. Minority Group Subcontractors
 - b. Women Subcontractors
 - c. Subcontractors who have substantial minority group and female representation among their employees and
 - d. Minority group and women vendors
2. Submit written evidence or other proof which shows that minority subcontractors have also been solicited and given an equal opportunity to submit proposals, and that such proposals have been given consideration for award. The Authority's Department of Equal Opportunity maintains a listing of minority contractors and vendors which is available upon request.
3. Secure from subcontractors of \$10,000.00 or more a P.A.A. and other general requirements described above as applying to the Contractor.

(e) MONTHLY EQUAL OPPORTUNITY CONTRACTOR REPORT

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Submit to the Authority's Department of Equal Opportunity monthly reports on Form 036.001A, Monthly Equal Opportunity Contractor Report, indicating the composition of all on-site workers, including those of subcontractors by name, race, sex, and ethnic classification. The forms may be secured from the Department of Equal Opportunity and are to be promptly submitted directly to this office at the end of each month during the performance of the contract. In addition, copies of these reports must be attached to the Requisition for Payment.

(f) POSTERS

Post the provisions of the Equal Opportunity clauses of Executive Order No. 11246 as amended or equivalent posters required by the New York City Housing Authority or other agency of appropriate jurisdiction, in conspicuous places available to all employees and applicants for employment. (Such posters will be provided by the Authority's Department of Equal Opportunity.)

SECTION 13 - EQUAL EMPLOYMENT OPPORTUNITY – AFFIRMATIVE ACTION FOR FEDERALLY FUNDED CONTRACTS

(a) NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY (EXECUTIVE ORDER 11246)

1. The Offeror's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth herein.

2. The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

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Goals for minority participation for each trade

Electricians	9% - 10.2%
Carpenters	27.6% - 32%
Steamfitters	12.2% - 13.5%
Metal Lathers	24.6% - 25.6%
Painters	22.8% - 26%
Operating Engineers	25.6% - 26%
Plumbers	12% - 14.5%
Iron Workers (Structural)	25.9% - 32%
Elevator Constructors	5.5% - 6.5%
Bricklayers	13.4% - 15.5%
Asbestos Workers	22.8% - 28%
Roofers	6.3% - 7.5%
Iron Workers (Ornamental)	22.4% - 23%
Cement Masons	23% - 27%
Glaziers	16% - 20%
Plasterers	15.8% - 18%
Teamsters	22% - 22.5%
Boilermakers	13% - 15.5%

Goals for female participation

Goals for Women apply nationwide

GOALS AND TIMETABLES

Since Mar. 31, 1981 the goal has remained 6.9%

The Ranges for all trades not included in the above listing: 16.4% - 17.5%

These goals are applicable to all the Contractor's construction work (whether or not it is Federal or federally assisted) performed in the covered area.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a), and its efforts to meet the goals established for the

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geographical area where the contract resulting from this solicitation is to be performed. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

3. The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address and telephone number of the subcontractor; employer identification number; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the contract is to be performed.
4. As used in this Notice, and in the contract resulting from this solicitation, the "covered area" is New York, New York.

(b) STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION CONTRACT SPECIFICATIONS (EXECUTIVE ORDER 11246)

1. As used in these specifications:
 - a. "Covered area" means the geographical area described in the solicitation from which this contract resulted;
 - b. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;

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- c. "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.
 - d. "Minority" includes:
 - (i) Black (all persons having origins in any of the Black African racial groups not of Hispanic Origin);
 - (ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
 - (iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
 - (iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).
2. Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.
3. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with the Plan for those trades which have unions participating in the Plan. Contractors must be able to

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demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7a through p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. The Contractor is expected to make substantially uniform progress toward its goals in each craft during the period specified.
5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women, shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.
6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.
7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results

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from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

- a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, shall assign two or more women to each construction project. The Contractor shall specifically ensure that all forepersons, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
- b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.
- c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.
- d. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union

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referral process has impeded the Contractor's efforts to meet its obligations.

- e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources complied under 7b above.
- f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.
- g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with onsite supervisory personnel such as Superintendents, General Forepersons, etc. prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
- h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with

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other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.

- i. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.
- j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's workforce.
- k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.
- l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.
- m. Ensure that seniority practices, job classification, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.
- n. Ensure that all facilities and company activities are non-segregated except that separate or single-user toilet, and necessary changing facilities,

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- shall be provided to assure privacy between the sexes.
- o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
 - p. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.
8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through p of these Specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.
9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor

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- has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).
10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.
 11. The Contractor shall not enter into any subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.
 12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implemented regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.
 13. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.
 14. The Contractor shall designate a responsible official to monitor all employment-related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, Social Security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be

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maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under Public Works Employment Act of 1977 and the Community Development Block Grant Program).

SECTION 14 – INTENTIONALLY OMITTED

SECTION 15 – PROTESTS

- (a) Any actual or prospective bidder or contractor may protest the solicitation of bids or the award of a contract on the grounds that the Authority has substantially failed to follow the standards set forth in the Authority's procurement policies and related procedures. Protesters may file a protest with respect to any phase of the solicitation or award, including, without limitation, bid solicitation; determination by the Authority of bidder responsibility or bid responsiveness; and contract award. If the protest is made by a potential bidder or proposer that has not submitted a bid or proposal, the protest shall be limited to a challenge of the notice procedures followed by the Authority. This right to protest shall not apply to protest regarding the denial of a request for a release from bid.
- (b) The Authority may make a determination that bids or proposals received are non-responsive or that the lowest bidder is non-responsible. Upon making a determination of non-responsibility with respect to the low bidder, the Authority shall notify the affected bidder in writing of that determination.

The notification shall state the reasons upon which the determination is based. In addition, the notification shall advise the bidder of the time period within which a formal written protest (the "Protest") may be filed and of the requirements for filing such Protest, as set forth in Section

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15(c) below. The Authority is not required to provide written notice of determinations of non-responsiveness.

(c) To expedite handling of Protest, a protester shall address its envelope to the Director/Program Administrator of The Originating Division, and such envelope be labeled "Protest". The Protest should include, without limitation, the following information:

1. the name, address and telephone number of the protester;
2. appropriate identification of the procurement, including the solicitation or contract number;
3. a statement of the reasons for the Protest;
4. supporting exhibits and documentary evidence to substantiate any arguments; and
5. the form of relief requested.

(d) Protests must be filed within seven calendar days after the protester discovers or should have discovered the facts giving rise to Protest. In furtherance and not in limitation of the foregoing, (i) any Protest against a determination of non-responsibility must be filed within seven calendar days after the protester receives the notice of determination referred to in Section 15(b) above, (ii) any Protest against a determination of non-responsiveness must be filed within seven calendar days after the protester learns that its bid or proposal has been deemed non-responsive, (iii) any Protest against a solicitation must be filed before the due date for receipt of the bids or proposals in response to such solicitation, and (iv) any Protest against award of a contract must be filed within seven calendar days after contract award.

A Protest is considered filed when such Protest is received by the Director/Program Administrator of the Originating Division. Protests received after the seven day period shall not be considered unless the Director/Program Administrator of the Originating Division determines, in his/her sole discretion that good cause is shown for considering the late Protest.

(e) Any additional information reasonably requested by the Originating Division must be submitted within the time period

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reasonably established by the Originating Division, in order to expedite consideration of the Protest. Failure of a protester to comply with a request for information within the specified time period may result in a resolution of the Protest without consideration of any information subsequently submitted by the protester in an untimely manner.

(f) The Director/Program Administrator of the Originating Division (or his/her designee) shall make decision on a Protest as expeditiously as possible after the Originating Division has received all relevant information requested of the protester. The Director/Program Administrator of the Originating Division (or his/her designee) may, in his/her sole discretion, meet with the protester and any other affected party to discuss the Protest. If a Protest is granted (i.e., sustained in favor of the protester), the Authority shall so notify the protester in writing and the solicitation or award shall be canceled or revised to comply with the Protest decision.

1. If the contract has already been awarded, the contract may be terminated for the convenience of the Authority, and the contract may be awarded to the protester or to the next eligible bidder, the Authority shall so notify the protester in writing and the solicitation or award shall be canceled or revised to comply with the Protest decision.

2. If the contract has not been awarded, the contract may be awarded to the protester or to the next eligible bidder or proposer (whichever is appropriate in light of the Protest decision) or the procurement may be resolicited; provided, however, that if the Authority determines that based on compelling circumstances (e.g., a condition of emergency or serious disruption of the Authority's operations or if the contract has already been completed), either of those actions would not be in the best interest of the Authority, the Authority may let the award stand and the Authority shall pay the successful protester the reasonable costs incurred by the protester in connection with preparing and submitting its bid or proposal, along with the reasonable costs of filing and pursuing the Protest. Anticipated profit or damages for lost business opportunities of the protester shall not be paid by the Authority. If a Protest is denied, the Authority shall send to the protester a written decision

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stating the reason(s) for the denial of the Protest. If the decision involves a determination of non-responsibility, the Authority shall also inform the protester of its right to request reconsideration of the decision in the manner set forth in Section 15 (g) below.

- (g) The protester may make a written request for reconsideration of a Director's/Program Administrator's decision regarding non-responsibility (but not of a Director's/Program Administrator's decision regarding non-responsiveness), which must be filed by the protester not later than five calendar days after the protester's receipt of such decision. The request for reconsideration shall be considered by the Deputy General Manager to whom the Director/Program Administrator of the Originating Division reports (or such Deputy General Manager's designee) or, in the case of Originating Divisions that do not report to a Deputy General Manager, by the General Manager (or the General Manager's designee); provided that neither the Director/Program Administrator of the Originating Division nor anyone who reports to him/her may serve as a designee considering the request for reconsideration of such Director's/Program Administrator's decision. The protester shall address its envelope to the General Manager or the Deputy General Manager to whom the Director/Program Administrator reports, as the case may be, and such envelope should be labeled "Request for Reconsideration." The request for reconsideration shall contain a statement of the factual and legal grounds upon which reversal or modification is deemed warranted specifying any errors of fact or law made or information not previously considered that should have been considered. Supporting documentation should be included.
- (h) The General Manager or the Deputy General Manager to whom the Director/Program Administrator reports, as the case may be, or his/her respective designee may, in his/her sole discretion; (i) meet with the protester and, if invited, a representative of the Originating Division to discuss the request for reconsideration, and/or (ii) hold a hearing, at which witnesses may be called and facts presented (at any such meeting or hearing, the Authority, the protester and any other affected party invited to the hearing may be represented by an attorney or other representative). The General Manager, or the Deputy General Manager, to whom the Director/Program Administrator reports or his/her respective designee, shall

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make a written decision with respect to the merits of the request for reconsideration as expeditiously as possible. The decision of the General Manager or the Deputy General Manager to whom the Director/Program Administrator reports, or his/her designee, with respect to a protester's request for reconsideration shall be final.

SECTION 16 – RECEIPT OF NOTICES

All notices required to be filed, or sent pursuant to Sections 8 and 15 of these Instructions to Bidders shall be in writing and must be delivered by hand or sent by registered or certified mail, return receipt requested, or overnight mail service that provides a receipt to the sender. Receipt of notices by the party to whom transmitted shall be deemed to have occurred: (1) upon receipt, if hand delivered, (2) when mailed, upon receipt, as evidenced by the required receipt, or five calendar days from the date of mailing, whichever is earlier, or (3) the next business day after transmittal by Federal Express, Express Mail or other overnight delivery service that provides a receipt to the sender.

SECTION 17 – ADDITIONAL CLAUSES FOR STATE FUNDED CONTRACTS

- (a) For State Funded Contracts, any attached Appendices A and B are a part of the contract.
- (b) In case of conflict between appendices and clauses contained elsewhere in the contract, the requirements of the appendices shall govern.
- (c) The successful bidder shall be requested to completely fill out the forms in Appendices A and B.

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SECTION 1 – DEFINITION OF TERMS

Whenever used in this Contract:

- (a) The term "Authority" means New York City Housing Authority, or any representative of the Authority acting within the scope of the particular powers and duties vested in him.
- (b) The term "Contractor" means the bidder for the contract whose bid is accepted by the Authority.
- (c) The term "Contract" or "Contract Documents" means and includes:
 - 1. Advertisement or solicitation for bids
 - 2. Instructions to Bidders
 - 3. Contractor's Proposal as accepted by the Authority
 - 4. The General Conditions
 - 5. The Specifications
 - 6. The drawing and plans, if any
 - 7. Amendments, Addenda and revisions to any of the foregoing
 - 8. Performance and payment bonds, if required
 - 9. All documents incorporated by reference
- (d) The term "Work" means the work and materials specified and the obligations imposed upon the Contractor under the Contract.
- (e) The term "Project" means the Projects involved to the Contract.
- (f) The terms "furnish", "install", "provide", "execute", "perform", or words of like import shall include the obligation to supply all materials, equipment, labor and all other things necessary to complete the installation or execution of work referred to, unless otherwise expressly stated.

SECTION 2 - PERFORMANCE

The Contractor shall perform the Work in strict conformity with the Contract Documents and in a good, substantial and workmanlike manner to the satisfaction of the Authority and shall furnish at his/her

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own cost and expense all labor, materials, plant, equipment, tools, requisite insurance, and all taxes thereon, which are necessary in connection with the Work or incidental thereto, all for the sum as accepted by the Authority.

"The Contractor shall perform on the site, and with its own organization, work of a value equivalent to at least thirty-five percent (35%) of the total amount of work to be performed under the Contract. This percentage may be reduced by a supplemental agreement to this Contract, if the Contractor requests a reduction and the Authority determines that such reduction would be in its best interests."

SECTION 3 – CONTRACT DRAWINGS

Unless otherwise specified in the Special Notice to Contractors, there are no contract drawings to this Contract. If plans and drawings are specified or incorporated by reference, they are intended to be co-extensive with the Contract Documents, including the Specifications, so that any matter or thing contained in or shown by any of them shall be of the same effect as if contained in or shown by all.

SECTION 4 – AMENDMENTS AND ADDENDA

The Amendments and Addenda, if any, to the Contract Documents, are for the purpose of varying, modifying, rescinding, or adding to the portions of the Contract Documents to which they pertain and should be read together with them. In the event of any inconsistency or conflict between any Contract Documents or any portion thereof and any Amendment or Addendum, the Amendment or Addendum shall prevail. Where an Amendment or Addendum modifies a portion of a paragraph or a section, the remainder of the paragraph or section shall remain in force unless otherwise stated in the Amendment or Addendum.

SECTION 5 – PARTIAL PAYMENTS

- (a) Prior to the submission of the first requisition for a partial payment, the Contractor, if required, shall present to the Authority, for the Authority's approval, a schedule showing the breakdown of the Contract price which must contain the

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amount estimated for each part of the Work, and in addition, a quantity survey for each such part of the Work. The values employed in making the schedule will be used only for determining the size of the partial payments and to supply labor statistical information required by the Authority, and will not be considered as fixing a basis for additions to or deductions from the Contract Price.

- (b) Partial payments will be made as the Work progresses not later than fifteen (15) days after the 25th day of each calendar month for work done and materials installed during the preceding fiscal month on estimates certified and approved by the Authority. The fiscal month shall be the period extending from the 25th day of one month to the 24th day of the next month. The estimates and certificates shall be submitted on the forms and in accordance with the rules of the Authority. The Authority will not approve any estimates for partial payment until the Contractor has submitted all *Contractor Daily Sign-In Sheets* required pursuant to Section 43(g) of the General Conditions, below, and all certified payrolls required pursuant to Sections 47(b) and 49(4) of the General Conditions, as amended, evidencing the Contractor's compliance with prevailing wage requirements with respect to the Work covered by the estimates. Unless allowed by the Authority, such partial payments shall not exceed the ratio to the total compensation hereunder that the portion of the work done bears to the entire Work. The estimates and requisitions thereon for monthly payments must be submitted at least ten (10) days in advance of the date set for payment. As an additional condition precedent to his/her right to any partial payments, the Contractor must, if requested, submit to the Authority proof satisfactory to the Authority that the Contractor is meeting his/her obligations to Subcontractors, Suppliers of Material and Workers.
- (c) In making such partial payments the Authority may retain ten percent (10%) of the estimated amount until the final completion and acceptance of all work covered by the Contract except that this may be reduced to five percent (5%) after satisfactory performance of 50% of the work. If performance and payment bonds in the full amount of the Contract Price have been furnished by the Contractor, the retention shall be five percent (5%) throughout.

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- (d) All material and Work covered by partial payments shall become the sole property of the Authority, but this provision shall not be construed as relieving the Contractor from the sole responsibility for the care and protection of materials and Work upon which payments have been made or for the restoration of any damaged Work or as waiver of the right of the Authority to require the fulfillment of all the terms of the Contract.
- (e) No such partial payments, however, will be made after the time fixed for the completion of the Work, or the time to which the completion may be extended under the terms of this Contract, until the full and final completion of all Work herein agreed upon, unless the Authority, in its discretion, directs otherwise.

SECTION 6 – FINAL PAYMENT

- (a) Within thirty (30) days after the issuance of the Certificate of Final Acceptance hereinafter provided for, the Authority, subject to all contract provisions, shall pay to the Contractor, by check or otherwise, all sums remaining unpaid and due it under the Contract.
- (b) The Final Payment shall not become due until the Contractor shall deliver to the Authority all releases required by the Authority from all liens, claims and demands arising out of any Work done pursuant to the Contract.
- (c) The acceptance by the Contractor of the Final Payment, or any part thereof, shall be and shall operate as a release of the Authority from all claims and all liability to the Contractor for all things done or furnished in connection with the Work and for every act, omission and neglect of the Authority and others relating to or arising out of this Work, excepting only claims expressly reserved by the Contractor in writing at the time final payment is made.
- (d) No Interest to be Paid. The Contractor agrees that no interest shall be due and payable from the Authority on any retained amounts or on any other sums deducted and withheld from the partial payments or the Final Payment or for failure to make any partial payments or the Final Payment on the date when any such payments may be due.

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SECTION 7 – AUTHORITY’S RIGHT TO WITHHOLD MONEY OUT OF PAYMENTS; LIENS

- (a) If the Work is not performed in strict accordance with the Contract, or if the work of any other contract between the Contractor herein and the Authority is not performed in strict accordance with its terms, or if the Authority has a claim against the contractor herein for any other reason whatsoever, or if any claim, just or unjust (including claims for wrongful death and for injuries to person or property), which arises out of the performance of the Work is made against the Authority, the Authority shall have the right to withhold out of any payment, final or otherwise, such sums as the Authority may deem ample to protect it against delays or loss or to assure the payment of such claims on this, or any other open contract which the Contractor has with the Authority.

- (b) In the event that wages have been paid at a rate less than the prevailing wage, the Authority shall also have the right to withhold from the Contractor out of any payment, final or otherwise, on this, or any other open contract that the Contractor has with the Authority, so much as may be necessary to pay to laborers, mechanics, architects draftsmen, engineers and technical workers, and other workers employed on the Work, the difference between the sums such persons should have received as wages and the amounts they actually received, and to pay such sums over to such persons. All such payments shall be deemed to be payments for the Contractor's account. In addition, the Contractor shall be required to pay for the cost of any investigation conducted by or on the behalf of the Authority that discovers a failure to pay prevailing wages by the Contractor or its subcontractors. If the Contractor fails or refuses to pay for any such investigation, the Authority shall deduct from any amount payable to the Contractor by the Authority, under the Contract or under any other contract between the Contractor and the Authority, an amount equal to the cost of such investigation in order to compensate and reimburse the Authority for such cost.

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- (c) The foregoing provisions shall be construed solely for the benefit of the Authority and shall not be construed to require the Authority to determine or adjust any claims or disputes between the Contractor and any other person or persons.
- (d) Deductions for Defective Work as an Alternative to Requiring Corrections. If the Authority deems it inexpedient to require the Contractor to correct Work damaged or not done in accordance with the Contract, an equitable deduction from the Contract Price shall be made by agreement between the Contractor and the Authority. In the event of the failure of the said parties to reach an agreement, the amount to be so deducted shall be settled in accordance with the procedure hereinafter provided for the settlement of disputes. Until such settlement, the Authority may withhold such sum as it deems just and reasonable from monies, if any, due the Contractor on this, or any other open contract which the Contractor has with the Authority.
- (e) Liens as Bar to Payment. The Contractor shall not, at any time, suffer or permit any lien, attachment, or other encumbrance, under the law of this State or otherwise, by any person or persons whomsoever, to remain on file with the Authority against any money due or to become due for any Work done or materials furnished under the Contract, or by reason of any other claims or demand against the Contractor. Such lien, attachment, or other encumbrance, until it is removed, shall preclude any payment and any and all claims or demand for any payment whatsoever under and by virtue of the Contract.

SECTION 8 – MODIFICATIONS OF COMPENSATION; CHANGES IN THE WORK

- (a) The Authority, without invalidating this Contract or any bonds or security furnished thereunder, and without notice to the sureties, if any, may, at any time after the acceptance of the Contractor's Proposal, make changes by altering or changing the Work or by ordering Extra Work, or by omitting or reducing the Work in part, or, upon five (5) days' notice to the Contractor, in whole, the Contract Price being adjusted as hereinafter provided. Such alterations, changes, extra work, reductions or omissions may be ordered by the Authority solely by written order. When Work is omitted or reduced, in whole

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or in part, no right to compensation or damages for any loss or cost, including loss of profit, or for any claim or cause of action, shall accrue to the Contractor for any Work so omitted or reduced, except that the Authority will pay, subject to the provisions of this Contract, for all Work actually performed.

(b) For changes resulting in Extra Work, the contract price shall be adjusted by such of the three following methods as the Authority selects:

1. Where unit prices have been established in the Contract, such unit prices may be used as a basis for computing the additions to be made; or
2. The Authority and the Contractor may agree upon unit prices or a lump sum therefor; or
3. The Contract Price may be adjusted in accordance with the following:
 - a. The Contractor shall submit an accurate current account of the actual direct and necessary production cost of the Extra Work itself, with substantiating documentation, subject to audit, as may be required by the Authority, consisting of and limited to the following: labor and items incidental to labor, including Social Security and unemployment insurance; other insurance required by reason of the performance of the extra work; necessary materials, rental value of plant and equipment.
 - b. All other items shall be considered as overhead and not as cost including, but not limited to, supervision, superintendents, timekeepers, clerks, security personnel, small tools, incidental job burdens and general office expense. To the cost calculated as aforesaid shall be added: ten percent (10%) as compensation to the Contractor for overhead and all other costs and ten percent (10%) of the resulting amount as profit.

(c) Where such Extra Work is performed through one or more subcontractors, there shall be added to the extra cost to the contractor of such work computed as above (including any

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overhead and profit allowed by the contractor to the subcontractor, not exceeding the percentage above prescribed for the contractor), six percent (6%) of such extra cost of the work involved in the change.

- (d) For changes resulting in omitted or reduced work, any of the methods set forth in the preceding paragraph (b) shall be utilized in calculating a credit to the Authority.

SECTION 9 – DIFFERING SITE CONDITIONS

- (a) The Contractor shall promptly, and before such conditions are disturbed, notify the Authority in writing of (1) subsurface or latent physical conditions at the site differing materially from those indicated in the Contract, or (2) unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in this Contract. The Authority shall promptly investigate the conditions, and if it finds that such conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performance of any part of the work under this Contract, whether or not changed as a result of such conditions, an equitable adjustment shall be made and the contract modified in writing accordingly.
- (b) No claim of the Contractor under this provision shall be allowed unless the Contractor has given the notice required in (a) above.

SECTION 10 – EXTRA OR OMITTED WORK

- (a) Extra Work is work required by the Authority which in its judgment is in addition to that required by the Contract in its present form. Except in an emergency, written orders must be received by the Contractor prior to the commencement of Extra Work and must expressly and unmistakably indicate the intention of the Authority to treat the Work described therein as Extra Work. The provisions of this Contract relating generally to Work and its performance shall apply to any Extra Work required and to the performance thereof except to the

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extent that the parties hereto may expressly provide otherwise in connection with any particular item of Extra work.

- (b) The Contractor shall, immediately upon receipt of a written order of the Authority, proceed to comply with such written order as regards to any changes involving Extra Work or Work omitted or reduced, regardless of whether or not the adjustment in the Contract Price by reason thereof has been agreed upon.

SECTION 11 – TIME OF ESSENCE

Inasmuch as the provisions hereof relating to the time of performance and completion of the Work are for the purpose of enabling the Authority to administer public property efficiently and economically and in accordance with a predetermined program, all such time limits are of the essence of this Contract.

SECTION 12- TIME FOR COMMENCEMENT AND NOTIFICATION TO PROCEED

The Contractor shall commence the Work on the date specified in the written notification from the Authority to proceed. This notification will be made, in general, no more than thirty (30) calendar days from the date of the Award of the Contract.

SECTION 13 – TIME FOR COMPLETION

The Contractor agrees to complete the work within the time specified in the Special Notice to Contractors.

SECTION 14 – DELAYS IN PERFORMANCE; EXTENSIONS OF TIME

In the event completion of the work is necessarily delayed beyond the time for the completion of the Work or the particular portion thereof affected, on account of unforeseeable causes beyond the control and without the fault or negligence of the contractor, including, but not restricted to acts or omissions of the Authority, its officers, agents, or employees, whether occurring before or after the acceptance of the Contractor's Proposal, or of any Contractor of the Authority engaged in operations upon the project

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or third persons, or because of any act of God, strike, embargo upon shipments, insurrection, act of the public enemy, governmental action, unusually severe weather, fire, flood or delays of subcontractors due to such causes, the time for completion shall be extended by a period of time corresponding to the delay, provided that within twenty (20) days from the beginning of such delay the Contractor notifies the Authority of the causes of the delay.

The Authority's determination whether an extension of time is justified and how long the period of extension should be, shall be conclusive and binding upon the Contractor. Except as otherwise provided in this Contract, the Contractor expressly agrees to make no claim or maintain any action against the Authority for damages for suspension of or delay in the performance of this Contract occasioned by delays to or interruptions of the work, and agrees that any such claim shall be fully compensated for by an extension of time to complete performance.

SECTION 15 – SUSPENSION OF WORK

The Authority may order the Contractor to suspend the Work for the Authority's convenience for such period of time it may deem appropriate, provided that where such suspension is for an unreasonable period of time an adjustment shall be made for any increase in the cost of performance of this Contract caused thereby. However, no adjustment shall be made where the work is suspended or delayed by any other cause, including the fault, negligence or improper performance of the Contractor or of any other contractor.

SECTION 16 – RISKS; INDEMNIFICATION

- (a) **Generally.** The Contractor shall at all times be liable for, and indemnify and save harmless the Authority, its members, officers, agents and employees against and from any and all claim or damage arising from, upon or by reason of the breach by the Contractor of any covenants herein contained.
- (b) **Loss or Damage to the Work.** All loss or damage to the Work howsoever caused, prior to the issuance of the Certificate of Final Acceptance, or to any equipment or materials used, installed or received by the Contractor, whether by fire, flood, vandalism or any other casualty or happening, shall be assumed and be borne by the Contractor, excepting any loss or

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damage caused by the willful negligence of the Authority subsequent to the award of the Contract. In the event of such loss or damage, the Contractor shall forthwith repair, replace, and make good the Work without cost to the Authority.

- (c) **Indemnification.** If any person sustains injury or death, or loss or damage to property occurs, resulting directly or indirectly from the Work of the Contractor, or his subcontractors, in their performance of this Contract, or from the Contractor's failure to comply with any of the provisions of this Contract or of law, or for any other reason whatsoever, the Contractor, to the fullest extent permitted by applicable law, shall indemnify and hold the Authority harmless from any and all claims and judgments for damages and from costs and expenses to which the Authority may be subjected or which it may suffer or incur by reason thereof.
- (d) The Contractor shall assume the risk of loss, damage, injury or delay due to the fault, acts, or omissions of other contractors, or their subcontractors, saving only the right to extensions of time as herein provided, and to any cause of action against other contractors or their parties. The acts or omissions of other contractors shall not be deemed to be the acts or omissions of the Authority and the Authority shall not be responsible, liable, or answerable in any way to the Contractor by reason of such acts or omissions. In the event of liability, loss, injury, delay or damage to the Work of this Contractor by reason of acts or omissions of other contractors or their subcontractors, this Contractor shall forthwith replace, repair, and make good the Work and all damage and loss thereto without cost to the Authority.
- (e) All loss or damages arising out of the nature of the Work to be done under the Contract, or for any unforeseen obstructions except as otherwise provided in the Contract, or difficulties which may be encountered in the prosecution of the same, or from the action of the elements, shall be sustained by the Contractor.
- (f) **Risks Unaffected by Certain Acts.** The coverage of any insurance which the Authority or the Contractor may have obtained under the provisions of the Contract or otherwise shall not be deemed to limit the Contractor's liability under this section.

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- (g) **Contractor to Defend.** With respect to any claim made or suit brought against the Authority by any person arising out of, or resulting from, or in connection with any of the above risks assumed by the Contractor, the Contractor shall negotiate the settlement thereof or defend the same at his own cost and expense, and pay all costs, expenses and judgments recovered against the Authority, its members, officers, agents and employees.

SECTION 17 – INSURANCE GENERALLY

- (a) Within ten (10) business days of the date of a letter to the Contractor advising the Contractor to submit evidence of insurance coverage, the Contractor shall provide the Authority with appropriate certificates of insurance or policies of the insurance evidencing such insurance. The Contractor shall not receive the award of this Contract until it has obtained all insurance required under this Contract, and until the policies of insurance have been approved by the Authority as to financial responsibility of the insurance company providing the coverage, amounts, coverage, and form of policy. If requested by the Authority to do so, the Contractor must submit receipts to the Authority evidencing complete payment of premiums for all policies of insurance required by this Contract. One original counterpart of each policy and of each extension of the Contractor's coverage, made to include additional Work or Subcontracts required under this Contract, shall be furnished to the Authority by the Contractor prior to commencement of Work by the Contractor and its Subcontractors. Such certificates of insurance should also stipulate that no coverage evidenced is subject to exclusion or limitation beyond those associated with the basic policy forms.
- (b) In cases where the Subcontractors to be used are known to the Contractor, the Contractor will not receive the award of this Contract until it has caused all such Subcontractors to obtain all insurance required under this Contract, and until all policies of insurance have been approved by the Authority as to the financial responsibility of the insurance company providing the coverage, amounts, coverage and form of policy. If requested by the Authority to do so, the Contractor must submit to the Authority on behalf of each Subcontractor to be used, receipts evidencing complete payment of premiums for the insurance required under the Contract. One original

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certificate of insurance must be furnished by the Contractor to the Authority prior to the commencement of Work by the Contractor and each Subcontractor. If the Subcontractors are to obtain their own insurance, the Contractor must submit one original certificate of each certificate of insurance for each Subcontractor prior to the commencement of any Work by the Subcontractor. The Authority will not approve any Subcontractor until satisfactory evidence of insurance of such Subcontractors has been submitted by the Contractor to the Authority.

- (c) In cases where the Contractor does not know the Subcontractors to be used prior to the commencement of Work under the Contract, the Contractor must, simultaneously with the submission of each request for approval of a Subcontractor during the term of the Contract, submit a valid extension of its insurance policy which names each Subcontractor to be used as an additional insured on the Contractor's policy, or, alternatively, the Contractor must submit a valid certificate of insurance from each Subcontractor to be used. Requests for approval of any Subcontractor will be contingent upon the Authority's receiving from the Contractor the required evidence of insurance of the Subcontractor.
- (d) The Contractor and its Subcontractors shall not cause any policies to be canceled or permit them to lapse prior to the issuance of the Certificate of Final Acceptance and, except as otherwise provided, all insurance policies shall include a clause to the effect that the policy shall not be canceled or changed until thirty (30) days after the Authority has received written notice of such intended changes or cancellations, as evidenced by the returned receipt of the registered letter.
- (e) At any time during the term of the Contract, upon the Authority's request, the Contractor and each Subcontractor must furnish to the Authority the insurance policies underlying the certificates of insurance previously furnished to the Authority.
- (f) The Authority shall have the unconditional right to review any and all insurance policies which are or may be applicable on behalf of any party to the Contract or any Subcontract and may reject such coverage for any cause, including, without

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limitation, financial instability of insurer, inadequate sub-limits, restricting terms or manuscripted exclusions.

- (g) No extension of the Contract completion date will be granted due to the Contractor's or Subcontractor's inability to procure or maintain the required insurance in force during the term of the Contract, or during the performance of Work under the Contract, whichever is applicable.

SECTION 18 – TYPES AND AMOUNTS OF INSURANCE REQUIRED

- (a) The Contractor agrees to maintain and to cause each Subcontractor to maintain, throughout the term of the Contract (including any extensions of such term) the kinds of insurance, with, at a minimum, the limits, set forth in subparagraphs (1) through (6) below. In addition, before commencing work, each Contractor and Subcontractor shall furnish the Authority with certificates of insurance and complete insurance policies showing that such insurance is in force and will insure all operations under its Contract and Subcontract. All coverage documentation must be provided to the Authority's Deputy Director of Risk Finance at the address herein set forth. All policies shall require that the Insurer mail copies of all notices to the New York City Housing Authority Deputy Director of Risk Finance, 90 Church Street, New York, New York 10007, or such other person as the Authority may at anytime designate. No deductible shall be permitted in any policy. All policies providing coverage to the Authority, its members, employees, agents and/or representatives under this Contract shall be primary to any other policies providing coverage to these entities.

1. **Workers' Compensation and Employer's Liability Insurance.** The Contractor shall obtain, and shall cause its Subcontractors to obtain, Worker's Compensation Insurance, including occupational disease, for all employees, as per statutory limits, and Employer's Liability Insurance: (a) unlimited in the State of New York or \$1,000,000 for other States; and (b) \$1,000,000 for those specific categories not covered by New York State Workers' Compensation Law.
2. **Commercial General Liability Insurance.** The Contractor shall carry commercial general liability insurance, written on an occurrence basis and must include Personal

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Injury, Bodily Injury, Property Damage, Contractual Liability and Completed Operations coverages. Minimum acceptable annual limits are as follows:

- a. \$2,000,000 General Aggregate Limit for all
 coverages.

 - b. \$1,000,000 Each Occurrence Limit for all coverages. This insurance must protect the Authority, the Contractor and each Subcontractor against, among other claims, claims for personal injury, bodily injury and property damage which arose out of or which is alleged to have arisen out of operations conducted under this Contract. This insurance shall cover the use of all equipment, hoists, and vehicles on the Site not covered by Automobile Liability under subparagraph (3) below.
3. **Automobile Liability Insurance.** The Contractor shall have Automobile Liability Insurance on owned, and non-owned and hired motor vehicles used on the Site or in connection with the Work for a \$1,000,000 combined single limit per accident for bodily injury and property damage to protect the Authority, the Contractor and each Subcontractor against, among other claims, claims for bodily injury or death or damage to the property of others suffered or caused, or alleged to have been suffered or caused, as a result of, in connection with, or in the course of, operations under this Contract.
4. **Owner's and Contractor's Protective Liability Insurance.** The Contractor shall provide Owner's and Contractor's Protective Liability Insurance for all bids equal to or exceeding \$100,000 ("OCP"). This policy must protect the Authority against liability claims for personal injury and bodily injury, including death, and property damage arising from or alleged to have arisen from operations of the Contractor and its Subcontractors for the limits of liability set forth in subparagraph (2) above. Such insurance policy shall insure the Authority and shall contain by rider annexed to such policy, the following provisions in substance:
- a. The presence of engineers or inspectors of the Authority on the Site shall not invalidate the policy of insurance.

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- b. The policy shall not be invalidated by reason of any violation of any of the terms of any policy issued by the insurance company to the Contractor.
5. **Lead Based Paint and Asbestos Insurance Coverage (Testing).** For Contracts that will involve testing for lead-based paint and/or asbestos as may be required by the Authority under the Agreement, the Contractor must obtain and cause its Subcontractors (i.e., professional testing firms, architectural firms and engineering firms) to obtain liability insurance (i) for lead-based paint testing in an amount not less than One Million Dollars (\$1,000,000) per occurrence with an aggregate limit of not less than Two Million Dollars (\$2,000,000), and (ii) for asbestos testing in an amount not less than One Million Dollars (\$1,000,000) per occurrence with an aggregate limit of not less than Two Million Dollars (\$2,000,000). In the event that the Contractor needs assistance in obtaining such insurance, the Contractor may request information regarding availability of coverage known to the Authority from the Deputy Director of the Risk Finance Department of the Authority's Treasury Division, or his or her designee, at the New York City Housing Authority, 90 Church Street, New York, NY 10007.
6. **Lead Based Paint and Asbestos Insurance Coverage (Abatement).** For contracts that will involve the abatement of lead-based paint and/or asbestos as may be required by the Authority under the Agreement, the Contractor must obtain or cause its lead-based paint and/or asbestos abatement Subcontractors to obtain pollution liability insurance for lead-based paint and/or asbestos abatement, as applicable, in an amount not less than Five Million Dollars (\$5,000,000) per occurrence with an aggregate limit of not less than Five Million Dollars (\$5,000,000), [(the "Primary Policy(ies)"].
7. **Contractor Pollution Legal Liability Insurance.** The Contractor shall obtain and shall cause its Subcontractors to obtain Contractor Pollution Legal Liability Insurance coverage for Contracts and Subcontracts that may involve the removal of any hazardous waste as defined under the Resource

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Conservation and Recovery Act, as amended, 42 U.S.C. Section 6901 et. seq. ("RCRA"), or any related state or city environmental statute, or the removal of any petroleum-contaminated material as may be required under the Contract. Such insurance may be specific to the type(s) of hazardous material(s) or pollutant(s) being removed from the Site. Contractor Pollution Legal Liability Insurance coverage shall be purchased with a minimum limit of Two Million Dollars (\$2,000,000) per claim, or per occurrence, whichever is applicable. The Contractor and its Subcontractors, as the case may be, shall use its best efforts or their best efforts to obtain such insurance on an occurrence basis, if it is available. In the event that such insurance is not available on an occurrence basis, the Contractor and its Subcontractors shall maintain such insurance in effect throughout the term of the Contract and Subcontract and for an additional period of not less than three years after the end of the term of the Contract and Subcontract. In the event that the term of the Contract and Subcontract is extended one or more times, the Contractor, or Subcontractor, shall maintain the coverage for a period of any such extension(s). In the event the Contract is terminated by the Authority for any reason (whether for the convenience of the Authority, or by reason of the Contractor's or subcontractor's default, as the case may be, or otherwise) prior to the end of the Contract term, or any extensions thereof, the Contractor and Subcontractor shall maintain such insurance in effect for a period of three years from the date set forth in the Authority's notice of termination as the effective date of the termination. The Contractor's and Subcontractor's obligation to maintain its Contractor Pollution Legal Liability Insurance policy for the additional three-year period shall survive the expiration of the Contract and Subcontract or the termination of the Contract and Subcontract by either party for any reason

8. All policies of insurance must: (a) be written with a company authorized and licensed to do business in the State of New York and having an "A. M. Best" rating of at least "B+" and a financial size category of at least Class "VI"; (b) include the Authority and its members employees, agents, and representatives as Additional Insureds except in the case of an OCP, in which case the

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Authority, its members, employees, agents and representatives shall be named the insureds; (c) include the Contractor similarly as an Additional Insured on any policy that will be carried by a Subcontractor except in the case of OCP; (d) be written on an occurrence basis except in the case of Pollution Legal Liability Insurance; and (e) warrant that such insurance as afforded by the policy shall not be cancelled, non-renewed, or have coverage materially reduced or restricted, without at least 30 calendar days advance written notice to the Authority, the Contractor and the Subcontractor.

9. The Contractor and Subcontractor shall cause evidence of renewals of the required insurance policies in the form of Declaration Pages to be sent by the Insurers to the Authority. The cost of the insurance described in subparagraphs (1) through (7) above shall be deemed to have been included in the Contractor's bid price and no adjustment shall be made to the Contract Price on account of such costs.

10. In addition to the insurance requirements for the Contractors and any Subcontractors, the Authority will obtain, at its cost and expense, the following insurance where the Authority believes such insurance to be necessary or desirable:
 - (i) **Builders Risk Insurance** covering work in place and/or materials and building equipment stored on site and in transit. If procured, the Builders Risk Insurance will be added to the Authority's present fire and extended coverage policy for the Development; the Authority will ask the insurer to add the Contractor and its known Subcontractors as Additional Insured to the Authority's policy as their interests may appear; and the policy will provide for "all risk" coverage and will have a \$25,000 deductible per claim.

11. The Contractor hereby agrees to waive subrogation against the Authority. The Contractor shall also cause its Subcontractors to waive subrogation against the Authority, and the Contractor. All policies of insurance obtained by the Contractors and Subcontractors shall

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contain a waiver of the right to subrogate against the Authority.

12. **State Funded Contracts Only:** The liability policies will include additional insureds as follows:

- a. The Authority.
- b. New York State.
- c. The New York State Division of Housing and Community Renewal (DHCR).
- d. The Housing Company's Mortgagee:

- i. The New York State Urban Development Corporation (UDC)

And

Where PFA is the mortgagee, the New York State Project Finance Agency (PFA)

Or

- ii. The New York State Housing Finance Agency.

The policy will be written with a company acceptable to the additional insureds.

Separate Certificates of Insurance shall be provided to both the Authority and DHCR evidencing the above.

The Contractor shall furnish the Authority and DHCR these Certificates of Insurance before commencing performance of this contract. The Certificates of Insurance shall name all the required additional insureds cited in 12(a) and warrant that such insurance as afforded by the policy shall not be cancelled, non-renewed, or have coverage materially reduced or restricted, without at least 30 calendar days advanced written notice to the Authority, DHCR, the Contractor and the Subcontractor.

Notice of any cancellation or material change shall be sent to the Authority and to DHCR at their respective places of business.

(b) Insurance coverage in the minimum amounts provided for in this Section 18 shall not relieve the Contractor of any liability

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which might exceed that amount, nor shall it preclude the Authority from taking such other actions as are available to the Authority under any other provisions of this Contract or otherwise.

- (c) In the event that the Contractor fails or refuses to renew any insurance policy required to be maintained in this Section 18, or if such policy is canceled or modified in a manner not permitted in this Section 18, the Authority may refuse to make payment of monies due under the Contract. The Authority in its sole discretion may use such monies to purchase insurance on behalf of the Contractor, or it may default the Contractor and exercise any and all rights available to the Authority in that event. During any period when the required insurance is not in effect, the Authority may suspend performance of the Contract. If the Contract is so suspended, no additional compensation or extension of time shall be due on account of such suspension.

SECTION 19 - SURETIES

In the event this Contract requires the Contractor to furnish Performance and Payment Bonds, such bonds shall be in the form prescribed by the Authority and shall be deemed to include the performance of all the Contractor's obligations under the guarantees by the Contractor or subcontractors contained in the Contract Documents.

SECTION 20 - DEFAULTS

- (a) The Authority shall have the right to declare the Contractor in default on the whole or any part of the work if:
1. The Contractor shall fail to begin the Work to be done under the Contract on the date of award or the date otherwise specified in writing by the Authority, or if the Work shall be abandoned by the Contractor, or
 2. The Contract shall be assigned or the Work sublet by the Contractor otherwise than as permitted by the Contract, or

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3. The Contractor has unnecessarily or unreasonably delayed the Work or any part thereof, or has persistently or repeatedly refused or failed to supply enough properly skilled workers or proper materials, or
 4. The Contractor has failed to make prompt payment to subcontractors, suppliers of materials, or other creditors; or has failed to display the prevailing wage poster, to provide a copy of the prevailing wage schedule when requested, to complete the Development Log or to submit the *Contractor Daily Sign-In Sheets* in compliance with the requirements of Section 43 of the General Conditions, below; or has failed to observe or perform the provisions of any term whatsoever of the Contract, or
 5. The Contractor shall become bankrupt or insolvent, or makes an assignment for the benefit of creditors, or its affairs are placed in the hands of a receiver or trustee.
- (b)** Upon declaration of default in writing to the Contractor, the Contractor shall not begin or shall discontinue or not resume the work. In such event, the Authority may take over the Work and prosecute the same to completion as agent for and at the expense of the Contractor, either directly or through other contractors, with or without public advertisement, or by calling upon the surety or sureties, if any, to complete the Contract as provided for in the Performance Bond, and the Contractor and sureties shall be liable to the Authority for any loss, damage, extra cost, or detriment to the Authority thereby. The Authority may take immediate possession of and utilize in completing the Work all materials and equipment provided for the Work. The Authority may also adopt and enforce any subcontracts which may have been let for any part of the Work. The Authority's certificate as to the excess cost and excess time, if any, of completing the Work, and the amount of damage suffered, shall be binding and conclusive upon the Contractor and his sureties.
- (c)** The right to declare the Contractor in default for any of the grounds specified or referred to in Section 20(a) of the General Conditions shall be exercised by the Authority by sending the Contractor a written notice setting forth the ground or grounds upon which such default is declared (the "Notice of Default").

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- (d) The Authority's determination that the Contractor is in default shall be conclusive, final and binding on the parties and such a finding shall preclude the Contractor from commencing a plenary action for any damages relating to the Contract. If the Contractor protests the Authority's determination, the Contractor may commence a lawsuit in a court of competent jurisdiction of the State of New York under Article 78 of the New York Civil Practice Law and Rules.

SECTION 21 – RIGHTS AND REMEDIES OF CONTRACTOR

The Contractor agrees that money damages are adequate compensation for any breach of the Contract which may be committed by the Authority, and that no default, act or omission of the Authority shall constitute a material breach of the Contract entitling the Contractor to cancel or rescind it or (unless the Authority shall so direct in writing) to suspend or abandon performance. The Contractor hereby waives any and all rights and remedies to which he might otherwise be or become entitled because of any wrongful act or omission of the Authority, saving only the right to money damages.

SECTION 22 – DISPUTES AS TO THE WORK

A fundamental intent of the Contract is that all Work required by the Authority shall be promptly performed in accordance with its directions and to its satisfaction, but without prejudice to the rights of either party as to the proper determination of questions relating to compensation, damages, or other money payments or deductions from payments as provided in this Contract. The Contractor shall, under no circumstances, cause any delay of the Work during any dispute as to the work or compensation or the meaning of the specifications or plans or drawings, or because of any dissatisfaction with any decision of the Authority, but shall proceed with the work promptly, as directed.

SECTION 23 – CLAIMS

- (a) If the Contractor claims that any instructions of the Authority, by drawings or otherwise, involve Extra Work entailing extra cost, or claims compensation for any damages sustained by reason of any act or omission of the Authority,

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or of any other persons, or for any other reason whatsoever, the Contractor shall, within twenty (20) days after such claim shall have arisen, file with the Authority written notice of intention to make a claim for such extra cost or damages, stating in such notice the nature and amount of the extra cost or damages sustained and the basis of the Claim against the Authority. If the Authority shall deem it necessary for proper decision, upon any notice filed hereunder, to require additional data, depositions or verified statements, the Contractor must furnish the same within twenty (20) days after written demand therefor upon him/her.

- (b) The filing by the Contractor of a notice of claim and the compliance by the Contractor with the demand, if any, for additional data, depositions or verified statements, both within the time limited herein, shall be a condition precedent to the settlement of any claim or to the Contractor's right to resort to any proceeding or action to recover thereon, and failure to do so shall be deemed to be a conclusive and binding determination on the Contractor's part that he/she has no claim against the Authority for compensation for Extra Work or for compensation for damages, as the cause may be, and shall be deemed a waiver by the Contractor of all claims for additional compensation or for damages.
- (c) The Authority shall have the right at any time that a claim is made or a lawsuit is brought by the Contractor on any account to audit the books and records of the Contractor with respect to all matters relating to the subject matter of the claim or lawsuit.

SECTION 24 – USE AND CARE OF PREMISES

The Contractor shall confine his apparatus, storage of materials, and operations to the limits indicated by law, ordinances, permits, and rules and regulations, and in accordance with the directions of the Authority. The Contractor shall not unreasonably encumber the premises with his materials. The Contractor shall maintain the premises in a neat and orderly condition and shall from time to time remove all plant, surplus materials, false work, and temporary structures of every nature resulting from his/her or his/her Subcontractor's work. The Contractor and all Subcontractors must

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collect daily their accumulated rubbish and leave it where designated by the Authority for prompt removal. The Contractor shall assume the entire risk of loss or damage to any materials or equipment stored in any location made available at the development by the Authority.

SECTION 25 – PRECAUTIONS TO BE TAKEN; CLEAN AIR AND WATER

- (a) The Contractor shall perform the Work with all due care and proper precaution, and in such manner as will afford the greatest protection to persons and property on or off the site of the project. The Contractor shall provide all the protection necessary for all materials and Work, whether in progress or completed, and whether incorporated in the project or not, against injury from any cause, and shall place and maintain all necessary and proper guards, lights, and other protective devices for the prevention of accidents and for the protection of workers and the public, and shall post danger signs warning against the hazards created by operations under the Contract. The Contractor shall observe all laws and regulations of the municipality in relation to obstructing the streets, keeping open passageways, and protecting the same where they are exposed and would be dangerous to the public.
- (b) The Contractor at his own cost and expense shall make such arrangements as may be necessary or required to protect the Work from the time it is commenced until the Certificate of Final Acceptance is issued or until the Authority shall otherwise direct.
- (c) In the event the work of the Contract is at a Federally-aided project, the Contractor shall comply with all the requirements of the Clean Air Act, as amended (42 U.S.C. Section 1857 et. seq.); the Water Pollution Control Act, as amended (33 U.S.C. Section 1251 et. seq.) and Executive Order 11738.

SECTION 26 – PERMITS AND INSPECTION FEES

The Authority will arrange for the issuance by the proper governmental agency of all permits necessary for the performance of

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the Work without cost to the Contractor. The Contractor shall cooperate with the Authority in obtaining such permits, and it shall be the duty of the Contractor, prior to the commencement of the Work, to attend at the office of the issuing department or agency and receive all such permits on behalf of the Authority. All fees required to be paid by the Contractor or any Subcontractor for a license to practice their respective trades shall not be included under the heading of permits and must be obtained at the Contractor's expense. All permits are to be kept at the site of the Project until completion of that part of the Work pertaining to those permits and then turned over to the Authority.

SECTION 27 – COMPLIANCE WITH LAWS AND REGULATIONS

The Contractor shall give all required notices and comply with all federal, state, municipal, and departmental laws, local laws, ordinances, rules and regulations, notices, orders and any requirements as to permits and licenses which affect the Work and which bear upon the conduct thereof and upon those engaged therein. All costs arising out of the performance of any Work contrary to any of these shall be borne by the Contractor. If the drawings or specifications are at variance with any of these, the Contractor shall promptly notify the Authority in writing so that any necessary changes may be made.

SECTION 28 – ORDER OF THE WORK

Unless otherwise specified in writings the Contractor shall commence the Work under the Contract at the time of award. The Authority may also designate the first block, section, or area, or the first apartment or apartments or building or buildings within a block, section, or area, on which the Contractor shall commence work. All work shall be performed in such order and by such methods as will produce the best workmanship, economy, safety and speed.

SECTION 29 – ASSIGNMENT OF BUILDINGS

At the time of the commencement of work, the Authority may not have all the apartments, buildings and the other spaces available. Therefore, the Contractor shall proceed immediately with the Work in such apartments, buildings and other spaces as are made available by

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the Authority, and will perform all other work required under the Contract in such order and at such times as the Authority will direct.

SECTION 30 – FITTING AND COORDINATION OF THE WORK

The Contractor shall be responsible for the proper fitting of all Work and for the coordination of the Work with that of other contractors who may be engaged in the performance of work at the development.

SECTION 31 – PROGRESS CHART; ATTENDANCE AT REGULARLY SCHEDULED JOB MEETINGS

- (a) **Progress Chart.** At the time of commencement of work, the Contractor, if requested, shall furnish a satisfactory progress schedule which shall be in the form of a graph to suitable scale, indicating salient features of the work and the expected status of the work and the expected status of the work at any time. The progress schedule shall be submitted to the Authority for approval and for such modifications to such schedule as the Authority may deem necessary. The sequence of the performance of the Work may, however, from time to time, be altered by the Authority.
- (b) **Authority May Require Satisfactory Progress.** The Authority shall have the right, without any extra compensation the Contractor, at any time when, in the judgment of the Authority and the work is not proceeding in accordance with the approved progress chart or schedule, to require the Contractor to take such measures or adopt such methods as may be necessary, in the opinion of the Authority, to obtain and maintain satisfactory progress.
- (c) **Attendance at Regularly Scheduled Job Meetings.** The Contractor shall attend (or cause its authorized representative to attend and act on behalf of the Contractor at) all job meetings regularly scheduled by the Authority. If the Contractor fails to attend or cause its authorized representative to attend any such regularly scheduled job meeting, the Authority may, in its sole discretion, charge the Contractor, and the Contractor shall pay the Authority, a fee of two-hundred and fifty

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dollars (\$250.00) as an administrative fee. Such fee may be charged against the Contract price or against any other contract the Contractor may have with the Authority.

SECTION 32 – INSPECTION AND TESTS

- (a) **Generally.** The Authority at all times shall have access to the Work, wherever and whenever it is in preparation or progress, and the Contractor shall provide facilities for such access for the purpose of inspection. The Authority will maintain such inspectors as it shall deem necessary to inspect the materials and labor furnished and the Work done, but shall be under no obligation to do so, nor shall it assume any responsibility for defective work which inspection may or could have disclosed. All work, materials, processes of manufacture, and all methods of construction shall at all times and places, including places of manufacture or origin, be subject to inspection and tests as may be determined by the Authority.

In the event the Contractor informs the Authority that the Work or any part of the Work is complete for inspection, whether or not as an element of any requisition for partial payment, and the Authority subsequently determines that the Work or the part thereof does not pass inspection, the Authority shall charge the Contractor and the Contractor shall pay the Authority a fee of fifty dollars (\$50.00) as an administrative fee for the time and travel of the Authority staff directed to inspect such substantially incomplete Work or part thereof. The Authority may, without limitation, credit this fee against the Contract price or any other contract the Contractor may have with the Authority.

(b) **Allocation of Costs of Tests and Re-Examination for Work:**

1. **Special Tests.** If the Contract Documents, the instructions of the Authority, local laws, or any public agency or officials require any work to be specially tested or approved, the Contractor shall give the Authority timely notice of its readiness for such inspection. All such tests or inspection shall be paid for by the Contractor, except as otherwise specifically provided for.

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2. **Other Tests.** The cost of test of materials as may be required by the Authority will be borne by the Authority. If, however, the tests prove that the materials tested are not according to the requirements of the Contract, then the cost of such tests is to be borne by the Contractor.

3. **Re-Examination of Work.** Re-examination of questioned work may be ordered by the Authority and if so ordered the work must be uncovered by the Contractor. If such work be found in accordance with the Contract Documents, the Authority shall pay the cost of re-examination and replacement. If such work be found not in accordance with the Contract Documents, the contractor shall pay such cost. If any work be covered up without the approval or consent of the Authority, such work must, upon request of the Authority, be uncovered at the expense of the Contractor.

SECTION 33 – CORRECTION AND REPLACEMENT OF DEFECTIVE OR DAMAGED WORK

Right of Authority to Reject. The Authority may reject defective or unsatisfactory Work or materials. The Contractor shall proceed at once with the correction of rejected, defective, or unsatisfactory workmanship or materials and shall have all objectionable materials removed from the site (or any place used for storing materials for use on the Work) and replaced.

SECTION 34 – MATERIALS AND WORKMANSHIP; PATENTS

- (a) **Quality and Suitability.** All materials, equipment and articles incorporated in the Work shall be new, unless the Authority shall otherwise direct in writing. All workmanship, equipment, materials, and articles incorporated in the Work shall be of the best grade of their respective kinds for their purposes. The Contractor shall, if required, furnish satisfactory evidence as to the kind and quality of materials.

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(b) The Contractor shall indemnify, hold and save the Authority harmless from liability of any nature or kind, including claims, suits, judgments, costs, and expenses, for, or on account of any infringement, alleged infringement, or use of any patented or unpatented, or copyrighted or non-copyrighted invention, method, appliance, process, design, article or device manufactured or used in the performance of the Contract, and the Contractor shall defend all suits or claims by any person on account of the foregoing at its own cost and expense.

(c) **PROHIBITION ON USE OF TROPICAL HARDWOODS**

1. In accordance with Section 167-b of the State Finance Law, tropical hardwoods and tropical hardwood products, shall not be obtained or utilized in the performance of this contract. The following species are tropical hardwoods:

<u>Scientific Name</u>	<u>Common Name</u>
Vouacapous americana	Acapu
Pericopsis elata	Afrormosis
Shorea almon	Almon
Peltogyne spp.	Amaranth
Guibourtia ehie	Amazaque
Aningeris spp.	Aningeria
Dipterocarpus grandiflorus	Apilong
Ochroma lagopus	Balsa
Virola spp.	Banak
Anisoptera thurifera	Bella Rose
Guibourtis arnoldiana	Benge
Deterium Senegalese	Boire
Guibourtis demeusil	Bubinga
Prioria copaifera	Cativo
Antiaris africana	Chenchen
Dalbergis retusa	Concobola
Cordia spp.	Corida
Diospyros spp.	Ebony
Aucoumes klaineana	Gaboon
Chlorophors excelsa	Iroko

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Acacia Koa	Koa
Pterygota macrocarpa	Koto
Shorea negrosensis	Red Lauan
Pentacme contorta	White Lauan
Shores ploysprma	Tanguile
Terminalia superba	Limba
Aniba duckei	Louro
Kyaya ivorensis	African Mahoga
Swletenia macrophylla	American Mahogany
Tieghemella leckellii	Makora
Distemonanthus benthamianus	Movingui
Pterocarpus soyauxii	African Padauk
Pterocarpus angolensis	Angola Padauk
Aspidosperma spp.	Peroba
Peltogyne spp.	Purpleheart
Gonystylus spp.	Ramin
Dalbergia spp.	Rosewood
Entandrophragma cylindricum	Sapela
Shores philippinensis	Sonora
Tectona grandis	Teak
Lovoa trichilloides	Tigerwood
Millettia laurentii	Wenge
Microberlinia brazzavillensis	Zebrawood

2. Any bid or proposal, which proposes or calls for the use of any tropical hardwood, or tropical hardwood product, in the performance of the Agreement shall be deemed to be non-conforming.

3. If, after execution of any contract, purchase order, or other agreement (any and all of which are referred to hereafter in this paragraph as "Agreement"), the Authority learns that any tropical hardwood or any hardwood product has been used or will be used in connection with the performance of the Agreement, the Contractor shall be in default of the Agreement and the Authority shall have the right to terminate the Agreement and to exercise any and all rights and remedies, both legal and equitable, available to the Authority under the Agreement.

SECTION 35 – REFERENCE BY NAME, TECHNICAL WORDS, NUMBER, OR SYMBOL: "EQUAL" DEFINED

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- (a) **Reference by name.** Specific reference in the Contract Documents to any article, product, materials, fixture, form, type of construction, equipment, appurtenance, or any other item to be incorporated into the Work or to be used in connection therewith, by name, make or catalogue number, is made only to establish a standard of quality and shall not be construed as limiting competition.
- (b) **Reference by Technical Words.** Materials or Work specified herein in words which have a well known technical meaning shall be held to refer to the particular standards which such words imply.
- (c) **Reference by Number or Symbol.** Materials specified by reference to the number or symbol or a specific standard, such as a Commercial Standard, a Federal Specification, or other similar standard, shall comply with requirements in the latest revision thereof and any amendment or supplement thereto in effect on the date of the Solicitation of Bids, except as limited to type, class, or grade, or modified in such reference. The standards referred to, except as modified in the Specifications, shall have full force and effect as though set forth herein.
- (d) **Use of Products Equal to Those Specified.** If the Contractor obtains the prior approval of the Authority in writing, the Contractor may substitute in lieu of any article or material specified by the Contract Documents a similar article or materials which in the judgment of the Authority is equal to that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended.

SECTION 36 – SAMPLES

The Contractor shall furnish for approval of the Authority, all samples as required by the Specifications or as directed by the Authority. When the Authority approves samples, the work shall be in accordance with such approved samples. Each sample shall have a label indicating the material represented, its place of origin, and the name of its producer, the name of the Contractor, and the name of the Work for which the materials is intended. The approval of any sample shall be only for the characteristics or for the uses named in such approval, and for no other matter.

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SECTION 37 – COOPERATION WITH OTHER CONTRACTORS

The Authority reserves the right to and may award other contracts in connection with this Contract. If the Authority shall let other contracts in connection with this Contract, the Contractor shall afford such other contractors reasonable opportunity for the introduction and storage of their materials, deposit of waste, and for the execution of the Work under such other contracts, and shall fully cooperate with such other contractors and carefully fit, coordinate, and connect the Work of this Contract with that of the other contracts. This obligation shall be a part of the Work and shall also be subject to the direction of the Authority. It is expressly understood and agreed that the Contractor shall lay out and install the Work at such time or times and in such manner as not to delay or interfere with the progress of any other contractor's work.

SECTION 38 – LOSS CAUSED BY OR TO OTHER CONTRACTORS

- (a) **Loss Caused by Other Contractors.** Should this Contractor sustain any loss, damage, or delay through any act or omission of any other contractor having a contract with the Authority for the performance of work or delivery of materials upon the site, then this Contractor shall have no claim against the Authority for such loss, damage, or delay, but shall have recourse solely to such other contractor. In the event another contractor defaults in or abandons his contract, then the Authority shall have a reasonable opportunity to engage others to perform the uncompleted work of the other contractor and shall not be liable for any delay, damage or loss which may be caused by the work of this Contractor in the interim.
- (b) **Loss Caused to Other Contractors.** If any other contractor shall suffer loss, damage, or delay through the acts or omissions on the part of this Contractor, this Contractor hereby agrees to reimburse such other contractor for his loss or damage. If such other contractor shall assert any claim against the Authority on account of any loss, damage, or delay alleged to have been so sustained, the Authority shall notify this Contractor, who shall save the Authority harmless against all claims, losses, costs, expenses, fees, and other liabilities of whatsoever kind, including legal fees and

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expenses incurred by the Authority in defending any suit or suits based upon such claim or claims, and, if any judgment or claim against the Authority shall be allowed, then this Contractor shall pay or satisfy such judgment or claim and pay all costs and expenses in connection therewith.

SECTION 39 – WORK OF OTHER CONTRACTORS

If any part of this Contractor's Work depends for proper execution or results upon the work of any other contractor, the Contractor herein shall inspect and promptly report to the Authority any defects in such work that render it unsuitable for the proper performance and execution of this Contractor's Work. The failure of the Contractor herein so to inspect and report shall constitute an acceptance by him of the work done under other contracts as fit and proper to receive his Work and to become the basis thereof, except as to defects which may develop in the work done under other contracts after the completion of the Work to be performed under this contract. In the event that any of the Work performed hereunder becomes defective, inadequate, or unsatisfactory because of defects in work done under other contracts which defects should or would have been discovered by a proper inspection of such work by the Contractor herein, then this Contractor shall be responsible and liable to replace such damaged portions of this Work as if the work of any other contractor had not been involved.

SECTION 40 - ASSIGNMENTS

The Contractor shall not assign, transfer, convey, sublet (directly or indirectly), or otherwise dispose of this Contract, of any right, title, or interest in or to the same or any part thereof, or monies due or to become due thereunder, without the previous consent in writing of the Authority. Any such assignment made without such written consent shall be void. Nothing herein contained shall be construed to hinder, prevent or affect an assignment by the Contractor for the benefit of his creditors made pursuant to the laws of the State of New York.

SECTION 41 – SUBCONTRACTS

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- (a) The contractor may not subcontract more than 65% of the work unless otherwise agreed in writing by the Authority.
- (b) The Contractor shall submit to the Authority for its written approval the names of subcontractors for any part of the work together with full information as to their qualifications and ability to perform the work satisfactorily.
- (c) The Contractor shall, upon demand of the Authority, submit to the Authority a copy of each contract made with any subcontractor.
- (d) The Authority and the Contractor are the only parties to this Contract. No subcontract and no approval of any subcontractor shall create or be deemed to create any rights in favor of such subcontractor and against the Authority nor create any contractual relation between any subcontractor or suppliers of material and the Authority. The Contractor shall be as fully responsible to the Authority for the acts or omissions of subcontractors and all persons either directly or indirectly employed by subcontractors, as for the acts and omissions of persons directly employed by him/her.

SECTION 42 – COMPLIANCE WITH LABOR LAWS AND REGULATIONS

The Contractor shall comply with all provisions of the New York State Labor Law and any law, rule or regulation of the federal, state or city governments, or agencies thereof, applicable to employees engaged in the performance of this Contract and their compensation, except as otherwise provided below.

SECTION 43 – PREVAILING WAGE RATES

- (a) The Contractor shall pay to all laborers and mechanics employed in the Work not less than the wages prevailing in the locality of the Project, as predetermined by the Secretary of Labor of the United States pursuant to the federal wage rate requirements set forth at 40 U.S.C. §3141 *et seq.* (formerly known as the Davis-Bacon Act) and other related laws and regulations. Notwithstanding prevailing wage rates and supplemental benefits for trades or occupations stated in the attached schedule, it is the Contractor's responsibility to

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become informed of, and to pay, the appropriate prevailing wages.

(b) With respect to federally-funded contracts, in the event the prevailing wages in effect at the time of the contract award are higher than those stated in the attached schedule, the Contractor shall pay, for the duration of the Contract, the prevailing wage rates and supplemental benefits in effect at the time of the award unless:

1. The contract has been awarded within 90 days after the bid opening date, or
2. No contract has been awarded, but construction has begun within 90 days after the bid opening date, or
3. The United States Department of Labor has issued an extension of the stated wage rates.

(c) The Contractor shall consult with the Authority's Department of Equal Opportunity to determine the applicability of prevailing wage schedules established by the U.S. Department of Housing and Urban Development pursuant to the Housing Act of 1937 (42 U.S.C. §1401 *et seq.*), or by the City Comptroller pursuant to Articles 8 and 9 of the New York State Labor Law and/or Section 6-109 of the New York City Administrative Code. Where the City Comptroller's prevailing wage schedule is applicable to the Contract Work, the Contractor must pay the prevailing wages in effect on the day that the work is actually performed.

(d) Any prevailing wage rate (including basic hourly rate and any fringe benefits) determined under State law to be prevailing with respect to any employee in any trade or position employed under this Contract is inapplicable to this Contract and shall not be enforced by the Authority for employees engaged under this Contract whenever either of the following occurs:

Such non-federal prevailing wage rate exceeds

1. The applicable wage rate determined by the U.S. Secretary of Labor pursuant to the federal wage rate requirements (40 U.S.C. §3141 *et seq.*, formerly known as the Davis-Bacon Act, and other related laws and regulations) to be prevailing in the locality with respect to such trade; or

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2. An applicable apprentice wage rate specified in an apprenticeship program registered with the U.S. Department of Labor or a DOL-recognized State Apprenticeship Agency; or
 3. An applicable trainee wage rate specified in a DOL-certified trainee program; or
 4. Such prevailing wage rate, exclusive of any fringe benefits, exceeds the applicable wage rate determined by the Secretary of HUD to be prevailing in the locality with respect to such trade or position.
- (e) The Contractor shall post at the Work site, in a place that is prominent, accessible and visible to all employees of the Contractor and its subcontractors during the daily time period that the Contractor and/or subcontractor performs work at the site, the poster entitled *Notice to All Employees Working on New York City Housing Authority Contracts*. The Contractor's display location requires the approval of the inspector assigned to the Contract by the Administering Department/Program Unit. The poster, in 11" x 17" format, will be provided by the Authority's Administering Department/Program Unit at the pre-start meeting. The poster also can be obtained at the Maintenance Office in the Development. The Contractor must indicate on the lower half of the poster, using a permanent marker, the Contract number, the name of the Development, the type of work, the name of the Contractor, and the names of subcontractors, if any, working on the site. The Contractor must attach to the bottom of the poster a copy of the appropriate prevailing wage schedule as follows:
1. For a federally-funded construction contract, the Labor Department or HUD-Determined schedule; or
 2. For a state-funded or city-funded contract, the pages of the appropriate prevailing wage schedule covering all titles applicable to the contract.
- (f) The Contractor must inform all employees, including those of its subcontractors, that they may obtain a copy of the prevailing wage schedule from the Contractor. The Contractor

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must provide the appropriate copy within forty-eight hours after any such request.

- (g) ***Contractor Daily Sign-In Sheet.*** The Contractor shall prepare a daily report on the Authority form entitled *Contractor Daily Sign-In Sheet*, copies of which can be obtained at the Pre-Start Meeting or at the Maintenance Office in the Development. The *Contractor Daily Sign-In Sheet*, which consists of an original and two copies, shall be completed in accordance with this provision.

1. At the beginning of each workday, the Contractor shall:
 - a. fill in the top of the *Contractor Daily Sign-In Sheet*, including the location, date, contractor/subcontractor name and contract number;
 - b. ensure that each employee, including those of subcontractors, has printed and signed his or her name and indicated his or her classifications, the last four digits of his or her social security number, and his or her starting time;
 - c. submit the Superintendent's Copy at the development's Maintenance Office within the first hour of work at the site; and
 - d. Ensure that each employee, including those of subcontractors, has signed out and indicated his or her ending time.
2. At the end of each workday, the Contractor shall:
 - a. sign the Certification Statement at the bottom of the form to indicate that the information contained in the *Contractor Daily Sign-In Sheet* is true and accurate;
 - b. submit the original completed form to the development's Maintenance Office for pick-up by the Contract Inspector; and
 - c. Keep the last copy for its records.

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- (h) **Development Log Book.** The Contractor, through a designated supervisor, must record the Contractor's presence and the number of employees present each day in the Development Log, a bound book that is kept in the development's Maintenance Office. The Contractor must ensure that a representative of each subcontractor signs the Development Log.
- (i) Failure by the Contractor to display the prevailing wage poster as required, to provide a copy of the prevailing wage schedule when requested, to prepare and submit the daily report entitled *Contractor Daily Sign-In Sheet*, or to record the information required on a daily basis in the Development Log shall be deemed a violation of prevailing wage law and Contract requirements. Such failure or the repeated violation of these requirements shall constitute a material breach of the Contract that may result in suspension of the Work, or in termination of the Contract for default, and may also result in a finding of non-responsibility with respect to the possible award of any future Authority contracts.
- (j) The Contractor shall make all payroll records that it is required to maintain pursuant to Sections 47(b) and 49(4) of the General Conditions, as amended, available for inspection by authorized representatives of the Authority, including without limitation the Authority's Department of Equal Opportunity, and the Authority's Office of the Inspector General, and shall permit the above to interview employees during working hours on the job.
- (k) If any Contractor or subcontractor finds it necessary or desirable to exceed the prevailing wage rates set forth in this Contract, any expense incurred by the Contractor or subcontractor because of the payment of wages in excess of those set forth in this Contract shall not be considered cause for any increase in the amount payable under this Contract. No right of recovery or claim shall be valid and enforceable against the Authority because of such payments.

Where work of this contract includes abatement of asbestos, the following labor classification shall apply for such work:

- a. For removal of asbestos from mechanical systems -
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- b. For removal of asbestos from walls, ceilings, floors, columns, and all other non-mechanical structures and surfaces - LABORERS: ASBESTOS REMOVAL.
- (1) The classification of Demolition Laborers, Tier A and Tier B shall apply only when laborers are assigned the following tasks:
- 1. TIER A: Responsible for the removal of all interior partitions and structural partitions that can consist of sheet rock, block or masonry. Also, all structural slab openings for ducts, mechanical, shafts, elevators, slab openings and exterior walls where the building is not being completely demolished (sic).
 - 2. TIER B: Responsible for shoveling of debris into containers, pushing containers from the inside to the outside of the building.

Demolition Laborers shall not be used for other contract work duties. Demolition Laborers, Tier B, shall be used only in an approved ratio to Demolition Laborers Tier A.

SECTION 44 – EMPLOYMENT OF APPRENTICES AND TRAINEES

- (a) **Apprentices.** Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in the first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of journeypersons in any craft classification shall not be greater than the ratio permitted to the Contractor's entire work force under the registered program.
- (b) **Trainees.** Trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are

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employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification, by the U.S. Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training. The ratio of trainees to journeypersons shall not be greater than permitted under the plan approved by the Bureau of Apprenticeship and Training.

SECTION 45 – PAYMENT OF WAGES AND OBLIGATIONS

Prompt Payment Required. Every employee of the Contractor or subcontractor shall be paid in full, less deductions made mandatory by law, not less often than once in each week and in lawful money of the United States, or by check if the Contractor provides or secures convenient and satisfactory facilities for the cashing of such checks without cost or expense to the employee, in the full amount accrued to each individual at the time of closing of the payroll, which shall be at the latest date practicable prior to the date of payment.

SECTION 46 – HOURS OF WORK; OVERTIME

- (a) No laborer, worker, or mechanic in the employ of the Contractor, subcontractor, or other person doing or contracting to do the whole or a part of the Work contemplated by the Contract, shall be permitted or required to work more than eight hours in any one calendar day or more than five days in any one week, except in cases of extraordinary emergency including fire, flood, or danger to life or property. The term "extraordinary emergency" as contained herein shall have the meaning set forth in Section 220 of the New York State Labor Law.

- (b) No contractor or subcontractor contracting for any part of the Contract work may require or permit the employment of laborers or mechanics to be employed on such work in excess of eight (8) hours in any calendar day in excess of forty (40) hours in any workweek unless such laborer or mechanic receives compensation at a rate of not less than one and one-half times (1 ½) the basic rate of pay for all hours worked in excess of eight (8) hours in any such calendar day, or in excess of forty (40) hours in any such workweek, as the case may be.

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- (c) **Non-Work Periods.** Unless specifically directed in writing by the Administering Department/Program Unit, the Contractor shall not perform contract work on Authority owned premises as follows:

Saturday, Sunday, New Years Day, Martin Luther King Jr. Day, Lincoln's Birthday, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Election Day, Veterans Day, Thanksgiving Day, Christmas Day, Before 8 a.m. & after 4 p.m. on weekdays.

If a Contractor wishes to obtain a waiver of this provision, a written request must be submitted to the Administering Department/Program Unit for review, not less than forty eight (48) hours before the non-work period. If the Contractor's request is approved, the Administering Department/Program Unit will communicate this fact to the Contractor in writing, as well as the name of the contract inspector who will be assigned to provide inspection services on the days approved.

All costs incurred by the Authority, related to inspection services, shall be charged to the Contractor by the issuance of a credit change order to the Contract.

SECTION 47 – LABOR REPORTS AND PAYROLL RECORDS

- (a) **Statements of Amounts Due.** Before any payments shall be made under this Contract, the Contractor and all subcontractors performing any part of the Work called for by this Contract must file in the office of the Authority a verified statement as required by Section 220-a of the New York Labor Law, verifying the amounts then due and owing from the Contractor and subcontractors filing such statements, to any and all laborers for daily or weekly wages on account of labor performed upon the Work under this Contract.
- (b) **Payroll Records.** The Contractor and every subcontractor shall keep payroll records during the course of the Work and for a period of three years thereafter for all laborers and mechanics employed. Such records shall contain the name and address of each such employee, the employee's correct classification, rate of pay, daily and weekly number of hours worked, deductions made and actual wages paid. The Contractor shall submit weekly to the Authority such copies and summaries

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(on forms furnished by the Authority, USDOL Form WH-347, or equivalent) of all his payrolls and those each of his subcontractors as the Authority may require, together with an affidavit to the effect that such payroll is correct and complete, the wage rates contained therein are not less than those required by the provisions of the Contract Documents and the classifications set forth for each laborer and mechanic conform with the work performed. Such records shall be available for inspection by the Authority, the United States Department of Housing and Urban Development, the United States Department of Labor, the Industrial Commissioner of the State of New York, and the Comptroller of the City of New York and the Contractor shall permit such representatives to interview employees during working hours on the job.

SECTION 48 – CONTRACTOR’S EMPLOYEES; LOCAL EMPLOYMENT

(a) The Contractor shall employ upon all parts of the Work only competent and trustworthy persons, including an expert and reliable supervisor or superintendent. The Contractor shall not employ persons or means which may cause strikes, stoppages, or similar troubles by workers employed either by the Contractor, the subcontractors, or other contractors or their subcontractors, or by other workers whose services affect the progress of the Work.

(b) Resident Employment and Business Opportunity Generally

Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u ("Section 3"), and its implementing regulations, provide certain requirements for contractors to employ low- and very low-income persons and public housing residents and to use business concerns substantially owned by low- and very low-income persons and public housing residents in the performance of work on certain federally assisted Developments as specifically set forth below.

For the purposes of the requirements under Section 3, a contractor means an entity that contracts with the Authority to perform work generated by the expenditure of certain federal funds or for work in connection with a Section 3 Covered Development (as hereinafter defined). In addition, a subcontractor means an entity (other than a person who is an employee of the Contractor) that has a contract with a

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contractor to undertake a portion of the contractor's obligation for the performance of work generated by the expenditure of Section 3 Covered Assistance (as hereinafter defined) or for work in connection with a Section 3 Covered Development (this ordinarily does not include subcontracts for the purchase of supplies or materials, except whenever a subcontract for supplies or materials includes the installation of same). The contractor must comply with, and must cause its subcontractors to comply with, the provisions of the Section 3 Clause (as hereinafter defined) outlined below.

(c) Definitions

As used in the Section 3 Clause and this section, these terms will have the following definitions:

1. **"HUD"** means the United States Department of Housing and Urban Development.
2. **"Resident"** means an individual or individuals who reside in public housing and are listed on a public housing lease.
3. **"Section 3 Business Concern"** means a business concern that meets either one of the following descriptions:
 - a. that is 51% or more owned by Section 3 Residents; or
 - b. whose permanent, full-time employees include persons, at least 30% of whom are currently Section 3 Residents, or who, within three years of the date of first employment with the business concern, were **Section 3 Residents**; or
 - c. That provides evidence of a commitment to subcontract in excess of 25% of the dollar award of all subcontracts to be awarded to business concerns that meet the qualifications set forth in paragraphs (a) and (b) in this definition of **"Section 3 Business Concern."**
4. **"Section 3 Covered Assistance"** means:

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- a. Public and Indian housing development assistance provided under section 5 of the U.S. Housing Act of 1937, as amended (the "1937 Act") [42 U.S.C. 1437(c)];
 - b. Public and Indian housing operating assistance under section 9 of the 1937 Act;
 - c. Public and Indian housing modernization assistance provided under section 14 of the 1937 Act; and
 - d. Assistance provided under any HUD housing or community development program that is expended for work arising in connection with: (i) housing rehabilitation; (ii) housing construction; or (iii) other public construction projects (which include other buildings or improvements, regardless of ownership).
5. **"Section 3 Covered Contract"** means a contract or subcontract (including a professional service contract) awarded by the Authority or a contractor for work generated by the expenditure of Section 3 Covered Assistance or for work arising in connection with a Section 3 Covered Development.
6. **"Section 3 Covered Development"** means the construction, reconstruction, conversion or rehabilitation of housing (including reduction and abatement of lead-based paint hazards), or of other public construction, which includes buildings or improvements (regardless of ownership) assisted with housing or community development assistance.
7. **"Section 3 Resident" means:**
- a. A Resident; or
 - b. An individual who resides in the metropolitan area or Non-metropolitan County in which the Section 3 Covered Assistance is expended and who is:
 - (i) A "Low-Income Person," as this term is defined in section 3(b)(2) of the 1937 Act [42 U.S.C. 1437a(b)(2)]. Section 3(b)(2) of the 1937 Act

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defines this term to mean families (including single persons) whose incomes do not exceed 80 per centum of the median income for the area, as determined by the Secretary of HUD (with adjustments in the income ceilings by the Secretary of HUD from time to time); or

- (ii) A "Very-Low Income Person," as this term is defined in section 3(b)(2) of the 1937 Act [42 U.S.C. 1437a(b)(2)], which defines this term to mean families (including single persons) whose incomes do not exceed 50 per centum of the median family income for the area, as determined by HUD (with adjustments by the Secretary of HUD in the income ceilings from time to time).

(d) The Section 3 Clause

Under 24 Code of Federal Regulations ("CFR") Part 135.38, the contractor is subject to the following Section 3 clause (the "Section 3 Clause"), and the contractor must include this clause in any subcontract with any subcontractor. All Section 3 covered contracts must include the following Section 3 Clause:

1. The work to be performed under this contract is subject to the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u ("Section 3"). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted Developments covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
2. The parties to this contract agree to comply with HUD's regulations in 24 CFR Part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.
3. The contractor agrees to send to each labor organization or representative of workers with which the contractor

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has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this Section 3 Clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

4. The contractor agrees to include this Section 3 Clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, and agrees to take appropriate action such as under subparagraph 6 below, as provided in an applicable provision of the subcontract or in this Section 3 Clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 135.
5. The contractor will certify that any vacant employment positions, including training positions, that are filled (i) after the contractor is selected, but before the contract is executed, and (ii) with persons other than those to whom the regulations of 24 CFR Part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR Part 135.
6. Noncompliance with HUD's regulations in 24 CFR Part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD-assisted contracts.

(e) The "Greatest Extent Feasible" Standard

The contractor may demonstrate compliance with the "greatest extent feasible" requirement of Section 3 by meeting the numerical goals set forth in 24 CFR Part 135, as amended, for

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providing training, employment and contracting opportunities to Section 3 Residents and Section 3 Business Concerns. The numerical goals represent minimum numerical targets.

(f) **Section 3 Affirmative Action Plan**

The contractor must submit, and cause each of its subcontractors to submit, a "Section 3 Affirmative Action Plan" (the "Section 3 AAP") prior to the award of the contract or any subcontract. The provisions of the subcontractor's Section 3 AAP must be consistent with stated objectives of the contractor's Section 3 AAP developed for the contract. The contractor's and each subcontractor's Section 3 AAP must have two parts:

Part I - Opportunities for Employment and Training

Under the contract and for each subcontract, the contractor and each subcontractor must review and may implement any of the various examples contained in the Appendix to 24 CFR Part 135, as amended, in meeting its Section 3 obligations with respect to training and employment opportunities for **Section 3 Residents**. The contractor must include any activities proposed to be undertaken by it or its subcontractor in the contractor's Section 3 AAP, which is subject to review and written approval by the Authority. The Authority may require the contractor, and cause the contractor to require each subcontractor, to undertake any of the activities contained in the Appendix to 24 CFR Part 135, if the Authority determines that the contractor or subcontractor may not otherwise meet the numerical goals set forth in Section 3 or otherwise set forth in this contract. In addition, each contractor and subcontractor must perform the following tasks, without limitation:

1. Identify the number of positions, by trade and skill level, required to plan and implement the work to be done at the housing development;
2. Identify the number of those positions currently filled and the number of those positions that are not filled by regular permanent employees;

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3. Identify the number of positions by trade and skill level that will be targeted to be filled by **Section 3 Residents**;

4. Make a good faith effort to utilize **Section 3 Residents** in filling vacant training and employment positions. In this regard, the Authority has recruited and established lists of applicants for employment, from the residents of the housing development where the work under the contract is being performed and/or from other Authority developments. The successful bidder may utilize such lists in recruiting employees to meet the goals of Section 3. In addition, the successful bidder must take steps at least as extensive as the following:
 - a. Send to each labor organization or representative of workers, which has a collective bargaining agreement or other contract or understanding, a notice advising said labor organization or workers' representative of the contractor's or subcontractor's, as the case may be, commitments under Section 3 and post copies of the notice in conspicuous places available to employees and applicants for employment or training;

 - b. Meet with applicable apprentice program administrators to request their cooperation in identifying and referring unemployed apprentices/trainees who reside in the development or other New York City public housing developments and who otherwise meet the definition of Section 3 Resident;

 - c. Prominently place a notice of training opportunities and eligibility requirements at the development where the work under the contract is being performed, and/or at other New York City public housing developments and/or other places in New York City where applications for training and employment are taken;

 - d. Meet with the resident organization or resident council at the development where the contract work is being performed to inform such resident organization or resident council of applicable

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eligibility requirements for existing or impending training or employment opportunities and to request the cooperation of such resident organization/council in identifying and referring eligible individuals; and

- e. Maintain a list of all Residents who apply on their own or by referral and the ultimate disposition of those applications.
5. The contractor and subcontractors may demonstrate compliance with Section 3 by committing to employ **Section 3 Residents** as:
 - a. 10% of the aggregate number of new hires for the one year period beginning federal fiscal year ("FY") 1995;
 - b. 20% percent of the aggregate number of new hires for the one year period beginning in FY 1996; and
 - c. 30% of the aggregate number of new hires for the one-year period beginning in FY 1997 and continuing thereafter.
 6. The contractor and subcontractors must provide a preference in hiring and in training to **Section 3 Residents** in the following order of priority:
 - a. **Section 3 Residents** of the housing development or developments for which the Section 3 covered assistance is being expended in the performance of the work under the contract (Category 1 Residents).
 - b. **Section 3 Residents** of other Authority housing developments (Category 2 Residents);
 - c. Participants in HUD Youthbuild Programs being carried out in the metropolitan statistical area in which the Section 3 Covered Assistance is being expended (Category 3 Residents); and
 - d. Other low-income and very-low income persons who are not Residents of public housing, but who reside in

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the metropolitan area or Non-metropolitan County in which Section 3 Covered Assistance is being expended (Category 4 Residents).

7. The contractor or subcontractor may not circumvent the numerical goals for employing and training new hires of **Section 3 Residents** by filling any vacant employment or training positions generated by the contract or subcontract after the proposed contractor or subcontractor is selected, but before the contract or subcontract is executed.

Part II - Plan to Utilize Section 3 Business Concerns:

For the contract and for each subcontract, the contractor and each subcontractor must review and may implement any of the various examples contained in the Appendix to 24 CFR Part 135, as amended, in meeting their Section 3 obligations with respect to utilizing **Section 3 Business Concerns**. The contractor must include any activities proposed to be undertaken by the contractor and its subcontractor in the contractor's Section 3 AAP, which is subject to review and written approval by the Authority. The Authority may require that the contractor undertake, and that the contractor cause its subcontractors to undertake, any of the activities contained in the Appendix to 24 CFR Part 135, as amended, if the Authority determines that the contractor or subcontractor may not otherwise meet the numerical goals set forth in Section 3. With respect to Section 3, the contractor and subcontractor must do the following specific tasks:

1. Identify the approximate number and dollar value of subcontracts to be awarded over the duration of the contract or subcontract. This estimate should be broken down by type of business or profession; and
2. Specify a target number and value of subcontracts to be awarded to **Section 3 Business Concerns** based on an analysis of the estimated contract needs. These targets should consider the availability of **Section 3 Business Concerns** within the categories identified in the initial estimate of contract needs.

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3. Take specific steps to ensure that **Section 3 Business Concerns** are notified of pending contractual opportunities; and
4. Outline a strategy for achieving the targets established for awards to **Section 3 Business Concerns**.
5. The Contractor and each subcontractor may demonstrate compliance with Section 3 by committing to award to **Section 3 Business Concerns**:
 - a. At least 10% of the total dollar amount of all Section 3 covered contracts for building trades' work for maintenance, repair, modernization or development of public housing, or for building trades' work arising in connection with housing rehabilitation, housing construction and other public construction; and
 - b. At least 3% of the total dollar amount of all other Section 3 Covered Contracts.
6. The contractor and each subcontractor must direct their efforts to award Section 3 Covered Contracts, to the greatest extent feasible, to **Section 3 Business Concerns** in the following order of priority:
 - a. Business concerns that are 51% or more owned by residents of the housing development or developments for which the Section 3 Covered Assistance is expended, or whose full-time, permanent workforce includes at least 30% of these persons as employees (Category 1 Businesses);
 - b. Business concerns that are 51% or more owned by residents of other housing developments or developments managed by the public housing authority that is expending the Section 3 Covered Assistance, or whose full-time, permanent workforce includes at least 30% of these persons as employees (Category 2 Businesses);
 - c. HUD Youthbuild programs being carried out in the metropolitan area (or non-metropolitan county) in

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which the Section 3 Covered Assistance is expended (Category 3 Businesses); and

- d. Business concerns that are 51% or more owned by **Section 3 Residents**, or whose permanent, full-time workforce includes at least 30% of **Section 3 Residents** (Category 4 Businesses), or that subcontract in excess of 25% of the total amount of subcontracts to business concerns identified in subparagraphs 6(a) and 6(b) above (also Category 4 Businesses).

(g) **Coordination of Equal Opportunity Regulations Implementing Section 3 and Authority Policy Regarding Minority, Women and Small Business Enterprises**

In addition to the Contractor's and subcontractor's obligations with respect to **Section 3 Business Concerns**, the Authority has a policy to ensure that all business entities have an equal opportunity to benefit from participation in Authority procurement, consulting and construction activities. When issuing solicitations for subcontractors, the Contractor shall take affirmative steps to include minority- and women-owned business enterprises. The Contractor will, in all solicitations or advertisements for bids for subcontractors placed by, or on behalf of the Contractor, state that all qualified applicants will receive consideration for subcontracts without regard to race, color, religion, sex, national origin, disability, age, handicap, marital status or military service.

As used in this Section (g), these terms have the following definitions:

1. **Minority Business Enterprise ("MBE")** means a business that is at least 51% owned by one or more minority group members; or, in the case of a publicly-owned business, one in which at least 51% of its voting stock is owned by one or more minority group members, and whose management and daily business operations are controlled by one or more such individuals. For this purpose, minority group members include (a) Black persons having origins in any of the Black African racial groups; (b) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or

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South American descent of either Indian or Hispanic origin, regardless of race; (c) Native American or Alaskan native persons having origins in any of the original peoples of North American; (d) Asian and Pacific Islander persons having origins in any of the Far East countries, South East Asia, the Indian subcontinent or the Pacific Islands; and (e) those groups of United States citizens or resident legal aliens designated by the Small Business Administration or any group designated in regulations developed by the Secretary of HUD.

2. **Women Business Enterprise ("WBE")** means a business that is at least 51% owned by one or more women who are United States citizens or resident legal aliens; or, in the case of publicly owned businesses, one in which at least 51% of the stock is owned by one or more women who are United States citizens or resident legal aliens and whose management and daily operations of the business are controlled by one or more such women.
3. **Small Business Enterprise ("SBE")** means a business that is owned by one or more persons who are United States citizens or resident legal aliens, with a place of business located in the United States, operates primarily within the United States and is sized consistently with the requirements set forth in 13 CFR Section 121.201, which defines size standards for small businesses, based on either annual receipts or the number of employees.

SECTION 48A – RESIDENT EMPLOYMENT REQUIREMENTS FOR SECTION 3 COVERED CONTRACTS IN EXCESS OF \$500,000

- (a) Where the Total Value of a Section 3 Covered Contract exceeds \$500,000, in addition to the requirements of Section 48, set forth above, the Contractor shall, and is hereby required to, expend not less than 15 percent of the total labor cost (including fringe benefits) component of the Total Contract Value of the work in accordance with the following hiring priority: first, to unemployed legal residents of the Authority development where the Contract is to be performed; second to unemployed legal Authority residents who are participating in Authority-sponsored or Authority-supported training and/or apprenticeship programs, or who have already had relevant training for the position(s) sought to be filled

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by the contractor in compliance with this resident employment requirement; third to unemployed legal residents of the neighboring Authority developments within the same New York City borough where this contract is to be performed; and forth to unemployed legal residents of Authority developments within any other New York City borough.

- (b) The Contractor's noncompliance with the provisions of Section 48A (a) shall constitute a breach of this Contract and may result in sanctions, default, and/or a finding of non-responsibility with respect to future contracts with the Authority.

SECTION 49 – LABOR STANDARDS PROVISIONS – APPLICABLE TO FEDERALLY FUNDED CONTRACTS

The following Labor Standards Provisions are applicable to federally-funded contracts and shall be deemed to supplement and not to supersede any other provisions in this Contract:

- (1) **FEDERAL WAGE RATE REQUIREMENTS (40 U.S.C. 3141 *et seq.*, formerly, the Davis-Bacon Act)**
- a. All mechanics and laborers, including apprentices and trainees, employed or working directly upon the site of the work shall be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by the Copeland Regulations, 29 CFR Part 3), the full amounts due at time of payment computed at wage rates not less than the aggregate of the basic hourly rates and the rates of payments, contributions, or costs for any fringe benefits contained in the wage determination decision of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist

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between the Contractor or subcontractor and such laborers and mechanics. A copy of such wage determination decision shall be kept posted by the Contractor at the site of the work in a prominent place where it can be easily seen by the workers.

- b. The Contractor may discharge his/her obligation under this clause to workers in any classification for which the wage determination decision contains:
 1. Only a basic hourly rate of pay, by making payment at not less than such basic hourly rate, except as otherwise provided in the Copeland Regulations (29 CFR Part 3); or
 2. Both a basic hourly rate of pay and fringe benefits payments, by making payment in cash, by irrevocably making contributions pursuant to a fund, plan, or program for, and/or by assuming an enforceable commitment to bear the cost of, bona fide fringe benefits described in 40 U.S.C. 3141(2)(B), or by any combination thereof. Contributions made, or cost assumed, on other than a weekly basis shall be considered as having been constructively made or assumed during a weekly period to the extent that they apply to such period. Where a fringe benefit is expressed in a wage determination in any manner other than as an hourly rate and the Contractor pays a cash equivalent or provides an alternative fringe benefit, he shall furnish information with his payrolls showing how he determined that the cost incurred to make the cash payment or to provide the alternative fringe benefit is equal to the cost of the wage determination fringe benefit. In any case where the Contractor provides a fringe benefit different from any contained in the wage determination, he shall similarly show how he arrived at the hourly rate shown therefor. In the event of disagreement between or among the interested parties as to an equivalent of any fringe benefit, the Contracting Officer shall submit the question, together with his recommendation, to the Secretary of Labor for final determination.

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- c. The assumption of an enforceable commitment to bear the cost of fringe benefits not expressly listed at 40 U.S.C. 3141(2)(B) or in the wage determination decision forming a part of the contract, may be considered as payment of wages only with the approval of the Secretary of Labor pursuant to a written request by the Contractor. The Secretary of Labor may require the Contractor to set aside assets, in a separate account, to meet his obligations under any unfunded plan or program.

- d. The Contracting Officer shall require that any class of laborers or mechanics, including apprentices and trainees, which is not listed in the wage determination decision and which is to be employed under the contract shall be classified or reclassified conformably to the wage determination decision, and shall report the action taken to the Secretary of Labor. If the interested parties cannot agree on the proper classification or reclassification of a particular class of laborers or mechanics to be used, the Contracting Officer shall submit the question, together with his/her recommendation, to the Secretary of Labor for final determination. Apprentices and trainees may be added under this clause only where they are employed pursuant to an apprenticeship or trainee program meeting the requirements of the Apprentices and Trainees clause below.

- e. In the event it is found by the Contracting Officer that any laborer or mechanic, including apprentices and trainees, employed by the Contractor or any subcontractor directly on the site of the work covered by this contract has been or is being paid at a rate of wages less than the rate of wages required by paragraph (a) of this clause, the Contracting Officer may (1) by written notice to the Government Prime Contractor terminate his right to proceed with the work, or such part of the work as to which there has been a failure to pay said required wages, and (2) prosecute the work to completion by contract or otherwise, whereupon such Contractor and subcontractor and his/her sureties shall be liable to the Government for any excess costs occasioned the Government thereby.

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- f. Paragraphs (a) through (e) of the clause shall apply to this contract to the extent that it is (1) a prime contract with the Government subject to the federal wage rate requirements set forth at 40 U.S.C. 3141 *et seq.* (formerly known as the Davis-Bacon Act), or (2) a subcontract also subject to the federal wage rate requirements under such prime contract.

**(2) CONTRACT WORK HOURS AND SAFETY STANDARDS - OVERTIME
COMPENSATION (40 U.S.C. 3701-3708).**

This contract is subject to the federal contract work hours and safety standards requirements set forth at 40 U.S.C. 3701 *et seq.*, and in the applicable rules, regulations, and interpretations of the Secretary of Labor.

- a. The Contractor shall not require or permit any laborer or mechanic, including apprentices, trainees, watchmen, and guards, in any workweek in which (s)he is employed on any work under this contract to work in excess of 8 hours in any calendar day or in excess of 40 hours in such workweek on work subject to the provisions of 40 U.S.C. 3701 *et seq.* unless such laborer or mechanic, including apprentices, trainees, watchmen and guards, receives compensation at a rate not less than 1 1/2 times his/her basic rate of pay for all such hours worked in excess of 8 hours in any calendar day or in excess of 40 hours in such workweek, whichever is the greater number of overtime hours. The "basic rate of pay," as used in this clause, shall be the amount paid per hour exclusive of the of the Contractor's contribution or cost or fringe benefits, and any cash payment made in lieu of providing fringe benefits, or the basic hourly rate contained in the wage determination, whichever is greater.

- b. In the event of any violation of the provisions of paragraph (a), the Contractor shall be liable to any affected employee for any amounts due, and to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including an apprentice, trainee, watchman,

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or guard, employed in violation of the provisions of paragraph (a) in the sum of \$10 for each calendar day on which such employee was required or permitted to be employed on such work in excess of 8 hours or in excess of the standard workweek of 40 hours without payment of the overtime wages required by paragraph (a).

(3) APPRENTICES AND TRAINEES

- a. Apprentices shall be permitted to work as such only when they are registered, individually, under a bona fide apprenticeship program registered with a State apprenticeship agency which is recognized by the Bureau of Apprenticeship and Training, U.S. Department of Labor; or if no such recognized agency exists in a State, under a program registered with the aforesaid Bureau of Apprenticeship and Training. The allowable ratio of apprentices to journeypersons in any craft classification shall not be greater than the ratio permitted to the Contractor as to his entire work force under the registered program. Any employee listed on a payroll at an apprentice wage rate who is not a trainee as defined in paragraph (b) of this clause, and who is not registered above, shall be paid the wage rate determined by the Secretary of Labor for the classification of work (s)he actually performed.

The Contractor shall furnish to the Contracting Officer written evidence of the registration of his/her program and apprentices as well as of the appropriate ratios allowed and the wage rates required to be paid thereunder for the area of construction, prior to using any apprentices in the contract work. The term "apprentice" means (1) a person employed and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Bureau of Apprenticeship and Training, or with a State apprenticeship agency recognized by the Bureau, or (2) a person in his first 90 days of probationary employment as an apprentice in such an apprenticeship program who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training, or a State Apprenticeship Council (where appropriate) to be eligible for probationary employment as an apprentice.

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1. The Contractor is advised that (s)he is required to submit to the Administering Department/Program Unit, a certification from the N.Y. State Department of Labor that each apprentice employed on this contract is registered in a bona fide apprenticeship program in accordance with the provisions of Subparagraph (a) of this Paragraph 3.

- b. Trainees shall be permitted to work as such when they are bona fide trainees employed pursuant to a program approved by the U.S. Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training. The term "trainee" means a person receiving on-the-job training in a construction occupation under a program which is approved (but not necessarily sponsored) by the U.S. Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training, and which is reviewed from time to time by the Manpower Administration to insure that the training meets adequate standards.

- c. In connection with contracts in excess of \$10,000, the Contractor agrees as follows:
 1. The Contractor shall make a diligent effort to hire for performance of work under this contract a number of apprentices or trainees, or both, in each occupation, which bears to the average number of the journeypersons in that occupation to be employed in the performance of the Contract the applicable ratio as set forth in paragraph (c) (7) of this clause.

 2. The Contractor shall insure that twenty-five (25%) of such apprentices or trainees in each occupation are in their first year of training, where feasible. Feasibility here involves a consideration of (i) the availability of training opportunities for first year apprentices, (ii) the hazardous nature of the work for beginning workers, and (iii) excessive unemployment of apprentices in their second and subsequent years of training.

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3. The Contractor shall, during the performance of the Contract, to the greatest extent possible, employ the number of apprentices or trainees necessary to meet currently the requirements of paragraph (c)(1) and (c)(2) of this clause.
4. The Contractor shall maintain records of employment on this contract by trade of the number of apprentices and trainees, apprentices and trainees in first year of training, and of journeypersons. In addition, the Contractor who claims compliance based on the criterion set forth in paragraph (c)(6)(ii) of this clause shall maintain such records of employment on all his construction work in the same labor market area, both public and private, during the performance of this contract. In each of the above cases, the Contractor shall make such records available for inspection upon request of the Department of Labor or the Contracting Officer.
5. The Contractor shall supply one copy of each of the written notices required in accordance with paragraph (c)(6)(iii) of this clause at the request of the Contracting Officer. The Contractor also agrees to supply at 3-month intervals during the performance of the Contract and after completion of contract performance a statement describing steps taken toward making a diligent effort and containing a breakdown by craft, of hours worked and wages paid for first year apprentices and trainees, and journeypersons. One copy of the statement will be sent to the Contracting Officer and one copy to the Secretary of Labor.
6. The Contractor will be deemed to have made a "diligent effort" as required by paragraph (c)(1) if during the performance of this contract, he accomplishes at least one of the following three objectives; (i) the Contractor employs under this contract a number of apprentices and trainees by craft, at least equal to the ratios established in accordance with paragraph (c)(7) of this clause, or (ii) the Contractor employs, on all his construction work both public and private in the same labor market area, an average number of apprentices and

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trainees by craft at least equal to the ratios established in accordance with paragraph (c) (7) of this clause, or (iii) the Contractor (A) if covered by a collective bargaining agreement, before commencement of any work on the project, has given written notice to all joint apprenticeship committees, the local U.S. Employment Security Office, local chapter of the Urban League, Workers Defense League, or other local organizations concerned with minority employment, and the Bureau of Apprenticeship and Training Representative, U.S. Department of Labor, for the locality of the work; B) if not covered by a collective bargaining agreement, has given written notice to all of the groups stated above, except joint apprenticeship Committees, and will in addition notify all non-joint apprenticeship sponsors in the labor market area; (C) has employed all qualified applicants referred to him through normal channels (such as the Employment Service, the Joint Apprenticeship Committees and where applicable, minority organizations and apprentice outreach programs who have been delegated this function) at least up to the number of such apprentices and trainees required by paragraph (c)(7) of this clause. The notice, as referred to herein, will include at least the Contractor's name and address, the agency designation, the contract number, job site address, value of the contract, expected starting and completion dates, the estimated average number of employees in each occupation to be employed over the duration of the contract work, and a statement of his willingness to employ a number of apprentices and trainees at least equal to the ratios established in accordance with paragraph (c)(7) of this clause.

7. The Contractor recognizes that the Secretary of Labor has determined that the applicable ratios of apprentices and trainees to journeymen in any occupation for the purpose of this clause shall be as follows: (i) In any occupation the applicable ratio of apprentices and trainees to journeypersons shall be equal to the predominant ratio for the

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occupation in the area where the construction is being undertaken, set forth in collective bargaining agreements, or other employments, and available through the Bureau of Apprenticeship and Training Representative, U.S. Department of Labor, for the applicable area; (ii) for any occupation for which no ratio is found, the ratio of apprentices and trainees to journeypersons shall be determined by the Contractor in accordance with the recommendations set forth in the Standards of the National Joint Apprentice Committee for the occupation, which are on file at offices of the U.S. Department of Labor's Bureau of Apprenticeship and Training; and (iii) for any occupation for which no such recommendations are found, the ratio of apprentices and trainees to journeypersons shall be at least one apprentice or trainee for every five journeypersons.

(4) PAYROLLS AND BASIC RECORDS

- a. The Contractor shall maintain payrolls and basic records relating thereto during the course of the Work and shall preserve them for a period of 3 years thereafter for all laborers and mechanics, including apprentices, trainees, watchers, and guards working at the site of the work. Such records shall contain the name and address of each such employee, his/her correct classification, rate of pay (including rates of contributions for, or costs assumed to provide fringe benefits), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Contractor has obtained approval from the Secretary of Labor in accordance with sub-paragraph 1.(c) of this Section 49 of the General Conditions, he shall maintain records which show the commitment, its approval, written communication of the plan or program to the laborers or mechanics affected, and the costs anticipated or incurred under the plan or program.
- b. The Contractor shall submit weekly a copy of all payrolls to the Contracting Officer. The Government Prime Contractor shall be responsible for the submission of copies of payrolls of all subcontractors. The copy shall

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be accompanied by a statement signed by the Contractor indicating that the payrolls are correct and complete, that the wage rates contained therein are not less than those determined by the Secretary of Labor, and that the classification set forth for each laborer or mechanic, including apprentices and trainees, conform with the work performed. Submission of the "Weekly Statement of Compliance" required under this contract and the Copeland Regulations of the Secretary of Labor (29 CFR Part 3) shall satisfy the requirement for submission of the above statement. The Contractor shall submit also a copy of any approval by the Secretary of Labor with respect to fringe benefits required by sub-paragraph 1. (c) of this Section 49 of the General Conditions.

- c. The Contractor shall make the records required under this clause available for inspection by authorized representatives of the Contracting Officer and the Department of Labor, and shall permit representatives to interview employees during working hours on the job.

(5) COMPLIANCE WITH COPELAND REGULATIONS

The Contractor shall comply with the Copeland Regulations of the Secretary of Labor (29 CFR Part 3) which are incorporated herein by reference.

(6) WITHHOLDING OF FUNDS

- a. The Contracting Officer may withhold or cause to be withheld from the Government Prime Contractor so much of the accrued payments or advances as may be considered necessary (1) to pay laborers and mechanics, including apprentices, trainees, watchers, and guards employed by the Contractor or any subcontractor on the Work the full amount of wages required by the Contract, and (2) to satisfy any liability of any Contractor and subcontractor for liquidated damages under paragraph (b) of the clause entitled "Contract Work Hours and Safety Standards - Overtime Compensation."
- b. If any Contractor or subcontractor fails to pay any laborer, mechanic, apprentice, trainee, watchman, or

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guard employed or working on the site of work, all or part of the wages required by the Contract, the Contracting Officer may, after written notice to the Government Prime Contractor, take such actions as may be necessary to cause suspension of any further payments or advances until such violations have ceased.

(7) SUBCONTRACTS

The Contractor agrees to insert the clauses hereof entitled "Federal Wage Rate Requirements," "Contract Work Hours and Safety Standards - Overtime Compensation," "Apprentices and Trainees," "Payrolls and Basic Records," "Compliance with Copeland Regulations," "Withholding of Funds," "Subcontracts," and "Contract Termination-Debarment," in all subcontracts. The term "Contractor" as used in such clauses in any subcontract shall be deemed to refer to the subcontractor except in the phrase "Government Prime Contractor."

(8) CONTRACT TERMINATION-DEBARMENT

A breach of the clauses hereof entitled "Federal Wage Rate Requirements," "Contract Work Hours and Safety Standards - Overtime Compensation," "Apprentices and Trainees," "Payrolls and Basic Records," "Compliance with Copeland Regulations," "Withholding of Funds," and "Subcontracts" may be grounds for termination of the Contract, and for debarment as provided in 29 CFR Part 5.

(9) DISPUTES CONCERNING LABOR STANDARDS

Disputes arising out of the labor standards provisions of this contract shall be subject to the Disputes clause except to the extent such disputes involve the meaning of classifications or wages rates contained in the wage determination decision of the Secretary of Labor or the applicability of the labor provisions of this contract which questions shall be referred to the Secretary of Labor in accordance with the procedures of the Department of Labor.

SECTION 50 – NON DISCRIMINATION – EQUAL OPPORTUNITY

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(a) In the hiring of employees for the performance of Work under this Contract or any subcontract hereunder, no Contractor, subcontractor, nor any person acting on behalf of such Contractor or subcontractor, shall by reason of age, race, creed, color, sex or national origin discriminate against or intimidate any person who is qualified and available to perform the work to which the employment relates. There shall be deducted from the amount payable to the Contractor by the Authority under this Contract a penalty of five dollars for each person for each calendar day during which such person was discriminated against or intimidated in violation of these provisions. This Contract may be cancelled or terminated by the Authority and all monies due hereunder may be forfeited, for a second or any subsequent violation of the terms or conditions of this Section.

(b) EQUAL OPPORTUNITY COMMITMENTS

1. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age, handicap, marital status or military service. The Contractor will undertake programs of affirmative action to ensure that applicants and employees are afforded equal employment opportunities without discrimination. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rate of pay or other forms compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to this Equal Opportunity clause.
2. The Contractor will, in all solicitations or advertisement for employees placed by on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, disability, age, handicap, marital status or military service.
3. The Contractor will send to each labor union or representative of workers with which the Contractor has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said

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labor union or worker's representatives of the Contractor's commitments under this Equal Opportunity clause, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

4. The Contractor will comply with all provisions of Presidential Executive Order 11246, as amended, and all other Federal, State and City laws and Executive Orders relating to Equal Opportunity and with all the rules, regulations and relevant orders issued in relation to the fulfillment of said laws and Executive Orders.
5. The Contractor will furnish all information and reports required by the New York City Housing Authority pursuant to Presidential Executive Order 11246, as amended, and in compliance with Federal, State and City rules, regulations, and laws and Executive Orders related to Equal Opportunity and will permit access to books, records and accounts by the New York City Housing Authority or other government agencies for the purposes of investigation to ascertain the Contractor's compliance with such laws and Executive Orders.
6. In the event of the Contractor's non-compliance with the Equal Opportunity provisions of the Contract or with any of the Federal, State or City rules, regulations, laws and Executive Orders related to Equal Opportunity, this Contract may be cancelled, terminated or suspended in whole or in part and the Contractor may be declared ineligible for further Governmental contracts in accordance with procedures authorized in presidential Executive Order 11246, as amended, and such other sanctions may be imposed and remedies invoked as provided in State or City rules, regulations, laws and Orders.
7. The Contractor will include the portion of the sentences immediately preceding Paragraph (1) and the provisions of Paragraphs (1) through (7) in every subcontract of \$10,000 or more and in all Purchase Orders so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the New York City Housing Authority may direct as a means of enforcing the Equal Opportunity provisions, including

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sanctions for non-compliance; provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the New York City Housing Authority, the Contractor may request the United States, New York State or New York City to enter into such litigation to protect the interests of the respective levels of governments.

8. The provisions of this section are supplementary to, and not in lieu of, or in substitution for, the provisions of the New York State Labor Law relating to non-discrimination, and other applicable Federal, State or City laws, ordinances, rules, regulations and Executive Orders.

SECTION 51 – FINAL INSPECTION

When the Work is practically completed, the Contractor shall notify the Authority in writing that the Work will be ready for final inspection on a definite date which shall be stated in such notice. Such notice shall be given at least ten (10) days prior to the date stated for final inspection.

SECTION 52 – CERTIFICATE OF FINAL ACCEPTANCE

- (a) After completion and inspection of all the Work the Authority will issue a Certificate of Final Acceptance which shall be filed in the office of the Authority. A copy thereof shall, upon such filing, be forwarded by the Authority to the Contractor.
- (b) The Certificate of Final Acceptance may set forth minor items of uncompleted work not preventing the Authority from making use of the Work or of the premises wherein the Work is performed; however, notwithstanding any other provision of the Contract, final payment shall not be due until all of the Work has been completed by the Contractor.
- (c) If the Contractor unduly delays in the completion of the uncompleted work the Authority, at its option, after notice to the Contractor, may terminate the Contract and deduct from the

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Contract Price the value of the uncompleted work and any other cost and expense incurred, remitting to the Contractor, as and for Final Payment, any monies otherwise due the Contractor.

- (d) Except through fault of the Contractor, loss or damage to the Work shall not be the Contractor's responsibility after issuance of the Certificate of Final Acceptance.

SECTION 53 – CONTRACTOR’S GUARANTEES

The Contractor hereby guarantees that upon completion of the Work all portions thereof will be in accordance with the Contract and will be perfect as to materials and workmanship, and will so remain for a period of one year except that in respect to items of uncompleted Work referred to in the preceding Section, such period shall commence on the date of their completion. Such period shall commence with the date of issuance of the Certificate of Final Acceptance. The Contractor further guarantees that during the period of the guarantee all defects to the Work and all damage caused to property of the Authority by such defects or by the work required to remedy such defects will be made good at the Contractor's expense. Upon demand, the Contractor shall furnish instruments separately evidencing the guarantees covered by the Contract.

SECTION 54 – CLEANING UP

Upon completion of the work, the Contractor shall leave the work and the premises in a clean, neat and perfect condition, satisfactory to the Authority.

SECTION 55 – LIMITATION OF ACTION OR SPECIAL PROCEEDINGS – WAIVER OF JURY – CHOICE OF LAW AND CHOICE OF FORUM

- (a) Notwithstanding any other provisions of the Contract, no action or special proceeding shall lie or be maintained by the Contractor, his assignees, successors in interest, or anyone claiming under him, against the Authority upon any claim arising out of or based upon the Contract, or by reason of any act, omission or requirement of the Authority, unless such action or special proceeding shall be commenced within one (1)

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year after the date of issuance of the Certificate of Final Acceptance, regardless of the completion of items of uncompleted work set forth therein, or upon any claim based upon monies to be retained for any period after the filing of such Certificate of Final Acceptance, unless such action or special proceeding is commenced within one (1) year after such monies become due and payable under the terms of the Contract, or, if the Contract is terminated, rescinded, revoked, annulled, or abandoned under the terms hereof, unless such action or special proceeding is commenced within one (1) year after the date of termination, rescission, revocation, annulment, or abandonment.

The Contractor, his/her assignees, successors in interest, or anyone claiming under him/her shall not be entitled to any additional time to begin anew any other action or special proceeding, if an action or special proceeding commenced within the times herein specified be dismissed or discontinued, notwithstanding any provisions in the Civil Practice Law and Rules to the contrary.

- (b)** It is mutually agreed by and between the Authority and the Contractor, his/her assignees, successors in interest or anyone claiming under him/her against the Authority upon any claim or upon any matter whatsoever arising out of, under or based upon the Contract, that the respective parties hereto shall, and they hereby do, waive trial by jury in any action, counterclaim or third party action, brought by either of the parties against the other, on any claim and upon any matter whatsoever out of, under, based upon or in any way connected with the Contract, excepting, however, from the foregoing, any action brought to recover, or based upon a claim for damages for personal injuries or death.
- (c)** The Contract and performance of it are governed by and are to be construed in accordance with the laws of the State of New York, excluding New York's rules regarding conflicts of laws. Any and all proceedings relating to the subject matter of the Contract must be maintained in the state courts sitting in the City and County of New York, which courts have exclusive jurisdiction for such purpose. The parties hereby consent to submit themselves to the jurisdiction of such courts with respect to any proceedings arising out of, under or related to the Contract.

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SECTION 56 – CONTRACTOR’S WARRANTIES

The Contractor represents and warrants:

- (a) That no member of the City Council, head of a department, chief of a bureau, deputy thereof, or clerk therein, or any other officer or employee of the City of New York or of the New York City Housing Authority is, shall be or become interested, directly or indirectly, as contracting party, partner, stockholder, surety or otherwise, in this Contract, or in the performance thereof, or in any portion of the profits thereof.
- (b) That no member of or delegate to the Congress of the United States of America or Resident Commissioner shall be admitted to any share or part of this Contract or to any benefit to arise therefrom; provided, that this provision shall not be construed to extend to this Contract if made with a corporation for its general benefit.
- (c) That the Contractor holds a license, permit, or other special license, to perform the services included in this Contract, as may be required by the Administrative Code of the City of New York, or employs or works under the general supervision of the holder of such license, permit or special license.
- (d) The Contractor warrants good title to all materials, supplies, and equipment installed or incorporated in the Work, and agrees, upon the completion of all Work, to deliver the possession of the premises, together with all improvements thereon, to the Authority free from any claims, liens or charges.

SECTION 57 – NON-LIABILITY OF THE MEMBERS OF THE AUTHORITY AND OTHERS

Neither the members of the Authority nor any officer, agent or employee thereof shall be charged personally by the Contractor with any liability, or held liable to the Contractor under any term or provision of the Contract, or because of its execution or attempted execution, or because of any breach thereof.

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SECTION 58 – MODIFICATION OF CONTRACT

No modification of, or change in the Contract shall be valid or enforceable against the Authority unless it is in writing and signed by the Authority.

SECTION 59 – COMMUNICATIONS

- (a) To be in writing. All notices, demands, requests, instructions, approvals, claims and orders between the Authority and the Contractor must be in writing.
- (b) Delivery to Contractor. Any notice or demand upon the Contractor shall be sufficiently given if delivered at the office of the Contractor specified in the Form of Proposal (or at such other office as the Contractor may from time to time designate to the Authority in writing), or deposited in a sealed postpaid wrapper in any post office box regularly maintained by the United States Government, or delivered with charges prepaid to any telegraph company for transmission, in each case addressed to such office, or if delivered to the superintendent of the Contractor.
- (c) Delivery to Authority. All papers to be delivered to the Authority shall be delivered to it at its principal office in New York City, and any notice to and demand upon the Authority shall be sufficiently given if delivered to the office of the Authority in the City of New York, or transmitted to the Authority by registered United States mail in a sealed postpaid wrapper, or delivered with charges prepaid to any telegraph company for transmission.

SECTION 60 – PROVISIONS OF LAW DEEMED INSERTED

Each and every provision of law and clause required by law to be inserted in the Contract shall be deemed to be inserted herein and the Contract shall be read and enforced as though it were included herein.

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SECTION 61 – CANCELLATION AND DISQUALIFICATION FOR FAILURE TO WAIVE IMMUNITY

Upon the refusal of a person, when called before a grand jury, governmental department, commission, agency or any other body which is empowered to compel the attendance of witnesses and examine them under oath, to testify concerning a transaction, contract, lease, permit or license entered into with the State, or any political subdivision thereof, or of any public authority or of a municipal housing authority or sub-contract thereunder or a public authority or with any public department, agency or official of the State or a political subdivision thereof, and such refusal to testify is for reason other than the assertion of his or her privilege against self-incrimination, upon being advised that neither his or her statement nor any information from such statement will be used against that person in any subsequent criminal proceeding;

- (a) Such person, or any firm, partnership, corporation or other entity related to the aforesaid testimony of which he or she was at the time of the testimony a member, partner, director, officer, fiduciary, principal or employee may be disqualified for a period not to exceed five years after such refusal from submitting bids for or entering into or obtaining any contract, lease, permit or license with or from the Authority or submitting bids for or entering into or obtaining any contract, lease, permit or license which will be paid in whole or in part out of monies under the control of or collected by the Authority, and
- (b) Any and all such existing Authority contracts, leases, permits or licenses that said refusal to testify concerned may be cancelled or terminated by the Authority and/or be subject to such other action appropriate under the circumstances thereto, in the discretion of the Authority for cause after a hearing, without the Authority incurring any penalty or damages on account of such cancellation or termination, but any monies owing for goods delivered, work done, rentals, permit or license fees due, prior to the cancellation or termination, shall be paid by the Authority.
- (c) The term license or permit as used herein shall be defined as a license, permit, franchise or concession not granted as a matter of right.

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- (d) Any disqualification, cancellation of termination hereunder shall be made after a hearing upon notice to the parties involved.

SECTION 62 – NO ESTOPPEL OR WAIVER

- (a) The Authority shall not be precluded or estopped by any acceptance, certificate or payment, final or otherwise, made by any of its officers, agents or employees, from showing the true amount and character of the work performed or that such acceptance, certificate or payment is incorrect or improperly made, and to recover on such account any monies paid in excess of those the Contractor is entitled to or any damages it may have sustained by reason of the Contractor's failure to comply with the Contract.
- (b) No act done or permitted to be done by any member, officer, agent or employee of the Authority at any time shall be deemed to be a waiver of any provision of the Contract, excepting only a resolution of the members of the Authority providing expressly for such waiver.

SECTION 63 – CHANGED CIRCUMSTANCES

If, at any time after the execution of the Agreement, the Authority is informed of "Changed Circumstances" (as hereinafter defined) with regard to the Contractor that the Authority, in its sole discretion, determines to be contrary to its best interest, the Authority in its sole discretion, may terminate the Agreement upon one day's prior written notice to the Contractor. As used herein, the term "Changed Circumstances" shall mean:

- (1) The initiation of any type of investigation by any federal, state or local governmental department, agency, authority or other instrumentality, or any federal, state or local prosecutor's office, into any activity or operation of the Contractor or any director, officer or principal shareholder or
- (2) The return of any federal or state grand jury indictment against the Contractor or any director, officer or principal shareholder.

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In the event of any termination under this clause, the Contractor shall be entitled to payment as provided under the clause entitled "Termination for Convenience", except that the Authority shall have the right to part or all of any profit that would otherwise be payable under such clause in the event the indictment pertains in whole or in part to the solicitation, award or performance of this Agreement.

SECTION 64 – TERMINATION FOR CONVENIENCE

The Authority may, for any reason, terminate this Agreement upon ten (10) days prior written notice to the Contractor. In the event of such termination, the Authority shall, within thirty (30) days after receipt of the Contractor's invoice and all supporting documentation reasonably required by the Authority; pay the Contractor an amount equal to the Contractor's reasonable direct costs incurred in the performance of work under this Agreement prior to termination, plus reasonable overhead and profit with respect to such work, less the sum of all payments previously made to the Contractor under this Agreement, but in no event in excess of the pro rata portion of the total compensation payable under this agreement with respect to such work.

SECTION 65 - COMPLETION OF CONTRACT WORK, INCLUDING PUNCH LIST WORK; CONTRACTOR'S LIABILITY FOR FAILURE TO TAKE CORRECTIVE ACTIONS

- (a) The Contractor itself, or using its subcontractors that have been approved by the Authority, must furnish all labor, materials, tools, trucks, equipment, and other incidental items needed to:
1. Complete all Contract Work, including punch list Work;
 2. Correct any damaged Work or damage to the Work site caused by the Contractor's or by its subcontractors' acts or omissions; and
 3. Correct the condition that gave rise to, and fully abate, remediate, and clean up, any unsafe or hazardous conditions arising out of the Contractor's Work including, without limitation, environmental hazards such

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as releases, leaks, or discharges of petroleum, gas, asbestos, or other hazardous or toxic wastes or materials (any and all of the foregoing actions being referred to as "Corrective Action(s)"). In the event that the Contractor fails to take Corrective Action(s) and prosecute such Corrective Action(s) to completion thereof to the satisfaction of the Authority, within any time frame set therefor in the Contract or by the Authority, or in the absence of any such time frame set therefor in the Contract or set by directive from the Authority, promptly (and, in the case of an emergency situation, immediately), the Authority may, at its sole option, perform the Corrective Action(s) itself; or engage a third party for that purpose, and the Contractor shall be liable to the Authority for all costs and expenses incurred by the Authority in connection with such Corrective Action(s), including, without limitation, any amounts paid to another contractor to take such Corrective Actions, and the labor costs (including fringe benefits) associated with time spent by any Authority employees in taking any Corrective Action(s), as well as any material costs and equipment costs (collectively, the "Costs and Expenses"). In addition, the Authority shall be entitled to an administrative charge ("Administrative Charge") in the event that it has to take any Corrective Action(s), equal to the greater of: (x) \$1,000, or (y) 21% of the aggregate of such Costs and Expenses.

- (b) The Authority shall have the right, at its sole option, to collect such monies, together with such Administrative Charge, directly from the Contractor, or to back charge the Contract, or to offset the amount of such monies, including such Administrative Charge, against any monies owed to the Contractor under any other contract between the Authority and the Contractor.
- (c) The Contractor, or any subcontractor engaged by the Contractor to perform any abatement, remediation, or clean up Work must have all licenses, permits, and training required by law and applicable regulations, and the Contractor or its subcontractor must provide copies of such licenses or permits to the Authority upon request.
- (d) Whether the Contractor has created a hazardous condition at any Work site or has failed to correct, in accordance with

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this section, a hazardous condition created at any Work site, or has failed to complete all Contract Work, including punch list work, or to correct any damaged Work or damage to the Work site caused by the Contractor's or its subcontractors' acts or omissions, may be considered in determining the Contractor's responsibility in connection with the award of any future contracts on which the Contractor is low bidder.