

Moynihan Station Development Corporation

May 13, 2011

SUBJECT: REQUEST FOR PROPOSALS FOR THE PERFORMANCE OF CONSTRUCTION MANAGEMENT AND RELATED TECHNICAL SERVICES FOR THE MOYNIHAN STATION CIVIC AND LAND USE IMPROVEMENT PROJECT - PHASE 1

Ladies and Gentlemen:

The Moynihan Station Development Corporation ("MSDC")¹ hereby invites you (the "Proposer") to submit a proposal (the "Proposal"), pursuant to this request for proposals (this "RFP"), for construction management and related technical services for the **MOYNIHAN STATION CIVIC AND LAND USE IMPROVEMENT PROJECT - PHASE 1** (the "Project").

The contract that may be awarded pursuant to this RFP is funded in whole or in part with funding provided by the United State of America and is subject to all federal law, rules, regulations, orders and requirements applicable to such funding and such contracts, including, without limiting the foregoing, the Federal Funding Requirements set forth in Part X of this letter.

The scope of the services to be performed by the construction manager (the "Construction Manager"), selected pursuant to this RFP, is set forth in Attachment A to the Construction Management Agreement (that agreement, inclusive of its Attachment A and all other attachments and exhibits to such agreement, the "Agreement"), attached hereto as Attachment A to this letter, and made a part of this RFP. The Agreement sets forth the terms and conditions of the contract between MSDC and the Construction Manager (as defined in the Agreement). Please review the Agreement as it is the basis for submission of the Proposal and the form of agreement that MSDC intends that the Construction Manager will sign in the event of acceptance of your Proposal.

The Proposer is expected to accept the form of the Agreement and its terms and conditions. The Proposer should therefore neither make any changes to the Agreement nor restate any of its provisions in the Proposal or supporting material. However, if the Proposer has any specific exceptions, such exceptions should be set forth in a separate letter included with its response to this RFP. MSDC is under no obligation to entertain or accept any such specific exceptions. After the Proposal Due Date (defined below), the Proposer will be precluded from raising any exceptions to this RFP.

Upon completion of the RFP process, MSDC may elect to enter into the Agreement with one or more firms.

I. PRE-PROPOSAL MEETING

A Pre-Proposal Meeting will be held at 2:00 PM (EDT) on, Monday, May 23, 2011. Proposers will meet in the 5th Floor Conference Room at the James A. Farley Building located on Eighth Avenue between 31st and 33rd Streets. Please use the side entrance on 33rd Street near Eighth Avenue to enter the North Rotunda of the Farley Building, sign in with the security desk, and take the elevator to the 5th Floor where signs will be posted to direct Proposers to the 5th Floor Conference Room.

¹ MSDC is a subsidiary of the New York State Urban Development Corporation d/b/a Empire State Development ("ESD"), a corporate governmental agency of the State of New York, constituting a political subdivision and public benefit corporation.

Attendance is strongly recommended. Information conveyed may be useful to the Proposer in preparing its Proposal and any Proposer not attending assumes all risks, which may ensue from non-attendance. **Those interested in attending should email MSDC at msdc@empire.state.ny.us, not later than 12:00 noon (EDT) on Friday, May 20, 2011**, and provide the Proposer's planned attendance and the name of each person that will attend on behalf of the Proposer in order to receive further directions and register its personnel for security. All persons attending will have to present photo identification in order to be admitted.

II. SUBMISSION OF PROPOSALS:

In order to respond to this RFP, the Proposer shall submit a concise Proposal in accordance with the following criteria:

- A. **Format and Copies:** The Proposal, not including the Pricing and Compensation Proposal (as defined in below in subpart E of Part IX of this RFP), shall be of no more than 100 pages (double-sided using 12 point or greater font size). Each resume shall be 2-pages maximum, double-sided using 12 point or larger front size. The Proposal pages shall be numbered and bound, or in a 3-ring binder, with "Firm Name" and **Moynihan Station Phase 1 Construction Management Proposal** clearly indicated on the cover. Each section of the Proposal shall be separated with a tab divider that is labeled in accordance with the letter of the requirements used in Parts VII and IX of this RFP and with a separate tab divider for the required Federal Certifications referred to pursuant to Part X. **The Pricing and Compensation Proposal shall be submitted in a separate sealed envelope.** With respect to each of (i) the Proposal (exclusive of the Pricing and Compensation Proposal) and (ii) the Pricing and Compensation Proposal, submit one (1) reproducible original and eight (8) copies, along with one (1) compact disc copy. In case of a conflict between the reproducible original and the material on the compact disc, the reproducible original shall take precedence over material on the compact disc.
- B. **Submission Address:** Moynihan Station Development Corporation, 633 Third Avenue, 36th Floor, New York, NY 10017, **Attention: Moynihan Phase 1 CM Procurement. Do not address your proposal to any other name.**
- C. **Proposer's Name:** In your RFP submission, including any return address label, information on the compact disc and information on the reproducible original and copies of the Proposal, the Proposer should use its **full legal name without abbreviations**. It is the responsibility of the Proposer to properly label all submissions, as mislabeling may lead to delays in the review and evaluation of the Proposal.
- D. **Proposer's Contact Information:** Provide the address of your firm to which any written correspondence should be sent, as well as the contact person's name with phone number and email address.
- E. **Proposal Due Date:** Allow sufficient time for delivery of your sealed Proposal so that MSDC receives it by **12:00 noon (EDT) on Friday, June 10, 2011** (the "Proposal Due Date"). **The cover of your submittal must include the "Moynihan Station Phase 1 Construction Management Proposal" (as stated above in subpart A of this Part II).** MSDC assumes no responsibility for delays caused by any delivery services.

- F. No Electronic Submission: MSDC will not accept Proposals submitted electronically (*e.g.*, via electronic mail or fax).
- G. Late Submission: Late submittals may be rejected.
- H. Additional Information: MSDC may request additional information from any Proposer.

If the Proposal is to be delivered by hand, please note that ***the person delivering the Proposal will not be permitted access up to MSDC's offices in the 633 Third Avenue building.*** The person delivering the proposal must call the Empire State Development mailroom from the dedicated telephone at the reception counter in the building lobby and notify the person answering the call that there is a person in the lobby to deliver the Proposal submission and that a MSDC representative should meet that person in the building lobby to receive the Proposal submission.

III. ORAL PRESENTATIONS

After review of all Proposal submissions, an oral presentation to the selection committee and others, as appropriate, may be requested. It should be noted that if the Proposer is selected to make a presentation, the Proposer may be given only short advance notice. Presentations will be limited to approximately sixty (60) minutes, and include the material contained in Proposal. The presentation will be followed by an approximately thirty (30) minute question and answer session. Proposer's staff providing the presentation shall be led by the proposed Project Manager, who may be supported by no more than five (5) other senior staff members or consultants who are proposed to work or advise MSDC on the Project. Notification of presentation scheduling will be made by email. Please provide the name and email address of the person who should be contacted for presentation scheduling as well as an alternate in the event that person is unavailable.

IV. COMMUNICATIONS

ALL QUESTIONS, COMMENTS, REQUESTS FOR CLARIFICATION AND OTHER COMMUNICATIONS REGARDING THIS SOLICITATION MUST BE IN WRITING AND SUBMITTED TO Thelma Washington at msdc@empire.state.ny.us. All such emails must have "Moynihan Phase 1 CM RFP" in the subject line. CONTACT WITH ANY OTHER PERSON REGARDING THIS SOLICITATION IS PROHIBITED BY LAW.

All such questions, comments, requests for clarifications and other communications should be submitted no later than 4:00 P.M. (EDT) on Friday, May 27, 2011.

Neither Thelma Washington nor any employee of MSDC or ESD is authorized to interpret the RFP or the accompanying documents or give additional information as to its requirements. If MSDC determines that interpretation or additional information is necessary, beneficial, or appropriate, it will be communicated only by written formal addenda to this RFP issued by MSDC, and such addenda shall be published on MSDC's website: http://www.empire.state.ny.us/Subsidiaries_Projects/MSDC/MSDC_RFPsOpportunities.html and form a part of this RFP or the accompanying documents as appropriate. Proposer should not rely on any representations, statements, or clarifications not made in writing in this RFP or in a written formal addendum. Proposers are encouraged to check the website frequently.

V. NOTIFICATION

Notification as to whether a Proposer has been pre-qualified, placed on a short list, rejected, or disqualified (i) will be made only by a notice in writing by MSDC (ii) and mailed or delivered to the office designated by the Proposer in its response to this RFP.

VI. PROCUREMENT PROTEST PROCEDURE

MSDC's Procurement Protest Procedure is attached hereto as Attachment B.

VII. PROPOSER PREREQUISITES

Only a Proposal from a Proposer demonstrating experience in the performance of services similar to those contemplated in the Agreement shall be considered. MSDC, in the exercise of its sole discretion, will determine whether the Proposer satisfies the prerequisites.

Only a firm that can demonstrate the following, to MSDC's satisfaction, should submit a Proposal, as only Proposals from such firms will be considered:

- A. Proposer must demonstrate to the satisfaction of MSDC that it has been in the business of construction management for at least ten (10) years; and
- B. The Proposer must demonstrate to the satisfaction of MSDC that the Proposer has the relevant experience and capability to manage a project of a size and type similar to the Project. The Proposer shall fulfill this prerequisite by demonstrating to MSDC's satisfaction that the Proposer, or persons or entities owning and controlling the Proposer, has successfully performed or is successfully performing on at least:
 - (i) two (2) similar contracts on projects with a major rail transportation component or other similar projects in size and complexity, each valued at or in excess of \$200 million; or
 - (ii) three (3) similar contracts requiring similar services of similar scope to those required pursuant to the Agreement; or
 - (iii) one (1) contract as specified in item (i) above and two (2) contracts as specified in item (ii) above.

In the event a Proposal is submitted by a joint venture, the prerequisites set forth in subparagraphs A and B above in this Part VII will be considered satisfied if any of the joint venture participants individually, can meet those prerequisites.

If the Proposal is submitted by a common law joint venture (*i.e.*, a joint venture that has not been established as a distinct legal entity), each participant in such joint venture shall be held jointly and severally liable with respect to this RFP and, unless otherwise expressly stated in this RFP (*e.g.*,

subparagraph B above in this Part VII), each such participant must individually execute all documents and satisfy all prerequisites and other requirements of this RFP. Documents signed by a common law joint venture in its Proposal submission, shall include the names of all participants of the joint venture followed by the words “acting jointly and severally” and be signed by each of the participants. Each joint venture participant must provide documentation of its legal formation and good standing.

All Proposals must include documentation satisfactory to MSDC that the Proposer fulfills the above prerequisites. Attachment C-1, Proposer Prerequisites A, and Attachment C-2, Proposer Prerequisites B, should be completed and submitted as part of the Proposal to document the prerequisite experience. By furnishing this solicitation document to Proposers, MSDC has not made a determination that the Proposers have met the prerequisites or have otherwise been deemed qualified to perform the services. In addition, a determination that a Proposer has met the prerequisites is no assurance that they will be deemed qualified in connection with other Proposal requirements included herein.

VIII. EVALUATION CRITERIA

The Proposal, and oral presentation(s), if necessary, will be evaluated by a Selection Committee composed of MSDC personnel experienced in the disciplines necessary to make a value judgment and decision regarding the technical qualifications of the Proposer.

The Selection Committee members will base their evaluation on criteria, which are listed below in relative order of importance, identifying which, if any, are equally weighted:

- A. Qualifications and experience of proposed staff;
- B. Proposed technical approach;
- C. Proposed management approach;
- D. Firm qualifications and experience.

Award will be made to the responsible firm whose Proposal is most advantageous to MSDC. In determining which Proposal is most advantageous, MSDC will evaluate Proposals to determine which Proposal offers the greatest business value to MSDC based upon an analysis of the qualitative technical factors and price/cost in order to derive which Proposal represents the “best value” to MSDC. In the event that two or more Proposals are considered by MSDC to be basically equal in their technical merit, the evaluated cost or price becomes more important; in such a case, cost or price may ultimately be the deciding factor. Accordingly, MSDC may not necessarily make an award to the Proposer with the highest technical ranking or award to the Proposer with the lowest Price Proposal, if doing so would not be in the overall best interest of MSDC.

Upon selection of the highest rated firm, based on the aforementioned criteria, MSDC shall endeavor to negotiate a fair and equitable compensation for the performance of the services outlined in the Agreement.

If negotiations cannot be satisfactorily concluded, the Proposer will be notified by letter that negotiations have been terminated. Thereafter, unless MSDC decides for any reason to recommend that MSDC reject all Proposals, MSDC will initiate negotiations with the next highest rated firm. This procedure shall be continued until a mutually satisfactory contract has been negotiated.

No Proposer shall have any rights against MSDC arising at any stage of the solicitation from any negotiations that take place, or from the fact that MSDC does not select a Proposer for negotiations.

IX. REQUIRED INFORMATION FOR PROPOSAL

The Proposal must provide the following information:

A. PROPOSER QUALIFICATIONS AND EXPERIENCE

Demonstrate Proposer's compliance with the prerequisites set forth in above in Part VII of this letter.

Provide a statement from a principal of the Proposer (or if the Proposer is a joint venture, from a principal of each participant in the joint venture) identifying the Proposer's (or joint venture participant's) specific relevant experience in the performance of services similar to those contemplated herein. For all projects referenced, include the name of the company, the date the services were provided, the nature of the services performed, the name of a contact person and such person's current mail and email addresses and telephone number for verification purposes.

Only Proposals received from a Proposer demonstrating relevant prior experience shall be evaluated for designation and selection pursuant to this RFP.

Provide a complete list of Proposer's (or if the Proposer is a joint venture, each participant's) affiliates.

If applicable, provide the following data regarding Proposer's (or if the Proposer is a joint venture, each participant's) safety record:

- EMR – Provide Proposer's (or if the Proposer is a joint venture, each participant's) Insurance Experience Modification Rate ("EMR") for the last three years and supply a letter from Proposer's (or if the Proposer is a joint venture, each participant's) insurance broker or carrier indicating the EMR of your firm for the last three years.
- United States Department of Labor Occupational Safety & Health Administration ("OSHA") Inspection Record – Provide Proposer's (or if the Proposer is a joint venture, each participant's) OSHA Inspection History for the last three (3) years by supplying a printout of the OSHA public database inspection record (<http://osha.gov/pls/imis/establishment.html>) and a printout of any citations. Also provide a copy of the last three years OSHA 300 Logs.

- Incidence Rates - OSHA/ Bureau of Labor Statistics (“BLS”) Total Recordable Incident Rate (“TRIR”) and Lost Work Day Incident Rate (“LWDIR”) – Provide Proposer’s (or if the Proposer is a joint venture, each participant’s) Incidence Rates for the last three years by supplying a printout of the public database BLS industry Incidence Rates (<http://www.bls.gov/iif/oshwc/osh/os/pr056ny.pdf>) with the appropriate industry and type of construction highlighted.
- Fatalities – List any work related fatalities that occurred to Proposer’s (or if the Proposer is a joint venture, each participant’s) personnel or any contractor’s personnel performing work on any project where Proposer (or if the Proposer is a joint venture, any participant) was the construction manager or controlling contractor for the last three years.

Upon Request by MSDC, the following additional information may be required

- EMR - A written explanation for any EMR above 1.2.
- OSHA Citations -A written explanation shall be provided for any OSHA citations issued to your firm within the last three years that were classified with a severity greater than serious.
- For any job related fatality recorded, or any fatality which occurred to any worker irrespective of who he or she was an employed by on a project where Proposer (or if the Proposer is a joint venture, any participant) was the construction manager or controlling contractor, a written explanation should be provided detailing the specifics around the fatality and any corrective actions that have been taken to prevent reoccurrence.
- Incidence Rates above BLS for specific work type - A written explanation shall be provided for TRIR or LWDCIR in excess of the BLS Incidence Rates for New York State for the Industry and work type performed.

B. QUALIFICATIONS AND EXPERIENCE OF STAFF

List the name(s), title(s) and resumes of key personnel who will be assigned to perform any services requested. Indicate how you will assure commitment to the Project of said key personnel and your plan for providing equally qualified personnel in the event that such key personnel become unavailable during the progress of the work. However, notwithstanding the aforementioned required plan, please note that it is expected that key personnel submitted pursuant to this RFP will be committed to being assigned to the Project for its duration. The Construction Manager shall not remove or replace the Principal-In-Charge or Project Manager or any other key personnel as identified by MSDC, without the written consent of MSDC and MSDC will not consent until the Construction Manager has proffered a candidate with similar and equal credentials acceptable to MSDC. Such removal or replacement without written consent by MSDC may subject the Construction Manager to liquidated damages in accordance with section 8 of the Agreement.

Identify subcontractors and subconsultants and indicate their experience and qualifications. Provide the terms and conditions for their compensation, their Disadvantaged Business Enterprise, Minority-Owned Business Enterprises and Women-Owned Business Enterprises (respectively “DBE”, “MBE” and “WBE” and each as further defined in Attachment E-3 to this letter) status and the technical qualifications of their key personnel to be assigned to the Project.

C. TECHNICAL APPROACH

Submit a detailed description of the proposed technical approach to be taken for the performance of the required services. Factors addressed in Proposer’s technical approach shall include, but are not limited to the proposed technical approach demonstrating to MSDC the knowledge and skill of Proposer to address specific technical areas. Proposer is requested to offer alternative methodologies to performing the work with the potential to result in cost savings and/or time conservation both for specific parts of the construction and the Project.

D. MANAGEMENT APPROACH

Submit a detailed description of the proposed management approach to be taken for the administration of work under the Agreement. Factors addressed in Proposer’s management approach shall include, but are not limited to the following: Proposer’s proposed organizational structure to be responsive to MSDC’s as well as other stakeholders’ needs and in compliance with Federal Railroad Administration regulations; Proposer’s approach and schedule for keeping the client apprised of the Project status; Proposer’s approach to ensuring the quality of the work product to be produced; and Proposer’s safety management plan. In support of the proposed management approach, the Proposer shall also provide a detailed Staffing Plan in accordance with the Attachment D – Staffing Plan.

Provide your DBE/MBE/WBE Participation Plan, in accordance with the DBE/MBE/WBE provisions in this RFP, including subpart F (below) of this Part and Attachments E-1, E-2, and E-3. Proposers are directed to complete and include the form attached to this letter as Schedule A-1 to Attachment E-2 as the recording mechanism for the DBE/MBE/WBE Participation Plan.

E. FINANCIAL INFORMATION

The Proposer must demonstrate that it is financially capable of performing the Agreement. The determination of the Proposer’s financial qualifications and ability to perform this Agreement is in the sole discretion of MSDC. The Proposer shall submit, with its Proposal, the following:

1. (a) Certified financial statements, including applicable notes, reflecting the Proposer’s assets, liabilities, net worth, revenues, expenses, profit or loss and cash flow for the most recent calendar year or the Proposer’s most recent fiscal year.

(b) Where the certified financial statements in (a) above are not available, then statements reviewed by an independent Certified Public Accountant and setting forth the aforementioned information shall be provided.

Where the statements submitted pursuant to subparts (a) and (b) if this subparagraph 1 do not cover a period which includes a date not more than forty-five (45) days prior to the Proposal Due Date, then the Proposer shall also submit a statement in writing, signed by an executive officer or his/her designee, that the present financial condition of the Proposer is at least as good as that shown on the statements submitted.

2. A statement of work which the Proposer has on hand, including any work on which a bid and/or Proposal has been submitted, containing a description of the work, the annual dollar value, the location by city, state, and country, the current percentage of completion, the expected date for completion, and the name of an individual (with full mail, email and telephone contact information) representing the owner of the work most familiar with the Proposer's work on these jobs.
3. The Proposer's (or if Proposer is a joint venture, each participant's) Federal Employer Identification Number (*i.e.*, the number assigned to firms by the Federal Government for tax purposes) certified on Internal Revenue Service Form W-9.
4. The Proposer's (or if Proposer is a joint venture, each participant's) Dun and Bradstreet number, if any, the name of any credit service to which the Proposer (or if Proposer is a joint venture, each participant's) furnished information and the number, if any, assigned by such service to the Proposer's (or such participant's) account.

F. NEW YORK STATE AFFIRMATIVE ACTION AND NON-DISCRIMINATION COMPLIANCE AND FEDERAL DISADVANTAGED BUSINESS ENTERPRISE COMPLIANCE

MSDC complies with all applicable laws, executive orders, and regulations and is committed to providing meaningful affirmative action opportunities for Minorities and Women Business Enterprises within the State.

Each Proposer (or if Proposer is a joint venture, each participant) must represent that it shall comply with the provisions of this section relating to Affirmative Action and Non-Discrimination. The Proposer must represent that it will require its agents, servants, representatives and/or employees to comply with any and all City, State and/or Federal laws that prohibit discrimination in employment because of age, race, creed, color, national origin, sex, disability or marital status of any individual. The Construction Manager, shall, to the extent permitted by law, undertake a program of affirmative action as directed by and substantially in accordance with the Affirmative Action program used by MSDC (see Attachments E-1, E-2, E-3 and E-4).

MSDC requests that responding Proposer (and if Proposer is a joint venture, each participant) demonstrate the ability and willingness to provide for meaningful participation for DBEs, MBE's, and WBE's and the participation of Minority and Female Workforce ("M/FWF"), and to implement the following Affirmative Action Program for the Proposer's work in connection with the Project.

1. The Proposer is required to use its best efforts to achieve an overall DBE/MBE/WBE participation goal of 20% of the total value of the contract.
2. The United States Department of Transportation regulations on Disadvantaged Business Enterprises are contained in Part 26 of Title 49 of the Code of Federal Regulations. Firms owned and controlled by socially and economically disadvantaged individuals and certified as DBEs pursuant to the New York State Uniform Certification Program ("NYSCUP") are eligible to be treated as DBEs. Eligible DBE firms are listed on the NYSUCP website <http://biznet.nysucp.net>. If the Proposer wishes to subcontract a portion of the work through, or joint venture with, a firm not listed in the NYSCUP directory, but which the Proposer believes should be eligible for certification by with the NYSCUP because the firm is (1) a DBE, as defined federal regulations cited above in this paragraph and (2) competent to perform portions of the work, the Proposer shall submit an DBE Uniform Certification Application to MSDC. The application is available online at <https://www.nysdot.gov/main/business-center/civil-rights/forms-and-applications>. In addition, to update a previously-certified firm's certification file and to advise MSDC of changes to any information, please email these changes to MSDC. Credit toward applicable DBE goals will be granted only to competent NYSCUP certified eligible DBEs.
3. The Proposer is encouraged to consider forming joint ventures, partnerships, or other similar arrangements where appropriate or feasible to assist in meeting this DBE/MBE/WBE goal.
4. The Proposer shall complete Attachment E-1. Other non-discrimination and affirmative action bid document provisions are set forth in Attachment E-2. Certain non-discrimination and affirmative action definitions and related information are set forth in Attachment E-3.
5. Attachment F is a partial listing of New York State Certified MBEs and WBEs that could provide services in completion of this proposed contract.
6. The Proposer is required to use its best efforts to achieve the overall goal of 25% M/FWF participation for construction, demolition, abatement and similar work, if any, performed by the Construction Manager (or its subcontractors and subconsultants) in connection with the Project. M/FWF provisions are set forth in Attachments E-3 and E-4 and participation is computed in the Monthly Employment Utilization Report ("MEUR") as indicated in Schedule A-2 of Attachment E-4.

MSDC strongly encourages the Proposer to implement an Affirmative Action Program that includes the participation of NYS Certified MBEs and WBEs for the subcontracting and subconsultant work or joint venturing in connection with this contract.

G. PRICING AND COMPENSATION PROPOSAL

The Proposer shall submit (**in a separate sealed envelope***) a concise Pricing and Compensation Proposal that provides the following information in accordance with scope of work set forth in Attachment A to the Agreement. The Pricing and Compensation Proposal shall include the following:

1. A salary schedule itemized by name, job title, experience and estimated hours to perform the defined scope for each job title, hourly rates for each specific job title. This information must also be provided for any proposed subconsultant.
2. A G&A rate as described in the Agreement, Section 10.
3. Out-of-pocket expenses as described in the Agreement, Section 10.
4. A fixed fee based upon the value of the services to be provided by the Proposer in accordance with the scope of work set forth in Attachment A to the Agreement.
5. Any backup material deemed appropriate for consideration of costs, and, in addition, any additional related material that MSDC may request, such material to be provided within the time set forth in such request. In the event of a failure by the Proposer to submit such material as requested, MSDC may deem the Proposer as ineligible for designation and selection.
6. A completed Attachment G – Cost Detail with the Cost Proposal.
7. The Pricing and Compensation Proposal should acknowledge and reflect that the proposed contract shall be subject to applicable New York State Labor Law prevailing wages and Federal prevailing wage requirements.

***NOTE: THE PRICING AND COMPENSATION PROPOSAL, INCLUDING ATTACHEMENT G, SHALL BE SUBMITTED IN A SEPARATE SEALED ENVELOPE.**

H. BACKGROUND QUALIFICATIONS QUESTIONNAIRE

The Proposer shall submit a completed Attachment H - Background Qualifications Questionnaire (“BQQ”), required for consultants, contractors and vendors providing services for the Project.

I. INTEGRITY CERTIFICATION

If Proposer is designated and selected for performance of the subject services, the Proposer (or if the Proposer is a joint venture, each participant in the joint venture) will be asked to sign a certification (the "Certification Statement") certifying the Proposer's (or if the Proposer is a joint venture, each participant's) compliance with the integrity provisions set forth in Sections 26 through 30 of the Agreement. By submitting the Proposal the Proposer (or if the Proposer is a joint venture, each participant) shall be deemed to have made the certifications contained therein unless said Proposer submits a statement with its Proposal explaining the inability to make such certification(s). Such statement shall be submitted in a separate envelope along with your proposal, clearly marked "CERTIFICATION STATEMENT".

J. GENERAL CONFLICT OF INTEREST

If the Proposer (or if the Proposer is a joint venture, any participant) or any employee, agent or subcontractor of the Proposer (or any joint venture participant) may have a possible conflict of interest, or may give the appearance of a possible conflict of interest, the Proposer shall include in its proposal a statement indicating the nature of the conflict and submit a mitigation plan addressing said conflict.

If in the sole discretion of MSDC, MSDC believes that the Proposer (or any joint venture participant) performing construction management, general contracting, design, environmental and/or management services in any capacity for MSDC has a conflict (or potential conflict) of interest, MSDC may reject or decline to review the Proposal. However, a Proposer who believes that it can provide a mitigation plan that would address the conflict (or potential conflict) of interest shall submit to MSDC, with the Proposal, such mitigation plan for evaluation by MSDC.

It is recommended that the following items/concepts be addressed in a proposed mitigation plan where a conflict or the appearance of a conflict of interest may, or may in the future, or does currently exist:

- 1) A proposed organizational chart/structure/firewall designed to keep separate, as specific by project, and to allow for no overlap between team members and resources including, but not limited to: equipment, materials, staffing, laydown areas, and office facilities on said projects.
- 2) Specific plan(s) intended to maintain the separation and integrity, as specific by project, of the following to include, but not limited to: confidential and/or privileged information, documents, plans, drawings, estimates and other financial data.
- 3) Specific plan to maintain proper and independent billing procedure(s) designed to address the avoidance of double and improper billings.
- 4) Specific plan to educate employees, on all levels, of the importance of said mitigation plan to promote the awareness and importance of mitigation and its roll in preventing fraud, waste, and abuse, and verification of such education/training and individual understanding.

- 5) Specific plan to internally oversee and/or audit the above-listed plans and procedures to ensure compliance.
- 6) Specific contingency plan, notification, and approval process for where there is a necessary, reasonable, and business related purpose for overlap in and/or sharing of staff members and/or resources.
- 7) Specific contingency plan in addressing a direct or suspected violation of said mitigation plan. All violations must be reported to MSDC.
- 8) The Proposer (or if the Proposer is a joint venture, each participant) shall ensure that all employees, contractors, consultants, sub-consultants, subcontractor or other person or entities identified with respect to each such conflict of potential conflict must cooperate with MSDC and its integrity monitor, in auditing the mitigation plan for compliance. This cooperation must include access to all necessary documentation and interviews of employees and affiliated persons.

MSDC reserves the right to disqualify the Proposer if, in its sole discretion, any interest disclosed from any source could create a conflict of interest or give the appearance of a conflict of interest. MSDC's determination regarding any questions of conflict of interest will be final.

K. ORGANIZATIONAL CONFLICT OF INTEREST

1. The Agreement may give rise to a potential for an organizational conflict of interest. An organizational conflict of interest exists when the nature of the work to be performed under the Agreement may, without some form of restriction on future activities result in an unfair competitive advantage to the Proposer.
 - a. If the Proposer is awarded the work (*i.e.*, becomes the "Construction Manager" pursuant to the Agreement), the Proposer will have access to confidential and/or sensitive MSDC and Project information in the course of Agreement performance. Additionally, the Proposer may be provided access to proprietary information obtained from other contracted entities during Agreement performance. The Proposer agrees to protect all such information from disclosure unless so authorized, in writing, by MSDC and to refrain from using such information for any purpose other than that for which it was furnished.
 - b. If the Proposer is awarded the work (*i.e.*, becomes the "Construction Manager" pursuant to the Agreement), then to the extent that the Proposer either (i) uses confidential and/or sensitive MSDC or Project information or proprietary information obtained from other MSDC or Project contractors to develop any form of document, report, or plan that is determined by MSDC to be the basis, in whole or in part, of any subsequent solicitation issued by MSDC or (ii) develops written specifications that are used in any subsequent

solicitation issued by MSDC, the Proposer agrees that it shall not be eligible to compete for such subsequent solicitation(s) as a prime or principal contractor or as part of any teaming arrangement unless MSDC provides, in writing, a specific waiver of this restriction. The duration of any restriction imposed under this subparagraph shall not exceed the length of the initial performance period of any subsequently awarded contract for which the Proposer was ineligible to complete.

2. The Proposer, by submitting its proposal, agrees to the above stated conditions and terms and further agrees to perform all duties under the Agreement and, in doing so, not to enter into contractual agreements with MSDC prime contractors and first-tier subcontractors in such a way as to create an organizational conflict of interest.

3. If MSDC determines that the Proposer has violated any term of this clause entitled "Organizational Conflict of Interest", MSDC may take any appropriate action available under the law or regulations to obtain redress to include, but not be limited to, requiring the Proposer to terminate any affiliation or contractual arrangement with a MSDC prime contractor or first-tier subcontractor at no cost to MSDC, determining the Proposer ineligible to compete for or be awarded any subsequent or "follow-on" contracts that may be based upon the Proposer's actions under the Agreement or violations of Subparagraphs I and J of this Part IX, or terminating the Agreement, in whole or in part.

L. ADDITIONAL REQUIRED PROPOSAL SUBMISSIONS

1. Proposer (and if the Proposer is a joint venture, each participant) shall submit a properly subscribed and affirmed Non-Collusive Bidding Certification in the form attached to this letter as Attachment I, and Proposer's failure to include it may result in MSDC rejection of the Proposal; provided, however, that if the Proposer (or any joint venture participant) cannot make such certification, it shall so state and shall submit with the Proposal a signed statement which sets forth in detail the reasons therefore. In the event that such statement is submitted in lieu of the Non-Collusive Bidding Certification, the bid shall not be considered unless MSDC determines that disclosure was not made for the purpose of restricting competition.

2. Proposer shall submit with its Proposal all certifications, statements, documents and information required pursuant to the law, regulations, and orders of the United States of America, including without limiting the foregoing, those expressly required pursuant to Part X, Federal Funding Requirements, of this letter.

M. NEW YORK STATE FINANCE LAW SECTIONS 139-j AND 139-k

State Finance Law Sections 139-j and 139-k (collectively, the "Section 139 Requirements") apply to this solicitation. These requirements (1) govern permissible communications between potential respondents and MSDC or other involved governmental entities with respect to this

solicitation during the procurement process; and (2) establish sanctions for knowing and willful violations of the provisions of the requirements, including disqualification from eligibility for an award of any contract pursuant to this solicitation.

In order to comply with the Section 139 Requirements: (i) all communications regarding this solicitation, from the issuance of this solicitation through award and final approvals of any resulting contract (the “Restricted Period”), must be conducted only with the contact person listed in Part IV of this letter; (ii) the completion by respondents of the Offerer Disclosure of Prior Non-Responsibility Determinations and the Offerer’s Affirmation of Understanding of and Agreement pursuant to State Finance Law, copies of which are attached to this solicitation respectively as Attachments K and L to this letter; and (iii) periodic updating of such forms during the term of any contract resulting from this solicitation. Respondents must submit both of these forms, properly completed, as part of their proposals.

The Section 139 Requirements also require MSDC and ESD employees to obtain and report certain information when contacted by prospective bidders during the Restricted Period, make a determination of the responsibility of bidders, and make all such information publicly available in accordance with applicable law. If a prospective bidder is found to have knowingly and willfully violated the Section 139 Requirements, that prospective bidder and its subsidiaries, and related and successor entities will be determined to be a non-responsible bidder and will not be awarded any contract issued pursuant to this solicitation. In addition, two such findings of non-responsibility within a four-year period can result in debarment from obtaining any New York State governmental procurement contract.

A copy of Policy Regarding Permissible Contacts under State Finance Law Section 139-j and 139-k, which is applicable to all ESD subsidiaries, including MSDC, is attached to this solicitation as Attachment M. Neither this summary nor the referenced Policy is a complete presentation of the provisions of the Procurement Requirements. A copy of State Finance Law Sections 139-j and 139-k can be found at <http://www.ogs.state.ny.us>. All potential respondents are solely responsible for full compliance with the Section 139 Requirements.

N. NEW YORK STATE TAX LAW SECTION 5-a

Any contract resulting from this solicitation is also subject to the requirements of State Tax Law Section 5-a (“STL 5-a”). STL 5-a prohibits MSDC from approving any such contract with any entity if that entity or any of its affiliates or subcontractors make sales within New York State of tangible personal property or taxable services having a value over \$300,000 during the immediately preceding consecutive four sales tax quarters and is not registered for sales and compensating use tax purposes. To comply with STL 5-a, all respondents to this solicitation must include in their responses a properly completed Form ST-220-CA, (a copy of the form is available at http://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf) or a satisfactory affidavit that the entity is not required to register. Solicitation responses that do not include a properly completed ST-220-CA or affidavit are incomplete and no contract will be approved without the appropriate forms, duly executed.

X. FEDERAL FUNDING REQUIREMENTS

The contract which is to be procured pursuant to this RFP is funded in whole or in part by the Federal Railroad Administration (“FRA”) under the American Recovery and Investment Act of 2009 (“ARRA” or the “Recovery Act”) and consequently, the contractor and all subcontracting activity associated with the Construction Agreement will be subject to certain FRA and United States Department of Transportation (“USDOT”) requirements including, but not limited to, the following:

1. Independent Monitor – Access to Records

Section 902 of the Recovery Act requires that each contract awarded using Recovery Act funds must include a provision that provides the U.S. Comptroller General and his or her representatives to: 1) examine any records of the contractor or any of its subcontractors, or any State or local agency administering such contract, that directly pertains to, and involves transactions relating to, the contract or subcontract; and 2) to interview any officer or employee of the contractor or any of its subcontractors, or of any State or local government agency administering the contract, regarding such transactions.

Section 1515 of the Recovery Act authorizes the USDOT Office of the Inspector General to: 1) examine any records of the contractor or any of the subcontractors that pertain to and involve transactions relating to the contract or subcontract; and 2) interview any officer or employee of the contractor or subcontractor regarding such transactions.

2. Buy American Requirements

The contract that may be awarded pursuant to this RFP will be subject to Section 1605 of the Recovery Act (regulations at 2 CFR Part 176.140) that requires that all iron, steel, and manufactured goods used are produced in the United States unless subject to a waiver or exception as provided therein.

3. Federal Certifications – See Attachment N to this letter for forms

Debarment and Suspension

This RFP is a covered transaction for purposes of 2 CFR Parts 180 and 1200. As such, the Proposer is required to verify that none of the Proposer, its principals, as defined at 2 CFR 180.995, or affiliates, as defined at 2 CFR 180.905, are excluded or disqualified as defined at 2 CFR 180.935 and 180.940.

The Proposer is required to comply with 2 CFR 180, Subpart C and must include the requirement to comply with 2 CFR 180, Subpart C in any lower tier covered transaction it enters into.

By signing and submitting its Proposal, the Proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by MSDC. If it is later determined that the Proposer knowingly rendered an erroneous certification, in addition to remedies available to MSDC, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The Proposer agrees to comply with the requirements of 2 CFR 180, Subpart C while this solicitation is valid and throughout the period of any contract that may arise from this offer. The Proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

1. USDOT requires that each potential contractor, for major third party contracts, complete a certification entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion" for itself and its principals and requires each subcontractor or supplier (for subcontracts and supplier agreements expected to equal or exceed \$25,000) to complete a certification entitled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tiered Covered Transactions" for itself and its principals. Copies of the required Certification forms and accompanying instructions are set forth in Attachment N.
2. In the event that the Proposer has certified prior to award that it is not proposed for debarment, debarred, suspended, or voluntarily excluded from covered transactions by any Federal Department or agency and such certification is found to be false, any subsequent contract may be canceled, terminated or suspended by MSDC and the Proposer will be liable for any and all damages incurred by MSDC because of such cancellation, termination or suspension because of such false certification.
3. The Proposer shall obtain certifications from all known potential subcontractors and suppliers (for which payments are expected to equal or exceed \$25,000) and submit such certifications to the address set forth below.
4. Prior to the award of any subcontracts or supplier agreements expected to equal or exceed \$25,000, regardless of tier, any prospective subcontractor or supplier who has not previously submitted a certification for the contract must execute and submit to the contractor a certification in the form set forth in Attachment O which will be deemed a part of the resulting subcontract and supplier agreement.
5. The originals of any Certifications or correspondence relating hereto shall be sent to Thelma Washington, Moynihan Station Development Corporation, 633 Third Avenue, New York, NY 10017 with the reference "Moynihan Phase 1 CM RFP" written thereon.
6. The Proposer shall not knowingly enter into any Subcontracts or Supplier agreements with a person that is proposed for debarment, debarred, suspended, declared ineligible or voluntarily excluded from covered transactions.

7. As required by USDOT, the Proposer and its Subcontractors or Suppliers required to file the certification have a continuing duty to disclose, and shall provide immediate written notice to MSDC if, at any time, it learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. Lobbying Restrictions – Contracts Exceeding \$100,000 - see Attachment O to this letter for forms

A. Definitions as used in this Clause:

1. "Agency," as defined in 5 U.S.C. 552(f), includes Federal executive departments and agencies as well as independent regulatory commissions and Government corporations, as defined in 31 U.S.C. 9101(1). As used in the Certification set forth in Attachment O, it also includes any other public agency.
2. "Covered Federal action" means any of the following Federal actions:
 - a. *The awarding of any Federal contract;*
 - b. *The making of any Federal grant;*
 - c. *The making of any Federal loan;*
 - d. *The entering into of any cooperative agreement; and*
 - e. *The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement. As used in the above referenced Certification, it includes the award of the contract with which it is associated.*
3. "Indian tribe" and "tribal organization" have the meaning provided in Section 4 of the Indian Self Determination and Education Assistance Act (25 U.S.C. 450B). Alaskan natives are included under the definitions of Indian tribes in that Act.
4. "Influencing or attempting to influence" means making, with the intent to influence, any communication to or appearance before an officer or employees of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.
5. "Local government" means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government. It also includes a bi-state agency.
6. "Officer or employee of an agency" includes the following individuals who are employed by an agency:

- a. An individual who is appointed to a position in the Government under title 5, United States Code, including a position under a temporary appointment;*
 - b. A member of the uniformed services as defined in section 101(3), title 37, United States Code;*
7. A special government employee as defined in Section 202, title 18, United States Code;
 - a. An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, Title 5, United States Code Appendix 2; and*
 - b. An employee of a bi-state agency.*
8. "Person" means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian Organization with respect to expenditures specifically permitted by other Federal law.
9. "Reasonable Compensation" means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.
10. "Reasonable Payment" means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.
11. "Recipient" includes all contractors and subcontractors at any tier in connection with a Federal Contract. The term excludes an Indian Tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.
12. "Regularly Employed" means, with respect to an officer or employee of a person requesting or receiving a Federal Contract, an officer or employee who is employed by such person for at least one hundred and thirty (130) working days within one (1) year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract. An officer or employee who is employed by such person for less than one hundred and thirty (130) working days within one (1) year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for one hundred and thirty (130) working days.
13. "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an

agency or instrumentality of a State, and a multi-state, regional, or interstate entity having governmental duties and powers.

B. Prohibition

1. Section 1352 of Title 31, United States Code provides in part that no appropriated funds may be expended by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract; the making of any Federal grant; the making of any Federal loan; the entering into of any cooperative agreement; and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement. For the purposes of the Certification set forth in Attachment O, it includes the award of the associated contract.
2. The prohibition does not apply as follows:
 - a. *Agency and legislative liaison by own employees.*
 - i. The prohibition on the use of appropriated funds, in subparagraph B.1.) of this Section, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a Federal contract or the contract associated with the certification if the payment is for agency and legislative liaison activities not directly related to a covered Federal Action.
 - ii. For purposes of subparagraph B. 2.) a.(i) of this Section, providing any information specifically requested by an agency or Congress is allowable at any time.
 - iii. For purposes of subparagraph B. 2.) a.(i) of this Section, the following agency and legislative liaison activities are allowable at any time only where they are not related to specific solicitation for any covered Federal action.
 - a. Discussing with an agency (including individual demonstrations) the qualities and characteristics of the person's products or services, conditions or terms of sales and service capabilities; and,
 - b. Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.

- iv. For purposes of paragraph B. 2)a.(i) of this Section, the following agency and legislative liaison activities are allowable only where they are prior to formal solicitation of any covered Federal action:
 - a. Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;
 - b. Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and
 - c. Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Public Law 95-507 and other subsequent amendments.
- v. Only those activities expressly authorized by subparagraph B. 2)a. of this Section are allowable under subparagraph B. 2)a.

b. Professional and Technical Services by Own Employees.

- i. The prohibition on the use of appropriated funds, in subparagraph B. of this Section, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a Federal contract or an extension, continuation, renewal, amendment, or modification of a Federal contract or the contract associated with the certification if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that contract or for meeting requirements imposed by or pursuant to law as a condition for receiving that contract.
- ii. For purposes of subparagraph B. 2.) b. (i) of this Section, "professional and technical services" shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this Section unless they provided advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the

preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this Section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this Section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.

- iii. Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation, or reasonably expected to be required by law or regulation, and any other requirements in the actual award documents.
- iv. Only those services expressly authorized by subparagraph B. 2.) b. this Section are allowable under subparagraph B. 2.) b.

c. Reporting for Own Employees.

No reporting is required with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.

d. Professional and Technical Services by Other than Own Employees.

- i. The prohibition on the use of appropriated funds, in subparagraph B. 1.) of this Section, does not apply in the case of any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action, if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal contract or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal contract.
- ii. For purposes of subparagraph B. 2.) d. (i) of this Section, "professional and technical services" shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this Section unless they provided advice and

analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this Section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this Section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.

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

C. Disclosure

1. Each person who requests or receives from MSDC a Contract with Federal assistance shall file with MSDC a certification entitled "Certification Regarding Lobbying Pursuant to 31 U.S.C. 1352," in the form set forth in Attachment O certifying that the person has not made, and will not make, any payment prohibited by subparagraph B. of this Clause. Each person who requests or receives from MSDC a Contract with Federal assistance shall file with MSDC a disclosure form entitled "Disclosure of Lobbying Activities Pursuant to 31 U.S.C. 1352" (Standard Form-LLL), as set forth in Attachment O, if such person has made or has agreed to make any payment using non-appropriated funds (to include profits from any covered Federal action), which would be prohibited under subparagraph B. of this Clause if paid for with appropriated funds.
2. Each person shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under subparagraph C.2 of this Section. An event that materially affects the accuracy of the information reported includes:

- a. *A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or*
 - b. *A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or*
 - c. *A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.*
3. Any person who requests or receives from a person referred to in subparagraph C.1) of this Section a subcontract exceeding \$100,000 at any tier under a Federal contract shall file a certification, and a disclosure form, if required, to the next tier above.
4. All disclosure forms, but not certifications, shall be forwarded from tier to tier until received by the person referred to in subparagraph C.1) of this Section. That person shall forward all disclosure forms to MSDC.
5. The originals of any certifications or correspondence relating hereto shall be sent to Thelma Washington, Moynihan Station Development Corporation, 633 Third Avenue, New York, NY 10017 with the reference "Moynihan Phase 1 CM RFP" written thereon.

D. Agreement

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

E. Penalties

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

F. Cost Allowability

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

XI. ADDITIONAL INFORMATION

It is MSDC policy that its contractors and vendors comply with the legal requirements of the State of New York and the federal government of the United State of America.

Your attention is therefore called to New York State's requirements that certain contractors, affiliates, subcontractors and subcontractors' affiliates register with the New York State Department of Taxation and Finance for the purpose of collection and remittance of sales and use taxes (see Part IX subpart M of this letter).

Your attention is directed to Section 22 of the Agreement regarding nondisclosure / confidentiality agreements.

With respect to professional liability insurance coverage, your attention is directed to Exhibit E to the Agreement regarding insurance. The Agreement provides that the Construction Manager will be covered by, and be a named insured under, a Project Professional Liability (PPL) policy arranged by MSDC. The details of that policy are as follows:

- Effective Date: 02/17/11 Expiration Date: 02/17/18
- Carrier: Lexington Insurance Company
- Named Insured: Prime design professionals, construction managers and all other sub consultants under written contract with named insureds
- Retroactive Date: 10-01-2010
- Extended Reporting Period: 3 Year(s)
- Professional Services Limits: Each claim \$20,000,000 Aggregate \$20,000,000
- Self Insured Retention: \$500,000 per claim

After a review of all proposals received, MSDC will forward two duplicate originals of the Contract Documents to the selected firm(s) who shall sign and return both originals. The return to the selected Construction Manager by MSDC of one executed original will effectuate the Agreement.

This contract may be subject to review and approval by the Office of the State Comptroller ("OSC") pursuant to Public Authorities Law section 2879-a and the regulations issued thereunder. Such OSC review and approval (including, if requested by OSC, review and approval by the New York State Attorney General) may be required of contracts with a value in excess of one million dollars, or modifications to contracts that result in an aggregate value in excess of one million dollars, where such contracts are paid in whole or in part with monies appropriated by the state, or were awarded on a basis other than a competitive procurement (as that term is defined in the law and regulations). If this contract is subject to OSC review and approval, then the contract shall not be valid and enforceable, nor shall the Corporation have any liability of any kind arising from or in connection with this contract, unless and until OSC approval has been received.

Due to the nature of the services and the benefit to the Project from continuous and consistent management of the Project and Construction Manager's unique knowledge of the Project arising from Construction Manager's work pursuant to this Agreement, after entering into the Agreement, the parties may by mutual written consent extend or modify the Agreement and increase the value of the Agreement in order to advance the Project.

XII. DISPOSAL OF CONTRACT DOCUMENTS

The Proposers shall ensure that all recipients of Contract Documents through them, including those who do not propose and any prospective subcontractors and suppliers who may receive all or a part of the Contract documents or copies thereof, must secure and appropriately dispose of the Contract Documents to prevent further disclosure of the information contained in the documents. Secure and appropriate disposal includes methods of document destruction such as cross shredding or arrangements with refuse handlers that ensure that third persons will not have access to the documents' contents before, during, or after disposal. Documents may also be returned for disposal purposes to MSDC at its office at 633 Third Avenue, New York NY 10017.

Regards,

MOYNIHAN STATION DEVELOPMENT CORPORATION

Attachments:

- Attachment A Construction Management Agreement (with Attachment A - Scope of Services)
- Attachment B Procurement Protest Procedure
- Attachment C-1 Proposer Prerequisite A
- Attachment C-2 Proposer Prerequisite B
- Attachment D Staffing Plan
- Attachment E-1 Minority and Women-Owned Business Participation Certification
- Attachment E-2 Non-Discrimination and Affirmative Action Bid Document Provisions
- Attachment E-3 Non-Discrimination and Affirmative Action Definitions
- Attachment E-4 Monthly Employment Utilization Report for the Minority and Female Workforce Pariticipation
- Attachment F Partial Listing of New York State Certified M/WBEs That Could Provide Services
- Attachment G Cost Detail with the Cost Proposal
- Attachment H Background Qualifications Questionnaire
- Attachment I Non-Collusive Bidding Certification
- Attachment J INTENTIONALLY OMITTED
- Attachment K Offerer Disclosure of Prior Non-Responsibility Determinations
- Attachment L Offerer's Affirmation of Understanding of and Agreement pursuant to State Finance Law
- Attachment M Policy Regarding Permissible Contacts Under State Finance Law §§ 139-j & 139-k
- Attachment N Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion (primary) & Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tiered Covered Transactions
- Attachment O Certification Regarding Lobbying Pursuant to 31 U.S.C. 1352 (with Standard Form LLL – Disclosure of Lobbying Activities & Instructions)

ATTACHMENT A

Construction Management Agreement (with its Attachment A - Scope of Services)

CONSTRUCTION MANAGEMENT AGREEMENT

Between

MOYNIHAN STATION DEVELOPMENT CORPORATION

As MSDC

and

As Construction Manager

Dated as of _____, 2011

Pertaining To

MOYNIHAN STATION CIVIC AND LAND USE IMPROVEMENT PROJECT

PHASE 1

NEW YORK CITY, NEW YORK

CONSTRUCTION MANAGEMENT AGREEMENT

TABLE OF CONTENTS

Section	Page
1. Defined Terms.....	2
2. MSDC Point of Contact	7
3. Standard of Care and Expertise	8
4. Construction Manager’s Responsibilities	9
5. Construction Manager’s Authority	11
6. Additional Services.....	12
7. Time	13
8. Approval of Personnel	14
9. Subconsultants.....	15
10. Compensation	15
11. Progress Payments.....	23
12. Non-Discrimination and Affirmative Action	24
13. Hazardous Materials	25
14. Public Relations.....	26
15. Preparation of Documents and Graphics	26
16. MSDC Review	27
17. Recordkeeping	27
18. Indemnification	28
19. Insurance.....	28
20. MSDC Ownership of Work Product	29
21. Patents	30
22. Confidentiality.....	31
23. Suspension and Termination	32
24. Dispute Resolution	33
25. Security Requirements.....	35
26. Certification of No Investigation (Criminal or Civil Antitrust), Indictment, Conviction, Debarment, Suspension, Disqualification and Disclosure of Other Information	35
27. Non-Collusive Bidding.....	36
28. Construction Manager Eligibility.....	38
29. No Gifts/Gratuities/Offer of Employment	39
30. Conflict of Interest	40
31. Legal Requirements	41
32. Standard Provisions	43
33. Miscellaneous.....	49

CONSTRUCTION MANAGEMENT AGREEMENT

TABLE OF CONTENTS

(continued)

List of Attachment/Exhibits

Each attached hereto and incorporated herein:

Attachment A Scope of Services

Exhibit A Estimated Project Schedule

Exhibit B Schedule of Personnel Hourly Rates

Exhibit C Schedule of Personnel Salaries

Exhibit D PANYNJ Services & Authority

Exhibit E Insurance

Exhibit F Non-Disclosure and Confidentiality Agreement

Exhibit G [Intentionally Omitted]

Exhibit H Offerer's Affirmation of Understanding of and Agreement pursuant to State Finance Law Section 139-j

Exhibit I Offerer Disclosure of Prior Non-Responsibility Determinations

Exhibit J NYS Tax Form ST-220-CA of Construction Manager

Exhibit K Non-Discrimination and Affirmative Action Provisions & Forms

Exhibit L Background Qualifications Questionnaire Package

Exhibit M [Intentionally Omitted]

Exhibit N Prevailing Wage Rates

Exhibit O Federal Railroad Administration Requirements, including forms:

- Certification Regarding Lobbying Pursuant to 31 U.S.C. 1352
- Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion (primary contract)
- Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower-Tier Covered Transactions

CONSTRUCTION MANAGEMENT AGREEMENT

THIS CONSTRUCTION MANAGEMENT AGREEMENT (“Agreement”) made and effective as of the ___ day of _____ 2011, by and between Moynihan Station Development Corporation, a New York corporation and a subsidiary of New York State Urban Development Corporation d/b/a Empire State Development, a corporate governmental agency of the State of New York, constituting a political subdivision and public benefit corporation (“ESD”), having an office at 633 Third Avenue, New York, N.Y. 10017 (“MSDC”), and _____, a _____ having _____ an _____ office _____ at _____ (“Construction Manager”), (individually a “Party” and collectively “Parties”).

WITNESSETH

WHEREAS, the Moynihan Station Civic and Land Use Improvement Project Phase 1 2010 involves the design, permitting, approval, construction, and construction administration with respect to a passenger railroad track overpass, also known as the West End Concourse (the “WEC”) and related improvements within the Pennsylvania Station train shed (the “Train Shed”) beneath, within, and adjacent to the James A. Farley Post Office Building (the “Farley Building”) all located in New York City (the “Property”); and

WHEREAS, All of the descriptions of the Moynihan Station Civic and Land Use Improvement Project Phase 1 2010 Project in this paragraph shall be referred to in this Agreement as the “Project,” or the “Moynihan Station Project.” This Agreement between MSDC and Construction Manager is made in connection with such construction management services and in consideration of the mutual covenants contained herein; and

WHEREAS, this Agreement sets forth terms and conditions that shall apply to the relationship between MSDC and Construction Manager when Construction Manager acts as a construction manager with respect to the Project under the circumstances more specifically described this Agreement; and

WHEREAS, the Project is to be funded, in whole or in part, by monies from the United States Department of Transportation Federal Railroad Administration (“FRA”); and

NOW THEREFORE, in consideration of the payments hereinafter specified to be made by MSDC to Construction Manager, and in consideration of the agreements and

CONSTRUCTION MANAGEMENT AGREEMENT

mutual covenants of the parties herein contained, the parties hereto hereby agree as follows:

1. DEFINED TERMS.

1.1 All terms initial capitalized in this Agreement are defined below or, to the extent not listed below, are as defined in other Contract Documents for the Project.

1.2 **Affiliate**. The term “affiliate” shall mean as follows: two or more firms are affiliates if a parent owns more than fifty percent (50%) of the voting stock of each of the firms, or a common shareholder or group of shareholders owns more than fifty percent (50%) of the voting stock of each of the firms, or if the firms have a common proprietor or general partner.

1.3 **Agency or Governmental Agency**. The term “agency” or “governmental agency” shall mean any federal, state, city or other local agency, including departments, offices, public authorities and corporations, boards of education and higher education, public development corporations, local development corporations and others.

1.4 **Agreement**. The term “Agreement” shall have the meaning set forth in the preamble.

1.5 **Agreement Change Order**. The term “Agreement Change Order” shall mean a written modification to any Contract Document impacting the monetary value of or time requirements set forth in the Agreement.

1.6 **Anything of Value**. The term “anything of value” shall have the meaning set forth in Section 29 of the Agreement.

1.7 **Certificate for Payment**. The term “Certificate for Payment” shall have the meaning set forth in 2.1.8.17 of **Attachment A** (Scope of Services).

1.8 **Confidentiality Agreement**. The term “Confidentiality Agreement” shall have the meaning set forth in Section 22.1 of the Agreement.

1.9 **Construction Change Directive**. The term “Construction Change Directive” shall mean a writing authorized by MSDC, directing a Contractor to modify its scope of work pending an agreement on the cost or time impact of such change.

1.10 **Construction Change Order**. The term “Construction Change Directive” shall mean a written modification (authorized by MSDC) to a Construction Contract impacting the monetary value of or time requirements set forth in the Construction Contract.

CONSTRUCTION MANAGEMENT AGREEMENT

1.11 **Construction Contracts and Construction Contract Documents.** The terms “Construction Contracts” and “Construction Contract Documents” shall mean all contracts and agreements between each Contractor and MSDC, including all of the exhibits and attachments thereto and the Contract Drawings all as may be amended in writing (in accordance with such Construction Contract Documents) by the parties thereto from time to time.

1.12 **Construction Manager.** The term “Construction Manager” shall have the meaning set forth in the preamble to the Agreement.

1.13 **Construction Manager’s Fee.** The term “Construction Manager’s Fee” or “Fee” shall have the meaning set forth in Section 10.2 of the Agreement.

1.14 **Construction Work.** The term “Construction Work” shall mean the construction required by the Construction Contract Documents, whether completed or partially completed, and includes all labor, materials, equipment and services provided or to be provided by each Contractor to fulfill its obligations pursuant to the Construction Contract Documents.

1.15 [Intentionally Omitted]

1.16 **Contract Documents.** The term “Contract Documents” shall include the Agreement, including all of the exhibits and attachments thereto all as may be amended in writing and in accordance with the Contract Documents by the parties from time to time.

1.17 **Contract Drawings.** The term “Contract Drawings” shall mean those drawings and specifications, completed in sufficient detail by Design Team, used by Contractors to perform the Work.

1.18 **Contract Management Plan.** The term “Contract Management Plan” shall have the meaning set forth in Section 4.3.1 of the Agreement.

1.19 **Contractors.** The term “Contractors” (and in the singular a “Contractor”) shall mean all contractors (or in the singular, a contractor) of MSDC (including, without limiting the foregoing National Railroad Passenger Corporation d/b/a Amtrak) performing Construction Work on the Project pursuant to the Construction Contract Documents.

1.20 **DBE.** The term “DBE” or “Disadvantaged Business Enterprise” shall have the meaning set forth in Section 12 of the Agreement.

1.21 **Design Team.** The term “Design Team” shall mean all of the design professionals hired by MSDC, either directly or indirectly, to provide professional services with respect to the Project.

CONSTRUCTION MANAGEMENT AGREEMENT

1.22 **Director**. As used herein, the “Director” shall mean the President of MSDC, acting in such capacity either personally or through his duly authorized representatives acting within the scope of the particular authority vested in them unless specifically stated to mean acting personally.

1.23 **Disadvantaged Business Enterprise**. The term “Disadvantaged Business Enterprise” or “DBE” shall have the meaning set forth in Section 12 of the Agreement.

1.24 **Emergency Costs**. The term “Emergency Costs” shall have the meaning set forth in Section 10.4.5.2 of the Agreement.

1.25 **ESD**. The term ESD shall have the meaning set forth in the preamble to the Agreement.

1.26 **Excluded Emergency Costs**. The term “Excluded Emergency Costs” shall have the meaning set forth in Section 10.4.5.2 of the Agreement.

1.27 **Farley Building**. The term “Farley Building” shall have the meaning set forth in the first paragraph of the recitals of the Agreement.

1.28 **Fee**. The term “Fee” or “Construction Manager’s Fee” shall have the meaning set forth in Section 10.2 of the Agreement.

1.29 **Final Completion**. The term “Final Completion” shall mean the date or number of calendar days after bid award as set forth in each Contractor’s Construction Contract Documents by which a Contractor shall have completed its Work in accordance with all applicable requirements in its Construction Contract Documents.

1.30 **FRA**. The term “FRA” shall have the meaning set forth in the fourth paragraph of the recitals of the Agreement.

1.31 **General and Administrative Costs**. The term “General and Administrative Costs” or “G&A” shall have the meaning set forth in Section 10.4.1 of the Agreement.

1.32 **General Conditions Costs**. The term “General Conditions Costs” shall have the meaning set forth in Section 10.4 of the Agreement.

1.33 **Hazardous Materials**. The term “Hazardous Materials” shall have the meaning set forth in Section 13.1 of the Agreement.

1.34 **Indemnitees**. The term “Indemnitees” shall have the meaning set forth in Section 18.1 of the Agreement.

1.35 **Insurance Program**. The term “Insurance Program” shall have the meaning set forth in Section 19.1 of the Agreement.

CONSTRUCTION MANAGEMENT AGREEMENT

1.36 **Integrity Monitor**. The term “Integrity Monitor” shall have the meaning set forth in Section 33.4 of the Agreement.

1.37 **Intellectual Property Rights**. The term “Intellectual Property Rights” shall have the meaning set forth in Section 21.4 of the Agreement.

1.38 **Investigation**. The term “investigation” shall mean any inquiries made by any appearance before a grand jury by representatives of Construction Manager, any oral or written inquiry, or review of Construction Manager’s documents, including, but not limited to, subpoenas and/or search warrants, or questioning of employees concerning the general operation or a specific project or activities of Construction Manager by any federal, state or local criminal prosecuting or other investigative bodies, including inspectors general and temporary commissions. The term “investigation” shall also mean federal, state or local criminal prosecuting agency and any inquiries concerning civil anti-trust investigations made by any federal, state or local governmental agency. Except for inquiries concerning civil anti-trust investigations, the term does not include inquiries made by any civil government agency concerning compliance with any regulation, the nature of which does not carry criminal penalties, nor does it include any background investigations for employment, or federal, state, and local inquiries into tax returns.

1.39 **IP Claims**. The term “IP Claims” shall have the meaning set forth in Section 21.3 of the Agreement.

1.40 **Legal Requirements**. The term “Legal Requirements” shall have the meaning set forth in Section 31 of the Agreement.

1.41 **Moynihan Station Project**. The term “Moynihan Station Project” shall have the meaning set forth in the second paragraph of the recitals.

1.42 **MSDC**. The term “MSDC” shall have the meaning set forth in the preamble to this Agreement. Any reference to MSDC’s approval, discretion, consent, action, review, or otherwise, shall be performed by the MSDC Representative, regardless of whether MSDC is explicitly stated in such reference.

1.43 **MSDC Representative**. The term “MSDC Representative” shall the meaning given in Section 2.1 of the Agreement.

1.44 **Officer**. The term “officer” shall mean any individual who serves as chief executive officer, chief financial officer, or chief operating officer of Construction Manager by whatever titles known.

1.45 **PANYNJ**. The term “PANYNJ” shall mean the Port Authority of New York and New Jersey, a body corporate and politic created by a compact between the States

CONSTRUCTION MANAGEMENT AGREEMENT

of New York and New Jersey with the consent of the Congress of the United States of America.

1.46 **PANYNJ Design & Construction Oversight Staff**. The term “PANYNJ Design & Construction Oversight Staff” shall mean the PANYNJ staff responsible for coordinating the activities of all persons or entities hired by MSDC in connection with the design and construction portion of the Project to the extent of the services and authority set forth on Exhibit D to the Agreement and as may be from time to time notified to Construction Manager by the Director or the MSDC Representative.

1.47 **Parent**. The term “parent” shall mean an individual, partnership, joint venture or corporation that owns more than 50% of the voting stock of Construction Manager.

1.48 **Personnel**. The term “Personnel” shall have the meaning set forth in each section of this Agreement where such term is used.

1.49 **PPL**. The term “PPL” shall mean the Professional Project Liability insurance program provided in the Insurance Program.

1.50 **Project**. The term “Project” shall have the meaning set forth in the second paragraph of the recitals to the Agreement.

1.51 **Project Schedule**. The term “Project Schedule” shall have the meaning set forth in Section 7.3 of the Agreement.

1.52 **Property**. The term “Property” shall have the meaning set forth in the first paragraph of the recitals of the Agreement.

1.53 **Reimbursable Expenses**. The term “Reimbursable Expenses” shall have the meaning set forth in Section 10.4.5 of the Agreement.

1.54 **Remediation Contractor**. The term “Remediation Contractor” shall have the meaning set forth in Section 13.1 of the Agreement.

1.55 **Services**. The term “Services” shall have the meaning set forth in Section 4.1 of the Agreement.

1.56 **Shop Drawings**. The term “Shop Drawings” shall mean drawings, diagrams, schedules and other data specially prepared for the Work by a Contractor, subcontractor of any tier, manufacturer, supplier or distributor to illustrate some portion of the Work.

1.57 **Standard of Care**. The term “Standard of Care” shall have the meaning set forth in Section 3.1 of the Agreement.

CONSTRUCTION MANAGEMENT AGREEMENT

1.58 **Subconsultant**. The term “Subconsultant” shall have the meaning set forth in Section 9.1 of the Agreement.

1.59 **Submittals**. The term “Submittals” shall mean Shop Drawings, samples, product data, supplementary product literature, mockups, calculations, statements of manufacturer’s review, or other information for specific portions of the Work as required by the Contract Drawings.

1.60 **Trade Costs**. The term “Trade Costs” shall have the meaning set forth in Section 10.3 of the Agreement.

1.61 **Train Shed**. The term “Train Shed” shall have the meaning set forth in the first paragraph of the recitals of the Agreement.

1.62 **WEC**. The term “WEC” shall have the meaning set forth in the first paragraph of the recitals of the Agreement.

1.63 **Work**. The term “Work” shall mean the construction management services required by the Contract Documents, whether completed or partially completed, and includes all labor, materials, equipment and services provided or to be provided by Construction Manager to fulfill its obligations pursuant to the Contract Documents.

1.64 **Works**. The term “Works” shall have the meaning set forth in Section 20.1 of the Agreement.

1.65 **Works for Hire**. The term “Works for Hire” shall have the meaning set forth in Section 20.1 of the Agreement.

2. MSDC POINT OF CONTACT AND MSDC CONTRACTORS

2.1 For the purpose of administering this Agreement, the Director has designated _____, or such other person(s) as may from time to time be notified to Construction Manager by the Director, (the “**MSDC Representative**”) to act as his duly authorized representative to manage the day-to-day work of the Project. Except as otherwise expressly provided in this Agreement, the MSDC Representative is the person authorized representative of the Director authorized to act, or receive, on behalf of the Director or MSDC any duty, obligation, notice, or other action set forth in this Agreement.

2.2 It is MSDC’s responsibility to directly contract with all contractors for the removal, transport, and disposal of all asbestos and hazardous waste from the site (each such contractor, hereinafter a “**Remediation Contractor**” as further defined in Section 13.1)

CONSTRUCTION MANAGEMENT AGREEMENT

3. STANDARD OF CARE AND EXPERTISE.

3.1 Construction Manager acknowledges that the Project is part of a project of symbolic and commercial importance that has local, regional, national, and international significance and visibility. Construction Manager represents and warrants that it has expert experience in the construction management and project management of projects with similar prominence and prestige located in comparable urban locations. Construction Manager shall perform its duties under this Agreement in conformance with its expert experience and with the very highest standard of care practiced by construction managers ("Standard of Care"). Nothing to the contrary herein shall erode the Standard of Care, including a requirement that Construction Manager use its best efforts to comply with the provisions in this Agreement.

3.2 Construction Manager represents that it has reviewed and is familiar with the Property and with terms and conditions of the relevant agreements that MSDC has entered into with respect to this Project.

3.3 Construction Manager accepts the relationship of trust and confidence established between Construction Manager and MSDC by the Agreement.

3.4 Construction Manager shall do the following:

3.4.1 Construction Manager shall perform its Services under this Agreement and, consistent therewith, shall furnish the very highest professional skill and judgment necessary to fulfill its duties under this Agreement and maintain the Standard of Care;

3.4.2 In performing its Services, Construction Manager shall furnish professional business administration and superintendence by the best, most efficient, and most economical method, all in a manner consistent with the Contract Documents, the Standard of Care, and the best interests of MSDC;

3.4.3 Construction Manager shall furnish at all times an ample supply of workers and materials necessary to meet the requirements of the Contract Documents. Construction Manager shall manage the workers, materials, and Project in such a manner that the Project can be safely and successfully completed within the Project Schedule and the Project budget; and

3.4.4 Construction Manager shall manage, direct, supervise, coordinate, and cooperate with all of MSDC's Contractors, agents, and other contractors in furthering the best interests of MSDC with respect to the Project; and shall cause the entire Work described in the Contract Documents to be executed in accordance with the very highest standard of care and skill for trade contractors experienced and

CONSTRUCTION MANAGEMENT AGREEMENT

specialized in the construction of major, superior facilities operated in comparable settings.

3.5 Construction Manager represents to MSDC that Construction Manager understands the complexity involved and has the ability to meet the standards of performance required by this Section 3.

4. CONSTRUCTION MANAGER'S RESPONSIBILITIES.

4.1 Construction Manager shall perform professional construction management services ("Services") as set forth in and in accordance with the provisions of this Agreement, the Contract Documents, and as otherwise requested by MSDC.

4.2 Construction Manager shall comply with all of the obligations and provisions set forth in this Agreement.

4.3 Construction Manager shall provide sufficient organization, personnel, and management to carry out the requirements of this Agreement in an expeditious and economical manner consistent with the interests of MSDC and the Standard of Care.

4.3.1 Contract Management Plan: The Construction Manager shall maintain, for the duration of its Services, an updated Contract Management Plan. The Plan shall contain the following:

4.3.1.1 An organization chart of Construction Manager and each Subconsultant, detailing the names, titles, level authority and functions of the key management personnel and technical personnel directly employed in the performance of the Work. A current resume of each person describing the individual's qualifications in terms of experience and education.

4.3.1.2 An organizational plan specifying responsibilities and levels of authority for the various areas of the Work to ensure the expedient and proper resolution to the various types of problems typically experienced during a project of this nature.

4.3.1.3 A description of specific roles and responsibilities of, and the interfaces and channels of communication between each firm constituting a Contractor and the its sub-contractors. Identify the Contractor employee in charge of the Contractor's project personnel and sub-contractors.

4.3.1.4 A description of specific roles and responsibilities, interfaces and channels of communication between the Contractors, PANYNJ Design & Construction Oversight Staff, the MSDC Representative, the Director, MSDC, and other agencies.

CONSTRUCTION MANAGEMENT AGREEMENT

4.3.1.5 A description of the management systems to be utilized for control of the Work.

4.3.1.6 Procedures governing review and sign off, interoffice and inter-company coordination, internal review and checking, calculations, key personnel change notifications, meetings, document and drawing control, public relations (including response to questions from the public sector), geotechnical investigation, analytical methods, field investigation methods, health and safety, road closings, and all other aspects of the Work.

4.3.1.7 A description of the management systems to be utilized for control of the Work.

4.4 A description of the Services is set forth in Attachment A (Scope of Services), attached hereto and made a part hereof; provided, however, MSDC, in its sole discretion, may direct Construction Manager to render other professional construction management services in furtherance of the Project, which professional construction management services shall be included in the Services, notwithstanding that such professional construction management services do not appear on the Scope of Services attached hereto at the time of execution of the Agreement. Nothing contained in this Agreement shall be deemed to require or authorize Construction Manager to perform with its own forces any act that would constitute the rendering of professional architecture or engineering services or laboratory testing. The reviews, recommendations and advice to be furnished by Construction Manager hereunder shall not be deemed to be warranties or guaranties with respect to professional architecture or engineer services or laboratory testing or constitute the performance of such services, it being understood that any such recommendation or advice pertaining to engineering or architectural matters shall only be considered as a recommendation by Construction Manager which is subject to the review and approval of MSDC and/or Design Team.

4.5 Construction Manager shall coordinate the performance of its Services with the performance of activities of such other persons or entities, each with the other, so that all are performed in a harmonious manner. Construction Manager, when requested, shall review the contract schedules of others or facilitate a joint review among relevant parties and shall provide that the activities of all shall be carried out in a proper and appropriate sequence for the best interests of the Project. Construction Manager shall cooperate fully with other persons or entities performing services for or working on behalf of the Project.

4.6 Construction Manager shall promptly give notice to MSDC upon becoming aware of the following:

4.6.1 Any act, omission, event, or occurrence that might reasonably be anticipated to result in the allegation of a claim, lien, or other demand

CONSTRUCTION MANAGEMENT AGREEMENT

against MSDC, Construction Manager, or any of the Contractors arising out of the execution of the Project;

4.6.2 Any claim, demand, or request asserted, filed, or made, or that Construction Manager anticipates may be asserted, filed, or made, for extensions to time or for additional money with respect to work or services rendered on the Project.

5. CONSTRUCTION MANAGER'S AUTHORITY.

5.1 Construction Manager shall, to the extent described in, and in accordance with, the Scope of Work, assume and perform to the duties of MSDC as set forth in the Construction Contract Documents; provided, however:

5.1.1 Construction Manager shall not have authority to enter into any Construction Contract Documents, Construction Change Orders, or Construction Change Directives for any Construction Contract without prior written approval from the Director, MSDC's Representative, MSDC's designee(s) and, with respect to those items identified on Exhibit D, the PANYNJ Design & Construction Oversight Staff;

5.1.2 Construction Manager shall not take any action that may result in additional time or money to any Construction Contract, a modification to the quality of the Construction Work or Project or a change in the safety or security requirements without obtaining prior written approval from MSDC as set forth below in this Section 5.1; and

5.1.3 For purposes of this Agreement, approval of MSDC means approval of Director, MSDC's Representative, MSDC's designee(s) and with respect to those items identified on Exhibit D for the PANYNJ Design & Construction Oversight Staff.

5.1.4 The MSDC Representative's authority with respect to the quality of Construction Work includes, without limitation:

5.1.4.1 interpreting the Construction Contract Documents

5.1.4.2 determining the amount, quality, acceptability, and fitness of all parts of the Construction Work;

5.1.4.3 altering the Construction Contract Documents; requiring performance of Construction Work not required by such Construction Contract Documents in their present form, even though the Construction Work is of a totally different character from that now required; and varying, increasing, or diminishing the

CONSTRUCTION MANAGEMENT AGREEMENT

character, quantity, and quality of, or countermanding, any Construction Work now or thereafter required, whether such variation, increase, diminution, or countermand is based on need or convenience;

5.1.4.4 objecting to the employment of any equipment, materials, methods, men, or workers used in performance of the Construction Work; and

5.1.4.5 withholding permission to remove materials, equipment, or other facilities from the Project site, which permission Construction Manager must seek prior to any such removal.

5.1.5 PANYNJ Design & Construction Oversight Staff authority, subject to the limits set forth Exhibit D, with respect to the quality of Work includes:

5.1.5.1 interpreting the Construction Contract Documents

5.1.5.2 determining the amount, quality, acceptability, and fitness of all parts of the Construction Work;

5.1.5.3 altering the Contract Documents; requiring performance of Construction Work not required by such Construction Contract Documents in their present form, even though the Work is of a totally different character from that now required; and varying, increasing, or diminishing the character, quantity, and quality of, or countermanding, any Work now or thereafter required, whether such variation, increase, diminution, or countermand is based on need or convenience;

5.1.5.4 objecting to the employment of any equipment, materials, methods, men, or workers used in performance of the Construction Work; and

5.1.5.5 withholding permission to remove materials, equipment, or other facilities from the Project site, which permission Construction Manager must seek prior to any such removal.

5.2 In no event shall this be considered an agreement of employment or partnership between MSDC and Construction Manager.

5.3 MSDC shall have the right, but shall not be obligated, to control or supervise the particular manner or method by which Construction Manager accomplishes the performance of the Services. Such right shall in no event relieve Construction Manager of any duty, responsibility, or obligation whatsoever under this Agreement.

6. ADDITIONAL SERVICES.

6.1 MSDC reserves the right, at any time, by written order, to authorize additional services for the Project to be performed by Construction Manager that may

CONSTRUCTION MANAGEMENT AGREEMENT

increase the scope of Services set forth in **Attachment A** (Scope of Services), or otherwise to make changes or additions to any portions of the Work that are within the general scope of the Work, in any one or more of the following areas:

6.1.1 Management Approach

6.1.2 Schedule

6.1.3 Deliverables

6.1.4 Staffing Plan.

6.2 All such Construction Manager duties for the Project shall be part of the Services compensated in accordance with Section 10 (Compensation) of this Agreement.

6.3 MSDC must authorize any such changes or additions in a writing ("Agreement Change Order") that states the maximum, not-to-exceed amount that may be payable to Construction Manager, before Construction Manager commences the additional or changed work. The executed Agreement Change Order is a condition precedent to Construction Manager's reimbursement for such work.

6.4 In the event that the parties are unable to agree on the amount to be paid under an Agreement Change Order, MSDC may nonetheless require that Construction Manager is to begin the work, pending final negotiation of the Agreement Change Order amount or resolution of dispute. No payments shall be authorized by MSDC to Construction Manager until a final agreement or resolution of dispute is made on the payment terms applicable to the Agreement Change Order.

6.5 If Construction Manager does not agree with any schedule or cost decision of MSDC relating to an Agreement Change Order, nonetheless Construction Manager shall diligently perform all such work without delay. In the event that Construction Manager wishes to issue any related claim to MSDC, written notice must be given to MSDC within five (5) days of MSDC's written request to perform the additional or changed work. Upon receipt, MSDC may consider the claim and if accepted, in whole or in part, MSDC will issue an Agreement Change Order.

7. TIME.

7.1 The term of this Agreement is a five (5) year period commencing on _____. MSDC reserves the right to extend this Agreement for one (1) additional two-year period. Said extension shall be by letter from the Director at least thirty (30) days prior to the end of the base term.

7.2 Time is of the essence with respect to Construction Manager's performance of Services under this Agreement.

CONSTRUCTION MANAGEMENT AGREEMENT

7.3 Without limiting the foregoing, Construction Manager shall perform its Services under this Agreement so as to permit MSDC, Design Team, Contractors and other Project participants to perform their services and Construction Work in accordance with the overall construction schedule for the Project consistent with the Construction Contract Documents, and achieve Final Completion of each Contractor's Construction Work in accordance with the dates set forth in the Construction Contracts and MSDC's schedule for the Project ("Project Schedule").

7.4 Construction Manager shall perform its Services as expeditiously as possible and at the time or times required by the MSDC Representative.

8. APPROVAL OF PERSONNEL.

8.1 Construction Manager shall hire and assign sufficient number of appropriately experienced (a) full-time personnel, and (b) part-time personnel based at Construction Manager's home office or, as required, on site, to carry out the duties under this Agreement and in accordance with the terms of such Agreement; provided, however, that (i) Construction Manager shall assign personnel to the Project only after such personnel are approved by MSDC in writing; and (ii) such personnel assigned to the Project shall begin performing Services and bill time to the Project only after MSDC has so approved in writing ("Personnel"). Subject to Section 8.2 below, Personnel who are dedicated to the Project on a full-time basis, shall continue performing Services on a full-time basis for the Project unless a member of such Personnel becomes deceased, goes on medical leave, voluntarily leaves the employment of Construction Manager, or is terminated for a violation of Construction Manager's sexual harassment, drug, or violence in the workplace policies or such other similar bad acts. Construction Manager shall not reassign full-time Personnel to work on any other project other than the Project for any other reason without the prior written consent of MSDC.

8.2 MSDC considers the individual(s) designated in Exhibit B (Schedule of Personnel Hourly Rates) as Construction Manager's Project Executive and/or Project Director to be essential to Construction Manager's performance under this Agreement. As such, Construction Manager shall not remove such individual(s) from this Project without prior written approval by MSDC. MSDC's approval will not be unreasonably withheld if Construction Manager is able to provide a replacement with similar credentials, expertise and experience, in MSDC's sole discretion. In the event that Construction Manager's Project Executive and/or Project Director ceases full time service for the Project anytime during execution of the Project, Construction Manager shall provide a credit in the amount of \$1 million to MSDC.

8.3 MSDC shall have the right in its sole and absolute discretion to direct Construction Manager to remove from or replace any Personnel on the Project.

8.4 Construction Manager shall comply, and shall require that its Subconsultants and vendors comply with the provisions of the Background

CONSTRUCTION MANAGEMENT AGREEMENT

Qualifications Questionnaire Package (“BQQ Package”) set forth in Exhibit L and Construction Manager shall obtain from each Subconsultant the certifications and all necessary disclosure forms.

9. SUBCONSULTANTS.

9.1 Construction Manager may contract with entities to perform a portion of Construction Manager’s Services, which entities may be retained only upon the prior written approval of MSDC (“Subconsultant”). Such approval, to be effective, must authorize the following: (i) the Subconsultant; (ii) the form of the contract with the Subconsultant, which form must be pre-approved by MSDC; and (iii) the amount of compensation to be paid to the Subconsultant. No changes may be made to a pre-approved form of Subconsultant agreement except as thereafter approved in writing by MSDC, which authorization and approval must be obtained prior to execution of such agreement by Construction Manager and Subconsultant.

9.2 This Agreement is based upon Construction Manager’s special qualifications for the Services herein contemplated; accordingly, any assignment, subletting, or other transfer of this Agreement or any part hereof or of any moneys due or to become due hereunder without the prior express consent in writing of MSDC shall be void and of no effect.

9.3 All persons to whom Construction Manager sublets Services shall be deemed to be Construction Manager’s agents, and no subletting or approval thereof shall be deemed to release Construction Manager from its obligations under this Agreement or to impose any obligation on MSDC to such Subconsultant or give the Subconsultant any rights against MSDC.

9.4 For each agreement entered into by Construction Manager with a Subconsultant, or by a Subconsultant with a subconsultant of any tier, Construction Manager shall (i) for each contract in an amount greater than \$100,000, obtain the certifications and all necessary disclosure forms from each such Subconsultant and its subconsultants of any tier, including those set forth in Exhibit O (FRA Provisions) and (ii) require that all Subconsultants and their subconsultants of any tier comply with the provisions of Sections 8.4 and 33.4 of this Agreement.

10. COMPENSATION.

10.1 Payment to Construction Manager for the Services performed hereunder will be based on the following categories, each of which are described in more detail below:

10.1.1.1 Construction Manager’s Fee, and

10.1.1.2 Cost of Work. The term “Cost of the Work” shall mean

CONSTRUCTION MANAGEMENT AGREEMENT

and include:

10.1.1.3 Trade Costs, as set forth in Section 10.3, below.

10.1.1.4 General Conditions Costs, as set forth in Section 10.4, below.

10.2 Construction Manager's Fee.

10.2.1 For Construction Manager's satisfactory performance of its Services and all of its obligations in connection with this Agreement, MSDC shall pay, subject to Section 23 (Suspension and Termination), Construction Manager a fixed fee in the amount of \$_____ ("Construction Manager's Fee" or "Fee") representing Construction Manager's profit on the base Agreement and not on any option or extension period, if so exercised by MSDC.

10.2.1.1 In no event shall an Agreement Change Order, which is within the general scope of this Agreement and increases the Cost of the Work, result in an increase in the Fee.

10.3 The term "Trade Costs" shall mean and include any money due and owing Contractors in accordance with each Contractor's Construction Contract Documents for Construction Work, including without limitation the procurement of required insurance set forth in such Construction Contract Documents. It is not expected that Construction Manager will incur any Trade Costs however, if Construction Manager pays for such costs, at MSDC's written request, MSDC will reimburse Construction Manager for such amounts.

10.3.1 Under no circumstance shall any subcontract with a Contractor of any tier contain a cost-plus-percentage-of-cost compensation structure.

10.4 "General Conditions Costs" shall mean and include the costs set forth in this Section 10.4.

10.4.1.1 General and Administrative ("G&A") Costs. The G&A rate of _____ for Construction Manager's indirect costs ("G&A Rate") shall be applied to the Personnel Direct Labor cost as permitted in Section 10.4.2 below. Computation of the G&A rate shall be in accordance with OMB Circular A-87, "Cost Principles for State and Local Governments", as amended.

10.4.1.2 A G&A rate is applicable for a one-year accounting period ("Provisional G&A Rate"). Ninety (90) days prior to the expiration of Construction Manager's of the applicable accounting period, Construction Manager shall submit one of the following: i) a current indirect cost audit (not currently under dispute) by a cognizant federal or state government agency; ii) a

CONSTRUCTION MANAGEMENT AGREEMENT

new calculation by Construction Manager of the G&A rate in accordance with 10.4.1; or iii) Construction Manager shall submit to an audit of the G&A rate by MSDC. Should a subsequent audit rate differ from the rate set forth in this subparagraph, said rate shall be adjusted by a contract modification.

10.4.1.3 The G&A rate shall represent reimbursement to Construction Manager for all other costs incurred by Construction Manager for such Personnel provided; however, for purposes of this Section 10.4.1 only, Personnel shall exclude any non exempt personnel eligible to receive overtime pay who belong to a labor union, perform work on the project under the terms of a collective bargaining agreement and in accordance with the contract documents, and are paid wages for such work. General Conditions Costs for such excluded personnel are to be calculated in accordance with Section 10.4.3 below (Costs of Non-Exempt Union Labor). For the avoidance of doubt, the term "Personnel" for purposes of this Section 10.4.1, shall include members of a labor union who are exempt from receiving overtime pay and render superintendents services on the project.

10.4.1.4 The G&A rate shall not apply to non-exempt union labor described in Section 10.4.3 below.

10.4.1.5 The G&A rate shall not apply to partners, principals or temporary employees of Construction Manager.

10.4.1.6 Construction Manager's actual G&A rate(s) during the term of this Agreement shall be subject to an audit by MSDC. MSDC reserves the right to retroactively adjust Construction Manager's compensation in the event that a final audit of G&A/overhead indicates the actual rate applicable during the Agreement to be less than the rate(s) used during the Agreement. Construction Manager is responsible for monitoring its actual rates to ensure compliance with the Provisional G&A rate applicable at the time.

10.4.1.7 The G&A rate shall not include any element that is not provided for in Section 10.4.1 above; attributable to Construction Manager's Profit/Fee; or addressed as a reimbursable expense or cost under this Agreement.

10.4.2 Direct Labor: General Conditions Costs shall include the actual hourly rates of Construction Manager's full-time employees ("Personnel") for service on the Project.

10.4.2.1 Attached hereto as **Exhibit C** (Schedule of Personnel Salaries) is a schedule of the actual hourly labor rates and titles of all Construction Manager's Personnel assigned to the Project who have been approved by MSDC, including an organizational chart showing name and title of

CONSTRUCTION MANAGEMENT AGREEMENT

all staff working on the project.

10.4.2.2 It is understood that such employee shall only bill time to the Project for work actually performed on the Project and shall not bill time to the Project for holidays, vacation days, sick leave, or personal days, maternity, medical, or family leave, nor for any other item included in the G&A rate, as set forth in Section 10.4.1 above.

10.4.2.3 When requesting salary or billing rate adjustments for one or more of its personnel, Construction Manager shall submit his/her name, title, current direct hourly rate or billing rate, proposed new direct hourly salary or billing rate, resulting percentage increase, effective date and reason for the requested change setting forth in detail any increased costs to Construction Manager of providing the services under this Agreement which has given rise to the request for increased salary. For adjustments submitted after the effective date of this Agreement, MSDC may consider an increase in pay if Construction Manager demonstrates to the satisfaction of MSDC compliance with all of the following conditions: that an increase in salary is (a) in accordance with the program of periodic merit and cost of living increases; (b) warranted by increased costs of providing Services under this Agreement; (c) based upon increases in salaries and billing rates which are generally applicable to all of Construction Manager's clients. Each increase, if granted, shall only be effective if it is expressly agreed to in writing by MSDC. MSDC, in its discretion, may approve increases approved retroactively, as appropriate. The amount of increase in salary or billing rate, if any, to be applicable under this agreement shall, therefore, in all cases, be finally determined by the Director or his/her designee, in his/her sole and absolute discretion.

10.4.3 Costs of Non-Exempt Union Labor. In the event that any of Construction Manager's Personnel are non-exempt union labor, then General Conditions Costs shall include the actual wages plus actual fringe benefits paid by Construction Manager to a worker for work performed on the Project, where such worker is (i) non-exempt and eligible to receive overtime pay, and (ii) a member of a labor union; provided, however, that such work is performed and payment made under the terms of an applicable collective bargaining agreement and in accordance with the Contract Documents.

10.4.4 Costs of Subconsultants. General Conditions Costs shall include an amount equivalent to the aggregate amount actually paid to Subconsultants by Construction Manager. Under no circumstances shall any subconsultant contract, at any tier, contain a cost-plus-percentage-of-cost compensation structure.

10.4.5 Reimbursable Expenses. Out-of-pocket expenses are reimbursable to Construction Manager to the extent such costs are (i)

CONSTRUCTION MANAGEMENT AGREEMENT

necessarily and reasonably incurred by Construction Manager in the reasonable opinion of MSDC, and (ii) actually paid by Construction Manager in its performance of the Services hereunder (“Reimbursable Expenses”). Reimbursable Expenses include, as follows:

10.4.5.1 Reasonable expenses necessary for the operation and furnishing of Construction Manager’s field office, including but not limited to rent, field office fit out, furniture, computer and telefax equipment, network charges, equipment, stationery, supplies, telefax, telegrams, long distance telephone calls, telephone service at the Project, express mail, messenger delivery, postage, pest control, and similar petty cash items in connection with the Services; provided, however, that such field office is utilized solely for the Project. Reasonable expenses of and usage charges for cell phones, walkie-talkies, and Blackberry® devices for those Personnel for whom MSDC has pre-approved in writing such expenses and charges. In the event any work occurs or services are rendered from this field office for work other than the Project, then the field offices and all of the expenses set forth in this Subsection (i) shall be excluded from Reimbursable Expenses as though such expenses were set forth in Section 9.2.3 below. In the event MSDC purchases any equipment pursuant to this Subsection (i), such equipment will belong to MSDC. In the event Construction Manager purchases any equipment pursuant to this Subsection (i), the purchase of such equipment must be pre-approved in writing by MSDC. In the event Construction Manager owns existing equipment that it moves to the field office pursuant to this Subsection (i), MSDC will approve payment for such existing equipment on a case by case basis.

10.4.5.2 Costs incurred due to an emergency affecting the safety of persons and property (“Emergency Costs”), unless such Emergency Costs are due to Construction Manager’s willful misconduct or negligence (“Excluded Emergency Costs”); Excluded Emergency Costs shall be reimbursed only to the extent MSDC receives reimbursement for such Excluded Emergency Costs from insurance proceeds. For purposes of this Section 10.4.5.3, the term “emergency” means the occurrence of an event requiring immediate action by Construction Manager to protect persons or property such that insufficient time exists to enable Construction Manager to seek prior approval from MSDC for the expenditure of the costs.

10.4.5.3 Costs of computer aided design and drafting (CADD) and the necessary printing of all drawings, specifications, and other approved reproductions.

CONSTRUCTION MANAGEMENT AGREEMENT

10.4.5.4 Costs of photos of the construction, if required by MSDC.

10.4.5.5 Travel

(i) When Construction Manager is asked to provide services outside NYC Metropolitan Area , the actual cost of transportation (coach class) as well as the cost for hotel accommodations and meals shall be reimbursable hereunder when approved in advanced in writing by the Director. The cost for all meals and lodging on approved overnight trips are limited to the amounts established by the United States General Services Administration or Department of State, as follows: for domestic travel, locality-specific per diem rates may be found at <http://www.gsa.gov>; and for non-contiguous United States (e.g. Hawaii, Alaska, Guam, etc.) and foreign travel per diem rates are available at <http://aoprals.state.gov/>

(ii) When Construction Manager uses his personal vehicle to provide services within the NYC Metropolitan Area, Construction Manager shall be reimbursed for travel expenses beyond normal commuting costs at a rate not higher than the Annual Federal Mileage Reimbursement Rate (as determined by the Internal Revenue Services, see <http://www.irs.gov>) per mile traveled by auto.

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

10.4.5.6 Costs of final cleaning of windows, interior areas and curtain wall, if required by MSDC.

10.4.5.7 Costs for flag persons and street cleaning, if required by MSDC.

10.4.5.8 Costs for temporary barricades and Project fence.

10.4.5.9 Costs incurred in connection with security Personnel.

CONSTRUCTION MANAGEMENT AGREEMENT

10.4.5.10 Costs for surveys.

10.4.5.11 Costs for trailers, temporary toilets.

10.4.5.12 Costs incurred for pre-approved reasonable coach travel associated with the Project.

10.4.6 Other Reimbursable Costs. The following costs shall be reimbursed by MSDC to Construction Manager. Such reimbursable costs shall include an amount equal to the out-of-pocket expenses of Construction Manager (i) necessarily and reasonably incurred by Construction Manager in the reasonable opinion of MSDC, and (ii) actually paid by Construction Manager in its performance of the Services hereunder, as follows:

10.4.6.1 Insurance premiums, deductibles, any self-insured retention for the benefit of MSDC with respect to any insurance or retention not provided by MSDC, and any required taxes on all such costs; but only to the extent reimbursement for any cost set forth in this clause 10.4.6.1 is not otherwise provided for in the Agreement; and only if such cost is (a) required by the terms of the Agreement, and (b) beyond the scope of the PPL;

10.4.6.2 Direct costs in connection with the administration of warranty work by Construction Manager after Final Completion;

10.4.6.3 Reasonable legal fees and costs pre-approved in writing (a) to prosecute a default under a Contract, (b) to enforce a Contract provision, or (c) to enforce MSDC's rights under the Contract; provided, however, it shall not be the responsibility of Construction Manager to pursue any such legal process for the benefit of MSDC unless MSDC authorizes same and agrees to reimburse Construction Manager for its out-of-pocket costs.

10.4.7 Excluded Expenses. Construction Manager agrees that the following expenses, even if incurred in furtherance of its Services, shall not be Reimbursable Expenses and shall not be paid by MSDC: (re the note: This is from PA standard documentation)

10.4.7.1 Construction Manager's overhead, including, without limitation, expenses necessary for the operation and furnishing of Construction Manager's principal office, such as furniture, equipment, stationery, supplies, telefax, telegrams, long distance telephone calls, telephone service, express mail, messenger delivery, utilization of computer systems (other than network charges), cameras, recording or measuring devices, flashlights and other small, portable equipment, safety supplies and similar petty cash items in connection with the Services.

CONSTRUCTION MANAGEMENT AGREEMENT

10.4.7.2 Salaries or other compensation of Construction Manager's Personnel at Construction Manager's principal office and branch offices, unless Construction Manager obtains prior written approval from MSDC, in which case such salaries or other compensation will be subject to the terms of Section 10.4.2 above.

10.4.7.3 Expenses of Construction Manager's branch offices except as otherwise explicitly allowed herein.

10.4.7.4 Any part of Construction Manager's capital expenses, including interest on Construction Manager's capital employed for the Services.

10.4.7.5 Rental or depreciation costs.

10.4.7.6 General expenses of any kind, except as may be expressly included in Section 10.4.1 above or approved in writing by MSDC, in accordance with Section 10.4.7.15 below.

10.4.7.7 Costs incurred due to the willful misconduct or negligence of, or breach of the Agreement by, Construction Manager, any Subconsultant, anyone directly or indirectly employed by any of them (other than the Contractors), or for whose acts any of them may be liable.

10.4.7.8 Except as set forth herein, costs incurred by reason of Construction Manager's membership in, or fees paid by Construction Manager, to trade or professional organizations.

10.4.7.9 [Intentionally Omitted]

10.4.7.10 All fees for obtaining building permits shall be paid directly by MSDC, but Construction Manager shall provide any services reasonably necessary to assist MSDC in obtaining any permits.

10.4.7.11 Construction Manager's federal, state, or local income taxes.

10.4.7.12 Indirect costs and expenses of Construction Manager in connection with the administration of the warranty after Final Completion.

10.4.7.13 Other than for non-exempt union labor who shall be billed at cost, overtime or hazardous pay, including, without limitation, overtime work or night work or pay for performing hazardous duties.

CONSTRUCTION MANAGEMENT AGREEMENT

10.4.7.14 Any tax paid with respect to any purchase or rental charge, including, without limitation, New York State or New York City sales tax, where the purchase or rental charge is exempt from such tax.

10.4.7.15 The cost of any item not specifically and expressly included in the items described in Section 10 above, unless Construction Manager obtains prior written approval from MSDC for each reimbursement of a specific, extraordinary, single, and non-reoccurring item of expense, which approval shall be granted or denied at MSDC's sole, subjective, and absolute discretion. To be eligible for approval under this Section 10.4.7.15, Construction Manager must demonstrate that the proposed cost was (i) necessarily and reasonably incurred by Construction Manager in the reasonable opinion of MSDC, and (ii) actually paid by Construction Manager in its performance of the Services hereunder.

11. PROGRESS PAYMENTS.

11.1 Progress Payments

11.1.1 Construction Manager shall requisition MSDC monthly for (a) General Conditions Costs that have been incurred by Construction Manager during the previous calendar month; and (b) any Trade Costs for work performed in the prior month; and (c) the portion of Construction Manager's Fee that has been earned in accordance with 11.1.1.1 below ("Requisition"). The Requisition shall be submitted to MSDC no later than the first day of each calendar month (or, if such day is not a business day, then the first business day thereafter). Construction Manager shall provide all payment documentation requested by, and in form and substance satisfactory to, MSDC.

11.1.1.1 Payment of Construction Manager's Fee shall be made in installments based upon the percentage of completion of the Work as determined from the estimates submitted to and approved by MSDC, but subject to the withholding provisions of Section 11.2 below. Construction Manager and every Subconsultant shall make and maintain weekly payroll records during the course of the Work and for the period set forth in the clause hereof entitled "MSDC Access to Records" for all employees employed in the Work. Such records shall contain the name, address and social security number of each such employee, the employee's correct payroll classification, rate of pay and supplements, daily and weekly number of hours worked, deductions made and actual wages and supplements paid. The Construction Manager must submit these weekly payroll records to MSDC (on forms furnished by MSDC) of all his payroll records and those of each of the Subconsultants with Construction Manager's monthly Payment Application, together with an affidavit by Construction Manager and by each Subconsultant to the effect that such payroll records are correct and complete, the wage and supplement rates contained therein are not less than those required by the provisions of this Agreement, and the

CONSTRUCTION MANAGEMENT AGREEMENT

classifications set forth for each employee conform with the work performed. Such copies and summaries and the original payroll records shall be available for inspection by MSDC (including its auditors), and Construction Manager and its Subconsultants shall permit such representatives to interview employees during working hours on the job site.

11.1.2 After the Requisition has been approved and certified for payment by the MSDC Representative, MSDC shall pay such Requisition in a reasonable time, not to exceed thirty (30) calendar days from the date that the Requisition has been approved.

11.2 Payments Withheld.

11.2.1 MSDC, at its discretion, may withhold an appropriate portion or all of any payment for any of the following reasons: (1) a lien or other claim made, asserted, or filed, or reasonable evidence indicating such a lien or claim may be asserted, regarding the Project for payments made to or authorized by Construction Manager; (2) failure of Construction Manager to properly make a payment to a Subconsultant; (3) improper, erroneous, or incomplete invoices from Construction Manager; (4) unauthorized deviation by Construction Manager from performance of the Services in accordance with the Standard of Care; or (5) breach of the Contract Documents by Construction Manager. Once the condition justifying withholding has been removed, the amount withheld shall be released with payment of the following Requisition.

11.2.2 Notwithstanding the above, MSDC may dispute any payment, deposit, or disbursement, and deduct from future payment requests the amount in dispute until such time as the dispute is resolved in accordance with the Contract Documents.

11.3 MSDC may perform an audit, investigation, or otherwise independently verify any payment request or certification by Construction Manager. Construction Manager shall not be entitled to reimbursement or other compensation for costs associated with such audit, investigation, verification, or certification.

12. NON-DISCRIMINATION AND AFFIRMATIVE ACTION

12.1 Construction Manager shall comply with any and all federal, state and local laws, orders, rules and regulations which prohibit discrimination in employment or hiring because of age, race, creed, color, national origin, sex, disability or marital status of any individual.

12.2 The United States Department of Transportation regulations on Disadvantaged Business Enterprises ("DBEs") are contained in Part 26 of Title 49 of the

CONSTRUCTION MANAGEMENT AGREEMENT

Code of Federal Regulations. Firms owned and controlled by socially and economically disadvantaged individuals and certified as DBEs pursuant to the New York State Uniform Certification Program ("NYSCUP") are eligible to be included in determining Construction Manager's good faith effort compliance with the Affirmative Action and Non-Discrimination program and policies, as set forth in Exhibit K to this Agreement. Eligible DBE firms are listed on the following Uniform Certification Programs (UCPs) website <http://biznet.nysucp.net>.

12.3 Construction Manager shall make a good faith effort to achieve an overall participation by DBE and Minority and/or Women-Owned Business Enterprises (as defined in Exhibit K to this Agreement) and shall make a good faith effort to comply with the Affirmative Action and Non-Discrimination program and policies, as set forth in Exhibit K to this Agreement.

12.4 Construction Manager shall comply and cause each of its Subconsultants to comply with the provisions of Exhibit K to this Agreement relating to non-discrimination and affirmative action. The provisions of this Section 12 and Exhibit K shall be available and applicable to all Subconsultant contract bidders and those selected to be Subconsultants, both during the bidding process and at time of execution of each respective Subconsultant contract; and to all Subconsultants and their subconsultants of any tier.

13. HAZARDOUS MATERIALS.

13.1 Except as otherwise provided in Section 13.2, Construction Manager shall not have any duties or obligations regarding the existence, remediation or removal of any hazardous waste, hazardous material, toxic substance, asbestos-containing material, petroleum product, or related materials, including, but not limited to, substances defined as "hazardous substances" or "toxic substances" as defined in the following: Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Sec. 9061 *et. seq.*; Hazardous Materials Transportation Act, as amended, 49 U.S.C. Sec. 1802; and the Resource Conservation Act and Recovery Act, as amended, 42 U.S.C. Sec. 6901 *et. seq.*; and the corresponding regulations (as amended) issued pursuant to these acts (collectively, "Hazardous Materials"); provided, however, that Construction Manager will assist MSDC in the procurement of Contracts with remediation trades to perform any needed remediation work. It is MSDC's responsibility to directly contract with remediation contractors for the removal, transport, and disposal of all asbestos and hazardous waste from the site (each such contractor, hereinafter a "Remediation Contractor"). At MSDC's request, Construction Manager shall bid at MSDC's request and recommend to MSDC an award for both the asbestos and hazardous waste survey and monitoring firm as well as the Remediation Contractor(s). The Remediation Contractor(s) shall be directly responsible to MSDC for the monitoring and supervision of all asbestos and hazardous waste

CONSTRUCTION MANAGEMENT AGREEMENT

removal/remediation. Construction Manager shall in no way be responsible for supervision of the work of remediating, removing, transporting, or disposing of the asbestos or hazardous waste as performed by MSDC's Remediation Contractor. MSDC shall, in its contract(s) with Remediation Contractors, use reasonable efforts to, and where possible, require each such Remediation Contractor to: (i) name MSDC and Construction Manager as additional insureds on all relevant insurance policies relating to work on the Project; and (ii) defend, indemnify and hold harmless in connection with the Remediation Contractor's work the following entities: MSDC and Construction Manager and the parents and affiliates, successors and permitted assigns of each of the foregoing entities and the officers and directors of each of them.

13.2 Construction Manager shall be responsible for the remediation, removal or damages arising from the following: (i) any Hazardous Material introduced to the Project by Construction Manager or its Subconsultants, or anyone for whom either or both are responsible; (ii) any Hazardous Material handled either improperly or unsafely or not in keeping with the Legal Requirements setting forth the requirements for handling or disposing of such Hazardous Materials; and/or (iii) any condition arising from the existence, remediation, removal or damages of a Hazardous Material that is negligently exacerbated by Construction Manager or its Subconsultants. Construction Manager shall ensure that both Construction Manager and MSDC are listed as additional insureds on any remediation contractor's Environmental and Comprehensive General Liability policies hired with respect to this Section 13.2.

14. PUBLIC RELATIONS.

Construction Manager shall not communicate with the media regarding the Project without the prior written approval of MSDC and shall comply with the requirements of Section 22 (Confidentiality) below at all times with respect to any communication whatsoever.

15. PREPARATION OF DOCUMENTS AND GRAPHICS.

15.1 When Services to be performed by Construction Manager include the preparation of Contract Documents, or the performance of post-award Services, Construction Manager shall submit a specific quality control/quality assurance program to MSDC prior to the performance of said Services. When Construction Manager has completed preparation of any Contract Documents required hereunder, Construction Manager shall submit a letter to MSDC certifying Construction Manager's conformance with the aforementioned quality control/quality assurance program.

15.2 When Services to be performed by Construction Manager include the preparation of computer aided design and drafting (CADD) documents, Construction Manager shall submit said documents in the format of the latest available version of AutoDesk's design CADD software (.dwg), or as directed by MSDC prior to performance

CONSTRUCTION MANAGEMENT AGREEMENT

of specific Services, and such documents shall be submitted to MSDCon compact disks or as otherwise required by MSDC.

15.3 When Services to be performed by Construction Manager include the preparation of architectural graphics, Construction Manager shall prepare said graphics using a system fully compatible with MSDC's and PANYNJ's standard computer systems. The graphics shall be prepared using the latest revision of the following software packages, as required by MSDC: Adobe Illustrator; Quark Xpress; Microsoft Word, and Microsoft PowerPoint. Such graphics shall be submitted to MSDC and PANYNJ Design & Construction Oversight Staff and on compact disk or as otherwise required by MSDC.

16. MSDC REVIEW.

16.1 Any deliverable, such as Project Schedule, to be submitted or prepared hereunder by Construction Manager shall be subject to review by PANYNJ Design & Construction Oversight Staff and MSDC or, where applicable, approval by MSDC.

16.1.1 MSDC may disapprove, if, in the MSDC Representative's sole opinion, any deliverable is not in accordance with the requirements of this Agreement, all applicable jurisdictional codes, MSDC's standards previously disclosed by MSDC to Construction Manager, sound engineering practices, or are impractical, uneconomical, or unsuitable for the purpose for which the construction is intended.

16.1.2 If any deliverable is so disapproved, Construction Manager shall forthwith revise said items until approved by MSDC, but Construction Manager shall not be compensated under any provision of this Agreement for performance of such revisions.

16.2 No approval or disapproval by MSDC shall relieve Construction Manager of its responsibilities under this Agreement.

17. RECORDKEEPING.

17.1 Construction Manager shall keep, and shall cause each Subconsultant under this Agreement to keep, daily records of the time spent in the performance of Services by all persons whose salaries or amounts paid thereto will be the basis for compensation under this Agreement, as well as records of the amounts of such salaries and amounts actually paid for the performance of such Services, and records and receipts of the General Conditions Costs, or other expenditures hereunder. In addition, Construction Manager shall also keep records associated with the calculation of General and Administrative Costs.

17.2 Notwithstanding any other provision of this Agreement, failure to comply with Section 17.1 shall be a conclusive and final waiver of any right to compensation for such Services or expenses that are otherwise compensable hereunder.

CONSTRUCTION MANAGEMENT AGREEMENT

17.3 MSDC shall have the right to audit all of the records of Construction Manager and Subconsultants of any tier with respect to the Project.

17.4 MSDC shall have the right to inspect Construction Manager's records, and those of Construction Manager's Subconsultants of any tier, pertaining to any compensation payable or to be paid hereunder.

17.5 Construction Manager's files and records with respect to the Project must be maintained by Construction Manager and its Subconsultants for a period of four (4) years after completion of Services to be performed under this Agreement and final payment is made to Construction Manager.

17.6 As used in this Section 17, "Subconsultants" shall also include subcontractors, vendors and suppliers at all tiers.

18. INDEMNIFICATION.

18.1 Construction Manager shall defend, indemnify and hold MSDC, ESD, PANYNJ and their respective affiliates, officers, directors, employees, agents, successors, and assigns ("Indemnitees") harmless from all claims, including but not limited to, damages, losses, and expenses for bodily injury or death or damage to or destruction of personal property to the extent such claims, damages, losses, and expenses arise out of, or are caused by Construction Manager's negligence or willful misconduct in connection with performance of the Services, including those of its Subconsultants and sub contractors.

19. INSURANCE.

19.1 MSDC shall provide a professional liability insurance program (the "Insurance Program") in accordance with the Insurance Program provisions of Exhibit E (Insurance) with respect to the PPL. MSDC and Construction Manager hereby agree to the Insurance Program provisions of Exhibit E. Construction Manager shall cooperate with the Insurance Program insurers and shall respond timely to all reasonable requests from same.

19.2 Construction Manager shall procure, and cause its Subconsultants to procure, all other insurance in accordance with the Other Insurance Requirements set forth in Exhibit E (Insurance) other than those described in Section 19.1 above.

19.2.1 Prior to execution of the Agreement, Construction Manager shall provide MSDC with the policy number and a complete and accurate copy of each such policy for all insurance coverages purchased or obtained by Construction Manager for or on behalf of MSDC with respect to the Project.

CONSTRUCTION MANAGEMENT AGREEMENT

20. MSDC OWNERSHIP OF WORK PRODUCT.

20.1 Mylars of the Contract Drawings, originals of technical specifications, estimates, reports, records, data, charts, documents, renderings, computations, computer tapes and disks, and other documents of any type whatsoever (collectively, "Works") and mechanical or electronic copies of the Works, whether in the form of writing, figures, or delineations, which are prepared or compiled in connection with this Agreement, shall become the property of MSDC, and MSDC shall have the right to use or permit the use of them and any ideas or methods represented by them for any purpose and at any time without other compensation than that specifically provided herein. For purposes of copyright creation and ownership, such Works shall be considered "Works for Hire" and shall be deemed created and owned by MSDC; Construction Manager shall otherwise assign such rights to MSDC and execute such documents and undertake such actions to effectuate such assignments and ownership.

20.2 Construction Manager hereby warrants and represents that MSDC will have at all times the ownership and rights provided for in Section 20.1 above, free and clear of all claims of third persons, whether presently existing or arising in the future, and whether presently known to either of the parties to this Agreement or not. This Agreement shall not be construed, however, to require Construction Manager to obtain for MSDC the right to use any idea, design, method, material, equipment or other matter which is the subject of a valid patent, unless such patent is owned by Construction Manager or one of its employees, or by Construction Manager's Subconsultant or one of Subconsultant's employees, in which case such right shall be obtained by MSDC under an irrevocable, non-exclusive, royalty free and worldwide license to make, have made, and use, either by itself or by anyone on MSDC's behalf, without additional compensation by the MSDC in connection with any activity now or hereafter engaged in or permitted by MSDC under this Agreement.

20.3 If research or development is furnished in connection with the performance of this Agreement and if, in the course of such research or development, patentable subject matter is produced by Construction Manager, its officers, agents, employees, or Subconsultants, then MSDC, without cost or expense to it, shall have an irrevocable, non-exclusive royalty-free and worldwide license to make, have made, and use, either by itself or by anyone on MSDC's behalf, such subject matter in connection with any activity now or hereafter engaged in or permitted by MSDC under this Agreement.

20.4 With respect to any license MSDC may be entitled to pursuant to this Section 20, promptly upon request by MSDC, Construction Manager shall furnish or obtain from the appropriate person a form of license satisfactory to MSDC, but it is expressly understood and agreed that, as between MSDC and Construction Manager, the license herein provided for shall nevertheless arise for the benefit of MSDC immediately

CONSTRUCTION MANAGEMENT AGREEMENT

upon the production of said subject matter and shall not await formal exemplification in a written license agreement as provided for above.

20.4.1 Any license agreement obtained pursuant to this Section 21 may be transferred by MSDC to its successors, immediate or otherwise, in the operation or ownership of any real or personal property now or hereafter owned or operated by MSDC, and such license may be otherwise transferable at MSDC's sole discretion.

21. PATENTS.

21.1 Construction Manager shall promptly and fully inform MSDC in writing of any patents or patent disputes, whether existing or potential, of which Construction Manager has knowledge, relating to any idea, design, method, material, equipment, or other matter related to the subject matter of this Agreement or coming to Construction Manager's attention in connection with this Agreement.

21.2 Construction Manager hereby acknowledges that, except as set forth herein, all Intellectual Property Rights (as such term is defined in Section 21.4 below) necessary for the development, construction, and marketing of the Project are owned by, licensed to, or have been otherwise secured by MSDC, its contractors, consultants, and employees and agents thereof, and that any uses by Construction Manager and its agent, employees, and Subconsultants are incidental and for the benefit of MSDC as part of the Project.

21.3 In the event that MSDC is accused of infringing any Intellectual Property Rights, including, but not limited to, those rights set forth in Section 21.1, as a result of any action taken by Construction Manager, its Subconsultants, officers, employees, or agents thereof, Construction Manager shall defend, indemnify, and hold harmless, and hereby does indemnify and hold harmless the Indemnitees from and against any and all claims, demands, suits, causes of action, damages, losses, costs, and expenses, including reasonable attorneys' and experts' fees and costs, arising directly or indirectly from or out of the design, creation, manufacture, advertising, promotion, distribution, sale, use, or misuse of any third-party Intellectual Property Rights or any alleged action or omission by Construction Manager, its Subconsultants, or their respective officers, directors, employees, agents, successors, assigns, or customers (collectively, "IP Claims"), including, but not limited to, any IP Claims that may be asserted by customers, suppliers, Contractors, Subconsultants, manufacturers, sales representatives (independent and otherwise), employees, and all other persons and entities which may assert any such claims. Construction Manager shall not settle or otherwise compromise any IP Claims naming MSDC without MSDC's prior written consent, which shall not be unreasonably withheld. MSDC shall have the option to assume the defense of any IP Claims and to hire counsel of its choice, at Construction Manager's expense. Construction Manager shall give immediate notice to MSDC of any occurrence that might reasonably be expected to result in any IP Claim against any one or more of the

CONSTRUCTION MANAGEMENT AGREEMENT

Indemnitees. All of Construction Manager's indemnification obligations hereunder shall survive the expiration or termination of this Agreement.

21.4 For purposes of this Agreement, "Intellectual Property Rights" shall be defined as patents, unpatented inventions, patent applications in process, rights in expired patents, designs, processes, know-how, inventions, mask works, common law trademarks and service marks, active, expired or cancelled trademark or service mark registrations, trade names, slogans, unregistered trade dress, registered and unregistered copyrights, agreements, licenses, trade secrets, rights of publicity, and any tangible media (including film negatives and electronic files) embodying the same.

22. CONFIDENTIALITY.

22.1 Construction Manager shall entered into a Confidentiality Agreement with MSDC and other parties ("Confidentiality Agreement"), a copy of which is attached hereto as Exhibit F (Non-Disclosure and Confidentiality Agreement) and made a part hereof. Construction Manager acknowledges and agrees that such Confidentiality Agreement is applicable to both the Project and the Agreement. Construction Manager shall require in all Subconsultants and Subconsultant Agreements comply with such requirements. A breach of the Confidentiality Agreement by Construction Manager or its Subconsultants shall be a material breach of this Agreement.

22.2 In addition to the obligations set forth in Section 22.1 above, Construction Manager shall comply, and cause its Subconsultants to comply, with Sections 22.3 through 22.7 below, unless a requirement of any such provision conflicts with a requirement set forth in the Confidentiality Agreement. In the event of such a conflict, the most stringent requirement upon Construction Manager shall apply. In the event there is a dispute or it cannot be determined which provision is most stringent upon Construction Manager, then MSDC shall select the requirement with which Construction Manager must comply.

22.3 Without the express written approval of MSDC, Construction Manager shall keep confidential, and shall require its Subconsultants and employees to keep confidential, the information set forth in Sections 22.3.1 and 22.3.2 below. Disclosure of any such information shall constitute a material breach of the Agreement.

22.3.1 all information identified as confidential, or some other similar identifying mark or statement indicating that such item is confidential, privileged, sensitive security, and/or proprietary information, disclosed to Construction Manager by MSDC or PATH or their respective contractors, consultants, or construction managers, if any; or

22.3.2 all information developed by Construction Manager or its Subconsultants in the performance of Services.

CONSTRUCTION MANAGEMENT AGREEMENT

22.4 Construction Manager shall execute, and shall cause its employees and its Subconsultants, and the Subconsultant's respective employees, to execute non-disclosure agreements, as MSDC may require, concerning intellectual property and proprietary information of MSDC, and any third person. Disclosure of any information covered under such non-disclosure agreements shall constitute a material breach of the Agreement.

22.5 The obligation of confidentiality under this Section 22 shall not pertain to:

22.5.1 information in the public domain;

22.5.2 information lawfully received from a third party;

22.5.3 information independently developed or obtained by Construction Manager or its Subconsultants prior to any disclosure or development contemplated in Sections 22.3.1 or 22.3.2, above; or

22.5.4 information that must be disclosed under law, provided MSDC is given reasonable notice of the legal obligation or legal process to disclose the same and provided Construction Manager is permitted to give such notice by applicable law.

22.6 Construction Manager shall not issue or permit to be issued any press release, advertisement, or literature of any kind that refers to MSDC or the Services performed in connection with this Agreement, unless Construction Manager obtains prior written approval from MSDC. Such approval may be withheld at the sole discretion of MSDC if, for any reason, MSDC believes that publication of such information could or would be harmful to the public interest or is in any way undesirable.

22.7 Under no circumstances shall Construction Manager or its Subconsultants communicate in any way with any contractor, department, board, agency, commission, or other organization, or any person, whether governmental or private, in connection with the Services unless required by law, except upon prior written approval and instruction of MSDC; provided, however, that data from manufacturers and suppliers of material shall be obtained by Construction Manager when Construction Manager finds such data necessary, unless otherwise instructed by MSDC.

23. SUSPENSION AND TERMINATION.

23.1 If, at any time, it is impracticable or undesirable from the viewpoint or judgment of MSDC to proceed with or continue the performance of the Agreement or any part thereof, whether or not for reasons beyond the control of MSDC, then MSDC shall have discretion to suspend performance of any part or all of the Agreement until such time as MSDC may deem it practicable or desirable to proceed.

CONSTRUCTION MANAGEMENT AGREEMENT

23.2 This Agreement may be terminated for the convenience of MSDC without cause upon thirty (30) days' prior written notice from MSDC, in which event MSDC shall pay Construction Manager the amounts calculated in Sections 23.2.1 through 23.2.4, as follows:

23.2.1 The portion of Construction Manager's Fee based upon the percentage of completion of Services performed through the effective date of termination;

23.2.2 Plus General Conditions Costs incurred up to the effective date of termination provided that such General Conditions Costs are reasonable and necessary to the wrap-up of Construction Manager's services.

23.2.3 Plus, MSDC shall pay Construction Manager for staff and related expenses for up to thirty (30) days after the effective date of termination to allow for transfer of Construction Manager's personnel. Provided, however, that the Direct Labor Costs for personnel beyond the effective date of termination shall not exceed an average of fifteen (15) days in the aggregate for all personnel.

23.2.4 Less any back charges against Construction Manager under this Agreement, which amounts shall be determined by MSDC in its sole and absolute discretion.

23.3 In no event shall Construction Manager be entitled to anticipated or unearned Fee or profits for (i) Services not executed, or (ii) cost of the Work (a) to be incurred or (b) incurred after the effective date of termination.

23.4 If requested by MSDC, Construction Manager shall assign all of the Subconsultants' agreements contracts to MSDC by the effective date of termination.

23.5 Construction Manager shall remain liable for Services as if contract was completed in full.

24. DISPUTE RESOLUTION.

24.1 Claims for Extra Work

- (a) If Construction Manager is of the opinion that (1) any work which it has been ordered to perform is extra work and not Work as set forth in the Contract Documents, (2) any determination, order or directive of MSDC is contrary to the terms of the Contract Documents and will require the performance of extra work or will cause additional expense to Construction Manager, or (3) any action or omission of MSDC is contrary to the terms and provisions of the Contract Documents and will require

CONSTRUCTION MANAGEMENT AGREEMENT

the performance of extra work or will cause additional expense to Construction Manager, Construction Manager shall:

1. not suspend Work, but promptly comply with such determination, order or directive and proceed diligently with the Performance of the Work in accordance with MSDC's instructions;
2. notify MSDC in writing within 72 hours of such determination, order or directive of its reasons for its opinion and request a final determination thereon by MSDC.

If within three (3) business days MSDC determines that the Work is not extra work, the Construction Manager, in order to reserve its right to claim compensation resulting from the performance of such work or the compliance with such determination, order or directive, must notify MSDC in writing within three (3) business days after receiving notice of MSDC's determination that it is performing such work or complying with such determination, order or directive under protest. In addition to the foregoing, Construction Manager must submit to MSDC within thirty (30) days after it has performed such work or complied with such determination, order or directive, a detailed statement of the extra expense incurred from the performance of such work or the compliance with such determination, order or directive.

- (b) No claims for extra work shall be allowed unless the same was done pursuant to written order approved by MSDC. If Construction Manager fails to comply with any provisions of the Article:
1. it shall constitute a conclusive and binding determination that such action, omission, determination order or directive does not involve extra work, has not caused extra expense to Construction Manager, and is not contrary to the terms and provision of the Contract Documents; and
 2. it shall be deemed to have waived any claim for compensation resulting from the performance of such work or the compliance with such determination, order or directive.
- (c) The value of claims for extra work, if allowed shall be determined in accordance with the Agreement.

24.2 All such dispute questions shall be submitted in writing by Construction Manager to the MSDC Representative for his or her decision, together with all evidence and other pertinent information in regard to such questions, in order that a fair and impartial decision may be made. In any action against MSDC relating to any

CONSTRUCTION MANAGEMENT AGREEMENT

such question Construction Manager must allege in his complaint and prove such submission, which shall be a condition precedent to any such action. No evidence or information shall be introduced or relied upon in such an action that has not been so presented to the MSDC Representative.

24.3 This numbered clause shall be governed by and construed in accordance with the law of the State of New York, without giving effect to its choice law provisions.

25 SECURITY REQUIREMENTS.

25.1 Construction Manager acknowledges and agrees that the WEC, Train Shed and areas beneath, within, and adjacent to the Farley Building are locations and facilities where terrorism or other criminal acts may have a significant impact on life safety and key infrastructures. MSDC reserves the right to impose multiple layers of security requirements on Construction Manager, its staff, and Subconsultants and their staffs, Contractors and their staffs and subcontractors and all others participating in the Project, depending upon the level of security required, as determined by MSDC in its sole, absolute, and subjective discretion. Accordingly, Construction Manager, if requested after execution of this Agreement, shall execute and comply with any security agreement or new security provision required by MSDC or with any new governmental regulation; or with any modification, increase, and/or upgrade to existing security requirements or governmental regulation, which modification, increase, and/or update is imposed after execution of this Agreement; and Construction Manager shall create an obligation and require that all Subconsultants and their respective staffs shall do the same and Construction Manager shall cause its Subconsultants to comply with the provisions therein.

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

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

26.1.1 been indicted or convicted in any jurisdiction;

26.1.2 been suspended, debarred, found not responsible, or otherwise disqualified from entering into any agreement with any governmental agency or been denied a government agreement for failure to meet standards related to the integrity of Construction Manager;

CONSTRUCTION MANAGEMENT AGREEMENT

- 26.1.3 had an agreement terminated by any governmental agency for breach of agreement or for any cause based in whole or in part on an indictment or conviction;
- 26.1.4 ever used a name, trade name, or abbreviated name, or an employer identification number different from those inserted in any such proposal or furnished to MSDC;
- 26.1.5 had any business or professional license suspended or revoked or, within the five (5) years prior to submission of any proposal or execution of this Agreement, whichever occurred earlier, had any sanction imposed in excess of Fifty Thousand Dollars (\$50,000) as a result of any judicial or administrative proceeding with respect to any license held or with respect to any violation of a federal, state, or local law, rule, or regulation, including environmental laws, rules, and regulations;
- 26.1.6 had any sanction imposed as a result of a judicial or administrative proceeding related to fraud, extortion, bribery, proposal rigging, embezzlement, misrepresentation, or anti-trust, regardless of the dollar amount of the any sanction or the date of its imposition; and
- 26.1.7 been and is not currently, or been and is currently, the subject of a criminal investigation by any federal, state, or local prosecuting or investigative agency and/or a civil anti-trust investigation by any federal, state or local prosecuting or investigative agency.

26.2 Construction Manager shall include the provisions of this Section 26 in each Subcontract (at any tier) agreement that Construction Manager enters into under this Agreement and shall cause such Subconsultants and their subconsultants of any tier to so include such provisions.

27 NON-COLLUSIVE BIDDING.

27.1 By signing this Agreement, Construction Manager and each person signing on behalf of Construction Manager certifies that:

- 27.1.1 the prices proposed or quoted have been arrived at independently and without collusion, consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such prices with any other Construction Manager or with any competitor;
- 27.1.2 prior to the official opening of any such proposal, the prices proposed or quoted have not been, and will not be, knowingly disclosed,

CONSTRUCTION MANAGEMENT AGREEMENT

directly or indirectly to any other Construction Manager or to any competitor by Construction Manager or any person covered by Section 26.1 above;

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

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

27.2 The certifications in Section 26 and Section 27 shall be deemed to be made by Construction Manager as follows:

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

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

27.2.3 if Construction Manager is a corporation, such certification shall be deemed to have been authorized by the board of directors of Construction Manager, and such authorization shall be deemed to include the signing and submission of any proposal and the inclusion therein of such certification as the act and deed of the corporation.

27.3 If Construction Manager cannot make every certification required under Section 26 or Section 27, Construction Manager shall so state and shall furnish to MSDC prior to executing this Agreement a signed statement that sets forth in detail the reasons there for. If Construction Manager is uncertain as to whether it can make the foregoing certifications, it shall so indicate to MSDC in a signed statement furnished to MSDC prior to executing this Agreement, setting forth in such statement the reasons for its uncertainty.

CONSTRUCTION MANAGEMENT AGREEMENT

27.4 Notwithstanding that Construction Manager may be able to make the certifications required under Section 26 or Section 27 prior to or at the time of executing this Agreement, Construction Manager shall immediately notify MSDC in writing during the term of this Agreement of any change of circumstances that might make Construction Manager unable to continue to make such certifications or require disclosure.

27.5 Certifications or signed statements made pursuant to Section 26 and Section 27 shall be deemed to have been made by Construction Manager with full knowledge that they shall become a part of the records of MSDC and that MSDC shall rely on their truth and accuracy in awarding this Agreement.

27.6 If MSDC determines at any time prior or subsequent to the award of this Agreement that Construction Manager has falsely certified as to any material item in such certifications or statements, or has willfully or fraudulently furnished a certification or signed statement that is false in any material respect, or has not fully and accurately represented any circumstance with respect to any item in the certifications and statements required to be disclosed, then MSDC may determine that Construction Manager is not a responsible Construction Manager with respect to its proposal regarding the Services or the Agreement or with respect to future proposals for Services or MSDC agreements, and MSDC may exercise such other remedies as are provided to it by the Agreement or by law or regulation with respect to these matters.

27.7 Construction Manager acknowledges that knowingly providing a false certification or statement in any proposal for Services or under this Agreement may be the basis for prosecution for offering a false instrument for filing (see, e.g., New York Penal Law, Section 175.30 et seq.). Construction Manager also acknowledges that the inability to make such certification will not in and of itself disqualify a Construction Manager, and that in each instance, MSDC will evaluate the reasons therefore provided by such Construction Manager.

27.8 Construction Manager shall include the provisions of this Section 27 in each Subconsultant (at any tier) agreement Construction Manager enters into under this Agreement and shall cause its Subconsultants and their Subconsultants of any tier to so include such provisions.

28 CONSTRUCTION MANAGER ELIGIBILITY.

28.1 Construction Manager acknowledges and shall abide by any determination with respect to MSDC's policy to honor any determination by any agency of the State of New York that a Construction Manager is not eligible to submit a proposal or be awarded a public agreement because such Construction Manager has been determined to have engaged in illegal or dishonest conduct or to have violated prevailing rate of wage legislation.

CONSTRUCTION MANAGEMENT AGREEMENT

28.2 Construction Manager acknowledges that with respect to the policy set forth in Section 28.1 above, such policy permits a Construction Manager whose ineligibility has been so determined by an agency of the State of New York to submit a proposal with respect to a MSDC agreement and then to establish that Construction Manager is eligible to be awarded an agreement because (i) the state agency determination relied upon does not apply to Construction Manager; or (ii) the state agency determination relied upon was made without affording Construction Manager the notice and hearing to which Construction Manager was entitled by the requirements of due process of law; or (iii) the state agency determination was clearly erroneous; or (iv) the state agency determination relied upon was not based on a finding of conduct demonstrating a lack of integrity or violation of a prevailing rate of wage law.

29 NO GIFTS / GRATUITIES / OFFERS OF EMPLOYMENT.

29.1 During the term of this Agreement, Construction Manager shall not offer, give, or agree to give anything of value either to an MSDC employee, agent, job shopper, or other person or firm representing MSDC, nor to a member of the immediate family (*e.g.*, spouse, child, parent, brother, or sister) of any of the foregoing, in connection with the performance by such employee, agent, job shopper, Construction Manager, or other person or firm representing MSDC of duties involving transactions with Construction Manager on behalf of MSDC, whether or not such duties are related to this Agreement or any other MSDC agreement or matter. Any such conduct shall be deemed a material breach of this Agreement.

29.2 As used herein, the phrase “anything of value” shall include, but not be limited to, any (a) favor, such as meals, entertainment, transportation, etc., (other than that contemplated by the Agreement) that might tend to obligate an MSDC or MSDC employee to Construction Manager, and (b) gift, gratuity, money, goods, equipment, services, lodging, discounts not available to the general public, offers or promises of employment, loans or the cancellation thereof, preferential treatment, or business opportunity. Such phrase shall not include compensation contemplated by this Agreement. For purposes of this provision in Section 29, the term “MSDC” shall be deemed to include ESD and all subsidiaries of ESD.

29.3 Construction Manager and its personnel shall not accept anything of value, for any reason whatsoever, from any Subconsultant, Contractor, subcontractor, vendor, passenger, tenant, customer, or other person with whom Construction Manager comes in contact during the course of performing the Services and shall so instruct its personnel.

29.4 Construction Manager shall include the provisions of this Section 29 in each subcontract (at any tier) it enters into under this Agreement and shall cause its Subconsultants and their Subconsultants of any tier to so include

CONSTRUCTION MANAGEMENT AGREEMENT

such provisions.

30 CONFLICT OF INTEREST.

30.1 During the term of this Agreement, Construction Manager shall not do any of the following:

30.1.1 participate in any way in the preparation, negotiation, or award of any contract (other than a contract for Construction Manager's own services or for those of potential Contractors to MSDC) to which it is contemplated MSDC may become a party other than contracts in connection with the construction of the Project;

30.1.2 participate in any way in the review or resolution of any claim under any contract described in Section 31.1.1 above if Construction Manager has a substantial financial interest in the contractor or potential contractor of MSDC or if Construction Manager has an arrangement for future employment or for any other business relationship with said contractor or potential contractor; or

30.1.3 take any other action that might be viewed as or give the appearance of a conflict of interest on the part of Construction Manager.

30.2 If any of the following situations exist, then Construction Manager shall inform MSDC immediately in writing of such situation, giving the full details thereof:

30.2.1 if the possibility of an arrangement for future employment or for another business arrangement has been or is the subject of a previous or current discussion between Construction Manager and a contractor or construction manager that has a business relationship with or has entered into a contract with MSDC;

30.2.2 if Construction Manager has reason to believe an arrangement as described in Section 30.2.1 above may be the subject of future discussion;

30.2.3 if Construction Manager has any financial interest, substantial or not, in a construction manager (other than Construction Manager), potential construction manager, Contractor, or potential Contractor of MSDC; or

30.2.4 if Construction Manager has reason to believe any situation exists that might be viewed as or give the appearance of a conflict of interest.

CONSTRUCTION MANAGEMENT AGREEMENT

30.3 Construction Manager shall give MSDC (i) specific prior written notice of Construction Manager's intent to take any action that might be viewed as or give the appearance of a conflict of interest, including, without limitation, performing any work or services for any of the other projects involving the reconstruction of the area surrounding the Project, and (ii) a mitigation plan acceptable to MSDC, prior to Construction Manager taking any such action.

30.4 If MSDC determines that Construction Manager's performance of a portion of its Services (a) is precluded by any provision of this Section 30, or (b) is no longer appropriate because of such preclusion, then MSDC shall have full MSDC on behalf of Construction Manager to order that such portion of Construction Manager's Services not be performed by Construction Manager; provided, however, that MSDC reserves the right to have the Services performed by others, and any compensation payable hereunder that is applicable to the deleted work shall be determined by MSDC, in its sole discretion.

30.5 Construction Manager's execution of this Agreement shall constitute a representation by Construction Manager that, at the time of such execution, except as set forth in written disclosures by Construction Manager, Construction Manager knows of no circumstances, present or anticipated, that come within the provisions of this Section 30 or that might otherwise be viewed as or give the appearance of a conflict of interest on Construction Manager's part.

30.6 Construction Manager acknowledges that MSDC may preclude Construction Manager from involvement in certain disposition initiatives or transactions that result from the findings of MSDC's evaluations hereunder or from participation in any agreements that result, directly or indirectly, from Services provided by Construction Manager.

31 LEGAL REQUIREMENTS.

31.1 Construction Manager's Services shall comply with all provisions of federal (including the FRA provisions that are attached as Exhibit O), state, and local laws, ordinances, codes, rules, regulations, and orders that affect or control its Services to the Project, or would affect or control its Services to the Project if the Project were being performed for a private corporation; provided, however, that if MSDC's standards are more stringent, then MSDC's standards shall prevail and be followed, unless Construction Manager receives written notification to the contrary from MSDC, in which case the requirements of said notification from MSDC shall apply ("Legal Requirements").

31.2 State Finance Law Sectins 139-j AND 139-k Compliance. Construction Manager hereby certifies that all information provided to MSDC with respect to State Finance Law Section 139-j, including, without limitation, the information contained in Offerer's Affirmation of Understanding of and Agreement pursuant to State Finance Law

CONSTRUCTION MANAGEMENT AGREEMENT

Section 139-j, attached as Exhibit H to this Agreement, and Offerer Disclosure of Prior Non-Responsibility Determinations, attached as Exhibit I to this Agreement is complete, true and accurate. Construction Manager acknowledges that the preceding sentence is a material representation upon which MSDC is relying in entering into this Agreement. Should any such information be found to be intentionally false or intentionally incomplete, this Agreement may be subject to termination pursuant to Section 23 of this Agreement.

31.3 Tax Law Section 5-a Compliance. (a) During the term of this Agreement, Construction Manager shall, at the times specified in paragraph (b) of this subsection, properly complete and deliver to the Corporation for inclusion in this Agreement, an updated NYS Tax Form 220-CA: Contractor Certification Pursuant to Section 5-a of the Tax Law. A copy of the Contractor's initial Form ST-220-CA is attached hereto as Exhibit J to this Agreement. Immediately upon delivery, such updated form shall form a part of this Agreement. (b) Construction Manager's updated certification shall be made if this Agreement authorizes renewal thereof at the conclusion of an initial or subsequent term, by the day prior to the commencement date of the applicable renewal term. (c) If Construction Manager is exempt from compliance with Tax Law Section 5-a (see the provisions of said section to determine if Contractor is exempt), the Contractor shall so certify to the Corporation, including in such certification the reason(s) for exemption, in a notarized statement submitted in lieu of Form ST-220-CA.

32. STANDARD PROVISIONS

32.1 Provisions Required by Law Deemed Inserted. Each and every provision of law and governmental regulation required by law to be inserted in the Agreement shall be deemed to be inserted herein and the Agreement shall read and shall be enforced as though so included therein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party, the Agreement shall be deemed to be amended to make such insertion or correction. If the Agreement contains any unlawful provision, the same shall be deemed of no effect and shall, upon the application of either party, be deemed stricken from the Agreement without affecting the binding force of the remainder of the Agreement.

32.2 Compliance with Laws, Rules and Regulations. Construction Manager and each Subconsultant shall comply fully with all applicable laws, rules and regulations pertaining to the Project including, but not limited to, all environmental laws, rules or regulations promulgated by the federal, state and local governments, in effect at the time of the Services. Construction Manager bears all risk associated with any deviation from such laws, rules or regulations pertaining to the Work and agrees to indemnify and hold MSDC harmless for, from and against any costs, expenses, fines or judgments which may be incurred by MSDC as a result of Construction Manager's deviation there

CONSTRUCTION MANAGEMENT AGREEMENT

from.

32.3 Governing Law. The Agreement shall be governed by the laws of the State of New York without giving effect to principles of conflicts of law.

32.4 No Third Party Rights. Nothing in the Agreement shall create or shall give to any third parties any claim or right of action against MSDC, PANYNJ or ESD.

32.5 Protection of Lives and Health

- (a) Construction Manager and its Subconsultants must comply with the rules and regulations, codes and bulletins of the New York State Department of Labor. Attention is also directed to the standards imposed under the Federal Occupational Safety and Health Act of 1970, as amended.
- (b) Construction Manager shall maintain an accurate record of all cases of death, occupational disease, and injury requiring medical attention or causing loss of time from work, arising out of and in the course of employment of work under the Agreement, and shall immediately notify MSDC in writing of any injury which results in hospitalization or death.
- (c) Construction Manager alone shall be responsible for the safety, efficiency and adequacy of Construction Manager's Work, plants, equipment, appliances and methods, and for any damage or injury which may result from the failure, or the improper construction, maintenance, or operation of such Work, plant, equipment, appliances and methods.

32.6 Waiver of Immunity Clause. Construction Manager hereby agrees to the provisions of Section 139-a of the State Finance Law, which section requires that upon the refusal of a person, when called before a grand jury, head of a State department, temporary State Commission, the Organized Crime Task Force in the State Department of Law, or other State agency which is empowered to compel the attendance of witnesses and examine them under oath, to testify in an investigation concerning any transaction or contract had with the State, any political subdivision thereof, or with any public department, agency or official of the State or any political subdivision thereof or a public authority, to sign a waiver of immunity against subsequent criminal prosecution or to answer any relevant questions concerning such transaction or contract:

- (a) Such person, and any firm partnership or corporation of which such person is a member, partner, director or officer shall be disqualified from thereafter selling to or submitting bids to or receiving awards from or entering into any contracts with the State of any public authority or official thereof, for goods, work or services, for the period of five (5)

CONSTRUCTION MANAGEMENT AGREEMENT

years after such refusal; and

- (b) Any and all contracts made with the State of any public department, agency or official thereof, since the effective date of Section 139-a of the State Finance Law, by such person and by any firm, partnership or corporation of which such person is a member, partner, director or officer may be canceled or terminated for cause without incurring any penalty or damages on account of such cancellation or termination, but any sums owing for goods delivered or work done prior to the cancellation or termination shall be paid.

32.7 Prohibited Interests. No official of MSDC, ESD or PANYNJ who is authorized in such capacity and on behalf of MSDC or ESD to negotiate, make, accept, or approve, or to take part in negotiating, making, accepting, or approving any architectural, engineering, inspection, construction or material supply contract or any subcontract in connection with the Work, shall become directly or indirectly interested personally in the Agreement. No officer, employee, architect, attorney, engineer, inspector or consultant of or for MSDC, ESD or PANYNJ who is authorized in such capacity and on behalf of MSDC, ESD or PANYNJ to exercise any legislative, executive, supervisory or other similar functions in connection with the Work, shall become directly or indirectly interested personally in the contract, any material supply contract, subcontract, insurance contract, or any other contract pertaining to the Work.

32.8 Labor Provisions

- (a) It is hereby agreed that all applicable provisions of the Labor Law of the State of New York shall be carried out in the performance of the Work including, but not limited to, Labor Law Sections 220, 220-d and 220-e, as amended, which are incorporated herein by reference, and all federal law and regulatory requirements, including, without limiting the foregoing the Davis-Bacon Act.
- (b) The minimum wage rates, if any, herein specified for apprentices shall apply only to persons working with the tools of the trade which such persons are learning under the direct supervision of journeymen mechanics. Except as otherwise required by law, the number of apprentices in each trade or occupation employed by Construction Manager or any subcontractor shall not exceed the number permitted by the applicable standards of the New York State Department of Labor, or, in the absence of such standards, the number permitted under the usual practice prevailing between the unions and the employer's association of the respective trades or occupations.

CONSTRUCTION MANAGEMENT AGREEMENT

- (c) All employees of Construction Manager and each subcontractor shall be paid in accordance with the provisions of the Labor Law and federal law regulatory requirements, including without limiting the foregoing, the Davis-Bacon Act. All payments shall be made in cash, except a payment may be by check upon certification of the Industrial Commissioner of the State of New York.
- (d) Construction Manager agrees that, in case of underpayment of wages to any worker engaged in the Work by Construction Manager or any Subconsultant, MSDC shall withhold from Construction Manager out of payments due an amount sufficient to pay such worker the difference between the wages required to be paid under the Contract Documents and the wages actually paid such worker for the total number of hours worked, and that MSDC may disburse such amount so withheld by MSDC for and on account of Construction Manager to the employee to whom such amount is due. Construction Manager further agrees that the amount to be withheld pursuant to this paragraph may be in addition to the percentages to be retained by MSDC pursuant to other provisions of the Contract documents.
- (e) Construction Manager shall immediately notify MSDC and MSDC's Representative of any actual or impending labor disputes which may effect or are affecting the Project Schedule of Construction Manager or any other contractor's work. In addition, Construction Manager shall take all appropriate measures to eliminate or minimize the effect of such labor dispute on the Project Schedule.
- (f) Any labor, materials, or means whose employment or utilization during the course of the Agreement may tend to or in any way cause or result in strike, work stoppages, delays, suspension of Work or similar troubles by workmen employed by Construction Manager, its Subconsultants or material suppliers, or by any of the trades working in or about the premises where Work is being performed under the Agreement, or by other contractors, their subcontractors or material suppliers pursuant to other contracts shall not be allowed. Any violation by Construction Manager of this requirement may in the sole judgment of MSDC be considered as proper and sufficient cause for declaring Construction Manager to be in default, and for MSDC to terminate Construction Manager or take such other action as MSDC may deem proper. Construction Manager shall include this section in every Subconsultant contract, subcontract and every lower tier subcontract.
- (g) Construction Manager shall include this Section 32.8 in every Subconsultant Agreement, subcontract and lower tier subcontract

CONSTRUCTION MANAGEMENT AGREEMENT

32.9 Dispute Procedure between Construction Manager and MSDC. Unless the parties hereto otherwise agree in writing, Construction Manager shall continue to perform its obligations hereunder, pursue prosecution of the Work and maintain the Project Schedule, if applicable, during any claim, dispute or proceeding arising under or out of the Agreement ("Claim"):

- (a) Any Claim not resolved by the parties through negotiation shall be first submitted to non-binding mediation within thirty (30) days of such Claim pursuant to the American Arbitration Association's ("AAA") Construction Industry Dispute Resolution Rules as a condition precedent to litigation in a court of competent jurisdiction in the state and county where the Project is located. If such mediation is not conducted within thirty (30) days of submission to the AAA, the requirement to mediate shall be deemed waived. All disputes not resolved through non-binding mediation may only be submitted to a Court of competent jurisdiction in the State of New York and in New York County.
- (b) If MSDC is the prevailing party in any dispute arising under the Agreement, it shall be entitled to recover from Construction Manager, in addition to any judgment, award or settlement, reasonable attorneys' fees, and expert witness fees, attributable to the prosecution or defense of any Claim.

32.10 No Promotion. Construction Manager agrees that it will not without the prior written consent of MSDC in each instance, (i) use in advertising, publicity, or otherwise, the name of MSDC or any affiliate of MSDC, or any employee of MSDC nor any trade name, trademark, trade device, service mark, symbol or any abbreviation, contraction or simulation thereof owned by MSDC or its affiliates; (ii) take or cause to be taken any photographs of the Project or the site except insofar as same is necessary for the performance of the Work; or (iii) represent, directly or indirectly, that any product or any service provided by Construction Manager has been approved or endorsed by MSDC. This Section shall survive completion of the Services or any earlier termination of the Agreement.

32.11 Limitation on Actions. No action or proceeding shall lie or shall be maintained by Construction Manager against MSDC unless such action shall be commenced with six (6) months after the date payment is mailed or otherwise made in respect of the Final Requisition or, if the Agreement is terminated by MSDC, unless such action is commenced within six (6) months after the date of such termination. No action or proceeding shall be commenced by Construction Manager against MSDC and/or MSDC's Representative except in the Supreme Court of the State of New York in New York County.

CONSTRUCTION MANAGEMENT AGREEMENT

32.12 Waiver of Remedies. Construction Manager acknowledges that it can be compensated adequately by money damages for any breach of the Agreement which may be committed by MSDC, MSDC's Representative or PANYNJ. Construction Manager agrees that no default, act or omission of MSDC, the MSDC Representative or PANYNJ shall constitute a material breach of contract entitling Construction Manager to cancel or rescind the Agreement or to suspend or abandon performance thereof, other than the failure of MSDC to make a payment in accordance with the terms hereof solely because sufficient funds to make such payment have not been appropriated or will otherwise not be made available to MSDC. Except as provided in this paragraph, Construction Manager hereby waives all rights and remedies to which Construction Manager might otherwise be or become entitled to become of any wrongful act or omission of MSDC, MSDC's Representative, ESD or PANYNJ saving only Construction Manager's rights to money damages.

32.14 Modification of Agreement. No change in or modification, termination or discharge of the Agreement in any form whatsoever shall be valid or enforceable unless it is in writing and signed by the party to be charged therewith or its duly authorized representative, provided, however, that any change in or modification, termination or discharge of the Agreement expressly provided for in the Agreement shall be effective as so provided.

32.15 Signs and Parking. Construction Manager agrees that it shall not display on or about the Project site any sign, trademark or other advertisement without the written approval of MSDC and to remove the same when so directed by MSDC. Construction Manager shall not permit any of its Subconsultants or materialmen to park vehicles on the Project site. Construction Manager shall be obligated to display at the Project site any signage as required by MSDC.

32.16 Entire Agreement. The Agreement constitutes the entire agreement between the parties and incorporates all prior understandings in connection with the subject matter hereof.

32.17 Reservation of Rights and Remedies. The duties and obligations imposed by the Agreement and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by MSDC or MSDC's Representative including, but not limited to, the making of any payment nor permitting Construction Manager to continue with the performance of the Services shall constitute a waiver of any right or duty afforded any of them under the Agreement, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

CONSTRUCTION MANAGEMENT AGREEMENT

33 MISCELLANEOUS.

33.1 No Release of Construction Manager. No certificate, payment (final or otherwise), acceptance of any Services or Work nor any other act or omission of MSDC or the MSDC Representative shall operate to release Construction Manager from any obligations under or upon the Agreement, or to estop MSDC from showing at any time that such certificate, payment, acceptance, act, or omission was incorrect or to preclude MSDC from recovering any money paid in excess of that lawfully due, whether under mistake of law or fact.

33.2 No Personal Liability. No officer, director, agent, or employee of MSDC shall be charged personally with any liability or be held liable under any term or provision of the Agreement, or because of the execution or attempted execution.

33.3 Binding Agreement. The Agreement shall be binding and inure to the benefit of the respective heirs, executors, administrators, and successors of the parties hereto.

33.4 No Assignment. Construction Manager shall not assign or transfer any interest in the Agreement without the prior written consent of MSDC.

33.5 No Waiver. No consent or waiver by MSDC shall be effective unless it is in writing and then only to the extent specifically stated. Failure on the part of any party to enforce any provision of the Agreement or failure to act or to declare Construction Manager in default hereunder, irrespective of how long such failure continues, shall not constitute a waiver of any right of MSDC hereunder. MSDC's payment for Services shall not be deemed an approval of Construction Manager's Services or a waiver of any rights MSDC may have.

33.4 Integrity Monitor. MSDC intends to hire and retain an integrity monitor in connection with the Project ("Integrity Monitor"). Construction Manager shall cooperate and cause its Subconsultants and the contractors to cooperate fully with the Integrity Monitor and MSDC, including but not limited to providing complete access to all personnel and records related to the performance of the Agreement. Failure to comply with this provision shall be a material breach of the Agreement.

33.5 Exculpation of Liability. Construction Manager shall look solely to MSDC for payment of any amount due and owing Construction Manager under the Agreement or for any claim, cause of action or damages in connection with the Project. Notwithstanding anything to the contrary, Construction Manager shall have no recourse in connection with the Agreement or the Project against any present or future officer, director, trustee or employee or agent of MSDC. Such exculpation of liability is absolute and without any exception, and shall survive any termination, expiration or assignment of the Agreement.

CONSTRUCTION MANAGEMENT AGREEMENT

33.6 Notices. All notices, approvals and consents required or desired to be given under the Agreement ("**Notices**") shall be in writing, and shall be (i) personally delivered, (ii) transmitted by certified mail, postage prepaid, return receipt requested, or (iii) transmitted by telecopier or facsimile (as elected by the party giving such notice). Notices shall be addressed and delivered as follows:

To MSDC:

Moynihan Station Development Corporation
633 Third Avenue
New York, New York 10017
Attention: Timothy Gilchrist, President

Telephone Number: (212) 803-3630
Facsimile Number: (212) 803-3660
Email Address: tgilchrist@empire.state.ny.us

With copies to

Empire State Development Corporation
633 Third Avenue, New York 10017
Attention: Vice President Legal and General Counsel

Telephone Number: (212) 803-37
Facsimile Number: (212) 803-3775
Email Address: leve@empire.state.ny.us

And

The Port Authority of New York and New Jersey
233 Park Avenue South, 11th Floor
New York, New York 10003

CONSTRUCTION MANAGEMENT AGREEMENT

Attention: Andrew Lynn, Director of Planning and Regional Development
Telephone Number: 212-435-4437
Facsimile Number: 212-435-4423
Email Address: alynn@panynj.gov

With a copy to

The Port Authority of New York and New Jersey
225 Park Avenue South, 15th Floor
New York, New York 10003
Attention: General Counsel

Telephone Number: 212-435-3515
Facsimile Number: 212-435-6610
Email Address: dbuchbin@panynj.gov

To Construction Manager:

[ADDRESS]
Attention: _____

Telephone Number:
Facsimile Number:
Email address:

33.7 New York State Comptroller Review. This contract may be subject to review and approval by the Office of the State Comptroller ("OSC") pursuant to Public Authorities Law section 2879-a and the regulations issued thereunder. Such OSC review and approval (including, if requested by OSC, review and approval by the New York State Attorney General) may be required of contracts with a value in excess of one million dollars, or modifications to contracts that result in an aggregate value in excess of one million dollars, where such contracts are paid in whole or in part with monies appropriated by the state, or were awarded on a basis other than a competitive procurement (as that term is defined in the law and regulations). If this contract is subject to OSC review and approval, then the contract shall not be valid and enforceable, nor shall the Corporation have any liability of any kind arising from or in connection with this contract, unless and until OSC approval has been received.

33.8 Extension of Contract. Due to the nature of the services and the benefit to the Project from continuous and consistent management of the Project and Construction Manager's unique knowledge of the Project arising from Construction Manager's work pursuant to this Agreement, the parties may by mutual written consent

CONSTRUCTION MANAGEMENT AGREEMENT

extend the Agreement and increase the value of the Agreement in order to advance the Project.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

**MOYNIHAN STATION
DEVELOPMENT CCORPORATION**

By: _____

Name: _____

Title: _____

Date: _____

[CONSTRUCTION MANAGER]

By: _____

Name: _____

Title: _____

Date: _____

CONSTRUCTION MANAGEMENT AGREEMENT

ATTACHMENT A

CONSTRUCTION MANAGEMENT SERVICES AS CONSTRUCTION MANAGER FOR THE MOYNIHAN STATION CIVIC AND LAND USE IMPROVEMENT PROJECT - PHASE 1

SCOPE OF SERVICES

1.0 ESTIMATED PROJECT SCHEDULE

The Construction Manager is responsible to administer the Construction Contracts and the Project in order to achieve the estimated schedule in Exhibit A (the "Schedule"). The schedule is subject to changes to be made by MSDC as the Project progresses. Based on the Project's estimated duration of four and one-half (4.5) years, the first two and one-half (2.5) years of the estimated duration is anticipated to require substantial overtime for Work on nights and approximately thirty-two (32) weekend outages. It is anticipated that the Project will require an additional year to properly close out. MSDC is considering the requirement that all Contractors participate in a Project Labor Agreement for the Project.

2.0 SCOPE OF SERVICES.

The Services to be performed by Construction Manager consist of (i) all of the duties and obligations set forth in this Attachment A, in addition to all other duties and obligations set forth in the Contract Documents; and (ii) all of the duties and obligations of MSDC identified in Construction Contracts. A list of the Construction Contracts will be made available to the Construction Manager.

2.1 Specific Tasks, Duties and Obligations. In addition to the other duties and obligations set forth in Section 2.0 above, Construction Manager's Services may include but not be limited to:

2.1.1 Task 1 – DESIGN MANAGEMENT SERVICES

2.1.1.1 Construction Manager shall expeditiously analyze, review, and evaluate design documents as requested during their development and advise on proposed site use and improvements, construction feasibility, availability of labor and materials, procurement duration, installation and construction, selection of materials, building systems and equipment, and methods of Project delivery. Construction Manager shall manage and oversee value engineering of alternative materials, methods, and systems and analyze and recommend the relative feasibility of construction methods, availability of materials

CONSTRUCTION MANAGEMENT AGREEMENT

and labor, time requirements for procurement, installation and construction, and factors related to construction cost, including, but not limited to, costs of alternative designs or materials, preliminary budgets and possible economies.

2.1.1.2 Construction Manager shall coordinate and synchronize its design reviews with MSDC, PANYNJ Design & Construction Oversight Staff, and the Design Team.

2.1.1.3 Construction Manager shall assist MSDC and PANYNJ Design & Construction Oversight Staff in reaching MSDC's goal that its requirements and requests are properly reflected in the design documents, and Construction Manager shall review and report its findings to MSDC and PANYNJ Design & Construction Oversight Staff.

2.1.1.4 Construction Manager shall coordinate and synchronize design development with the Design Team, PANYNJ Design & Construction Oversight Staff, and MSDC; shall continue to review and monitor design development throughout the design development process; and shall analyze and then review same with MSDC and PANYNJ Design & Construction Oversight Staff and obtain MSDC's approval prior to proceeding to the construction phase.

2.1.2 Task 2 – ESTIMATING SERVICES

2.1.2.1 The Construction Manager shall prepare and update (with increasing detail and refinement), at appropriate intervals and in the format agreed to by MSDC, the Construction Manager's estimates of the construction cost of each of the Construction Contracts. Such estimates shall be provided for review by MSDC and PANYNJ Design & Construction Oversight Staff and MSDC's approval. Construction Manager shall advise MSDC and PANYNJ Design & Construction Oversight Staff if it appears that the construction cost may exceed the latest approved Project budget and research, analyze, and recommend corrective action.

2.1.2.2 Construction Manager shall analyze and update (subject to MSDC's prior written approval) the Project budget based upon changes in design development.

2.1.2.3 Construction Manager shall prepare and update estimates of the construction cost for post-award Construction Contract changes, equitable adjustments, and claims. Such estimates shall be provided for review by MSDC and PANYNJ Design & Construction Oversight Staff and MSDC's prior approval.

2.1.2.4 Following MSDC's approval of the Contract Drawings, Construction Manager shall update and submit the latest detailed estimate of construction cost and the Project Schedule for MSDC, Design Team and PANYNJ Design & Construction Oversight Staff review and MSDC's approval.

CONSTRUCTION MANAGEMENT AGREEMENT

2.1.3 Task 3 – SCHEDULING SERVICES

2.1.3.1 Construction Manager shall prepare and update monthly a Critical Path Method Project Schedule for review by MSDC and PANYNJ Design & Construction Oversight Staff and approval by MSDC. The Construction Manager shall analyze, coordinate, and integrate the Construction Manager's services, Design Team's services, PANYNJ Design & Construction Oversight Staff services and MSDC's responsibilities with the anticipated Project Schedule, and Construction Manager shall highlight critical and long-lead time items. The Construction Manager shall use Primavera P6 in performing all schedule updates and analysis in order to ensure proper conformity with MSDC master schedules.

2.1.3.2 Construction Manager shall evaluate and prepare, for review by MSDC and PANYNJ Design & Construction Oversight Staff and approval by MSDC, a Project Schedule (such Project Schedule, as it may be amended from time to time with the prior written approval of MSDC, the "Project Schedule") providing for the components of the Construction Work, including phasing of construction, times of commencement and completion required of each Contractor, ordering and delivery of products requiring long-lead time, and the occupancy requirements of MSDC that shall be consistent with all Contractors construction schedules incorporated into the Construction Contracts. Such Project Schedule also shall meet MSDC requirements for construction schedules as set forth in the Construction Contract Documents. Construction Manager shall provide the current Project Schedule for each set of Construction Contract bidding documents and for each Construction Contract.

2.1.3.3 Construction Manager shall oversee and manage compliance with the Project Schedule and the Project's construction schedule, scrutinize any delays, and report the status each month to PANYNJ Design & Construction Oversight Staff and MSDC, providing analysis of and recommendations regarding any delay, concern, problem, or other issue resulting in a recovery plan.

2.1.3.4 Construction Manager shall review and advise MSDC, PANYNJ Design & Construction Oversight Staff and Design Team regarding the Contract Drawings and make recommendations whenever design details adversely affect constructability, cost (including without limiting the foregoing, the Project budget) or schedules (including without limiting the foregoing, the Project schedule).

2.1.4 Task 4 – EXPEDITING SERVICES

2.1.4.1 Construction Manager shall assist MSDC with local, city, regional, state, and federal jurisdictional agencies; research and identify municipal permitting processes; manage, administer, and secure building permit approval as necessary; coordinate and oversee with local permitting officials with respect to permit submissions; and assist MSDC, Contractors, and other contractors or entities in securing all other necessary permits and required approvals from public agencies and others.

CONSTRUCTION MANAGEMENT AGREEMENT

2.1.4.2 Construction Manager shall assist MSDC in obtaining building permits, and/or the equivalent of a building permit as provided by MSDC, ESD or the State, and special permits for permanent improvements, except for permits required to be obtained directly by the various Contractors.

2.1.5 Task 5 – SAFETY MONITORING

2.1.5.1 Construction Manager shall prepare, analyze, evaluate, and then recommend to MSDC a comprehensive plan regarding the allocation of responsibilities for safety programs among the Contractors, including, without limitation, the site-wide Health and Safety Plan and site-wide security plan and procedures. Construction Manager shall implement and administer these plans and procedures. During execution of the Project, Construction Manager shall be responsible to: review, comment upon, and provide information to MSDC, upon its request, regarding the testing and inspection of the plans, procedures, and safety features; monitor the compliance of the Contractors with respect to their responsibilities for the health, safety and security programs; and report regularly to MSDC and PANYNJ Design & Construction Oversight Staff on such compliance and the effectiveness of these plans and procedures.

2.1.5.2 Construction Manager shall immediately inform the MSDC Representative and PANYNJ Design & Construction Oversight Staff of any unsafe condition discovered at any time during the course of performing these Services.

2.1.5.3 Pedestrians, vehicular traffic, and rail operations at the site always shall have priority over any and all of Construction Manager's operations, except as directed by MSDC.

2.1.5.4 Construction Manager shall limit its Work to the areas necessary for the performance of the tasks herein and shall not interfere with the operation of the Project site without first obtaining specific approval from MSDC.

2.1.5.5 During all periods of time when Construction Manager is not performing operations at the Project site, Construction Manager shall store all equipment being used for performance of such operations related to the tasks herein in areas designated by the MSDC Representative, and MSDC shall provide all security required for such equipment unless MSDC requests that Construction Manager shall perform such tasks, in which case Construction Manager shall do so at MSDC's expense.

2.1.5.6 Construction Manager shall not permit any objects or pieces of equipment to lie unattended on sidewalks, roadways, or structures at any time except with proper permits.

2.1.6 Task 6 - [Intentionally Omitted]

2.1.7 Task 7 - [Intentionally Omitted]

CONSTRUCTION MANAGEMENT AGREEMENT

2.1.8 Task 8 – CONSTRUCTION PHASE CONTRACT ADMINISTRATION SERVICES

2.1.8.1 Construction Manager shall manage, and oversee construction activities at the Project site and with respect to administration of the Construction Contracts, including but not limited to performing inspection and /or inspections of the Construction Work.

2.1.8.2 Construction Manager shall manage, administer, direct, supervise, and perform other related services in order to coordinate the activities and responsibilities of the Contractors, each with the other, and those with the activities and responsibilities of the Construction Manager, MSDC, and other Contractors at the site in order to manage the Project in accordance with the latest MSDC approved Project budget, Project Schedule, Contract Drawings and Construction Contract Documents.

2.1.8.3 Construction Manager shall (i) execute and perform all of the duties and obligations required or requested of MSDC under each of the Construction Contracts, and (ii) protect and exercise all of MSDC's rights and benefits under each of the Construction Contracts; provided, however, that prior to Construction Manager determining a Contractor in breach of its Construction Contract or selecting and pursuing any remedy, Construction Manager shall notify PANYNJ Design & Construction Oversight Staff and MSDC and obtain the prior written approval of MSDC.

2.1.8.4 Construction Manager shall schedule, facilitate, administer, and conduct regular Project meetings, including MSDC, PANYNJ Design & Construction Oversight Staff, Design Team, Contractors, and others approved or requested by MSDC. Construction Manager shall facilitate discussion of such matters as procedures, progress, and scheduling. Construction Manager shall prepare and promptly distribute minutes of such meetings to MSDC, PANYNJ Design & Construction Oversight Staff, Design Team and Contractors.

2.1.8.5 Construction Manager shall confirm that Design Team and Contractors have established the shop drawing process, and Construction Manager shall manage and administer delivery and review of shop drawings and submittals.

2.1.8.6 Utilizing the construction schedules provided by Contractors, Construction Manager shall evaluate and update the Project Schedule monthly, incorporating the activities of all of the Contractors on the Project, including activity sequences and durations, allocation of labor and materials, processing of shop drawings, submittals, and delivery of products requiring long-lead time and procurement. The Project Schedule shall include MSDC's occupancy requirements showing portions of the Project having occupancy priority as the appropriate information becomes available. Construction Manager shall update and reissue the Project Schedule as required to show current conditions. If an update indicates that the previously approved Project Schedule's final completion date of any Contractor may not be met, Construction Manager shall inform and warn PANYNJ Design & Construction Oversight Staff and

CONSTRUCTION MANAGEMENT AGREEMENT

MSDC of such deviation and recommend corrective action to MSDC.

2.1.8.7 Consistent with the various bidding documents, and utilizing information from the Contractors, Construction Manager shall manage, oversee, scrutinize, and coordinate the sequence of construction and assignment of space in areas where the Contractors are performing Construction Work.

2.1.8.8 Construction Manager shall require, and use best efforts to obtain, satisfactory performance from each of the Contractors. Construction Manager shall evaluate and recommend courses of action to PANYNJ Design & Construction Oversight Staff and MSDC when requirements of a Contract are not being fulfilled.

2.1.8.9 Construction Manager shall oversee and monitor the approved estimate of construction costs. Construction Manager shall prepare an analysis showing actual costs for activities in progress and estimates for uncompleted tasks by way of comparison with such approved estimate.

2.1.8.10 Construction Manager shall develop, analyze, and prepare monthly cash flow reports and forecasts for the Project, unless required more often by MSDC, and advise MSDC and PANYNJ Design & Construction Oversight Staff and Design Team as to variances between actual and budgeted or estimated costs. Construction Manager shall prepare, at least monthly, Contractor Earned Value Reports in a format required by MSDC.

2.1.8.11 Construction Manager shall quarterly submit to MSDC and PANYNJ Design & Construction Oversight Staff for review and MSDC for written approval a proposed budget estimating the General Conditions Costs for the remainder of the Project on a quarterly basis. For the duration of the Project, Construction Manager shall submit the proposed budget in a timely fashion in order to allow MSDC and PANYNJ Design & Construction Oversight Staff to review and MSDC to approve same.

2.1.8.12 Construction Manager shall manage, coordinate, prepare, and maintain accounting records on authorized Construction Work performed under unit costs, additional Construction Work performed on the basis of actual costs of labor and materials, and other Construction Work requiring accounting records.

2.1.8.13 Construction Manager shall evaluate, develop, and implement procedures for the review and processing of applications by Contractors for progress and final payments.

2.1.8.14 Based on Construction Manager's observations and evaluations of each Contractor's application for payment, Construction Manager shall scrutinize, evaluate, review, and certify the amounts due the respective Contractors.

2.1.8.15 Construction Manager shall scrutinize, oversee, monitor, and review all

CONSTRUCTION MANAGEMENT AGREEMENT

payments to Contractors and vendors and supporting documentation, including, without limitation, all lien waivers (partial and final) from all Contractors throughout the course of the Project.

2.1.8.16 Construction Manager shall analyze, evaluate, and prepare a Project application for payment based on the Contractors' requests for payment.

2.1.8.17 Construction Manager's certification for payment ("Certificate for Payment") shall constitute a representation to MSDC, based on Construction Manager's determinations at the Project site and on the data comprising Contractors' applications for payment, that the Construction Work has progressed to the point indicated and the quality of the Construction Work is in accordance with the Construction Contract Documents. The foregoing representations are subject to an evaluation of the Construction Work for conformance with the Construction Contract Documents upon final completion of each Construction Contract, to results of subsequent tests and inspections, to minor deviations from the Construction Contract Documents correctable prior to completion, and to specific qualifications expressed by Construction Manager. The issuance of a Certificate for Payment shall further constitute a representation that Contractors are entitled to payment in the amount certified.

2.1.8.18 Construction Manager shall prepare and implement the Health and Safety Plan for the Project site and the Property and shall scrutinize, review, and monitor the safety programs developed by each of the Contractors for the purposes of compliance thereto and coordinating the safety programs with those of the other Contractors as well as with any other contractors.

2.1.8.19 Construction Manager shall develop, and implement a Quality Assurance Plan and a Project Quality Assurance Manual, including mockups, sampling, testing, and inspections. Solicitation of third-party- inspections must be approved in advance and in writing by MSDC. The principal/director of the special inspection agency accepting responsibility for conducting the inspections shall certify: (i) all Construction Work performed substantially conforms to approved Construction Contract Documents, the Contract Drawings and has been performed in accordance with applicable provisions of the New York City Construction Codes and other designated rules and regulations; and (ii) for progress and final inspections, that all Construction Work substantially conforms to the approved construction documents and has been performed in accordance with applicable provisions of the New York City Construction Codes and other designated rules and regulations.

2.1.8.20 Construction Manager shall oversee and manage Project site visits and provide or arrange for responses to Contractor inquiries.

2.1.8.21 Construction Manager shall provide the services and assistance necessary to avoid a construction conflict; when a conflict does occur, Construction Manager shall use best efforts to resolve the dispute.

CONSTRUCTION MANAGEMENT AGREEMENT

2.1.8.22 Construction Manager shall scrutinize and determine, subject to review by PANYNJ Design & Construction Oversight Staff and MSDC, that the Construction Work of each Contractor is being performed in accordance with the requirements of the Contract Documents, guarding MSDC against defects and deficiencies in the Construction Work, including by means of but not limited to performing inspection and /or inspections of the Construction Work. As appropriate, Construction Manager shall have authority, upon written authorization from MSDC, to require additional inspection or testing of the Construction Work in accordance with the provisions of the Construction Contract Documents, whether or not such Construction Work is fabricated, installed, or completed. Construction Manager may reject Construction Work that does not conform to the requirements of the Construction Contract Documents; provided, however, Contractor may appeal to MSDC Construction Manager's rejection of such Construction Work; and, in the event of an appeal, MSDC shall make the final decision as to whether the Construction Work shall be rejected. Notwithstanding anything to the contrary herein, MSDC shall retain at all times the right to reject any Construction Work at MSDC's sole, absolute, and subjective discretion.

2.1.8.23 Construction Manager shall scrutinize, schedule, oversee, and coordinate the sequence of construction in accordance with the Construction Contract Documents and the latest approved Project Schedule.

2.1.8.24 Construction Manager shall transmit to Design Team requests for interpretations of the meaning and intent of the Contract Drawings and, with the Design Team's assistance, shall resolve questions that arise.

2.1.8.25 Construction Manager shall review and evaluate requests for changes in costs and/or time, assist in negotiating Contractors' proposals for such changes, submit recommendations to Design Team, PANYNJ Design & Construction Oversight Staff and MSDC, and, if such proposals are accepted, prepare Construction Change Orders and Construction Change Directives that incorporate Design Team's modifications to the Contract Drawings.

2.1.8.26 Construction Manager shall review, analyze, evaluate, and document any claim made or any claim Construction Manager anticipates may be made.

2.1.8.27 Construction Manager shall receive certificates of insurance from the Contractors, review and evaluate them for conformance with the requirements of the respective Construction Contracts, and forward them to MSDC with copies to PANYNJ Design & Construction Oversight Staff.

2.1.8.28 In collaboration with MSDC's procedures, the Construction Manager shall establish and implement procedures for expediting the processing and approval of shop drawings and other submittals. Construction Manager shall review and evaluate all shop drawings and other submittals from the Contractors. Construction Manager shall coordinate and synchronize submittals with information contained in related documents

CONSTRUCTION MANAGEMENT AGREEMENT

and transmit to Design Team those, which have been reviewed and deemed complete by Construction Manager. Construction Manager's actions shall be performed and completed with such reasonable promptness as to cause no delay in the Construction Work or in the activities of MSDC or Contractors.

2.1.8.29 Construction Manager shall oversee, scrutinize, monitor, evaluate, analyze, and record the progress of the Project. Construction Manager shall prepare and submit written, detailed progress reports to MSDC, including information and evaluation with respect to each Contractor and each Contractor's Construction Work, as well as on the entire Project, and determining and showing percentages of completion. Construction Manager shall maintain a daily Project log containing a record of whether, each Contractor's Construction Work on the Project site, and, for each Contractor, the number of workers, identification of major equipment, Construction Work accomplished, problems encountered, and other similar relevant data as MSDC may require.

2.1.8.30 Construction Manager shall arrange and be responsible for and maintain complete progress photos and other visual records, files, and documentation with respect to the progress of the Project, as requested by MSDC. Construction Manager shall make all photos and other visual records available to MSDC and PANYNJ Design & Construction Oversight Staff upon request and shall deliver them to MSDC upon Final Completion of all Contracts for the Project.

2.1.8.31 Construction Manager shall maintain at the Project site for MSDC one (1) record copy of all Construction Contracts, Contract Drawings, addenda, Construction Change Directives, Construction Change Orders, and other modifications, in good order and marked currently to record changes and selections made during construction; and, in addition, approved shop drawings and similar required submittals. Construction Manager shall maintain records, in duplicate, of principal building layout lines, elevations of the bottom of footings, floor levels, and key site elevations certified by a qualified surveyor or professional engineer. Construction Manager shall make all such records available to PANYNJ Design & Construction Oversight Staff and MSDC and, upon completion of the Project, shall deliver all such records to MSDC. The Construction Manager shall maintain its own document control function and shall establish the procedures and protocols. The Construction Manager shall submit its document control procedures and plan for review by PANYNJ Design & Construction Oversight Staff and MSDC and approval by MSDC.

2.1.8.32 When Construction Manager determines that a Contractor's Construction Work, or a designated portion thereof, is sufficiently complete to allow Contractor to prepare a punch list, then Construction Manager, jointly with the Contractor, shall prepare for PANYNJ Design & Construction Oversight Staff and MSDC a list of incomplete or unsatisfactory items and Construction Manager shall schedule and monitor them for completion. Construction Manager shall coordinate, oversee, and

CONSTRUCTION MANAGEMENT AGREEMENT

monitor the correction and completion of the Construction Work. When the Construction Work is ready for final inspections, then Construction Manager shall participate and assist in conducting inspections to determine whether the Construction Work or designated portion thereof meets the Contract's requirements for final completion of such Construction Work.

2.1.8.33 Construction Manager will coordinate and lead integration efforts between contractors, design teams and all stakeholders of new systems including but not limited to communications, fire safety, emergency alarms, scada etc. with existing systems.

2.1.8.34 Construction Manager shall scrutinize, review, monitor, process and administer the MBE, WBE and DBE programs and Minority and Women Workforce Utilization programs of each Contractor and the Contractor's compliance with the Construction Contract Documents with respect to the programs.

2.1.8.35 The Construction Contracts shall provide (i) that the prevailing rate of wage and supplements are those established by the Secretary of Labor of the United States pursuant to the Davis-Bacon Act (40 U.S.C.A. 276a) for the locality in which the Construction Work it is to be performed and (ii) for compliance with all applicable provisions of the Labor Law of the State of New York including, but not limited to, Sections 220, 220-d and 220-e, as amended. The Construction Manager shall perform audits and enforce all applicable regulations as required to maintain compliance. Construction audits shall involve but not limited to (i) an examination of each Contractor's field records to determine whether the Contractor actually provided the hours billed for labor and equipment, and the quantities billed for materials, and (ii) a determination as to whether labor rates and material prices billed are supported by the Contractor's records and in compliance with legal and regulatory requirements.

2.1.8.36 Construction Manager shall compile, record and report to MSDC all information regarding the Project for purposes of MSDC compliance with the American Recovery and Reinvestment Act of 2009, Public Law 111-5 (the "Act"), including the number of direct jobs created or sustained (including number job hours with respect thereto) by the grant funding for the Project.

2.1.9 Task 9 – FINANCING/COST CONTROL

During the course of the Project, Construction Manager shall assist with, monitor, and, as appropriate, administer any financing aspect of the Project, including the following:

2.1.9.1 Construction Manager shall prepare and provide necessary Project information, documentation, and materials as requested by various lenders and as approved by MSDC.

CONSTRUCTION MANAGEMENT AGREEMENT

2.1.9.2 Construction Manager shall scrutinize and coordinate the financing requirements and cash flow reports of the Project and the Construction Contracts and Contractors and subcontractors of any tier.

2.1.9.3 Construction Manager shall scrutinize and manage, and use best efforts to control construction costs and/or time, and negotiate on behalf of MSDC as necessary or required and pre-approved by MSDC, in accordance with the Project Schedule, and the Project, safety, and quality goals of MSDC.

2.1.10 Task 10 – FACILITY PLANNING SERVICES

2.1.10.1 Construction Manager shall analyze, recommend and inform MSDC, PANYNJ Design & Construction Oversight Staff and Design Team regarding the assignment of responsibilities for temporary Project facilities and equipment, materials, and services for common use of the Contractors. Construction Manager shall confirm and verify that such requirements and assignment of responsibilities are included in the proposed Contract Documents.

2.1.10.2 Construction Manager shall analyze and determine the scope and requirements for furniture, fixtures, equipment, tele/data cabling, operational equipment, security requirements, etc., to be provided or purchased by MSDC, as requested by MSDC.

2.1.10.3 Construction Manager shall gather and evaluate information and product data that meets the scope and requirements of MSDC with respect to furniture, fixtures, equipment, tele/data cabling, operational equipment, security requirements as requested by MSDC.

2.1.10.4 Construction Manager shall evaluate and assist in qualifying vendors and reviewing pricing and product proposals with respect to furniture, fixtures, and equipment, as requested by MSDC.

2.1.10.5 Construction Manager shall coordinate and oversee the delivery, installation, and commissioning of furniture, fixtures, and equipment, and coordinate same with vendors, as requested by MSDC.

2.1.11 Task 11 – PROJECT CLOSEOUT

2.1.11.1 Construction Manager shall (i) oversee and manage preparation of and review of construction punch lists by Contractors and (ii) coordinate and, along with the Design Team, verify completion of punch list items.

2.1.11.2 Construction Manager shall oversee, manage, coordinate and confirm delivery of keys, manuals, plans and specifications, as-built drawings, etc.

2.1.11.3 Construction Manager shall schedule, manage, and oversee all product and equipment demonstrations.

CONSTRUCTION MANAGEMENT AGREEMENT

2.1.11.4 Construction Manager shall oversee and manage (i) the delivery, installation, and commissioning of equipment; (ii) commissioning processes and procedures; and (iii) the initial start-up and testing of all systems to confirm compliance with specifications.

2.1.11.5 Construction Manager shall ensure and confirm that all equipment use permits and regulatory sign-offs are obtained and delivered to MSDC upon Project completion.

2.1.11.6 Construction Manager shall oversee, scrutinize, and coordinate activities and obtain sign-offs necessary for the issuance of a final certificate of occupancy or MSDC's equivalent.

2.1.11.7 Construction Manager shall scrutinize, evaluate, review, administer, and process final payments and lien documentation.

2.1.11.8 Construction Manager shall coordinate, oversee, and confirm performance of corrective and warranty work prior to close out of the Project.

2.1.12 Task 12 – GENERAL ADMINISTRATIVE SERVICES

2.1.12.1 Construction Manager will be provided approximately ten thousand (10,000) sq. ft. +/- within the Farley Building for establishment of a construction management field office for the duration of the contract and the construction manager will be responsible for necessary fit out, office equipment, furniture etc. subject to MSDC approval. Additional space can be requested subject to prior approval by MSDC.

2.1.12.2 Construction Manager shall prepare and deliver to MSDC not less than once each month a report addressing progress, problems, issues, and concerns with respect to the status of the Services and the status of any additional services Construction Manager is performing with respect to the Project.

2.1.12.3 Construction Manager shall perform other construction management services related to the Project as requested by MSDC.

2.1.12.4 Duties, responsibilities, and limitations of authority of Construction Manager as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of MSDC.

2.1.12.5 Construction Manager shall use the management software designated by MSDC.

2.1.12.6 Construction Manager shall follow MSDC's policies and procedures as set forth in the Agreement, including all Attachments hereto, and as may be modified or established from time to time.

2.1.12.7 Construction Manager shall be responsible to coordinate all aspects of the Project and to work in harmony with other contractors involved in the Projects and

CONSTRUCTION MANAGEMENT AGREEMENT

activities at the Property.

3.0 QUALITY ASSURANCE / QUALITY CONTROL

In addition to the Quality Assurance Plan for the Project and Construction Contract administration, the Construction Manager shall provide a Quality Assurance/ Quality Control Plan, and a Quality Assurance Manual for the all the tasks, duties and responsibilities of the Construction Manager. The objective of the Construction Manager's quality plan is to verify that activities are performed accurately and in compliance with all Project, contractual, and all local, State and Federal requirements. The Construction Manager's quality plan and process must focus on the fundamental elements of quality planning, performance, assessment, and continuous improvement.

The approach defined in the Construction Manager's Quality Assurance/ Quality Control Plan, and then set forth in the Construction Manager's Quality Assurance Manual, shall include a hierarchy of documents, policies, plans, procedures, work instructions, and forms. This hierarchy provides the management and procedural controls essential for successful performance. It also establishes the basic quality assurance requirements to verify that risks and project impacts are minimized and that performance are maximized through the use of effective management systems through all phases of the Project. At a minimum, the Construction Manager's Quality Assurance/ Quality Control Plan must address the effective management of the following:

- Design Management
- Estimating
- Scheduling
- Safety
- Project Coordination
- Procurement
- Contract Administration
- Budgeting / Cost Control

The Construction Manager shall implement and manage a quality program developed in accordance with the requirements above.

The Construction Manager shall review, and if satisfactory, approve the quality control programs and plans from each of the Contractors and their respective subcontractors, suppliers and vendors and, prior to Construction Manager's approval, submit those plans for review and comment by PANYNJ Design & Construction Oversight Staff and MSDC. The Construction Manger shall approve the Contractor's suppliers and vendors Quality Assurance Plan and

CONSTRUCTION MANAGEMENT AGREEMENT

documented quality management system and, prior to Construction Manager's approval, submit them for review and comment by PANYNJ Design & Construction Oversight Staff and MSDC.

4.0 DELIVERABLES

Construction Manager shall provide support to MSDC in the formation and review of program documentation. All documents prepared by the Construction Manager shall be prepared on behalf of MSDC, and the Construction Manager may not independently publish or distribute any document without prior written permission from MSDC. The Construction Manager shall review and provide written comments on the technical accuracy and completeness of each document. No documents, reports, information, etc. may be released to the public or provided to any party other than MSDC and its contractors without written approval of MSDC.

The Construction Manager shall provide status reports, progress reports, and other deliverables as required in a format proposed by Construction Manager and agreed to by MSDC. The Construction Manager shall use Primavera P6 in performing all schedule updates and analysis in order to ensure proper conformity with MSDC master schedules.

The following does not constitute a complete list of deliverables that may be required during the performance of the Construction Manager's duties. Due dates are subject to change and dependent on the development of the Project and the Construction Contractor's milestones. All references to days are in calendar days. Contractor may be required to provide additional deliverables not listed below, as required.

<u>Deliverable</u>	<u>Due Date</u>
Progress Reports	Monthly
Project Design Requirements (Section 2.1.3)	15 Days from Notice to Proceed
Procurement Procedures/ Plan	As Required
Construction Contract Change Order Log	Monthly
Design Estimates	As required
Project Schedules	Monthly
Earned Value Report	Monthly
DBE/MBE/WBE & M/W Workforce Utilization Reports	Monthly
Contract two-week look ahead	Weekly

EXHIBIT A

ESTIMATED PROJECT SCHEDULE

EXHIBIT B

SCHEDULE OF PERSONNEL HOURLY RATES

EXHIBIT C

SCHEDULE OF PERSONNEL SALARIES

EXHIBIT D

PANYNJ SERVICES AND AUTHORITY

Moynihan Station: Scope of Port Authority Services

(Terms used in this Exhibit are as defined in the Agreement unless otherwise indicated.)

For of Phase 1 of the Project, the services (the “Services”) of PANYNJ (the “Port Authority”) will consist of the following work:

- I. Phase 1 - Design, Engineering, and Construction Consultation and Supervision
 - 1) All design, engineering and construction consultants’ contracts for Phase 1 of the Project will be procured and held by MSDC.
 - 2) The Port Authority will manage the work of the Design Team on a day-to-day basis in preparing the design, engineering and construction contract drawings and specifications for Phase 1 of the Project; also, as may be requested by MSDC, the Port Authority shall perform advisory technical design reviews and advisory audits of the consultant’s work.
 - 3) MSDC will be responsible during Phase 1 of the Project for solicitation of bids, award of construction contracts and administration and payments associated with these contracts. The Port Authority will coordinate with MSDC with respect to the procurement of Construction Contracts by providing advisory and review support to MSDC with respect to the preparation, bid and award of Construction Contracts for Phase 1 of the Project.
 - 4) The Port Authority will manage the work of the Construction Team (as defined below) on a day-to-day basis, in advancing construction of Phase 1 of the Project. The term “Construction Team” shall mean all of the professionals retained by ESD or MSDC either directly or indirectly, for general contracting or other construction services for the construction of Phase 1 of the Project.
 - 5) In managing the work of the Design Team and the Construction Team, the Port Authority shall have authority to review and comment on all invoices, payment requisitions, change orders and similar documents, and shall have the authority to give supervisory instructions to, members of the Design Team and Construction Team in finalizing designs for Phase 1 of the Project and in advancing the construction thereof, provided, however, that in giving any such instructions, the Port Authority agrees to observe and abide by the limitations on its authority as follows:
 - (a) In performing any of the Services, the Port Authority shall not have the authority, in the name or on behalf of MSDC or ESD, to enter into any modification or amendment of the terms of, or increase the amount authorized by the MSDC Board of Directors or the ESD Directors for,

any contract for services from the Design Team or the Construction Team.

- (b) In performing any of the Design, Engineering and Construction Consultation and Supervision Services, the Port Authority shall not make any decision or take any action (including, without limitation, the issuance of change orders, construction directives, waivers or consents) that would result in a change to the scope, schedule or budget for Phase 1 of the Project (as set out in the Grant Agreement (as hereinafter defined)), except in accordance with this Exhibit's Part II - Phase 1 - Design and Construction Authority.
 - (c) In performing any of real estate planning and consultation Services, the Port Authority shall have no authority to obligate MSDC or ESDC without obtaining the prior express written authorization with respect to such obligation from, as appropriate, MSDC or ESD.
 - (d) The Port Authority shall have no authority to authorize any action, or to give any instruction, that is or would be contrary to the General Project Plan for the Project as forth in the 2010 GPP, as the same may be further supplemented or amended.
 - (e) MSDC and the Port Authority may modify their relationship as set for in this Exhibit at any time and from time to time, subject to the execution by the Parties of a written amendment signed by each of MSDC and the Port Authority and, if required, authorization to do so from the Port Authority Board of Commissioners and the MSDC Board of Directors. Such modification to this Exhibit will be effective with respect to Construction Manager (*i.e.*, MSDC's Construction Manager) upon Construction Managers receipt of a copy of such amendment from the MSDC representative, and Construction Manager may act in reliance thereon.
- 6) During the design and construction process, at weekly project meetings, the Port Authority shall keep MSDC informed with respect to all issues that arise with the Design Team, the Construction Team or the railroads operating in the Train Shed.

II. Phase 1 - Design and Construction Authority

- 1. Subject to Paragraph 3 below, in managing the design of the Phase 1 of the Project, in connection with each design contract awarded by MSDC, the Port Authority shall have the following limitation with respect to the review and

approvals of the design work including, change orders or other directives to the Design Team:

- a. The Port Authority shall not make any changes to the design or approve change orders or issue any directive that would result in the failure of the design to meet the objectives outlined in Attachment 1 to this Exhibit or the Grant Agreement (as hereinafter defined) without MSDC's prior written consent.
 - b. The Port Authority may not issue any change order or directive extending the time for performance of the design work pursuant to the Design Team consultant contracts without MSDC's prior written approval.
 - c. The Port Authority shall not approve without prior MSDC written consent, any order of extra work not included in a Design Team contract.
 - d. The Port Authority shall consult with MSDC weekly on the progress of the design work and provide timely notification of design issues which could impact the project budget, scope, or schedule.
 - e. The Port Authority shall not approve any material changes to the contractually required submissions of plans and specifications and, after the 30% submission, will notify MSDC in weekly updates of progress and proposed material changes for subsequent submissions, including changes proposed based upon comments by FRA, Amtrak, Long Island Rail Road and New York City Transit and obtain MSDC' prior written approval for such proposed changes.
2. Subject to Paragraph 3 below, in managing the construction of Phase 1 of the Project, in connection with each Construction Contract awarded by MSDC, the Port Authority shall have the following authority with respect to the review and approval of change orders or other directives to the Contractor, instructing Contractor to perform extra work:
- (a) If the estimated cost of the extra work is less than \$100,000, the Port Authority Construction Manager (who shall be identified to MSDC's Construction Manager in a written notice from MSDC) shall have the authority to the extent he/she reasonably believes such action necessary to advance the work in an efficient manner, to approve the change order or other directive instructing the contractor to perform such extra work, without referral back to MSDC.
 - (b) If the estimated cost of the extra work is between \$100,000 and \$250,000 inclusive, the Port Authority Engineering Program Director (who shall be

identified to MSDC's Construction Manager in a written notice from MSDC), based on the recommendation of the Port Authority Construction Manager, shall have the authority, to the extent he/she reasonably believes such action necessary to advance the work in an efficient manner, to approve the change order or other directive instructing the contractor to perform such extra work, without referral back to MSDC.

(c) If the estimated cost of the extra work is in excess of \$250,000, the Port Authority shall not have any authority to approve the related change order or directive. The Port Authority shall forward a description of the proposed extra work and the need therefor, along with the estimated cost thereof and any recommendations it elects to make, to the President of MSDC, for written approval of any change order or directive instructing the contractor to perform such extra work.

3. Anything in Paragraph 2 above of this part II to the contrary notwithstanding, if any proposed extra work would, if performed, have the effect of extending the schedule for construction of the Project as described in the Grant Agreement (as hereinafter defined), or altering the scope of the Project as described in the Grant Agreement, no change order or directive shall be issued instructing the Contractor to perform such work unless such change order or directive shall have been previously approved in writing by MSDC. As used herein, the term "Grant Agreement" shall mean that certain Grant/Cooperative Agreement, Agreement Number: FR-TGR-0007-11-01-00, between the FRA and MSDC, with respect to Phase 1 of the Project.
5. The Port Authority Engineering Program Director will provide monthly updates to the President of MSDC on the use of contingency allowances for all construction contracts in a format to be agreed upon by the Port Authority and MSDC.
6. Notwithstanding any other provision of this Exhibit D, the Port Authority has no authority to approve any change order or allowance items that (individually or in aggregate) would be likely to exceed the MSDC approved budget for the project work or materially change or affect the MSDC approved design for the work (including, without limitation, materials and finishes), and the Port Authority must obtain MSDC's prior written consent with respect to all such change orders and allowance items.

EXHIBIT D - ATTACHMENT 1
Description of Phase 1 of the Project

Phase 1 of the Project would consist of the following, mostly below-grade, elements.

1. A substantially expanded West End Concourse (“**WEC**”), doubled in width and more than doubled in length with multiple access points up to the Farley Building and down to platforms, which will: (i) provide access to eight tracks not currently served by the existing concourse; (ii) significantly increase passenger circulation space; and (iii) for the first time, provide space for the sale of tickets (by vending machine) on the WEC.

2. Nineteen new vertical access points (stairs, escalators, and elevators) connecting the platforms to the WEC and to subway connections and to the street through Farley. Today, no platforms are accessible from Farley; via Phase 1, nine platforms (17 tracks) will be accessible from Farley. These new vertical access points will: (i) dramatically increase passenger access/egress and circulation space, which will relieve congestion at platform and concourse levels throughout the Penn Station complex as a whole; (ii) reduce train dwell time, thereby reducing lost passenger time and permitting additional train movements; and (iii) improve safety and security by permitting, as necessary, a much more prompt evacuation of platforms, corridors, and the station as whole than is possible today.

3. Two new above-grade entrances through Farley west of 8th Avenue, at 31st and 33rd Streets respectively, with access directly to the WEC, which will decrease congestion at Penn Station and improve access to the development district to the west. The entrances will face 8th Avenue, flanking the United States Postal Service (“USPS”) monumental stairs.

4. A substantially widened and improved underground connection between the WEC, the 8th Avenue Subway, and Level A of Penn Station (the “**33rd Street Connector**”), running under 8th Avenue and 33rd Street between Penn and Moynihan Stations, reconfigured to be compliant with the Americans with Disabilities Act (the “ADA”). The 33rd Street Connector will remain under the control of the Metropolitan Transportation Authority (“**MTA**”), and the proposed improvements will be closely coordinated with MTA and NYC Transit Authority staff.

5. State-of-the-art, emergency platform ventilation for the below-grade Train Shed areas west of 8th Avenue (the “**Platform Ventilation Work**”). Phase 1 will include critical design elements and features that will improve adherence, to the maximum extent practicable, to guidelines established by the *National Fire Protection Association (NFPA) Standard 130: Standard for Fixed Guideway Transit and Passenger Rail Systems* and will improve egress time from platforms to station exits.

EXHIBIT E

INSURANCE

INSURANCE PROGRAM – PROFESSIONAL LIABILITY POLICY

MSDC has a Project specific professional liability (“PPL”) policy (the “Policy”) providing certain coverage for those performing professional services in connection with the Project, including, without limiting the foregoing, PANYNJ, each member of the Design Team, and Construction Manager (the “Insureds”). The Policy provides the exclusive primary coverage for any and all professional liability claims against the Insureds arising from the Project. Construction Manager hereby accepts coverage as Insured under the Policy. MSDC shall be solely responsible for paying the Policy premium. Construction Manager shall comply with its Policy obligations as an Insured, including, without limitation, its obligation for the SIR (as defined below) as provided in the Policy and the Agreement (including this Exhibit E).

The Policy contains a \$500,000 Self-Insured Retention (“SIR”) per claim. The SIR shall be allocated among the involved Insureds, and the allocation of the SIR responsibility among the involved Insureds shall be determined as provided in Section ID of the Policy. As provided in Section ID5 of the Policy, after the final resolution of any incident, circumstance, event or claim, each of the involved Insureds shall have the right to request reallocation of the SIR to the extent it believes that it has paid more than its equitable share of the SIR based upon the facts and circumstances of the claim. In the event that MSDC or PANYNJ pays a portion of the SIR that is allocable to Constructing Manager, MSDC, or PANYNJ shall have the right to reimbursement of such portion from the responsible party and the responsible party shall remit such reimbursement to MSDC or PANYNJ promptly upon demand.

Construction Manager shall cause endorsement of its own professional practice liability policy to provide excess coverage above the Policy coverage and to continue such coverage in place at current levels until completion of the Project and for a period of three (3) years thereafter, unless continuation of such coverage at current levels becomes commercially impracticable. In addition, the professional practice liability policy shall include Moynihan Station Development Corporation, New York State Urban Development Corporation d/b/a Empire State Development, and The Port Authority of New York and New Jersey as additional insureds under such professional practice liability policy. Construction Manager shall submit certificates reflecting such coverage to MSDC and PANYNJ on an annual basis until the expiration of three (3) years after completion of the Project and shall give written notice to MSDC and PANYNJ within ten (10) days of any material change in such coverage. Further, such professional practice policy shall be specifically endorsed that *“The insurance carrier(s) shall not, without obtaining the express advance permission from the General Counsel of the Port Authority of New York and New Jersey (the “Port Authority”), raise any defense involving in any way the jurisdiction over the person of the Port Authority, the immunity of the Port Authority, its commissioners, officers, agents or employees, the governmental nature of the Port Authority, or the provisions of any statutes respecting suits against the Port Authority.”*

Notwithstanding any other provision of the Agreement, any controversy or claim arising out of or relating to the Policy, or the breach of the provisions of the preceding paragraphs in this Exhibit E, that is not resolved by the parties through mediation or otherwise shall be settled by arbitration administered by the American Arbitration Association under its Construction Industry Rules, and

judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

OTHER INSURANCE REQUIREMENTS

Construction Manager covenants and agrees that, prior to the commencement of Work, Construction Manager shall provide, or cause to be provided, and thereafter shall keep in full force and effect, or cause to be kept in full force and effect, all insurance required under this Article until final acceptance of all the Work, at no cost to MSDC.

Certificates of Insurance

Construction Manager shall furnish to MSDC a certificate or certificates in duplicate of the insurance required hereunder, including, without limiting the foregoing, certificates of the insurance of all Subconsultants. Said certificates shall be in a form satisfactory to MSDC, shall list the various coverages and shall contain a provision that the policies shall not be changed or canceled and that they shall be automatically renewed upon expiration and continued in force until final acceptance of the Work unless MSDC is given thirty (30) days written notice to the contrary. Upon request, Construction Manager shall furnish MSDC or the MSDC Representative with a certified copy of each policy.

Authorized Insurance Companies

All insurance required to be procured and maintained as aforesaid must be procured from insurance companies authorized to do business in the State of New York with a rating by Bests Insurance Reports of A or better.

Termination of Insurance

If at any time any of the above required insurance policies should be canceled, terminated or modified so that insurance is not in effect as above required, then, if MSDC shall so direct, Construction Manager shall suspend performance of the Work. If the Work is so suspended, no extension of time shall be due on account thereof. If the Work is not suspended then MSDC may, at MSDC's option, obtain insurance affording coverage equal to that required herein, the costs of said insurance to be payable by Construction Manager to MSDC.

Required Insurance

Construction Manager and each Subconsultant and subcontractor shall secure:

Worker's Compensation Insurance providing statutory New York State benefits, including occupational disease and coverage under other similar employee benefit acts, which are applicable, covering all persons employed in connection with the construction at the premises.

Commercial General Liability Insurance (CGL) written on a combined single limit occurrence basis in an amount not less than \$1,000,000 and aggregate coverage of \$2,000,000. In addition, there must be at least \$10,000,000 Excess and/or Umbrella coverage for both the GCL and Auto Liability Insurance. Such insurance must be endorsed to eliminate any Railroad Exceptions or exclusions and copy of the endorsement provided. Such insurance shall include operations-premises liability, contractors protective liability, blanket contractual liability, (designating the indemnity provisions contained in the Agreement), broad form property damage liability, completed operations (minimum of two years), and independent contractor's coverage. For all Subconsultants, Construction Manager require and ensure that the Comprehensive General Liability coverage shall not be less than \$1,000,000 and that an appropriate certificate of insurance naming each of Moynihan Station Development Corporation, New York State Urban Development Corporation d/b/a Empire State Development, the State of New York, and The Port Authority of New York and New Jersey as an additional insureds is provided to MSDC.

Automobile Liability and Property Damage Insurance for all owned, non-owned and hired vehicles written on a combined single limit occurrence basis in amount not less than \$1,000,000. In addition, there must be at least \$10,000,000 Excess and/or Umbrella insurance coverage for both the CGL and Auto Liability Insurance. For all Subconsultants, Commercial Automobile Insurance coverage shall not be less than \$1,000,000.

Additional Policy Requirements

Moynihan Station Development Corporation, New York State Urban Development Corporation d/b/a Empire State Development, the State of New York, and The Port Authority of New York and New Jersey shall each be named as an additional insured "on a primary basis" in the policies required above. Policy or policies must be endorsed to be primary as respects the coverage afforded the additional Insureds and each such policy shall be primary to any other insurance maintained by MSDC.

Any other insurance maintained by MSDC shall be excess of and shall not contribute with Construction Manager's or subcontractor's insurance, regardless of the "other insurance" clause contained in MSDC's own policy of insurance.

Umbrella and/or Excess Liability policies used to comply with CGL, Automobile Liability and Employers Liability limits shown above must be warranted to be in excess of limits provided by Construction Manager's primary CGL, Automobile Liability and Employer's Liability, but not excess to other insurance maintained by MSDC. This must be stated on the certificates of insurance.

Liability Insurance Policies shall be specifically endorsed to provide that in any action or proceeding under or in connection with such policies, the insurance carrier shall not, without obtaining the express advance written permission of the General Counsels of MSDC, ESD and PANYNJ (as the case may be) to raise any defense involving in any way the immunity of MSDC, ESD, PANYNJ and their

respective officials, officers, agents or employees, the governmental nature of MSDC, the provisions of any statutes respecting suits against or the jurisdiction of the tribunal over the person of MSDC.

Liability Insurance Policies shall include coverage for cross liability.

Construction Manager's Property Insurance Construction Manager and/or Subconsultants shall secure, pay for, and maintain Property Insurance necessary for protection against the loss of owned, borrowed or rented capital equipment and tools, including any tools owned by employees, and any tools or equipment owned, borrowed or rented by Construction Manager and against the loss of any stored materials. The requirement to secure and maintain such insurance is solely for the benefit of Construction Manager. Failure of Construction Manager to secure such insurance or to maintain adequate levels of coverage shall not render the additional Insureds or their agents and employees responsible for any losses; and the additional Insureds, their agents and employees shall have no such liability. This must be stated on the certificates of insurance.

EXHIBIT F

NON-DISCLOSURE AND CONFIDENTIALITY AGREEMENT

**NON-DISCLOSURE AND CONFIDENTIALITY AGREEMENT
BETWEEN**

(INSERT NAME OF COMPANY)

AND

MOYNIHAN STATION DEVELOPMENT CORPORATION

THIS NON-DISCLOSURE AND CONFIDENTIALITY AGREEMENT (this “**Agreement**”) is made as of this ____ day of _____, 20__, by and between MOYNIHAN STATION DEVELOPMENT CORPORATION (“MSDC”) a subsidiary of New York State Urban Development Corporation Development d/b/a Empire State Urban Development (“ESD”), a corporate governmental agency of the State of New York, constituting a political subdivision and public benefit corporation, and having an office and place of business at 633 Third Avenue, New York, New York, 10017, and _____ having an office and place of business at _____ (address) (“**Recipient**”).

WHEREAS, MSDC desires, subject to the terms and conditions set forth below, to disclose to Recipient Confidential Information (as defined below) in connection with the Moynihan Station Civic and Land Use Improvement Project - Phase 1 (the “Project”) that involves the design and construction of improvements to a passenger railroad track overpass, also known as the West End Concourse, and related improvements within the Pennsylvania Station train shed and beneath, within, and adjacent to the James A. Farley Post Office Building all located in New York City; and

WHEREAS, the Recipient acknowledges that MSDC, in furtherance of its performance of essential and critical governmental functions relating to the Project, has existing and significant interests and obligations in establishing, maintaining and protecting the security and safety of the Project site and surrounding areas and related public welfare matters; and

WHEREAS, in furtherance of critical governmental interests regarding public welfare, safety and security at the Project site, MSDC has collected information and undertaken the development of certain plans and recommendations regarding the security, safety and protection of the Project site, including the physical construction and current and future operations; and

WHEREAS, MSDC and Recipient (collectively, the “Parties”) acknowledge that in order for Recipient to undertake its duties and/or obligations with regard to its involvement in the Project, MSDC may provide Recipient or certain of its Related Parties (as defined below) certain information in the possession of MSDC, which may contain or include confidential, privileged, classified, commercial, proprietary or sensitive information, documents and plans, relating to the Project or its occupants or other matters, the unauthorized disclosure of which could result in significant public safety, financial and other damage to MSDC, ESD the Project, its occupants, and the surrounding communities; and

WHEREAS, Recipient recognizes and acknowledges that providing unauthorized access to, or disclosing such information to third parties in violation of the terms of this Agreement could compromise or undermine the existing or future guidelines, techniques and procedures implemented for the protection against terrorist acts or for law enforcement, investigation and prosecutorial purposes, and accordingly could result in significant irreparable harm and injury; and

WHEREAS, in order to protect and preserve the privilege attaching to and the confidentiality of the aforementioned information as well as to limit access to such information to a strict need to know basis, MSDC requires, as a condition of its sharing or providing access to such confidential, privileged, classified, commercial, proprietary or sensitive information, documents and plans, that the Recipient enter into this Agreement and that its Related Parties thereafter acknowledge and agree that they will be required to treat as strictly confidential and/or privileged any of such information so provided, as well as the work product and conclusions of any assessments and evaluations or any recommendations relating thereto, and to also fully comply with applicable federal rules and regulations with respect thereto; and

WHEREAS, as a condition to the provision of such information to Recipient and certain Related Parties, the Recipient has agreed to enter into this Agreement with respect to the handling and use of such information and to cause Related Parties to join in and be bound by the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the provision by MSDC of Information for Project Purposes (as each such term is defined below) and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Recipient and each Related Party that receives such Information, the Recipient and each such Related Party agrees, as follows:

1. Defined Terms. In addition to the terms defined in the Recitals above, the following terms shall have the meanings set forth below:

1. **“Authorized Disclosure”** means the disclosure of Confidential Information strictly in accordance with the Confidentiality Control Procedures applicable thereto: (i) as to all Confidential Information, only to a Related Party that has a

need to know such Confidential Information strictly for Project Purposes and that has agreed in writing to be bound by the terms of this Agreement by executing a form of Acknowledgment as set forth in Exhibit A; and (ii) as to Confidential Privileged Information, only to the extent expressly approved in writing and in advance by MSDC, and then only the particular Confidential Privileged Information that is required to accomplish an essential element of the Project.

2. **“Confidential Information”** means and includes collectively, Confidential Proprietary Information, Confidential Privileged Information, and Information that is labeled, marked or otherwise identified by or on behalf of MSDC so as to reasonably connote that such Information is confidential, privileged, sensitive or proprietary in nature. The term Confidential Information shall also include all work product that contains or is derived from any of the forgoing, whether in whole or in part, regardless of whether prepared by the Recipient, MSDC or others. The following Information shall not constitute Confidential Information for the purpose of this Agreement:
 - A. Particular Information, other than Confidential Privileged Information, that is provided to the Recipient by a source other than MSDC, provided that such source is not subject to a confidentiality agreement, or similar obligation, or understanding with or for the benefit of MSDC, with respect to such Information and that the identity of such source is not itself part of such Confidential Information.
 - B. Information that is or becomes generally available to the public other than as a result of a disclosure by the Recipient or a Related Party in violation of this Agreement.
3. **“Confidential Privileged Information”** means and includes collectively, (i) any and all Information, documents and materials entitled to protection as a public interest privilege under New York State law and as may be deemed to be afforded or entitled to the protection of any other privilege recognized under New York laws or Federal laws, (ii) Critical Infrastructure Information, (iii) Sensitive Security Information, and (iv) Limited Access Safety and Security Information.
4. **“Confidential Proprietary Information”** means and includes Information that contains financial, commercial or other proprietary, business Information concerning the Project, or MSDC or ESD, or their respective facilities.
5. **“Confidentiality Control Procedures”** means procedures, safeguards and requirements for the identification, processing, protection, handling, care, tracking and storage of Confidential Information that are required under applicable federal or state law or by the terms of this Agreement.

6. **"Critical Infrastructure Information"** (CII) has the meaning set forth in the Homeland Security Act of 2002, under the subtitle Critical Infrastructure Information Act of 2002 (6 U.S.C. §131-134), and any rules or regulations enacted pursuant thereto, including, without limitation, the Office of the Secretary, Department of Homeland Security Rules and Regulations, 6 C.F.R. Part 29 and any amendments thereto. CII may also be referred to as "Protected Critical Infrastructure Information" or "PCII," as provided for in the referenced rules and regulations and any amendments thereto.
7. **"Information"** means, collectively, all information, documents, data, reports, notes, studies, projections, records, manuals, graphs, electronic files, computer generated data or information, drawings, charts, tables, diagrams, photographs, and other media or renderings containing or otherwise incorporating information that may be provided or made accessible at any time, whether in writing, orally, visually, photographically, electronically or in any other form or medium, including, without limitation, any and all copies, duplicates or extracts of the foregoing.
8. **"Limited Access Safety and Security Information"** means and includes sensitive Information, the disclosure of which would be detrimental to the public interest and might compromise public safety and/or security as it relates to MSDC or ESD property, facilities, systems and operations, and which has not otherwise been submitted for classification or designation under any Federal laws or regulations.
9. **"Project Purposes"** means the use of Confidential Information strictly and only for purposes related to Recipient's and its Related Parties' participation and involvement in the Project, and only for such period of time during which Recipient and its Related Parties are involved in Project related activities.
10. **"Related Party"** and **"Related Parties"** means the directors, employees, officers, partners or members of the Recipient, as applicable, and the Recipient's outside consultants, advisors, accountants, architects, engineers or subcontractors or subconsultants (and their respective directors, employees, officers, partners or members) to whom any Confidential Information is disclosed or made available.
11. **"Sensitive Security Information"** has the definition and requirements set forth in the Transportation Security Administrative Rules & Regulations, 49 CFR 1520, (49 U.S.C. §114) and in the Office of the Secretary of Transportation Rules & Regulations, 49 CFR 15, (49 U.S.C. §40119) and any amendments thereto.
12. **Use of Confidential Information.** All Confidential Information shall be used by the Recipient in accordance with the following requirements:
 - (a) All Confidential Information shall be held in confidence and shall be processed, treated, disclosed and used by the Recipient and its Related

Parties only for Project Purposes and in accordance with the Confidentiality Control Procedures established pursuant to Paragraph 2(c), below, and applicable legal requirements. Confidential Information may be disclosed, only if and to the extent that such disclosure is an Authorized Disclosure.

(b) Recipient and each Related Party acknowledges and agrees that (i) any violation by the Recipient or any of its Related Parties of the terms, conditions or restrictions of this Agreement relating to Confidential Information may result in penalties and other enforcement or corrective action as set forth in such statutes and regulations, including, without limitation, the issuance of orders requiring retrieval of Sensitive Security Information and Critical Infrastructure Information to remedy unauthorized disclosure and to cease future unauthorized disclosure and (ii) pursuant to the aforementioned Federal Regulations, including, without limitation, 49 C.F.R. §§ 15.17 and 1520.17, any such violation thereof or mishandling of information therein defined may constitute grounds for a civil penalty and other enforcement or corrective action by the United States Department of Transportation and the United States Department of Homeland Security, and appropriate personnel actions for Federal employees.

(c) Recipient and each Related Party covenants to MSDC that it has established, promulgated and implemented Confidentiality Control Procedures for identification, handling, receipt, care, and storage of Confidential Information to control and safeguard against any violation of the requirements of this Agreement and against any unauthorized access, disclosure, modification, loss or misuse of Confidential Information. Recipient and each Related Party shall undertake reasonable steps consistent with such Confidentiality Control Procedures to assure that disclosure of Confidential Information is compartmentalized, such that all Confidential Information shall be disclosed only to those persons and entities authorized to receive such Information as an Authorized Disclosure under this Agreement and applicable Confidentiality Control Procedures.

(d) MSDC may request in writing that the Recipient or any Related Parties apply different or more stringent controls on the handling, care, storage and disclosure of particular items of Confidential Information as a precondition for its disclosure. MSDC may decline any request by the Recipient or any of its Related Parties to provide such item of Confidential Information if the Recipient or any of the Related Parties do not agree in writing to apply such controls.

(e) Nothing in this Agreement shall require MSDC to tender or provide access to or possession of any Confidential Information to the Recipient or its Related Parties, whether or not the requirements of this Agreement are otherwise satisfied. However, if such Confidential Information is provided and

accepted, the Recipient and its Related Parties shall abide by the terms, conditions and requirements of this Agreement.

(f) The Recipient and each Related Party agrees to be responsible for enforcing the provisions of this Agreement with respect to its Related Parties, in accordance with the Confidentiality Control Procedures. Except as required by law pursuant to written advice of competent legal counsel, or with MSDC's prior written consent, neither the Recipient, nor any of the Related Parties shall disclose to any third party, person or entity: (i) any Confidential Information under circumstances where the Recipient is not fully satisfied that the person or entity to whom such disclosure is about to be made shall act in accordance with the Confidentiality Control Procedures whether or not such person or entity has agreed in writing to be bound by the terms of this Agreement or any "Acknowledgement" of its terms or (ii) the fact that Confidential Information has been made available to the Recipient or such Related Parties, or the content or import of such Confidential Information. The Recipient is responsible for collecting and managing the Acknowledgments signed by Related Parties pursuant to this Agreement. Recipient shall, at MSDC's request, provide MSDC a list of all Related Parties who have signed an Acknowledgment, and copies of such Acknowledgments.

(g) As to all Confidential Information provided by or on behalf of MSDC, nothing in this Agreement shall constitute or be construed as a waiver of any public interest privilege or other protections established under applicable state or federal law.

13. Disclosures and Discovery Requests. If a subpoena, discovery request, Court Order, Freedom of Information Request, or any other request or demand authorized by law seeking disclosure of the Confidential Information is received by the Recipient or any Related Party, Recipient shall notify MSDC thereof with sufficient promptness so as to enable MSDC to investigate the circumstances, prepare any appropriate documentation and seek to quash the subpoena, to seek a protective order, or to take such other action regarding the request as it deems appropriate. In the absence of a protective order, disclosure shall be made, in consultation with MSDC, of only that part of the Confidential Information as is legally required to be disclosed. If at any time Confidential Information is disclosed in violation of this Agreement, the Recipient shall immediately give MSDC written notice of that fact and a detailed account of the circumstances regarding such disclosure to MSDC.

14. Retention Limitations; Return of Confidential Information. Upon the earlier occurrence of either MSDC's written request or completion of Recipient's need for any or all Confidential Information, such Confidential Information, all writings and material describing, analyzing or containing any part of such Confidential Information, including any and all portions of Confidential Information that may be stored, depicted or

contained in electronic or other media and all copies of the foregoing shall be promptly delivered to MSDC at Recipient's expense. In addition, as to Confidential Information that may be stored in electronic or other form, such Confidential Information shall be completely removed so as to make such Confidential Information incapable of being recovered from all computer databases of the Recipient and all Related Parties. The Recipient may request in writing that MSDC consent to destruction of Confidential Information, writings and materials in lieu of delivery thereof to MSDC. MSDC shall not unreasonably withhold its consent to such request. If MSDC consents to such destruction, the Recipient and each Related Party shall deliver to MSDC a written certification by Recipient and such Related Party that such Confidential Information, writings and materials have been so destroyed within such period as may be imposed by MSDC. Notwithstanding the foregoing, to the extent required for legal or compliance purposes, the Recipient may retain a copy of Confidential Information, provided that (a) MSDC is notified in writing of such retention, and (b) Recipient continues to abide by the requirements of this Agreement with respect to the protection of such Confidential Information.

15. Duration and Survival of Confidentiality Obligations. The obligations under this Agreement shall be perpetual (unless otherwise provided in this Agreement) or until such time as the Confidential Information is no longer considered confidential and/or privileged by MSDC.

16. Severability. Each provision of this Agreement is severable and if a court should find any provision of this Agreement to be unenforceable, all other provisions of this Agreement shall remain in full force and effect.

17. Injunctive and Other Relief. Recipient and each Related Party acknowledges that the unauthorized disclosure and handling of Confidential Information is likely to have a material adverse and detrimental impact on public safety and security and could significantly endanger MSDC or ESD, or their respective facilities (including, without limitation, the Project site) and the general public and that damages at law are an inadequate remedy for any breach, or threatened breach, of this Agreement by Recipient or its Related Parties. MSDC shall be entitled, in addition to all other rights or remedies, to seek such restraining orders and injunctions as it may deem appropriate for any breach of this Agreement, without being required to show any actual damage or to post any bond or other security.

18. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regard to conflict of laws principles.

19. Notices. Any notice, demand or other communication (each, a “notice”) that is given or rendered pursuant to this Agreement by either party to the other party, shall be: (i) given or rendered, in writing, (ii) addressed to the other party at its required address(es) for notices delivered to it as set forth below, and (iii) delivered by either (x)

hand delivery, or (y) nationally recognized courier service (e.g., Federal Express, Express Mail). Any such notice shall be deemed given or rendered, and effective for purposes of this Agreement, as of the date actually delivered to the other party at such address(es) (whether or not the same is then received by other party due to a change of address of which no notice was given, or any rejection or refusal to accept delivery). Notices from either party (to the other) may be given by its counsel.

The required address(es) of each party for notices delivered to it is (are) as set forth below. Each party, however, may, from time to time, designate an additional or substitute required address(es) for notices delivered to it, provided that such designation must be made by notice given in accordance with this Paragraph 9.

If to the MSDC: Moynihan Station Development Corporation
633 Third Avenue
New York, NY 10017
Attention: Project Manager, Construction

with a copy to: Empire State Development Corporation
633 Third Avenue
New York, NY 10017
Attn: General Counsel

If to the Recipient: _____

with a copy to: _____

20. Entire Agreement. This Agreement contains the complete statement of all the agreements among the parties hereto with respect to the subject matter thereof, and all prior agreements among the parties hereto respecting the subject matter hereof, whether written or oral, are merged herein and shall be of no further force or effect. This Agreement may not be changed, modified, discharged, or terminated, except by an instrument in writing signed by all of the parties hereto.

21. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which shall be one and the same document.

22. Parties Bound and Third Party Beneficiary. This Agreement shall be binding upon the Recipient and its respective successors. The foregoing shall not be affected by the failure of any Related Party to join in this Agreement or to execute and deliver an

Acknowledgement hereof. ESD is a third Party Beneficiary of this Agreement and is entitled to all the rights, benefits, and protections afforded thereby.

23. Authority. The undersigned individual(s) executing this Agreement on behalf of the Recipient below represent(s) that they are authorized to execute this Agreement on behalf of the Recipient and to legally bind such party.

24. Disclosure of Ownership Rights or License. Nothing contained herein shall be construed as the granting or conferring by MSDC of any rights by ownership, license or otherwise in any Information.

25. No Liability. Neither MSDC's nor ESD's respective directors, officers, agents or employees, shall be charged personally by the Recipient with any liability, or held liable to the Recipient under any term or provision of this Agreement, or because of such person's execution or attempted execution or because of any breach, or attempted or alleged breach thereof.

26. Construction. This Agreement is the joint product of the parties hereto and each provision of this Agreement has been subject to the mutual consultation, negotiation, and agreement of the parties hereto, and shall not be construed for or against any party hereto. The captions of the various sections in this Agreement are for convenience only and do not, and shall not be deemed to, define, limit or construe the contents of such Sections.

[No further text on this page; signatures appear on next page]

IN WITNESS WHEREOF, the Recipient has executed this Agreement as of the date first above written.

Dated: New York, New York

_____, _____, _____

RECIPIENT:

By: _____

Title: _____

Date: _____

EXHIBIT A - NON-DISCLOSURE AND CONFIDENTIALITY AGREEMENT

ACKNOWLEDGMENT BY RELATED PARTY ENTITY

The undersigned, _____ (name of authorized signatory), is the _____ (Title) of _____ (name of entity), a _____ (type of entity and jurisdiction of formation) ("**Related Party**"), located at _____ (address of entity), and is duly authorized to execute this Acknowledgment on behalf of the above Related Party. The above Related Party is involved with the functions of _____ (describe scope of work of Related Party) in connection with Moynihan Station Civic and Land Use Improvement Project - Phase 1 that involves the design and construction of improvements to a passenger railroad track overpass, also known as the West End Concourse, and related improvements within the Pennsylvania Station train shed and beneath, within, and adjacent to the James A. Farley Post Office Building all located in New York City for Moynihan Station Development Corporation ("**MSDC**"). I acknowledge and confirm that the above named Related Party has been provided with a copy of and shall be bound and shall abide by all of the terms, requirements and conditions set forth in the Non Disclosure and Confidentiality Agreement dated _____, _____, _____, between _____ (the "**Recipient**") and MSDC (hereinafter the "**Agreement**"). Appropriate and responsible officers and employees of the Related Party have carefully read and understand the terms and conditions of the Agreement. The Related Party has notice and acknowledges that any breach or violation of such terms, requirements and conditions may result in the imposition of remedies or sanctions as set forth or otherwise described therein against such Related Party.

Signed: _____
Print Name: _____
Title: _____
Date: _____

ACKNOWLEDGMENT BY RELATED PARTY INDIVIDUAL

I, _____ (name of employee) ("**Related Party**"), am employed as a(n) _____(job title) by _____ (name of employer). I have been provided with and have read the Non Disclosure and Confidentiality Agreement between _____ (the "**Recipient**") and Moynihan Station Development Corporation ("**MSDC**") dated _____, _____ (hereinafter the "**Agreement**".) I understand that because of my employer's relationship with _____ (name of Recipient, or MSDC if Related Party Individual is an employee of Recipient), both my employer and I may be provided with access to, and/or copies of, sensitive security materials or confidential information. If it is required for me to review or receive Confidential Information, as it is defined in the aforementioned Agreement, I acknowledge that I will be bound by each and every term and provision contained therein, and that failure to do so may include, but is not limited to, the imposition of disciplinary action and sanctions, and/or the institution of legal action seeking injunctive relief, monetary and/or criminal penalties for violation of law and/or MSDC policies and procedures, as well as for violation of federal and/or state regulations.

To the extent that I am currently in the possession of, or have previously come into contact with, marked information as it relates to the aforementioned Agreement, I agree to conform my handling procedures for Confidential Information to the practices and procedures set forth and defined herein, or risk loss of access to said Information, removal from said Project and/or subjecting myself to the aforementioned disciplinary actions and/or civil and criminal penalties.

Signed:

Print Name:

Title:

EXHIBIT G

[INTENTIONALLY OMITTED]

EXHIBIT H

**OFFERER'S AFFIRMATION OF UNDERSTANDING OF AND AGREEMENT PURSUANT TO STATE
FINANCE LAW 139-J**

**Model Language to Obtain Offerer's Affirmation of Understanding of and Agreement
pursuant to State Finance Law § 139-j (3) and § 139-j (6) (b)**

Background:

State Finance Law § 139-j(6)(b) provides that:

Every Governmental Entity shall seek written affirmations from all Offerers as to the Offerer's understanding of and agreement to comply with the Governmental Entity's procedures relating to permissible contacts during a Governmental Procurement pursuant to subdivision three al this section.

Instructions:

A Governmental Entity must obtain the required affirmation of understanding and agreement to comply with procedures on procurement lobbying restrictions regarding permissible Contacts in the restricted period for a procurement contract in accordance with State Finance Law § § 139-j and 139-k.

It is recommended that this affirmation be obtained as early as possible in the procurement process, such as when the Offerer submits its proposal or bid.

The following language can be used to obtain the affirmation.

Offerer affirms that it understands and agrees to comply with the procedures of the Government Entity relative to permissible Contacts as required by State Finance Law § 139-j (3) and § 139-j (6) (b).

Signed: _____ Date:

Name: _____

Title: _____

Contractor Name:

Contractor Address:

EXHIBIT I

**OFFERER DISCLOSURE OF PRIOR
NON-RESPONSIBILITY DETERMINATIONS**

EXHIBIT J

NYS TAX FORM ST-220-CA OF CONSTRUCTION MANAGER

**THE FORM AVAILABLE ON THE EWW YORK STATE DEPARTMENT OF TAXATION AND FINANCE
WEBSITE PAGE:**

[HTTP://WWW.TAX.NY.GOV/PDF/CURRENT_FORMS/ST/ST220TD_FILL_IN.PDF](http://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf)

EXHIBIT K

NON-DISCRIMINATION AND AFFIRMATIVE ACTION PLAN

ESD NON-DISCRIMINATION AND AFFIRMATIVE ACTION CONSULTANT CONTRACT PROVISIONS

I. Policy

It is the policy of the State of New York, ESD, and MSDC to comply with all federal, State and local laws, policies, orders, rules and regulations which prohibit unlawful discrimination because of race, creed, color, national origin, sex, sexual orientation, age, disability or marital status, and to take affirmative action to ensure that Disadvantaged Business Enterprises (DBEs), Minority and Women-owned Business Enterprises (M/WBEs), Minority Group Members and women share in the economic opportunities generated by MSDC's participation in projects or initiatives, and/or the use of MSDC funds.

- 1) The Contracting Party represents that its equal employment opportunity policy statement incorporates, at a minimum, the policies and practices set forth below:
 - (a) Contracting Party shall (i) not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, sexual orientation, age, disability or marital status, (ii) undertake or continue existing programs of affirmative action to insure that Minority Group Members and women are afforded equal employment opportunities without discrimination, and (iii) make and document its conscientious and active efforts to employ and utilize Minority Group Members and women in its workforce on Contracts. Such action shall be taken with reference to, but not limited to, recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff or termination, rates of pay or other forms of compensation, and selection for training or retraining, including apprenticeship and on-the-job training.
 - (b) At the request of the AAO, the Contracting Party shall request each employment agency, labor union, or authorized representative of workers with whom it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative does not unlawfully discriminate, and that such union or representative will affirmatively cooperate in the implementation of the Contracting Party's obligations herein.
- (2) In accordance with reporting provisions of Article 15A of the NYS Executive Law and with respect to this Contract which is funded with funds provided by the United States of America:

- (a) Upon commencement of the contract services and quarterly thereafter during the term of the Contract, the Contracting Party shall submit to the AAO a Workforce Employment Utilization Report (Schedule C-1) of the workforce actually utilized on the Contract, itemized by ethnic background, gender, and Federal Occupational Categories or other appropriate categories specified by the AAO. In the case where the Contracting Party's and/or subcontractor's workforce does not change within the quarterly period, the Contracting Party shall so notify the AAO in writing.
- (b) The Contracting Party shall also submit quarterly DBE / MBE / WBE Compliance Reports (Schedule C-2) of the DBEs and MWBEs providing goods and services on the project. Upon request of final payment, all compliance reports must be submitted.

The Contracting Party shall include, or cause to be included, the provisions of clauses (1) and (2) in every Contract or purchase order that it enters into in order to fulfill its obligations under the Contract, in such a manner that such provisions will be binding upon each and every Contracting Party with respect to any Contract or Subcontract.

II. Goals for Disadvantaged Business Enterprise and Minority and Women-Owned Business Enterprise Participation

- (a) The Contracting Party is required to use its best efforts to achieve an overall DBE /MBE / WBE participation goal of 20 % of the total dollar value of the Contract.
- (b) The goal for DBE /MBE / WBE participation in the performance of the work is expressed as a percentage of the contract price.
- (c) The total dollar value of the work performed by DBEs / MBEs / WBEs will be determined as: (i) the dollar value of the work subcontracted to DBEs / MBEs / WBEs; (ii) where the Contracting Party is a joint venture, association, partnership or other similar entity including one or more DBEs / MBEs / WBEs -- the contract price multiplied by the percentage of the entity's profits/losses which are to accrue to the DBE(s) / MBE(s) / WBE(s) under the Contracting Party's agreement; or (iii) where the DBE / MBE / WBE is the Contracting Party -- the contract price.
- (d) The Contracting Party shall include, or cause to be included, the provisions of clauses (a) through (c) in every Contract or purchase order that it enters into in order to fulfill its obligations under the Contract, in such a manner that such provisions will be binding upon each and every Contracting Party with respect to any Contract or Subcontract.

III. Reporting Requirements

The Contracting Party will permit access to its books, records and accounts, with respect to the Contract, by the AAO for purposes of investigation to ascertain compliance with the provisions herein. Upon request, the Contracting Party shall periodically file, or cause to be filed, reports, substantially in the format attached hereto as Schedule C-1 and C-2 (DBE/MBE/WBE Compliance Report to be filed quarterly) detailing compliance with the provisions of these non-discrimination and affirmative action clauses. Accuracy of the information contained in the reporting an MSDC or officer of the Contracting Party shall certify to documentation.

IV. Non-Compliance and Sanctions

In the event that any Contracting Party violates any of the provisions herein, MSDC may require that the following sanctions and remedies for non-compliance be imposed:

- (a) Summon the Contracting Party for a hearing with the AAO.
- (b) After any such hearing, and a determination by the AAO that the Contracting Party has failed to comply with any of these provisions, and the passage of time in which to remedy such failure has transpired, this Contract may be canceled, terminated or suspended, in whole or in part. Alternatively, the AAO, in his/her sole discretion, may assess liquidated damages against the Contracting Party for failure to demonstrate its best efforts in complying with the affirmative action program. Liquidated damages may be assessed in an amount equal to the dollar value of Contracts that would have been realized by DBEs / MBEs / WBEs if the goals had been achieved.
- (c) If such an award is assessed against any Contracting Party, (i) the amount of such assessment may be withheld from any monies due to the Contracting Party from MSDC or; (ii) may be paid to MSDC by the Contracting Party that has been found to fail to comply with the affirmative action program. Any liquidated damages collected hereunder shall be paid into one or more DBE / MBE / WBE technical assistance funds administered by MSDC or ESD.
- (d) Such sanctions that may be imposed and remedies invoked hereunder, shall be considered independent of, or in addition to, sanctions and remedies otherwise provided by law.

ESD NON-DISCRIMINATION AND AFFIRMATIVE ACTION DEFINITIONS

Affirmative Action

Shall mean the actions to be undertaken by the Contracting Party in connection with any project or initiative to ensure non-discrimination and Disadvantaged Business Enterprise and Minority/Women-owned Business Enterprise and minority/female workforce participation, as set forth in Sections II herein, and developed by MSDC.

Affirmative Action Officer (“AAO”)

Shall mean ESD’s Affirmative Action Officer or his/her designee, managing the affirmative action program for MSDC.

Best Efforts – Disadvantaged Business Enterprise and Minority and Women-owned Business Enterprise Participation

Best efforts are not limited to the efforts specified herein, and the roles of DBE / MBE / WBE firms are not restricted to that of a subcontractor/subconsultant. Where applicable, DBE / MBE / WBE firms should be considered for roles as prime contractors. Such best efforts shall include at least the following:

- (a) Dividing the contract work into smaller portions in such a manner as to permit subcontracting to the extent that it is economically and technically feasible to do so;
- (b) Actively and affirmatively soliciting bids from qualified DBEs / MBEs / WBEs, including circulation of solicitations to DBE, minority and women's trade associations. Each Contracting Party shall maintain records detailing the efforts made to provide for meaningful DBE / MBE / WBE participation in the work. Such record keeping must include the names and addresses of all DBE / MBE / WBEs contacted and, if a DBE / MBE / WBE is the low bidder and is not selected for such work or portion thereof, the reasons for such decision;
- (c) Making plans and specifications for prospective work available to DBE / MBE / WBEs in sufficient time for review;
- (d) Utilizing the services and cooperating with those organizations providing technical assistance to the Contracting Party in connection with potential DBE / MBE / WBE participation on the Contract;
- (e) Utilizing the resources of the AAO to identify New York State certified M/WBE firms and the New York State Uniform Certification Program (“NYSCUP” website

<http://biznet.nysucp.net>) to identify eligible DBE firms for the purpose of soliciting bids and subcontracts; and

- (f) Encouraging the formation of joint ventures, associations, partnerships, or other similar entities, where appropriate, to ensure that the Contracting Party will meet its obligations herein.
- (g) The Contracting Party shall remit payment in a timely fashion.

Contract

Shall mean a written agreement or purchase order instrument, or amendment thereto, executed by or on behalf of a **Contracting Party**, providing for a total expenditure in excess of \$5,000 for labor, services, supplies, equipment, materials or any combination of the foregoing funded in whole or in part with MSDC or funds of the United States of America.

Contracting Party

Shall mean any contractor, subcontractor, consultant, subconsultant or vendor supplying goods or services, pursuant to a contract or purchase order in excess of \$1,500, in connection with any projects or initiatives funded in whole or in part by MSDC or the United States of America.

ESD NON-DISCRIMINATION AND AFFIRMATIVE ACTION DEFINITIONS

Minority Business Enterprise (“MBE”)

Shall mean a business enterprise, including a sole proprietorship, partnership or corporation that is: (i) at least fifty-one percent (51%) owned by one or more Minority Group Members; (ii) an enterprise in which such minority ownership is real, substantial and continuing; (iii) an enterprise in which such minority ownership has and exercises the authority to control and operate, independently, the day-to-day business decisions of the enterprise; (iv) an enterprise authorized to do business in the State of New York and is independently owned and operated; and (v) an enterprise certified by New York State as a minority business.

Minority Group Member

Shall mean a United States citizen or permanent resident alien who is and can demonstrate membership in one of the following groups: (i) Black persons having origins in any of the Black African racial groups; (ii) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American descent of either Indian or Hispanic origin, regardless of race; (iii) 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 (iv) Native American or Alaskan native persons having origins in any of the original peoples of North America.

Subcontract

Shall mean an agreement providing for a total expenditure in excess of \$1,500 between a **Contracting Party** and any individual or business enterprise, for goods or services rendered in connection with any project or initiative funded in whole or in part with ESD funds.

Women-owned Business Enterprise (“WBE”)

Shall mean a business enterprise, including a sole proprietorship, partnership or corporation that is: (i) at least fifty-one percent (51%) owned by one or more citizens or permanent resident aliens who are women; (ii) an enterprise in which ownership interest of such women is real, substantial and continuing; (iii) an enterprise in which such women ownership has and exercises the authority to control and operate, independently, the day-to-day business decisions of the enterprise; (iv) an enterprise authorized to do business in the State of New York and is independently owned and operated; and (v) an enterprise certified by New York State as woman-owned.

Disadvantaged Business Enterprise (“DBE”)

The United States Department of Transportation regulations on Disadvantaged Business Enterprises (“DBEs”) are contained in Part 26 of Title 49 of the Code of Federal Regulations. Firms owned and controlled by socially and economically disadvantaged individuals and certified as DBEs pursuant to the New York State Uniform Certification Program (“NYSCUP”) are eligible to be treated as DBEs. Eligible DBE firms are listed on the NYSUCP website <http://biznet.nysucp.net>. If the Proposer wishes to subcontract portion of the work through, or joint venture with, a firm not listed in the NYSCUP directory, but which the Proposer believes should be eligible for certification by with the NYSCUP because the is (1) an DBE, as defined above and (2) competent to perform portions of the work, then the Proposer shall submit an DBE Uniform Certification Application to MSDC. The application is available online at <https://www.nysdot.gov/main/business-center/civil-rights/forms-and-applications>. In addition, to update a previously-certified firm’s certification file and to advise MSDC of changes to any information, please email these changes to MSDC. Credit toward applicable DBE goals will be granted only to competent NYSCUP certified eligible DBEs.

EXHIBIT L

BACKGROUND QUALIFICATIONS QUESTIONNAIRE PACKAGE

EXHIBIT M

[Intentionally Omitted]

EXHIBIT N

PREVAILING WAGE RATES

Construction Manager shall pay the higher of the applicable Federal, State or New York City Wage Rates

State Wage Rates

[HTTP://WWW.LABOR.STATE.NY.US/](http://www.labor.state.ny.us/)

NYC Wage Rates

[HTTP://WWW.COMPTROLLER.NYC.GOV/BUREAUS/BLL/SCHEDULES.SHTM](http://www.comptroller.nyc.gov/bureaus/bll/schedules.shtm)

EXHIBIT O

UNITED STATES DEPARTMENT OF TRANSPORTATION FEDERAL RAILROAD ADMINISTRATION REQUIREMENTS

1. INCORPORATION OF FEDERAL RAILROAD ADMINISTRATION TERMS

This Agreement is anticipated to be partially funded by the United States Department of Transportation (“USDOT”) Federal Railroad Administration (“FRA”), pursuant to several grant/cooperative agreements (each a “Grant Agreement”). As used herein the term “Contractor” shall mean “Construction Manager” and the term “Contract” shall mean the “Agreement”. Any reference herein to USDOT shall also mean FRA and any reference to FRA shall also mean USDOT.

Anything to the contrary herein notwithstanding, all mandated terms pursuant to the Grant Agreement shall be deemed to control in the event of a conflict with other provisions contained in this Contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any MSDC requests that would cause MSDC to be in violation of the USDOT terms and conditions.

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

2. FEDERAL CHANGES

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

3. NO FEDERAL GOVERNMENT OBLIGATIONS TO THIRD PARTIES

MSDC and the Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to MSDC,

Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

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

4. ORGANIZATIONAL CONFLICT OF INTEREST

A. This Contract may give rise to a potential for an organizational conflict of interest. An organizational conflict of interest exists when the nature of the work to be performed under the contract may, without some form of restriction on future activities; result in an unfair competitive advantage to the Contractor.

1. The Contractor shall have access to confidential and/or sensitive MSDC information in the course of contract performance. Additionally, the Contractor may be provided access to proprietary information obtained from other contracted entities during contract performance. The Contractor agrees to protect all such information from disclosure unless so authorized, in writing, by MSDC and to refrain from using such information for any purpose other than that for which it was furnished.

2. To the extent that the Contractor either (a) uses confidential and/or sensitive MSDC information or proprietary information obtained from other MSDC contractors to develop any form of document, report, or plan that is determined by MSDC to be the basis, in whole or in part, of any subsequent solicitation issued by MSDC or (b) develops written specifications that are used in any subsequent solicitation issued by MSDC, the Contractor agrees that it shall not be eligible to compete for such subsequent solicitation(s) as a prime or principal contractor or as part of any teaming arrangement unless MSDC provides, in writing, a specific waiver of this restriction. The duration of any restriction imposed under this subparagraph shall not exceed the length of the initial performance period of any subsequently awarded contract for which the Contractor was ineligible to compete.

B. The Contractor, by submitting its bid or proposal, agrees to the above stated conditions and terms and further agrees to perform all duties under the contract and, in doing so, not to enter into contractual agreements with MSDC prime contractors and first-tier subcontractors in such a way as to create an organizational conflict of interest.

C. If MSDC determines that the Contractor has violated any term of this numbered clause, MSDC may take any appropriate action available under the law or regulations to obtain redress to include, but not be limited to, requiring the Contractor to terminate any affiliation or contractual arrangement with an MSDC prime contractor or first-tier subcontractor at no cost to MSDC; determining the Contractor ineligible to compete for or be awarded any subsequent or "follow-on" contracts that may be based upon the Contractor's actions under this Contract

or violations of this numbered clause, or terminating this Contract, in whole or in part.

5. CERTIFICATION - DEBARMENT AND SUSPENSION

This Contract is a covered transaction for purposes of 2 CFR Parts 180 and 1200. As such, the Contractor is required to verify that none of the Contractor, its principals, as defined at 2 CFR 180.995, or affiliates, as defined at 2 CFR 110.905, are excluded or disqualified as defined at 2 CFR Part 180 Sections 935 and 940.

The Contractor is required to comply with 2 CFR 180, Subpart C and must include the requirement to comply with 2 CFR 180, Subpart C in any lower tier covered transaction it enters into.

By signing and submitting its bid or proposal and/or by signing and delivering the Contract proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by MSDC. If it is later determined that the proposer or Contractor knowingly rendered an erroneous certification, in addition to remedies available to MSDC, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The proposer/Contractor agrees to comply with the requirements of 2 CFR 180, Subpart C while the offer is valid and throughout the period of any contract that may arise from the offer. The proposer/Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.

A. USDOT requires that each potential Contractor, for major third party contracts, complete a certification entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion" for itself and its principals and requires each Subcontractor or Supplier [for Subcontracts and Supplier agreements expected to equal or exceed the Federal procurement small purchase threshold fixed at 10 U.S.C. 253(g) (currently \$25,000)] to complete a certification entitled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tiered Covered Transactions" for itself and its principals. Copies of the required Certification forms and accompanying instructions are set forth at the end of this Exhibit.

B. In the event that the Contractor has certified prior to award that it is not proposed for debarment, debarred, suspended, or voluntarily excluded from covered transactions by any Federal Department or agency and such certification is found to be false, this Contract may be canceled, terminated or suspended by MSDC and the Contractor will be liable for any and all damages incurred by MSDC because of such cancellation, termination or suspension because of such false certification.

C. The Contractor shall obtain certifications from all known potential Subcontractors and Suppliers [for which payments are expected to equal or exceed the Federal

procurement small purchase threshold fixed at 10 U.S.C. 253(g) (currently \$25,000)] and submit such certifications to the address set forth in E below.

D. Prior to the award of any Subcontracts or Supplier agreements expected to equal or exceed the Federal procurement small purchase threshold fixed at 10 U.S.C. 253(g) (currently \$25,000), regardless of tier, any prospective Subcontractor or Supplier who has not previously submitted a certification for this Contract must execute and submit to the Contractor a certification, in the form set forth at the end of this Agreement, which will be deemed a part of the resulting Subcontract and Supplier agreement.

E. The originals of any Certifications or correspondence relating hereto shall be sent by the Contractor to Moynihan Station Development Corporation, 633 Third Avenue, New York, NY 10017, Attention: Project Manager.

F. The Contractor shall not knowingly enter into any Subcontracts or Supplier agreements with a person that is proposed for debarment, debarred, suspended, declared ineligible or voluntarily excluded from covered transactions.

G. As required by FRA, the Contractor and its Subcontractors or Suppliers required to file the certification have a continuing duty to disclose, and shall provide immediate written notice to MSDC if, at any time, it learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

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

A. Definitions as used in this Clause:

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

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

a. The awarding of any Federal contract;

b. The making of any Federal grant;

c. The making of any Federal loan;

d. The entering into of any cooperative agreement; and

e. The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement. As

used in the above referenced Certification, it includes the award of the contract with which it is associated.

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

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

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

6. “Officer or employee of an agency” includes the following individuals who are employed by an agency:

a. An individual who is appointed to a position in the Government under title 5, United States Code, including a position under a temporary appointment;

b. A member of the uniformed services as defined in section 101(3), title 37, United States Code;

7. A special government employee as defined in Section 202, title 18, United States Code;

a. An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, Title 5, United States Code Appendix 2; and

b. An employee of a bi-state agency.

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

9. “Reasonable Compensation” means, with respect to a regularly employed

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

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

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

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

[Spaces Intentionally Inserted]

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

B. Prohibition

1. Section 1352 of title 31, United States Code provides in part that no appropriated funds may be expended by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract; the making of any Federal grant; the making of any Federal loan; the entering into of any cooperative agreement; and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement. For the purposes of the Certification included herein at the end of this Exhibit, it includes the award of the

associated contract.

2. The prohibition does not apply as follows:

a. Agency and legislative liaison by own employees.

i. The prohibition on the use of appropriated funds, in subparagraph B.1.) of this Section, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a Federal contract or the contract associated with the certification if the payment is for agency and legislative liaison activities not directly related to a covered Federal Action.

ii. For purposes of subparagraph B. 2.) a.(i) of this Section, providing any information specifically requested by an agency or Congress is allowable at any time.

iii. For purposes of subparagraph B. 2.) a.(i) of this Section, the following agency and legislative liaison activities are allowable at any time only where they are not related to specific solicitation for any covered Federal action.

a. Discussing with an agency (including individual demonstrations) the qualities and characteristics of the person's products or services, conditions or terms of sales and service capabilities; and,

b. Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.

iv. For purposes of paragraph B. 2)a.(i) of this Section, the following agency and legislative liaison activities are allowable only where they are prior to formal solicitation of any covered Federal action:

a. Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;

b. Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and

c. Capability presentations by persons seeking awards

from an agency pursuant to the provisions of the Small Business Act, as amended by Public Law 95-507 and other subsequent amendments.

v. Only those activities expressly authorized by subparagraph B. 2)a. of this Section are allowable under subparagraph B. 2)a.

b. Professional and Technical Services by Own Employees.

(i) The prohibition on the use of appropriated funds, in subparagraph B. of this Section, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a Federal contract or an extension, continuation, renewal, amendment, or modification of a Federal contract or the contract associated with the certification if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that contract or for meeting requirements imposed by or pursuant to law as a condition for receiving that contract.

(ii) For purposes of subparagraph B. 2.) b. (i) of this Section, "professional and technical services" shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this Section unless they provided advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this Section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this Section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.

(iii) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation, or reasonably expected to be required by law or regulation, and any other requirements in the actual award documents.

(iv) Only those services expressly authorized by subparagraph B. 2.) b. this Section are allowable under subparagraph B. 2.) b.

c. Reporting for Own Employees.

No reporting is required with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.

d. Professional and Technical Services by Other than Own Employees.

(i) The prohibition on the use of appropriated funds, in subparagraph B. 1.) of this Section, does not apply in the case of any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action, if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal contract or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal contract.

(ii) For purposes of subparagraph B. 2.) d. (i) of this Section, "professional and technical services" shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this Section unless they provided advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this Section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this Section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.

(iii) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation, or reasonably expected to be required by law or regulation, and any other requirements in the actual award documents.

(iv) Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.

(v) Only those services expressly authorized by subparagraph B. 2.) d. of this Section are allowable under subparagraph B. 2.) d.

C. Disclosure

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

2. Each person shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under subparagraph C.2) of this Section. An event that materially affects the accuracy of the information reported includes:

a. A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or

b. A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or

c. A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.

3. Any person who requests or receives from a person referred to in subparagraph C.1) of this Section a subcontract exceeding \$100,000 at any tier under a Federal contract shall file a certification, and a disclosure form, if required, to the next tier above.

4. All disclosure forms, but not certifications, shall be forwarded from tier to tier until received by the person referred to in subparagraph C.1) of this Section. That person shall forward all disclosure forms to MSDC.

D. Agreement

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

E. Penalties

1. Any person who makes an expenditure prohibited under subparagraph A of this Clause shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure.

2. Any person who fails to file or amend the disclosure form to be filed or amended if required by the Clause, shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

3. Contractors may rely without liability on the representations made by their Subcontractors in the certification and disclosure form.

F. Cost Allowability

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

7. ACCESS TO RECORDS AND REPORTS

The Contractor agrees to provide MSDC, the Secretary of Transportation, FRA Administrator, the Comptroller General of the United States, and the Department of Transportation Inspector General, or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts and transcriptions. The Contractor also agrees to provide the entities identified herein or their authorized representatives, including any PMO Contractor, access to the Contractor's records and construction sites pertaining to the project.

The Contractor shall make available records related to the contract to MSDC, the Secretary of Transportation, the FRA Administrator, the Comptroller General, and the Department of Transportation Inspector General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

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

This requirement is independent of MSDC's requirements for record retention contained elsewhere in the Contract Documents.

8. CIVIL RIGHTS

A. Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, and section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FRA may issue.

B. Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

1. Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 *et seq.*, (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that

applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FRA may issue.

2. Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FRA may issue.

3. Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FRA may issue.

C. The Contractor also agrees to include these requirements in each subcontract related to this project, modified only if necessary to identify the affected parties.

9. CARGO PREFERENCE - USE OF UNITED STATES FLAG VESSELS

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

- A. To utilize privately owned United States-flag commercial vessels to ship at least Fifty (50) percent of the freight revenue and tonnage of cargo generated by the U.S. Government Grant, Guaranty, Loan or Advance of Funds.
- B. To furnish within twenty (20) days following the date of loading for shipments originating within the United States or within thirty (30) working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (1) above to the FRA Administrator and grantee (through the prime contractor in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20230.
- C. To include these requirements in all subcontracts issued pursuant to this Contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

10. **DISADVANTAGED BUSINESS ENTERPRISES (“DBE”)**

The United States Department of Transportation regulations on Disadvantaged Business Enterprises (“DBEs”) are contained in Part 26 of Title 49 of the Code of Federal Regulations. Firms owned and controlled by socially and economically disadvantaged individuals and certified as DBEs pursuant to the New York State Uniform Certification Program (“NYSCUP”) are eligible to be treated as DBEs. Eligible DBE firms are listed on the NYSUCP website <http://biznet.nysucp.net>. If the Proposer wishes to subcontract portion of the work through, or joint venture with, a firm not listed in the NYSCUP directory, but which the Proposer believes should be eligible for certification by with the NYSCUP because the is (1) an DBE, as defined above and (2) competent to perform portions of the work, then the Proposer shall submit an DBE Uniform Certification Application to MSDC. The application is available online at <https://www.nysdot.gov/main/business-center/civil-rights/forms-and-applications>. In addition, to update a previously-certified firm’s certification file and to advise MSDC of changes to any information, please email these changes to MSDC. Credit toward applicable DBE goals will be granted only to competent NYSCUP certified eligible DBEs.

11. **DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS**

Section 1606 of the Recovery Act requires that all laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to the Recovery Act shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 title 40, United States Code. The Davis-Bacon and Copeland Acts are codified at 40 USC 3141, *et seq.* and 18 USC 874. The Acts apply to construction contracts and subcontracts that “at least partly are financed by a loan or grant from the Federal Government.” 40 USC 3145(a), 29 CFR 5.2(h), 49 CFR 18.36(i)(5). The Acts apply to any construction contract over \$2,000. 40 USC 3142(a), 29 CFR 5.5(a). ‘Construction,’ for purposes of the Acts, includes “actual construction, alteration and/or repair, including painting and decorating.” 29 CFR 5.5(a). The requirements of both Acts are incorporated into a single clause (*see* 29 CFR 3.11) enumerated at 29 CFR 5.5(a) and reproduced below and are applicable if this Contract is a construction contract (as delineated above) over \$2000. The requirements can currently be found at <http://frwebgate.access.gpo.gov/cgi-bin/get-cfr.cgi>

A. Minimum Wages

1. All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll

deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which, if applicable, is attached hereto and made a part hereof (the attachment is the most current determination), regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Determinations may change during the term of the Contract, and the wages and fringe benefits required by the most recent determination of the Secretary of Labor are those to be used.

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

2.

a. The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(i) Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination;

(ii) The classification is utilized in the area by the construction industry;

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and

(iv) With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.

b. If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within thirty (30) days of receipt and so advise the contracting officer or will notify the contracting officer within the thirty-day (30-day) period that additional time is necessary.

c. In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

d. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs A (2)(ii) (b) or (c) of this Section, shall be paid to all workers performing work in the classification under this Contract from the first day on which work is performed in the classification.

3. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

4. If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided, That the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

5.

a. The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination;

(ii) The classification is utilized in the area by the construction industry; and

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

b. If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

c. In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for

determination. The Administrator, or an authorized representative, will issue a determination with 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

d. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs A (2)(ii)(b) or (c) of this Section, shall be paid to all workers performing work in the classification under this Contract from the first day on which work is performed in the classification.

B. Withholding

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

C. Payrolls and Basic Records

1. Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is

enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

2.

a. The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to MSDC for transmission to the Federal Railroad Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

b. Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(i) That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5 and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

c. The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph C(2)(b) of this Section.

d. The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

3. The Contractor or subcontractor shall make the records required under paragraph C(1) of this Section available for inspection, copying, or transcription by authorized representatives of the Federal Railroad Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the Contractor, sponsor, applicant, or MSDC, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

D. Apprentices and Trainees

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

applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

3. Equal employment opportunity - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

E. Compliance with Copeland Act Requirements

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

F. Subcontracts

The Contractor or subcontractor shall insert in any subcontracts the clauses contained in

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

G. Contract Termination: Debarment

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

H. Compliance with Davis-Bacon and Related Act Requirements

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

I. Disputes Concerning Labor Standards

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

J. Certification of Eligibility

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

12. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT – CONTRACTS EXCEEDING \$100,000

The Contract Work Hours and Safety Standards Act applies to grantee contracts and

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

A. Overtime Requirements

No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

B. Violation; liability for unpaid wages; liquidated damages

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

C. Withholding for unpaid wages and liquidated damages

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

D. Subcontracts

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

13. SEISMIC SAFETY

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

14. ENERGY CONSERVATION

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

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

A. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 USC §1251 et seq.

B. The Contractor agrees to report each violation to MSDC and understands and agrees that MSDC will, in turn, report each violation as required to assure notification to FRA and the appropriate EPA Regional Office.

C. The Contractor also agrees to include the requirements of this Article in all subcontracts exceeding \$100,000 issued pursuant to this Contract.

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

A. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 USC §7401 et seq. The Contractor agrees to report each violation to MSDC and understands and agrees that MSDC will, in turn, report each violation as required to assure notification to FRA and the appropriate EPA Regional Office.

B. The Contractor also agrees to include the requirements of this Clause in all subcontracts exceeding \$100,000 issued pursuant to this Contract.

17. FLY AMERICA

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

18. CONTRACTS INVOLVING FEDERAL PRIVACY ACT REQUIREMENTS

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

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

B. The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by USDOT.

19. PREFERENCE FOR RECYCLED PRODUCTS

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

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

A. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 *et seq.* and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to its actions pertaining to this Project. The Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the contract or project. In addition

to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

B. The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under this Contract, financed in whole or in part with Federal assistance, the Federal Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

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

21. TRANSIT EMPLOYEE PROTECTIVE REQUIREMENTS

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

22. ADA ACCESS REQUIREMENTS

Facilities to be used in public transportation service must comply with 42 U.S.C. Sections 12101 *et seq.* and DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 CFR Part 37; and Joint ATBCB/DOT regulations, "Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 CFR Part 1192 and 49 CFR Part 38.

23. TERMINATION FOR CONVENIENCE – CONTRACTS EXCEEDING \$10,000

Notwithstanding anything to the contrary elsewhere within this Contract, MSDC may

terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in MSDC's best interest. In the event of such termination, the Contractor shall be paid its costs, including contract close-out costs, as so provided for in the Contract, on work performed up to the time of termination for convenience.

24. CHANGES TO THE CONTRACT

MSDC reserves the right to make changes to this Contract that are within the general scope of this Contract. Any such changes shall be subject to the "Extra Work" provisions of this Contract.

25. FEDERAL ACCOUNTING PRINCIPLES

All costs, direct and indirect, under this Contract must comply with the Federal cost principles set forth in 48 CFR Part 31, and are subject to audit.

26. BUY AMERICA REQUIREMENTS

The Secretary of Transportation may not obligate any funds for a project unless the steel, iron, and manufactured products are produced in the United States, pursuant to FRA – Buy America, 49 U.S.C. §24405(a) and ARRA – Buy American, Section 1605 of the Recovery Act.

For the purposes of implementing section 1605 of the Recovery Act, the following applies:

(a) Definitions. As used in this award term and condition—

(1) Manufactured good means a good brought to the construction site for incorporation into the building or work that has been—

(i) Processed into a specific form and shape; or

(ii) Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.

(2) Public building and public work means a public building of, and a public work of, a governmental entity (the United States; the District of Columbia; commonwealths, territories, and minor outlying islands of the United States; State and local governments; and multi-State, regional, or interstate entities which have governmental functions). These buildings and works may include, without limitation, bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, and canals, and the construction, alteration, maintenance, or repair of such buildings and works.

(3) Steel means an alloy that includes at least 50 percent iron, between .02 and 2

percent carbon, and may include other elements.

(b) Domestic preference.

(1) This award term and condition implements Section 1605 of the American Recovery and Reinvestment Act of 2009 (Recovery Act) (Pub. L. 111–5), by requiring that all iron, steel, and manufactured goods used in the project are produced in the United States except as provided in paragraph (b)(3) and (b)(4) of this section and condition.

(2) This requirement does not apply to the material listed by the Federal Government as follows:

None

(3) The award official may add other iron, steel, and/or manufactured goods to the list in paragraph (b)(2) of this section and condition if the Federal Government determines that—

(i) The cost of the domestic iron, steel, and/or manufactured goods would be unreasonable. The cost of domestic iron, steel, or manufactured goods used in the project is unreasonable when the cumulative cost of such material will increase the cost of the overall project by more than 25 percent;

(ii) The iron, steel, and/or manufactured good is not produced, or manufactured in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or

(iii) The application of the restriction of section 1605 of the Recovery Act would be inconsistent with the public interest.

(c) Request for determination of inapplicability of Section 1605 of the Recovery Act.

(1)

(i) Any recipient request to use foreign iron, steel, and/or manufactured goods in accordance with paragraph (b)(3) of this section shall include adequate information for Federal Government evaluation of the request, including—

(A) A description of the foreign and domestic iron, steel, and/or manufactured goods;

(B) Unit of measure;

(C) Quantity;

(D) Cost;

(E) Time of delivery or availability;

(F) Location of the project;

(G) Name and address of the proposed supplier; and

(H) A detailed justification of the reason for use of foreign iron, steel, and/or manufactured goods cited in accordance with paragraph (b)(3) of this section.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed cost comparison table in the format in paragraph (d) of this section.

(iii) The cost of iron, steel, and/or manufactured goods material shall include all delivery costs to the construction site and any applicable duty.

(iv) Any recipient request for a determination submitted after Recovery Act funds have been obligated for a project for construction, alteration, maintenance, or repair shall explain why the recipient could not reasonably foresee the need for such determination and could not have requested the determination before the funds were obligated. If the recipient does not submit a satisfactory explanation, the award official need not make a determination.

(2) If the Federal Government determines after funds have been obligated for a project for construction, alteration, maintenance, or repair that an exception to section 1605 of the Recovery Act applies, the award official will amend the award to allow use of the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is nonavailability or public interest, the amended award shall reflect adjustment of the award amount, redistribution of budgeted funds, and/or other actions taken to cover costs associated with acquiring or using the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is the unreasonable cost of the domestic iron, steel, or manufactured goods, the award official shall adjust the award amount or redistribute budgeted funds by at least the differential established in 2 CFR 176.110(a).

(3) Unless the Federal Government determines that an exception to section 1605 of the Recovery Act applies, use of foreign iron, steel, and/or manufactured goods is noncompliant with section 1605 of the American Recovery and Reinvestment Act.

(d) Data.

To permit evaluation of requests under paragraph (b) of this section based on unreasonable cost, the Recipient shall include the following information and any applicable supporting data based on the survey of suppliers:

Foreign and Domestic Items Cost Comparison

Description	Unit of measure	Quantity	Cost (dollars)*
<i>Item 1:</i>			
Foreign steel, iron, or manufactured good	_____	_____	_____
Domestic steel, iron, or manufactured good	_____	_____	_____
<i>Item 2:</i>			
Foreign steel, iron, or manufactured good	_____	_____	_____
Domestic steel, iron, or manufactured good	_____	_____	_____

[List name, address, telephone number, email address, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.]

[Include other applicable supporting information.]

[*Include all delivery costs to the construction site.]

For the purposes of implementing 49 U.S.C. 24405(a), see FRA guidance found at: <http://www.fra.dot.gov/Pages/251.shtml>

27. SINGLE AUDIT INFORMATION FOR RECIPIENTS OF RECOVERY ACT FUNDS REQUIREMENTS

(a) To maximize the transparency and accountability of funds appropriated under the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5) (Recovery Act) as required by Congress and in accordance with 2 CFR 215.21 “Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Non-Profit Organizations” and OMB Circular A–102 “Grants and Cooperative Agreements with State and Local Governments” (the Common Rules provisions), contractor shall maintain records that identify adequately the source and application of Recovery Act funds. OMB Circular A–102 is currently available at

<http://www.whitehouse.gov/omb/circulars/a102/a102.html>.

(b) MSDC is covered by the Single Audit Act Amendments of 1996 and OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations," contractor agrees to separately identify the expenditures for Federal awards under the Recovery Act on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF-SAC) required by OMB Circular A-133. OMB Circular A-133 is currently available at

<http://www.whitehouse.gov/omb/circulars/a133/a133.html>. This shall be accomplished by identifying expenditures for Federal awards made under the Recovery Act separately on the SEFA, and as separate rows under Item 9 of Part III on the SF-SAC by CFDA number, and inclusion of the prefix "ARRA-" in identifying the name of the Federal program on the SEFA and as the first characters in Item 9d of Part III on the SF-SAC.

(c) Contractor shall separately identify to each subrecipient, and document at the time of subaward and at the time of disbursement of funds, the Federal award number, CFDA number, and amount of Recovery Act funds. When a recipient awards Recovery Act funds for an existing program, the information furnished to subrecipients shall distinguish the subawards of incremental Recovery Act funds from regular subawards under the existing program.

(d) Contractor shall require subrecipients to include on their SEFA information to specifically identify Recovery Act funding similar to the requirements for the recipient SEFA described above. This information is needed to allow MSDC and contractor to properly monitor subrecipient expenditure of Recovery Act funds as well as oversight by the Federal awarding agencies, Offices of Inspector General and the Government Accountability.

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

The undersigned

(name of authorized officer)

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

- No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form LLL, "Disclosure of Lobbying, Activities" in accordance with its instructions.
- The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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

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

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

Executed this day _____ of _____, 2010

By: _____
Signature of Authorized Official

Official Name and Title of Authorized Official

semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.	
Federal Use Only	Authorized for Local Reproduction Standard Form - LLL (Rev. 7-97)

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

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

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

Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

(b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).

11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

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

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

1. The prospective lower tier participant,

_____, certifies by submission of this bid or proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

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

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

Executed this day _____ of _____, 2009.

BY SIGNATURE OF AUTHORIZED OFFICIAL

NAME AND TITLE OF AUTHORIZED OFFICIAL

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

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

prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under sub-paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to all remedies available to the Federal Government, MSDC may pursue available remedies including suspension and/or debarment.

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER
RESPONSIBILITY MATTERS--PRIMARY COVERED TRANSACTIONS**

Instructions For Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

4. The prospective primary participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion- Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered

transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Non-procurement Programs.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER
RESPONSIBILITY MATTERS--PRIMARY COVERED TRANSACTIONS**

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification;

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

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

Signature/Authorized Certifying Official

Typed Name and Title

Applicant/Organization

Date Signed

ATTACHMENT B

Procurement Protest Procedure

PROCUREMENT PROTESTS

Protest Procedure

The following protest procedure is the sole administrative remedy for protesting procurement decisions of the Moynihan Station Development Corporation (MSDC).

Any bidder or proposer submitting a bid or proposal in response to a MSDC solicitation may protest the award or decision to award a contract by submitting to MSDC Vice President, Development by certified mail or by hand delivery such protest setting forth the basis thereof in writing to the no later than ten (10) calendar days after notice of the award or announcement of the decision to award on MSDC's website or actual knowledge by the protester that a decision by MSDC to award to other than the protester has been made whichever occurs first, addressed as follows:

Vice President, Development
Moynihan Station Development Corporation
633 Third Avenue
New York, NY 10017

The written protest must be received in MSDC office no later than 5:00 p.m. on the tenth (10th) day as set forth above. In the event the tenth (10th) day falls on a weekend or an official holiday, the (10) ten-day period expires at 5:00 p.m. on the next regular business day.

The protest should contain, at a minimum, the following:

- Name and address of the protester including telephone and facsimile numbers and email address;
- The solicitation title and number, if available;
- The contract or purchase order title and number, if available;
- A statement concerning the protester's interest in the award or non-award of the contract and/or purchase order;
- A detailed statement of the basis for the protest including any supportive documents and information;
- The relief requested and the reason therefor.

The MSDC Vice President, Development shall, within three (3) business days of receipt of the protest, appoint a Protest Officer who will be a manager or other employee of MSDC or New York State Urban Development Corporation d/b/a Empire State Development Corporation (ESD) with the requisite procurement knowledge, as designated by the ESD General Counsel.

The Protest Officer shall review the protest and supportive documents and issue a written decision within five (5) business days of the appointment where feasible. The Protest Officer may take any action or make any requests he or she deems necessary in order to investigate the protest including extending the time to issue a decision in order to obtain all evidence and other pertinent information.

The protester will be provided a copy of the written decision. This decision will be final unless within three (3) business days of receipt of the written decision the protester appeals to the ESD General Counsel or her/his designee. The appeal shall be in writing, sent via facsimile and certified mail, or by hand delivery to the ESD General Counsel as follows:

General Counsel
Empire State Development Corporation
633 Third Avenue
New York, NY 10017

Fax: (212) 803-3775

No evidence or information may be introduced or relied upon in the appeal that has not been presented to the Protest Officer prior to Protest Officer's decision. The ESD General Counsel or her/his designee will review the appeal and supportive documents and the decision of the Protest Officer and issue a written decision within five (5) business days of receipt if feasible. The ESD General Counsel or her/his designee may take any action or make any requests she or he deems necessary including extending the time to issue a decision in order to render a decision on the appeal.

The decision of the ESD General Counsel or her/his designee shall be conclusive and final.

ATTACHMENT C-1

Proposer Prerequisite A

Attachment C-1

Proposer Prerequisite A.

* Note - Duplicate form as necessary *

Reference RFP Section II – Proposer Prerequisites
If If Proposer is a common law joint venture, specify which entity's experience is being cited below to satisfy Prerequisite A.

Client Name	
Contract Start Date	
Contract End Date	
Brief description of Scope of work	
Client contact Name / Title	
Client Contact Email Address	
Client Contact Phone Number	
Contracting Entity	

Client Name	
Contract Start Date	
Contract End Date	
Brief description of Scope of work	
Client contact Name / Title	
Client Contact Email Address	
Client Contact Phone Number	
Contracting Entity	

Client Name	
Contract Start Date	
Contract End Date	
Brief description of Scope of work	
Client contact Name / Title	
Client Contact Email Address	
Client Contact Phone Number	
Contracting Entity	

Note – Client Contact must be employee of Company

ATTACHMENT C-2

Proposer Prerequisite B

Attachment C-2

Proposer Prerequisite B.

* Note - Duplicate form as necessary *

Reference RFP Section II – Proposer Prerequisites
If If Proposer is a common law joint venture, specify which entity's experience is being cited below to satisfy Prerequisite B.

Client Name	
Contract Start Date	
Contract End Date	
Construction Value	
Brief description of Scope of work	
Client contact Name / Title	
Client Contact Email Address	
Client Contact Phone Number	
Contracting Entity	

Client Name	
Contract Start Date	
Contract End Date	
Construction Value	
Brief description of Scope of work	
Client contact Name / Title	
Client Contact Email Address	
Client Contact Phone Number	
Contracting Entity	

Client Name	
Contract Start Date	
Contract End Date	
Construction Value	
Brief description of Scope of work	
Client contact Name / Title	
Client Contact Email Address	
Client Contact Phone Number	
Contracting Entity	

Note – Client Contact must be employee of Company

ATTACHMENT D
STAFFING PLAN FORM

PROPOSER NAME: _____

Moynihan Station Phase 1 Construction Manager RFP

Term	Staffing/ Individual Discipline	2011	2012	2013	2014	2015	2016	Total hours per task
		HOURS	HOURS	HOURS	HOURS	HOURS	HOURS	
Task 1	Principal							
	Project Manager							
Task 2	Principal							
	Project Manager							
Task 3	Principal							
	Project Manager							
Task 4	Principal							
	Project Manager							
Task 5	Principal							
	Project Manager							

PROPOSER NAME: _____

Moynihan Station Phase 1 Construction Manager RFP

Term	Staffing/ Individual Discipline	2011	2012	2013	2014	2015	2016	Total hours per task
		HOURS	HOURS	HOURS	HOURS	HOURS	HOURS	
Task 6	Principal							
	Project Manager							
Task 7	Principal							
	Project Manager							
Task 8	Principal							
	Project Manager							
Task 9	Principal							
	Project Manager							
Task 10	Principal							
	Project Manager							

PROPOSER NAME: _____

Moynihan Station Phase 1 Construction Manager RFP

Term	Staffing/ Individual Discipline	2011	2012	2013	2014	2015	2016	Total hours per task
		HOURS	HOURS	HOURS	HOURS	HOURS	HOURS	
Task 11	Principal							
	Project Manager							
Task 12	Principal							
	Project Manager							

ATTACHMENT E-1

**MINORITY AND WOMEN-OWNED BUSINESS PARTICIPATION
CERTIFICATION**

_____ hereby certifies to Moynihan Station Development Corporation that:

It agrees to use its best efforts to achieve an overall goal of 20% Disadvantaged Business Enterprise, Minority Business Enterprise, and Women-Owned Business Enterprise ("DBE/MBE/WBE") participation in the Work and an overall goal of 25% Minority Female Workforce ("M/FWF") participation for the contract.

ATTACHMENT E-2

NON-DISCRIMINATION AND AFFIRMATIVE ACTION BID DOCUMENT PROVISIONS

It is the policy of MSDC, to comply with all federal, State and local law, policy, orders, rules and regulations which prohibit unlawful discrimination because of race, creed, color, national origin, sex, sexual orientation, age, disability or marital status, and to take affirmative action in working with Contracting Parties to ensure that Disadvantaged Business Enterprises, Minority Business Enterprises, and Women-owned Business Enterprises (DBEs/MBEs/WBEs), Minority Group Members and women share in the economic opportunities generated by MSDC's participation in projects or initiatives, and/or the use MSDC funds (from any source, including the United States of America).

Each proposing bidder must represent and warrant that, if successful in obtaining a Contract, it shall (i) comply with the provisions of this section relating to Non-Discrimination and Affirmative Action and (ii) require its Contracting Parties and/or employees to comply with any and all federal, State and local law, policy, orders, rules and regulations which prohibit unlawful discrimination in employment or hiring because of the race, creed, color, national origin, sex, sexual orientation, age, disability or marital status of any individual.

A copy of the bidder's Equal Employment Opportunity ("EEO") policy statement shall be included as part of the response to any bid document. The bidder's EEO policy statement shall contain, but not necessarily be limited to, and the bidder, **as a precondition to entering into a valid and binding Contract**, shall, during the performance of said Contract, agree to the following:

- (i) The Contracting Party will (a) not unlawfully discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, sexual orientation, age, disability or marital status, (ii) undertake or continue existing programs of affirmative action to ensure that Minority Group Members and women are afforded equal employment opportunities, and (iii) make and document its conscientious and active efforts to employ and utilize DBEs/MBEs/WBEs, Minority Group Members and women in its workforce relative to contracts executed by MSDC or to projects or initiatives utilizing MSDC funds (from any source, including the United States of America). Such action shall be taken with reference to, but not limited to, solicitations or advertisements for employment, recruitment, job assignment, promotion, upgrading, demotion, transfer, layoff or termination, rates of pay or other forms of compensation, and selection for training or retraining, including apprenticeship and on-the-job training.
- (ii) At the request of MSDC, the Contracting Party shall request each employment agency, labor union, or authorized representative of workers with whom it has a collective bargaining or other agreement or understanding, to furnish a written

statement that such employment agency, labor union, or representative does not unlawfully discriminate, and that such union or representative will affirmatively cooperate in the implementation of the Contracting Party's obligations herein.

The successful bidder shall, to the extent permitted by law, agree to undertake a program of affirmative action as directed by and substantially in accordance with the affirmative action program of ESD as implemented by MSDC. MSDC requests that responding bidders agree to use their best efforts to provide for the meaningful participation of DBEs/MWBs/WBEs, Minority Group Members and women: and implement the following affirmative action program for the construction management work (the "work") as set forth in the Bid Document:

- The utilization of DBE/MBE/WBE firms equal to 20% of the total value of the work. The bidders are encouraged to utilize DBEs/MBEs/WBEs for any product/materials or services necessary for the completion of the work.
- The successful bidder will be required to use its best efforts to achieve an overall 25% minority/female workforce participation goal in connection with the project or initiative.

The successful bidder is required to use its best efforts to consider forming joint ventures, associations, partnerships, or other similar entities with DBE/MBE/WBE firms, where appropriate or feasible, to assist in meeting this affirmative action program. Bidders are requested to complete Schedule A-1 to denote the subcontractors that the bidders propose to use in achieving DBE/MBE/WBE participation.

Attachment F is a partial listing of New York State Certified M/WBE firms that could provide services in completion of the work. The firms on the list in Attachment F have been certified by the State of New York as meeting all required criteria as a Minority and/or Women-owned Business Enterprise. This listing should not be construed as an endorsement or recommendation for any particular firm. If you require additional trade listings, please call the ESD Affirmative Action Office at (212) 803-3225.

The United States Department of Transportation regulations on Disadvantaged Business Enterprises ("DBEs") are contained in Part 26 of Title 49 of the Code of Federal Regulations. Firms owned and controlled by socially and economically disadvantaged individuals and certified as DBEs pursuant to the New York State Uniform Certification Program ("NYSUCP") are eligible to be treated as DBEs. Eligible DBE firms are listed on the NYSUCP website.

Commencing not more than 30 days after (i) execution of the Contract, or (ii) start of the work, the Contracting Party shall submit to the AAO a Monthly Employment Utilization Report (Schedule A-2) of the workforce actually utilized on the project, itemized by ethnic background, gender, and Federal Occupational Categories or other appropriate categories specified by the AAO. Accuracy of the information contained in the reporting documentation (Schedule A-1 and Schedule A-2) shall be certified to by an owner or officer of the Contracting Party.

SCHEDULE A-1

DISADVANTAGED BUSINESS ENTERPRISE (DBE), MINORITY OWNED BUSINESS ENTERPRISE (MBE) & WOMEN OWNED BUSINESS ENTERPRISE (WBE) PARTICIPATION

(No substitutions may be made on this submission except by prior written approval from Empire State Development)

Name of Respondent

Contract/Project Title:

Address

Respondent's Contract Amount:

Telephone Number: (____) _____

Name/Address/Phone No. of DBE/MBE/WBE	DBE, MBE or WBE	Joint Venture, Subconsultant, or Supplier	Scope of Work to be Performed	Proposed Contract Price or Purchase Amount & Percentage

CERTIFICATION:

I, _____ (Print Name), the _____ (Title), do certify that (i) I have read this Schedule of Minority/Women Owned Business Participation and (ii) to the best of my knowledge, information and belief the information herein is complete and accurate.

Signature _____ Date

Forward to:

Empire State Development
Affirmative Action Unit – Helen Daniels
633 Third Avenue
New York, NY 10017 Office: (212) 803-3225 Fax: (212) 803-322_

ATTACHMENT E-3

NON-DISCRIMINATION AND AFFIRMATIVE ACTION DEFINITIONS

Affirmative Action

Shall mean the actions to be undertaken by the Borrower, Grantee and any Contracting Party in connection with any project or initiative to ensure non-discrimination and Minority/Women-owned Business Enterprise and minority/female workforce participation, as set forth herein, and as developed by Empire State Development ("ESD").

Affirmative Action Officer ("AAO")

Shall mean ESD's Affirmative Action Officer or his/her designee, managing the affirmative action program for ESD.

Contract

Shall mean (i) a written agreement or purchase order instrument, or amendment thereto, executed by or on behalf of a **Contracting Party**, providing for a total expenditure in excess of \$5,000 for labor, services, supplies, equipment, materials or any combination of the foregoing funded in whole or in part with MSDC or ESD funds (from any source) and (ii) any loan or grant agreement funded in whole or in part with ESD funds.

Contracting Party

Shall mean (i) any contractor, subcontractor, consultant, subconsultant or vendor supplying goods or services, pursuant to a contract or purchase order in excess of \$1,500, in connection with any projects or initiatives funded in whole or in part by MSDC or ESD and (ii) **any borrower or grantee** receiving funds from ESD pursuant to a loan or grant document.

Subcontract

Shall mean an agreement providing for a total expenditure in excess of \$1,500 between a **Contracting Party** and any individual or business enterprise, for goods or services rendered in connection with any project or initiative funded in whole or in part with ESD funds.

Disadvantaged Business Enterprise

The United States Department of Transportation regulations on Disadvantaged Business Enterprises are contained in Part 26 of Title 49 of the Code of Federal Regulations. Firms owned and controlled by socially and economically disadvantaged individuals and certified as DBEs pursuant to the New York State Uniform Certification Program ("NYSUCP") are eligible to be treated as DBEs. Eligible DBE firms are listed on the NYSUCP website <http://www.nyscup.net>.

Minority Business Enterprise (“MBE”)

Shall mean a business enterprise, including a sole proprietorship, partnership or corporation that is: (i) at least fifty-one percent (51%) owned by one or more Minority Group Members; (ii) an enterprise in which such minority ownership is real, substantial and continuing; (iii) an enterprise in which such minority ownership has and exercises the authority to control and operate, independently, the day-to-day business decisions of the enterprise; (iv) an enterprise authorized to do business in the State of New York and is independently owned and operated; and (v) an enterprise certified by New York State as a minority business.

Minority Group Member

Shall mean a United States citizen or permanent resident alien who is and can demonstrate membership in one of the following groups: (i) Black persons having origins in any of the Black African racial groups; (ii) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American descent of either Indian or Hispanic origin, regardless of race; (iii) 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 (iv) Native American or Alaskan native persons having origins in any of the original peoples of North America.

Women-owned Business Enterprise (“WBE”)

Shall mean a business enterprise, including a sole proprietorship, partnership or corporation that is: (i) at least fifty-one percent (51%) owned by one or more citizens or permanent resident aliens who are women; (ii) an enterprise in which the ownership interest of such women is real, substantial and continuing; (iii) an enterprise in which such women ownership has and exercises the authority to control and operate, independently, the day-to-day business decisions of the enterprise; (iv) an enterprise authorized to do business in the State of New York and is independently owned and operated; and (v) an enterprise certified by New York State as woman-owned.

Best Efforts – DBE, MBE and WBE Participation

Best efforts are not limited to the efforts specified herein, and (ii) the roles of DBE/MBE/WBE firms are not restricted to that of a subcontractor/subconsultant. Where applicable, DBE/MBE/WBE firms should be considered for roles as prime contractors. Such best efforts shall include at least the following:

- (a) Dividing the contract work into smaller portions in such a manner as to permit subcontracting to the extent that it is economically and technically feasible to do so;
- (b) Actively and affirmatively soliciting bids from qualified DBEs/MBEs/WBEs, including circulation of solicitations to Minority and Women's trade associations and to eligible DBEs are listed on the NYSUCP website <http://biznet.nysucp.net>.

- (c) Each Contracting Party shall maintain records detailing the efforts made to provide for meaningful M/WBE participation in the work, including the names and addresses of all M/WBEs contacted and, if an M/WBE is the low bidder and is not selected for such work or portion thereof, the reasons for such decision;
- (d) Making plans and specifications for prospective work available to DBEs/MBEs/WBEs in sufficient time for review;
- (e) Utilizing the services and cooperating with those organizations providing technical assistance to the Contracting Party in connection with potential DBE/MBE/WBE participation on the Contract;
- (f) Utilizing the resources of the (i) ESD Affirmative Action Unit to identify New York State certified M/WBE firms and for the purpose of soliciting bids and subcontracts and (ii) New York State Uniform Certification Program, including its website <http://biznet.nysucp.net> to identify eligible DBEs and for the purpose of soliciting bids and contracts;
- (g) Encouraging the formation of joint ventures, associations, partnerships, or other similar entities, where appropriate, to ensure that the Contracting Party will meet its obligations herein; and
- (h) Remitting payment in a timely fashion.
- (i) A Contracting Party's best efforts will be assessed by examining the total dollar value of the work performed by DBEs/MBEs/WBEs. The total dollar value of the work performed by DBEs/MBEs/WBEs will be determined as: (i) the dollar value of the work subcontracted to DBEs/MBEs/WBEs; (ii) where the Contracting Party is a joint venture, association, partnership or other similar entity including one or more DBEs/MBEs/WBEs - the contract price multiplied by the percentage of the entity's profits/losses which are to accrue to DBE(s)/MBE(s)/WBE(s) under the Contracting Party's agreement; or (iii) where the M/WBE is the Contracting Party - the contract price.

Best Efforts - Minority Group Member and Female Workforce Participation

The Contracting Party shall use best efforts to provide for meaningful Minority Group Member and female workforce participation; such best efforts shall include at least the following in connection with the work:

- (a) Ensure and maintain a working environment free of harassment, intimidation, and coercion at the premises. The Contracting Party shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the obligation to maintain such a working environment, with specific attention to Minority Group Member or female individuals working at the premises;

- (b) State in all solicitations or advertisement for employees that all qualified applicants will receive consideration for employment without regard to race, creed, color, national origin, sex, sexual orientation, age disability or marital status;
- (c) Send to each labor union or representative of workers with which a collective bargaining agreement or understanding is in place, a notice advising the said labor union or workers' representative of commitments under this Section, and post copies of the notice in conspicuous places available to employees and applicants for employment;
- (d) Establish and maintain a current list of Minority Group Member and female recruitment sources and community organizations, and provide written notification to them when employment opportunities are available. Maintain a record of the organizations' responses;
- (e) Maintain a current file of the name, address and telephone number of each Minority Group Member and female applicant and any referrals from a union, recruitment source or community organization, and of the action taken with respect to each individual. If such individual was sent to the union hiring hall for referral and was not referred back by the union or, if referred, was not employed, this shall be documented in writing in the file with the reasons therefor, along with whatever additional actions the Contracting Party may have taken;
- (f) Disseminate the Contracting Party's equal employment opportunity policy by providing notice of the policy to unions and training programs and requesting their cooperation in meeting its Equal Employment Opportunity obligations, by including it in any policy manual and collective bargaining agreement, by publicizing it in the company newspaper, annual report, and other similar items, by specific review of the policy with all management personnel and with all Minority Group Member and female employees at least once a year, and by posting the company Equal Employment Opportunity policy on bulletin boards accessible to all employees at each location where work is performed under this Contract;
- (g) Disseminate the Contracting Party's Equal Employment Opportunity policy externally by including it in any advertising in the news media, specifically including Minority Group Member and female news media, and providing written notification to and discussing the Equal Employment Opportunity policy with any contractor with whom the Contracting Party does or anticipates doing business; and,
- (h) Ensure that all facilities and company activities are non-segregated except that separate or single-user toilets and necessary changing facilities shall be provided to assure privacy between the sexes.
- (i) A Contracting Party's best efforts will be assessed by calculating a percentage equal to the person hours of training and employment of minority or female workers, as the case may be, used by any Contracting Party, divided by the total person hours of training and employment of all workers (including supervisory personnel).
- (j) The required participation for minority and female employment and training must be substantially uniform throughout the work.

- (k) Contracting Party shall not participate in the transfer of minority or female employees or trainees from employer-to-employer or from project-to-project for the sole purpose of meeting the Contracting Party's obligations herein.
- (l) In striving to provide for meaningful M/FWF participation, Contracting Party shall use its best efforts to identify and employ qualified minority and female supervisory personnel and journey persons.
- (m) The non-working hours of trainees or apprentices may not be considered in measuring M/FWF participation unless (1) such trainees or apprentices are employed by Contracting Party during the training period; (2) the Contracting Party has made a commitment to employ the trainees or apprentices at the completion of their training, subject to the availability of employment opportunities; and (3) the trainees are trained pursuant to an approved training program.

ATTACHMENT E-4

MONTHLY EMPLOYMENT UTILIZATION REPORT ("MEUR")
FOR THE MINORITY & FEMALE WORKFORCE PARTICIPATION ("M/FWF")

Minority & Female Workforce participation are expressed as a percentage equal to the persons hours of training and employment of minority and female workers as the case may be used by the Contractor or Subcontractor in the work, divided by the total person-hours of training and employment of all workers (including supervisory personnel) used by the Contractor and any Subcontractor in the work. ESD requires that all contractors and their subcontractors complete and submit the MEUR activity forms for each month of work. The MEUR activity forms are to be completed and forward by the fifth day of each month.

(See reverse side for instructions)

COMPANY NAME: _____ ADDRESS: _____ TELEPHONE NUMBER: _____ FEDERAL ID NO.: _____ CHECK IF NOT-FOR-PROFIT: _____	PROJECT NAME: _____ PROJECT LOCATION: _____ COUNTY: _____ ZIP: _____ REPORTING PERIOD: Month _____ Year _____	CONTRACTOR START DATE: _____ ESTIMATED COMPLETION DATE: _____ PERCENT OF JOB COMPLETED (for reporting period) _____ CONTRACT NO.: _____ CONTRACT AMOUNT: _____
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CLASSIFICATION	1. WORKER HOURS OF EMPLOYMENT										2. NUMBER OF WORKERS				3. CONSTRUCTION TRADES	
	1a. ALL WORKER HOURS			1b. BLACK (Not of Hispanic Origin)		1c. HISPANIC		1d. ASIAN or PACIFIC ISLANDER		1e. NATIVE AMERICAN/ALASKAN NATIVE		2a. ALL		2b. MINORITY		
	MALE	FEMALE	TOTAL	MALE	FEMALE	MALE	FEMALE	MALE	FEMALE	MALE	FEMALE	MALE	FEMALE	MALE		FEMALE
Supervisory																
Journey Worker																
Apprentice																
Trainee																
Subtotal																
Journey Worker																
Apprentice																
Trainee																
Subtotal																
Journey Worker																
Apprentice																
Trainee																
Subtotal																
TOTAL SUPERVISORS																
TOTAL JOURNEY WORKERS																
TOTAL APPRENTICES																

MONTHLY EMPLOYMENT UTILIZATION REPORT

Instructions for Completion

The Monthly Employment Utilization Report (“MEUR”) is to be completed by each subject contractor (both Prime and Sub) and signed by a responsible official of the company. The reports are to be filed by the 5th day of each month during the term of the project, and they shall include the total work-hours for each employee classification in each trade in the covered area for the monthly reporting period. The prime contractor is responsible for submitting its subcontractors report, along with its own. Additional copies of this form may be obtained from Empire State Development (“ESD”).

Minority: Includes Blacks, Hispanics, Native Americans, Alaskan Natives, and Asian and Pacific Islanders, both men and women.

1. Worker Hours of Employment (a-e):

a) *All Worker Hours:* The total number of male hours, the total number of female hours, and the total of both male and female hours worked under each classification.

b) through e) *Minority Worker Hours* The total number of male hours and the total number of female hours worked by each specified group of minority worker in each classification.

2. Number of Workers (a-b):

a) *All Workers* Total number of males and total number of females working in each classification of each trade in the contractor’s aggregate workforce during reporting period.

b) *Minority Workers* Total number of male minorities and total number of female minorities working in each classification, in each trade in the contractor’s aggregate workforce during reporting period.

3. Construction Trade: Only those construction crafts which contractor employs in the covered area.

Construction Trades include: Field Office Staff (Professionals and Office/Clerical), Laborers, Equipment Operators, Surveyors, Truck Drivers, Iron Workers, Carpenters, Cement Masons, Painters, Electricians, Plumbers and Other.

Note: ESD may demand payroll records to substantiate work hours listed on the Monthly Employment Utilization Report, if discrepancies should arise.

OCCUPATIONAL CODES

Officials/Administrators	100
Professionals	110
Technicians	120
Sales Workers	130
Office & Clerical	140
Craft Workers	150
Operatives	160
Laborers	170
Service Workers	180

FORWARD TO:

Empire State Development
Affirmative Action Unit – Laverne Poole
633 Third Avenue
New York, NY 10017 Office: (212) 803-3224 FAX: (212) 803-3223

ATTACHMENT F

PARTIAL LISTING OF NEW YORK STATE CERTIFIED M/WBES
THAT COULD PROVIDE SERVICES

The list of firms attached have been certified by the State of New York as meeting all required criteria as a Minority and/or Women-Owned Business Enterprises. The Proposer is to determine which M/WBE firms have acceptable professional qualifications for subconsultant(s) work in connection with the project scope.

Company	MW	Address	City	State	Zip_5	Name	Ph	Fx	EEmail	DESCRIPTOR	Sales
ACCU-COST CONSTRUCTION CONSULTANTS INC	Women Owned	575 EIGHT AVENUE, SUITE 1220	MIDTOWN	NY	10018	Patricia Neumann	(212)687-2121	(212)687-2323	pneumann@accucost.com	CONSTRUCTION MANAGEMENT	Not Specified
AFG CONSTRUCTION MANAGEMENT INC	Women Owned	450 SEVENTH AVENUE SUITE 3002	NEW YORK	NY	10123	Amal Manassah	(212)897-2674	(212)897-2676	mbianco@afgcm.com	CONSTRUCTION MANAGEMENT	Not Specified
AMCC INDUSTRIES INC	Minority Owned	66-06 253RD STREET	LITTLE NECK	NY	11362	Peter Liou	(347)408-4130	(718)408-4130	AMCCINDUSTRIES@GMAIL.COM	CONSTRUCTION MANAGEMENT	\$100,000 - \$499,000
ANDREW VELEZ CONSTRUCTION INC	Minority Owned	245 FIFTH AVENUE	NEW YORK	NY	10016	Andrew Velez	212 684--5500		evelez@velezorg.com	CONSTRUCTION MANAGEMENT	\$1,000,000 - \$4,999,999
ANIL VERMA ASSOCIATES INC	Minority Owned	11 PENN PLAZA 5TH FLOOR	NEW YORK	NY	10001	Anil Verma	(212)265-1977	(212)268-5565	ekend@aol.com	CONSTRUCTION MANAGEMENT	Not Specified
APEX BUILDING COMPANY INC	Minority Owned	226 WEST 116TH STREET	NEW YORK	NY	10026	Robert Horsford	(212)663-6288	(212)865-2157	rthorsford@apexb.com	CONSTRUCTION MANAGEMENT	\$1,000,000 - \$4,999,999
ARTEMIS DEVELOPMENT	Dual Certification	24 RIDGE STREET	KATONAH	NY	10536	Sally Greene	(914)260-1285	(914)767-9001	sally@artemisdevelopment.com	CONSTRUCTION MANAGEMENT	\$100,000 - \$499,000
ATHENA CONSULTANTS INC	Women Owned	37 FIELD HOUSE AVENUE	EAST SETAUKET	NY	11733	Susan Konsker	(631)921-4150	(631)982-5545	SK@ATHENACONSULTANTSINC.COM	CONSTRUCTION MANAGEMENT	\$100,000 - \$499,000
BANU CONSTRUCTION CORP	Minority Owned	107-35 76TH STREET	OZONE PARK	NY	11417	Mohammed Sheeble	(718)845-0718	(718)845-6822	BD786@AOL.COM	CONSTRUCTION MANAGEMENT	\$100,000 - \$499,000
BARRYHILL CONSTRUCTION COMPANY INC	Women Owned	565 PLANDOME ROAD	MANHASSET	NY	11030	Jennifer Meyer	(516)343-3730	(516)487-3228		CONSTRUCTION MANAGEMENT	Less than \$1000,000
BART INDUSTRIES INC	Women Owned	550 HARRISON AVENUE SUITE 509	HARRISON	NY	10528	Sally Bartolotta	(914)403-3915	(914)347-7746		CONSTRUCTION MANAGEMENT	\$100,000 - \$499,000
BLAZE CONSTRUCTION SERVICES INC	Women Owned	39 MEADOW GLEN ROAD	FORT SALONGA	NY	11768	Carolyn Chionchio	(631)292-2086	(631)292-2087	cmc@blazeconstruction.net	CONSTRUCTION MANAGEMENT	Less than \$1000,000
BUILTECH ASSOCIATES INC	Women Owned	122 E 57TH STREET SUITE 4R	NEW YORK	NY	10022	Julie Kelley	(718)888-1880	(646)219-2692	juliekelley@aerialdesignandbuild.com	CONSTRUCTION MANAGEMENT	\$100,000 - \$499,000
CARA CONSTRUCTION MANAGEMENT INC	Dual Certification	199 LINCOLN AVENUE SUITE 205	BRONX	NY	10454	Celeste Ramirez	(718)401-2633	(718)401-2635	CRamirez@caracm.com	CONSTRUCTION MANAGEMENT	\$100,000 - \$499,000
CORPORATE CONSTRUCTION & PROJECT MANAGEM	Dual Certification	1034 SIPP AVENUE	MEDFORD	NY	11763	Catherine Jallim	(631)730-6249	(646)349-3050	CORPCONSTRUCTION@AOL.COM	CONSTRUCTION MANAGEMENT	\$1,000,000 - \$4,999,999
DEBBRAM CONSULTING LLC	Dual Certification	255 HUGUENOT STREET #206	NEW ROCHELLE	NY	10801	Debbie ann Bramwell	(914)954-3942	(914)740-5493	debbbramlc@gmail.com	CONSTRUCTION MANAGEMENT	Less than \$1000,000
DESIGN2BUILD CORPORATION	Minority Owned	12 CHERYL LANE	NORTH BABYLON	NY	11703	Juan Aviles	(631)940-6052	(631)940-6052	JAVILES@D2B-NY.COM	CONSTRUCTION MANAGEMENT	Less than \$1000,000
DIANE PAPARO ASSOCIATES LTD	Women Owned	127 W 24TH STREET 2ND FL	NEW YORK	NY	10011	Diane Paparo	(212)308-8390	(212)308-9046	DIANE@GOVSPACES.COM	CONSTRUCTION MANAGEMENT	\$500,000 - \$999,999
ECONOMIC PROJECT SOLUTIONS INC	Women Owned	19 WEST 21ST STREET SUITE 903	NEW YORK	NY	10010	Kimberley Gillespie	(866)246-1110	(212)255-3425	epsbusiness@economicprojects.com	CONSTRUCTION MANAGEMENT	\$1,000,000 - \$4,999,999
ENVIROSAFE SYSTEMS INC	Minority Owned	2157 TOMLINSON AVENUE	BRONX	NY	10461	Romeo Adams	(617)785-3888	(508)755-1821	envirosafeoffice@gmail.com	CONSTRUCTION MANAGEMENT	\$100,000 - \$499,000
ESPINOSA GROUP INC THE	Minority Owned	38-34 11TH STREET	LONG ISLAND CITY	NY	11101	Juan Espinosa	(201)621-4315	(201)621-5020	MPGE@ESPINOSAGROUP.COM	CONSTRUCTION MANAGEMENT	Less than \$1000,000
EXCEL INTERIOR CONSTRUCTION CORP	Minority Owned	307 WEST 38TH STREET SUITE 1501	NEW YORK	NY	10018	Jose Mendez	(212)627-6319	(212)337-8038	jmendez@excelinterior.com	CONSTRUCTION MANAGEMENT	Not Specified
G2 PROJECT PLANNING INC	Women Owned	75 BEACON STREET	BEACON	NY	12508	Christine Glavasich	(845)440-7015	(845)765-1125	christine@g2projectplanning.com	CONSTRUCTION MANAGEMENT	\$100,000 - \$499,000
GEORGEVILLE CONSTRUCTION CORP	Minority Owned	353 SOUTH 5TH AVE	MOUNT VERNON	NY	10550	Francis Isidore	(914)356-7176		FHISIDORE@GMAIL.COM	CONSTRUCTION MANAGEMENT	\$100,000 - \$499,000

Company	MW	Address	City	State	Zip_5	Name	Ph	Fx	EEmail	DESCRIPTOR	Sales
HENEGAN CONSTRUCTION CO INC	Women Owned	250 WEST 30TH STREET	NEW YORK	NY	10001	Maureen Henegan	(212)947-6441	(212)643-1053	mahenegan@henegan.com	CONSTRUCTION MANAGEMENT	Not Specified
HILL SLATER INC	Dual Certification	14 BOND STREET #410	GREAT NECK	NY	11021	Phyllis Slater	(718)281-0800	(718)281-1600	hillslater@aol.com	CONSTRUCTION MANAGEMENT	\$100,000 - \$499,000
HRAD CONSTRUCTION CO INC	Minority Owned	12-06 149TH STREET	WHITESTONE	NY	11357	Wayne Adderley	(718)640-9001	(718)640-9002	HRADCONSTRUCTION@AOL.COM	CONSTRUCTION MANAGEMENT	\$1,000,000 - \$4,999,999
HYKE ENGINEERING & MANAGEMENT P C	Minority Owned	245 EAST 25TH ST #16A	NEW YORK	NY	10010	Gene Hu	(646)269-5129	(631)302-9230	HYKE.ENGINEERING@GMAIL.COM	CONSTRUCTION MANAGEMENT	\$100,000 - \$499,000
IDEAL INTERIORS GROUP, LLC	Minority Owned	575 8TH AVE 12TH FLOOR	NEW YORK	NY	10018	Ricardo Rivera	(212)262-7005	(212)262-7024	rrivera@ideal-interiors.com	CONSTRUCTION MANAGEMENT	\$1,000,000 - \$4,999,999
IDEAL INTERIORS, INC	Minority Owned	575 8TH AVENUE 12TH FLOOR	NEW YORK	NY	10018	Ricardo Rivera	(212)262-7005	(212)262-7024	rrivera@ideal-interiors.com	CONSTRUCTION MANAGEMENT	Not Specified
IMPACT CONSULTING & ENGINEERING, PC	Minority Owned	C/O DEBABRATA BANERJEE, 122-02 25TH ROAD	FLUSHING	NY	11354	Debabrata Banerjee	(917)577-7540	(718)461-9815	dbaner@gmail.com	CONSTRUCTION MANAGEMENT	Less than \$1000,000
INNOVATIVE BUILDING SOLUTIONS LLC	Dual Certification	8731 18TH AVENUE 2ND FLOOR	BROOKLYN	NY	11214	Juana Gauthier	(718)676-1065	(718)676-4642	juana@innovativeblgsolutions.com	CONSTRUCTION MANAGEMENT	Less than \$1000,000
INTEGRATED CONSTRUCTION MANAGEMENT INC	Minority Owned	780 SUNRISE HIGHWAY	WEST BABYLON	NY	11704	Roger Rowe	(631)661-3900	(631)661-3189	rrowe@icm-ny.com	CONSTRUCTION MANAGEMENT	\$100,000 - \$499,000
JCMS ASSOCIATES LLC	Dual Certification	183 CROWELL STREET	ELMONT	NY	11003	Sophia Campbell-miller	(917)753-9478	(516)437-6734	JCMSASSOCIATES@YAHOO.COM	CONSTRUCTION MANAGEMENT	Less than \$1000,000
JOHN CABALEIRO CONTRACTING LLC	Minority Owned	296 PALMER LANE	PLEASANTVILLE	NY	10570	John Cabaleiro	(914)760-4856	(914)449-6329	CABALEIRO25@OPTONLINE.NET	CONSTRUCTION MANAGEMENT	Less than \$1000,000
K BAND INCORPORATION	Women Owned	1023 WESTMINSTER AVE	DIX HILLS	NY	11746	Kristine Fitzpatrick	(631)278-6385	(631)598-8280	kmband@aol.com	CONSTRUCTION MANAGEMENT	\$100,000 - \$499,000
KKOT ASSOCIATES LLC	Minority Owned	2569 FISH AVENUE	BRONX	NY	10469	Kevin Osafo-twum	(718)344-7094	(718)228-3578	KKOTASSOCIATES@GMAIL.COM	CONSTRUCTION MANAGEMENT	Less than \$1000,000
LALAND BAPTISTE LLC	Dual Certification	8513 COVENTLEY ROAD	BROOKLYN	NY	11236	Schillivia Laland	(718)629-2477	(718)451-0436	RB@LALANDBAPTISTE.COM	CONSTRUCTION MANAGEMENT	Less than \$1000,000
LANDAIR PROJECT RESOURCES INC	Women Owned	10 EAST 33RD STREET 11TH FLR	NEW YORK	NY	10016	Leith ter Meulen	(212)685-9680	(212)685-9685	leith@projectresourcesgroup.com	CONSTRUCTION MANAGEMENT	\$1,000,000 - \$4,999,999
LEGACY CONSTRUCTION LLC	Minority Owned	527 1/2 MANHATTAN AVENUE	NEW YORK	NY	10027	Michael Williams	(212)931-5740	(212)931-5744	SWILLIAMS@DANFORTHDEV.COM	CONSTRUCTION MANAGEMENT	\$100,000 - \$499,000
LLF CONSTRUCTION SERVICES INC	Minority Owned	175 MAIN STREET SUITE 821	WHITE PLAINS	NY	10601	Leonardo Fabio	(914)287-6441	(914)287-6469	info@llfcsi.com	CONSTRUCTION MANAGEMENT	\$500,000 - \$999,999
MACE CONTRACTING CORPORATION	Minority Owned	35 PORTMAN ROAD	NEW ROCHELLE	NY	10801	James Blaise	(914)576-0606	(914)654-9386	JAMES@MACECONTRACTING.COM	CONSTRUCTION MANAGEMENT	\$1,000,000 - \$4,999,999
MARIANO D MOLINA CONSULTING ENGINEERS	Minority Owned	17 BATTERY PLACE SUITE 100	NEW YORK	NY	10004	Jesus Suarez	(212)677-0777	(212)618-1705	JJSUAREZ@CSAGROUP.COM	CONSTRUCTION MANAGEMENT	\$1,000,000 - \$4,999,999
MCKISSACK GROUP INC THE	Dual Certification	150 WEST 30TH STREET, SUITE 1200	NEW YORK	NY	10001	Cheryl Felder	(212)349-6501	(212)760-4238	cheryl@mckissack.com	CONSTRUCTION MANAGEMENT	Not Specified
MORGAN CONTRACTING CORPORATION THE	Women Owned	30 COOPER SQUARE 10TH FLOOR	NEW YORK	NY	10003	Adrienne Wollard	(212)377-2600	(212)377-2611	drasile@morgancontracting.com	CONSTRUCTION MANAGEMENT	Not Specified
NEW VISIONS KITCHEN AND BATHS INC	Women Owned	719 ROUTE 6	MAHOPAC	NY	10541	Rose Paciullo	(845)621-1642	(845)519-6012	info@newvisionsinc.com	CONSTRUCTION MANAGEMENT	\$500,000 - \$999,999
NIA CONSTRUCTION SERVICES INC	Minority Owned	79 WHITTIER BLVD	POUGHKEEPSIE	NY	12603	John Heard	(845)485-2483	(845)483-9166	nia.construction@yahoo.com	CONSTRUCTION MANAGEMENT	\$100,000 - \$499,000
NJ&C ASSOCIATES INC	Dual Certification	210 LEETOWN ROAD	STORMVILLE	NY	12582	Nancy Castro	(914)879-6098	(914)963-0794	Julcel1@yahoo.com	CONSTRUCTION MANAGEMENT	\$100,000 - \$499,000

Company	MW	Address	City	State	Zip_5	Name	Ph	Fx	EEmail	DESCRIPTOR	Sales
NOBLESTRATEGY NY INC	Minority Owned	2601 FREDERICK BLVD	NEW YORK	NY	10030	William Parrish	(212)690-4370	(212)690-4373	JDPARRISH@NOBLESTRATEGY.COM	CONSTRUCTION MANAGEMENT	Less than \$1000,000
NORTHSTAR CONSTRUCTION MANAGEMENT INC	Dual Certification	48 GRATTAN STREET 2ND FLOOR	BROOKLYN	NY	11237	Sheela Vaz	(718)360-5342	(718)928-9931	northstarcm@speakeasy.net	CONSTRUCTION MANAGEMENT	\$100,000 - \$499,000
ORNAMENTAL INSTALLATION SPECIALISTS INC	Women Owned	4 JONES ROAD	WARWICK	NY	10990	Celia Cantelmo	(845)987-7763	(845)987-8511	celia@OIS-WBE.COM	CONSTRUCTION MANAGEMENT	\$1,000,000 - \$4,999,999
ORTEGA GROUP LLC	Minority Owned	15 SOUTH MACQUESTEN PKWY	MOUNT VERNON	NY	10550	Kirk Ortega	(914)668-1000	(914)668-1002	kirk.ortega@ortegagroup.com	CONSTRUCTION MANAGEMENT	\$1,000,000 - \$4,999,999
PACO GROUP INC	Minority Owned	110 WILLIAM STREET SUITE3010	NEW YORK	NY	10038	Frank Otero	(212)685-0578	(212)685-1379	jotero@pacogroup.com	CONSTRUCTION MANAGEMENT	\$1,000,000 - \$4,999,999
PIONEER GENERAL CONSTRUCTION CO LLC	Minority Owned	7216 7TH AVENUE	BROOKLYN	NY	11209	Akhilak Choudhary	(718)745-5464	(718)238-4845		CONSTRUCTION MANAGEMENT	\$1,000,000 - \$4,999,999
PMA CONSULTANTS LLC	Minority Owned	TWO PENN PLAZA SUITE 1080	NEW YORK	NY	10121	Dr gui Ponce de leon	(212)736-4096	(212)736-4098	info@pmaconsultants.com	CONSTRUCTION MANAGEMENT	Not Specified
PROJECT MANAGEMENT RESOURCE GROUP INC	Minority Owned	305 MADISON AVENUE SUITE 449	NEW YORK	NY	10017	Fredrick Redd	(212)983-7385	(877)493-0963	fred.redd@pmrg-inc.com	CONSTRUCTION MANAGEMENT	\$100,000 - \$499,000
RAKENS INCORPORATED	Minority Owned	64-65 212TH STREET	BAYSIDE	NY	11364	Kailash Sharma	(718)279-4356	(718)279-0674	trishala@aol.com	CONSTRUCTION MANAGEMENT	\$500,000 - \$999,999
S&P CONTRACTORS LLC	Minority Owned	307 7th AVENUE, SUITE 303	NEW YORK	NY	10003	Wilmot Harris	(212)239-1014	(212)564-6742	sandpcontractorsllc@verizon.net	CONSTRUCTION MANAGEMENT	\$100,000 - \$499,000
SAVE DOLLAR ENTERPRISES	Minority Owned	115-01 SUTTER AVENUE	SOUTH OZONE PARK	NY	11420	Pankaj Dalal	(718)835-0793	(702)922-2470	savetollarinc@aol.com	CONSTRUCTION MANAGEMENT	Less than \$1000,000
SHRAZ ASSOCIATES INC	Minority Owned	176-38 80TH ROAD	JAMAICA	NY	11432	Saith Dawood	(718)380-9886	(718)380-9875	shraz@hotmail.com	CONSTRUCTION MANAGEMENT	\$100,000 - \$499,000
SKY RISE INC	Minority Owned	141-70 85TH ROAD 1A	JAMAICA	NY	11435	Tariq Khan	(718)200-5228	(718)766-8842	usabuilders@hotmail.com	CONSTRUCTION MANAGEMENT	Less than \$1000,000
SKYLINE INDUSTRIES LLC	Minority Owned	10 JAVA STREET SUITE 1	BROOKLYN	NY	11222	Dunyo Awoonor	(718)383-6370	(718)383-6420	dawoonor@skylinelpl.com	CONSTRUCTION MANAGEMENT	\$100,000 - \$499,000
SQUARE INCH DESIGN CORP	Dual Certification	398 DECATUR STREET	BROOKLYN	NY	11233	Angela Anderson	(347)228-3063	(718)559-4705	INFO@SQUAREINCHDESIGNCORP.COM	CONSTRUCTION MANAGEMENT	Less than \$1000,000
STRUCTUREALL LLC	Minority Owned	2903 MCKINLEY COURT	NEW WINDSOR	NY	12553	Apollo Cypress	(845)567-0220	(845)567-3497	INFO@STRUCTUREALL-LLC.COM	CONSTRUCTION MANAGEMENT	Less than \$1000,000
STUART-LYNN COMPANY INC	Dual Certification	180 VARICK STREET STE 1202	NEW YORK	NY	10014	Victoria Cabanos	(212)209-1180	(212)209-1195	vcabanos@stuartlynn.com	CONSTRUCTION MANAGEMENT	\$100,000 - \$499,000
SURETECH ENGINEERING P C	Dual Certification	1945 MADISON AVENUE	NEW YORK	NY	10035	Kiwesa king Yara	(212)348-3409	(212)410-5851	suretech@nyc.rr.com	CONSTRUCTION MANAGEMENT	Less than \$1000,000
VENEZUS CORP	Women Owned	19 MAPLE STREET	PINE PLAINS	NY	12567	Eileen Yajure	(518)398-9600	(518)398-9602	ft@bestweb.net	CONSTRUCTION MANAGEMENT	\$100,000 - \$499,000
YARMUS ENGINEERING PC	Minority Owned	230 NORTH MAIN STREET	NEW CITY	NY	10956	Andrew Yarmus	(845)634-3580	(845)643-3733	info@yarmusengineering.com	CONSTRUCTION MANAGEMENT	\$100,000 - \$499,000
YEC ENGINEERING PC	Minority Owned	612 CORPORATE WAY	VALLEY COTTAGE	NY	10989	Yuan shan Chen	(845)268-3203	(845)268-5313	edchen.yec@verizon.net	CONSTRUCTION MANAGEMENT	Less than \$1000,000

ATTACHMENT G

Cost Detail with the Cost Proposal

ATTACHMENT G – PRICING AND COMPENSATION PROPOSAL Moynihan Phase 1 CM RFP

PROPOSER NAME: _____

Total Contract Price	
1. Construction Manager's Fee (see Part IX, Subpart G)	\$
2. Cost of the Work	
*(b) General Conditions Costs \$ _____	
(c) Proposed "G&A Rate": _____	
Subtotal - (the sum of 2(a) + 2(b) above)	\$
Total Proposed Consultant Price (Item 1 + Item 2)	\$

** The G&A rate is to be applied to the Personnel Direct Labor cost as permitted in Part IX, Subpart G.*

Please refer to Part IX, Subpart G - "PRICING AND COMPENSATION PROPOSAL" for proposal instructions and additional information.

Proposal price is to be filled out both words and in figures.

Proposal Amount:

Subconsultant Pricing

Contract Price	Subconsultant <i>(Insert Name)</i>	Subconsultant <i>(Insert Name)</i>	Subconsultant <i>(Insert Name)</i>	Subconsultant <i>(Insert Name)</i>
1. Construction Manager's Fee	\$	\$	\$	\$
2. Cost of the Work (Show the sum of (a) + (b) below)	\$	\$	\$	\$
(a) Trade Costs	\$	\$	\$	\$
*(b) General Conditions Costs	\$	\$	\$	\$
(c) Proposed "G&A Rate":				
Total Proposed Subconsultant Price	\$	\$	\$	\$

* The G&A rate of _____ is to be applied to the Personnel Direct Labor cost as permitted in Article 10, Section 10.4.2.

ATTACHMENT G – COST DETAIL

PROPOSER NAME: _____

Moynihan Station Phase 1 Construction Manager RFP

Term	Staffing/ Individual Discipline	Average Hourly Rates	2011		2012		2013		2014		2015		2016		Total hours per task	Total per Task
			HOURS	AMOUNT												
Task 1	Principal	\$														\$
	Project Manager	\$														\$
		\$														\$
		\$														\$
		\$														\$
		\$														\$
		\$														\$
Task 2	Principal	\$														\$
	Project Manager	\$														\$
		\$														\$
		\$														\$
		\$														\$
		\$														\$
		\$														\$
Task 3	Principal	\$														\$
	Project Manager	\$														\$
		\$														\$
		\$														\$
		\$														\$
		\$														\$
		\$														\$
Task 4	Principal	\$														\$
	Project Manager	\$														\$
		\$														\$
		\$														\$
		\$														\$
		\$														\$
		\$														\$

ATTACHMENT G – COST DETAIL

PROPOSER NAME: _____

Moynihan Station Phase 1 Construction Manager RFP

Term	Staffing/ Individual Discipline	Average Hourly Rates	2011		2012		2013		2014		2015		2016		Total hours per task	Total per Task
			HOURS	AMOUNT												
Task 5	Principal	\$														\$
	Project Manager	\$														\$
		\$														\$
		\$														\$
		\$														\$
		\$														\$
		\$														\$
Task 6	Principal	\$														\$
	Project Manager	\$														\$
		\$														\$
		\$														\$
		\$														\$
		\$														\$
		\$														\$
Task 7	Principal	\$														\$
	Project Manager	\$														\$
		\$														\$
		\$														\$
		\$														\$
		\$														\$
		\$														\$
Task 8	Principal	\$														\$
	Project Manager	\$														\$
		\$														\$
		\$														\$
		\$														\$
		\$														\$
		\$														\$

ATTACHMENT G – COST DETAIL

PROPOSER NAME: _____

Moynihan Station Phase 1 Construction Manager RFP

Term	Staffing/ Individual Discipline	Average Hourly Rates	2011		2012		2013		2014		2015		2016		Total hours per task	Total per Task
			HOURS	AMOUNT												
Task 9	Principal	\$														\$
	Project Manager	\$														\$
		\$														\$
		\$														\$
		\$														\$
		\$														\$
		\$														\$
Task 10	Principal	\$														\$
	Project Manager	\$														\$
		\$														\$
		\$														\$
		\$														\$
		\$														\$
		\$														\$
Task 11	Principal	\$														\$
	Project Manager	\$														\$
		\$														\$
		\$														\$
		\$														\$
		\$														\$
		\$														\$

ATTACHMENT G – COST DETAIL

PROPOSER NAME: _____

Moynihan Station Phase 1 Construction Manager RFP

Term	Staffing/ Individual Discipline	Average Hourly Rates	2011		2012		2013		2014		2015		2016		Total hours per task	Total per Task
			HOURS	AMOUNT												
Task 12	Principal	\$														\$
	Project Manager	\$														\$
		\$														\$
		\$														\$
		\$														\$
		\$														\$
		\$														\$
TOTAL DIRECT LABOR			\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$		\$	

Other Direct Costs/Out-of-Pocket Expenses	
Year	Amount*
2011	
2012	
2013	
2014	
2015	
2016	
Total ODC's	

* Only include total amount for term indicated. In the attached worksheet, itemize all expenses that make up the total amount.

ATTACHMENT H

Background Qualification Questionnaire

BACKGROUND QUALIFICATION QUESTIONNAIRE

FOR

("The Company")

General Identification

1. Tax ID# (or SSN) _____

Business Entity Name (the "Company") _____

D/B/A name, if any _____
 (D/B/A means "doing business as")

Street address _____

City/State/Zip _____

Mailing address (if different) _____

City/State/Zip _____

Phone No. _____ Fax No. _____

E-mail address _____ Website _____

2. a. What project is the Company bidding, proposing, or intending to work on? (Select one).

<input type="checkbox"/> 1 World Trade Center	<input type="checkbox"/> Central Chiller Plant
<input type="checkbox"/> Nat'l Sept. 11 Memorial & Museum	<input type="checkbox"/> Streets, Utilities, & Infrastructure
<input type="checkbox"/> Transportation Hub	<input type="checkbox"/> Vehicular Security Center
<input type="checkbox"/> Retail	<input type="checkbox"/> Other (Specify) _____

b. Prime Contractor (the "Prime") _____
 (The firm that the Company will be contracting with.)

c. Description of Work _____

3. a. Has the Company changed address(es) in the past five years?
 No Yes

b. Has the Company operated under any other name(s) in the past five years?
 No Yes

c. Does the Company have offices, plants or warehouses at other addresses?
 No Yes

If 'yes', to question 3 a, b, or c provide details below:

Specify (3a-c)	Name	Address	From (Mo./Yr.)	To (Mo./Yr.)

Business Organization and History

4. Type of Entity: Corporation Partnership Sole Proprietorship Joint Venture*
 Limited Liability Company Other (Specify) _____

* If the Company is a Joint Venture, please provide a list of all partner firms and/or parties to the Joint Venture below. All partners and/or parties listed are also required to individually complete a separate BQQ.

Partner/Party Name	Tax ID# (or SSN)	% of Ownership

5. a. Date the Company was formed _____
b. Date of incorporation if different than date the Company was formed _____
c. State in which formed or incorporated _____
d. Number of shares authorized for issuance if Company is a corporation _____
e. Number of shares issued to individuals or entities _____
f. Registered Agent (Lawyer/incorporator) _____

6. Was the Company purchased as an existing business by its present owner(s)?
 No Yes (if yes, provide information below)

Date purchased _____
Previous Owner(s) Name(s): _____

7. Does the Company own, rent, or lease any of its office facilities?
 Own
 Lease/Rent (if leased or rented, provide information below)

Owner Name	Address	Phone Number

8. Does the Company share any office space, staff, or equipment (including telephone exchanges) with any other business or organization?
 No Yes (list below)

Tax ID# (or SSN)	Firm Name	Address	Space	Staff	Equip
			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

9. Identify all Key People

Instructions: Fill in the required information on all present and past **Key People for the past five years.**

"Key People" include:

- Principals, directors, officers
- Shareholders of 5% or more of the Company's issued and outstanding stock
- Any manager or individual who participates in overall policy-making or financial decisions for the Company
- Project managers and project executives
- Any person in a position to control and direct the Company's overall operations
- Authorized signatories to bank accounts and any debt instruments, whether or not otherwise considered Key People

"Shareholders" are owners of stock or other securities that can be converted to stock that, if converted, would constitute 5% of the Company's issued and outstanding stock. Other securities include stock options, secured or unsecured bonds, warrants and rights.

Be sure to include all those who fit the definition of Key People for the past five years whether or not they are currently with the Company. Copy this page if more space is required.

KEY PEOPLE TABLE
COMPLETE ALL BLANK AREAS

	PERSON #1	PERSON #2	PERSON #3
NAME AND HOME ADDRESS*			
Date of Birth			
SS #			
Current Title			
From (Date)			
To (Date)			
% of Ownership			
Number of Shares Owned			
How Shares Were Acquired			
	PERSON #4	PERSON #5	PERSON #6
NAME AND HOME ADDRESS*			
Date of Birth			
SS #			
Current Title			
From (Date)			
To (Date)			
% of Ownership			
Number of Shares Owned			
How Shares Were Acquired			

*Provide current proper legal name and specify any name change, including maiden or married names or aliases.

10. At present or during the past five years:

- a. Has the Company been a subsidiary of any other firm?
 No Yes
- b. Has the Company consisted of a partnership in which one or more partners are other firms?
 No Yes
- c. Has any other firm owned 5% or more of the Company?
 No Yes
- d. Has the Company been a joint venture partner with any other firms?
 No Yes

If 'yes' to question 10 a, b, c, or d, list the other firms below and indicate the percent of stock, if any, owned in the Company.

	FIRM #1	FIRM #2
Specify (10a-d)		
Tax ID#		
Firm Name		
Address		
Relationship To The Company (Co. Owner, Partner, Etc.)		
% of the Company Owned		
From (Date)		
To (Date)		
Representative Name/Title		

11. At present or during the past five years:

- a. Has the Company had any subsidiaries?
 No Yes
- b. Has the Company owned 5% or more of any other firm?
 No Yes

If 'yes' to question 11 a or b, list the firms below and indicate the percent of the other firm's stock owned by the Company.

Specify (11a,b)	Tax Id#	Firm Name and Address	% Owned By The Company	Dates of Ownership From/To

12. At present or during the past five years have any of the Key People of the Company served as a Key Person (see definition in question 9) or owned 5% or more of any other firm (including firms that are inactive or have been dissolved)?
- No Yes

If 'yes' to question 12, list below:

Firm Name and Address	Tax Id#	Key Person	Position Held	% Owned	Remainder Owned By	Dates Owned From/To

All firms listed in questions 10 a-d, 11 a-b, and 12 will be referred to in the following questions as: "Affiliate Firms"

13. Are any Key People of the Company:
- a. present or past employees of The Port Authority of New York and New Jersey, or the Prime identified in Question 2(b)?
 No Yes
 - b. related by kinship or marriage to any present or past employee of The Port Authority of New York and New Jersey, or the Prime identified in Question 2(b)?
 No Yes

If 'yes' to question 13a or b, provide names of such individual(s) and indicate relationship to the current/former employee.

14. Number of employees of the Company (not including Key People) _____

15. Is the Company a union company or non-union company?
 Union Non-Union

If 'Union', provide below which trade(s) the Company has agreements with and the date of their expiration.

Union Name & Local #	Exp. Date	Union Name & Local #	Exp. Date

16. Does the Company currently participate in, or have any applications pending for, any business or job opportunity certification programs with The Port Authority of New York and New Jersey or any other government agency? (i.e. MBE, WBE, SBE, DBE, LBE, etc.)
 No Yes

If 'yes' to question 16, provide details below:

Certification Type	Exp. Date	Certifying Agency	Certification #

Financial Information

17. At present or in the past five years:

- a. Has the Company been indebted to an individual or entity other than a commercial lending institution in the cumulative amount of \$50,000 or more?
 No Yes

- b. Have any of the Company's Key People been indebted to an individual or entity other than a commercial lending institution in the cumulative amount of \$50,000 or more, for the benefit of the Company?
 No Yes

- c. Has the Company pledged any of its stock to guarantee any of the above obligations?
 No Yes N/A

- d. Has any individual or the Company been a guarantor, co-maker or co-signer of any of these obligations on behalf of the Company?
 No Yes N/A

If 'yes', to any portion of question 17a-d, provide details below:

Specify (17a-d)	Name of Creditor	Name of Borrower	Amount of Loan & Balance Remaining	Terms of Pledge or Loan	Name of Guarantor, or Co-Signer

- e. Have monies generated by the Company in the cumulative amount of \$50,000 or more been loaned to another firm or individual by the Company or its Key People? No Yes

If 'yes', please provide details below:

Name: _____

Address: _____

- f. Has the Company, or any of its Affiliate Firms, or any of its Key People paid commissions or finders fees to obtain contracts or work to anyone other than its own key people? No Yes

If yes, explain: _____

- 18. Has the Company, or any of its Affiliate Firms, or any of its Key People been a party to a bankruptcy or reorganization proceeding?
 No Yes

If 'yes,' provide details below:

Caption	Date	Docket #	Court	County

19. During the past five years, has the Company ever:
- a. been the subject of a lien, judgment or litigated claim of \$25,000 or more by a subcontractor, supplier or other creditor?
 No Yes

 - b. failed to complete a contract for a commercial or private owner or government agency?
 No Yes

 - c. had, or does it currently have, any delinquent local, city, state or federal taxes or liens outstanding?
 No Yes

If 'yes' to question 19 a, b or c, supply details below:

Specify (19a-c)	Agency/Owner	Contract #	Describe Circumstances & Current Status	Date of Events	Name/Phone No. of Contact Person

Experience/Performance

20. On the following table state the Company's gross revenues for the past three years:

	Sales/Gross Revenues	Net Income
Past Fiscal Year		
Past Fiscal Year (-1)		
Past Fiscal Year (-2)		

21. Does the Company have a bonding capacity?
 No Yes

If 'yes', provide information below on all surety companies that have agreed to furnish the Company with performance and payment bonds and answer all related questions:

- a. Surety Name: _____
 Address: _____

 Agent/Broker: _____
 Phone No. (____) _____

- b. In writing bonds for the Company, does the surety company rely on the indemnity of any other firm(s) or individual(s)?
 No Yes

If 'yes', supply names & addresses of others:

c. What is the Company’s bonding capacity:

Single Job: \$ _____ Aggregate: \$ _____

22. Has the Company or any of its Key People, officers, owners or managers had any business related or professional licenses, certificates or certifications revoked or suspended in the past five (5) years?
 No Yes (if yes, explain below)

Compliance Information

23. Has the Company or any of its Affiliate Firms ever been the subject of any of the following actions by any government agency:

Government agencies include city, state, federal public agencies, quasi-public agencies, authorities and corporations, public development corporations, public benefit corporations and local development corporations.

*Note: Matters under appeal must be disclosed.

- a. been suspended, debarred, disqualified, declared non-responsible or non-responsive, or had its prequalification revoked or otherwise been declared ineligible to bid or to perform work?
 No Yes
- b. been barred from bidding or denied a contract as a result of refusal of Key People to testify before a grand jury or administrative board?
 No Yes
- c. been denied a contract despite being the low bidder for any other reason?
 No Yes
- d. been defaulted on or breached any contract?
 No Yes
- e. had a contract terminated, for either “cause” or “convenience”?
 No Yes
- f. been given a final unsatisfactory performance evaluation or determination, or deemed a poor performer (by letter or formal proceedings)?
 No Yes
- g. been prevented, or barred from bidding for any other reason?
 No Yes
- h. been denied a contract for failure to obtain surety or otherwise provide required security?
 No Yes
- i. had liquidated damages assessed against it upon completion of a contract or failure to complete a contract?
 No Yes

If 'yes', to any portion of question 23 supply details below:

Specify (23a-i)	Agency	Contract #	Date of Action	Describe Action	Name/Phone # of Agency or Owner Contact Person

24. In the past five (5) years, has the Company or any current or past Key People or Affiliate Firms been a plaintiff or defendant in any lawsuits arising out of the Company's operations?
 No Yes

If 'yes', to question 24, supply details below and submit documentation if applicable. Indicate in P/D column whether the Company's Key People or Affiliate Firms were plaintiffs (P) or defendants (D).

Caption or Action	P/D	Court	Index/Docket No.	Nature of Claim	Date	Status

25. In the past ten (10) years has the Company or any of its current or past Key People or Affiliate Firms:
- a. voluntarily engaged the services of an Integrity Monitor, independent private sector inspector general, or integrity compliance consultant (hereinafter collectively referred to as an "Integrity Monitor") in connection with the performance of any public or private contract?
 No Yes
 - b. been required to engage the services of an Integrity Monitor in connection with the award of, or in order to complete, any public or private contract?
 No Yes
 - c. been required to submit a Certification in connection with the award of, or in order to complete, any public or private contract?
 No Yes
 - d. otherwise been the subject of audits/investigations (see definition of investigation below in Question 26a) performed by an Integrity Monitor in connection with any public or private contract?
 No Yes

If yes to any portion of question 25, explain below:

26. In the past five (5) years has the Company or any of its Affiliate Firms been subject to or issued any OSHA violations?
 No Yes

If 'yes', to any portion of question 26 supply details below:

Nature of Violation	Type (Serious, Willful, Repeat, etc.)	Penalty Amt. (\$)	Date

27. Has the Company or any of its current or past Key People or Affiliate Firms ever:

- a. been under investigation involving any alleged violation of criminal law relating to business activities?
 No Yes

An INVESTIGATION includes an appearance before a grand jury by representatives of a business entity, any oral or written inquiry or review of the entity's documents by a public agency, temporary commission or other investigative body including, but not limited to, subpoenas and/or search warrants, or questioning of employees concerning the general operation or a specific project or activities of such business entity, whether or not such business entity is notified, is in-fact, or otherwise believed to be, the subject or target of any such investigation.

- b. had records in its or his/her control, custody or ownership subpoenaed or seized by a search warrant by any law enforcement or government agency?
 No Yes
- c. been questioned by any officer or agent of a law enforcement or investigative agency regarding any practices or conduct relating to the providing of services?
 No Yes
- d. been advised of being the target, subject, or person of interest of an investigation involving any violation of criminal law?
 No Yes
- e. been notified of being the subject of court ordered electronic surveillance?
 No Yes
- f. been arrested or indicted or otherwise named as an unindicted co-conspirator in any indictment or other accusatory instrument?
 No Yes
- g. been convicted, after trial or by plea, of any felony under state or federal law?
 No Yes
- h. been convicted of any misdemeanor involving business-related crimes?
 No Yes
- i. entered a plea of nolo contendere to any felony and/or business-related misdemeanor?
 No Yes
- j. entered into a consent decree, deferred prosecution agreement, or non-prosecution agreement?
 No Yes
- k. been granted immunity from prosecution for any business-related conduct constituting a crime under state or federal law?
 No Yes
- l. exercised the Fifth Amendment right against self-incrimination in testimony regarding a business related crime?
 No Yes

If 'yes', to any portion of question 27, supply details below and submit documentation.

Specify (27a-l)	Agency Or Court	Nature Of Action	Person or Entity Named or Involved	Date	Status/Outcome

28. Do any current or past Key People listed in this application have any felony or misdemeanor charges pending against them that were filed either before, during or after their employment with the Company?
 No Yes

If 'yes' to question 28, provide details below:

Agency or Court	Nature of Charges	Key Person Named	Date of Charges

29. Has the Company or any of its current or past Key People or affiliate firms ever engaged in any of the following practices:
- a. filed with a government agency or submitted to a government employee a written instrument which the Company or any of its Key People or affiliate firms knew contained a false statement or false information?
 No Yes
 - b. falsified business records?
 No Yes
 - c. given, or offered to give, money, gifts or anything of value or any other benefit to a labor official or public servant with intent to influence that labor official or public servant with respect to any of his or her official acts, duties or decisions as a labor official or public servant?
 No Yes
 - d. given or offered to give, money, gifts or anything of value or any benefit to a labor official or public servant for any reason?
 No Yes
 - e. given, or offered to give, money or other benefit to an official or employee of a private business with intent to induce that official or employee to engage in unethical or illegal business practices?
 No Yes
 - f. agreed with another to bid below prevailing market rate?
 No Yes
 - g. agreed with another to submit identical or complementary bids or otherwise not to bid competitively or agree to withdraw or abstain from bidding?
 No Yes
 - h. agreed with another not to submit competitive bids in another's territory established either by geography or customers?
 No Yes
 - i. agreed with another to take turns in obtaining contracts by pre-determining which firm shall submit the lowest bid?
 No Yes

If 'yes', to any portion of question 29, explain below:

30. This document was prepared by (Note: This person must be a Key Person listed in response to Question 9):

_____ (Name)

_____ (Title)

_____ (Signature)

_____ (Date)

EXHIBIT A
CERTIFICATION

A materially false statement willfully or fraudulently made in connection with this Certification, and/or failure to conduct appropriate due diligence in verifying the information that is the subject matter of this Certification may prevent the Company and/or the undersigned from being found to be responsible bidders/proposers in connection with future agreements. In addition, a materially false statement willfully or fraudulently made in connection with this Certification may subject the Company and/or the undersigned to criminal charges, including charges for violation of New York State Penal Law Sections 175.35 (Offering a False Statement for Filing) and 210.40 (Sworn False Statement), New Jersey Code of Criminal Justice Title 2C:28-3 (Unsworn Falsification to Authorities), and/or Title 13 U.S.C. Sections 1001 (False or Fraudulent Statement) and 1341 (Mail Fraud).

Certifications must be notarized when signed.

I _____, being duly sworn, state that I am _____, an officer of
(Print Name) (Title)
the Company, and that I have read and understood the questions contained in the attached questionnaire.

I certify that to the best of my knowledge the information given in response to each question, whether prepared by me, or by the Key Person identified in Question 30, is full, complete and truthful as of this date hereof. I agree and warrant that truthfully answering the questions is an event entirely within my control.

I recognize that all the information submitted in connection with this Questionnaire is for the express purpose of inducing the Port Authority to enter into a contract with, or to approve the award of a contract or subcontract to, or otherwise approve some other relationship with, the Company.

I acknowledge that the Port Authority, may by means it deems appropriate, determine the accuracy, truth and completeness of the answers to the questions in the questionnaire. I authorize the Port Authority or its designee to contact any person or entity for purposes of verifying the information supplied by the Company.

(Print Name)

(Signature)

Sworn to before me
this ____ day of _____ 20____

Notary Public

ATTACHMENT ___ of ___

Response to Question _____:

Response to Question _____:

Response to Question _____:

Response to Question _____:

Response to Question _____:

Attachment I

Non-Collusive Bidding Certification

NON-COLLUSIVE BIDDING CERTIFICATION

_____ ("Bidder") which has submitted the attached Proposal, each person signing on behalf of Bidder, and in the case of a joint bid each party thereto, as to its own organization, hereby certifies and affirms under penalty of perjury, that to the best of its knowledge and belief:

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

Signed and sealed this ___ day of _____, 20__.

Name of Bidder: _____

By: _____

Print Name: _____

Title: _____

IN THE PRESENCE OF:

Signature _____

Print Name: _____

ACKNOWLEDGEMENT OF BIDDER, IF A CORPORATION

STATE OF

ss.:

COUNTY OF

On _____, 20____, before me personally came _____ to me known, who, by me duly sworn, did depose and say that he resides at _____; that he/she is the _____ of _____, the Corporation described in and which executed the foregoing certification; that he/she knows the seal of the Corporation; that the seal affixed to the foregoing certification is the corporate seal; that the foregoing certification was executed and the corporate seal affixed by order of the Board of Directors of the Corporation; that he/she signed his/her name by like order.

ACKNOWLEDGEMENT OF PRINCIPAL, IF A PARTNERSHIP

STATE OF

ss.:

COUNTY OF

On _____, 20____, before me personally came _____ to me known and known to me to be a member of the firm of _____, the firm described in and which executed the foregoing certification, and he duly acknowledged to me that he/she executed the foregoing certification for and on behalf of the said firm for the uses and purposes mentioned therein.

ACKNOWLEDGMENT OF BIDDER, IF AN INDIVIDUAL

STATE OF

ss.:

COUNTY OF

On _____, 20____, before me personally came _____ to me known and known to me to be the individual described in and who executed the foregoing certification, and he/she duly acknowledged to me that he/she executed the same.

Attachment J

INTENTIONALLY OMITTED

Attachment K

Offerer Disclosure of Prior Non-Responsibility Determinations

Model Language to Obtain the Offerer Disclosure of Prior Non-Responsibility Determinations

Background:

Under New York State Finance Law § 139-k(2), covered governmental entities are obligated to obtain specific information regarding prior non-responsibility determinations. This information must be collected in addition to the information that is separately obtained pursuant to State Finance Law § 163(9). In accordance with State Finance Law § 139-k, an Offerer must be asked to disclose whether there has been a finding of non-responsibility made within the previous four (4) years by an Governmental Entity due to: (a) a violation of State Finance Law § 139-j or (b) the intentional provision of false or incomplete information to a Governmental Entity. The terms "Offerer" and "Governmental Entity" are defined in State Finance Law § 139-k(1). State Finance Law § 139-j sets forth detailed requirements about the restrictions on Contacts during the procurement process. A violation of State Finance Law § 139 -j includes, but is not limited to, an impermissible Contact during the restricted period (for example, contacting a person or entity other than the designated contact person, when such Contact does not fall within one of the exemptions).

As part of its responsibility determination, a covered governmental entity must consider whether an Offerer fails to timely disclose accurate or complete information regarding the above non-responsibility determination. In accordance with law, no Procurement Contract shall be awarded to any Offerer that fails to timely disclose accurate or complete information under this section, unless a finding is made that the award of the Procurement Contract to the Offerer is necessary to protect public property or public health safety, and that the Offerer is the only source capable of supplying the required Article of Procurement within the necessary timeframe.

Instructions:

A Governmental Entity must include a disclosure request regarding prior non-responsibility determinations in its solicitation of proposals or bid documents or specifications or contract documents, as applicable, for procurement contracts. The attached form is to be completed and submitted by the individual or entity seeking to enter into a Procurement Contract.

6. If yes, please provide details below.

Governmental Entity:

Date of Termination or Withholding of Contract:

Basis of Termination or Withholding:

(Add additional pages as necessary)

Offerer certifies that all information provided to the Governmental Entity with respect to State Finance Law § 139-k is complete, true and accurate

By:

Date:

Signature

Name:

Title:

Attachment L

Offerer's Affirmation of Understanding of and Agreement

Model Language to Obtain Offerer's Affirmation of Understanding of and Agreement pursuant to State Finance Law § 139-j (3) and § 139-j (6) (b)

Background:

State Finance Law § 139j(6)(b) provides that:

Every Governmental Entity shall seek written affirmations from all Offerers as to the Offerer's understanding of and agreement to comply with the Governmental Entity's procedures relating to permissible contacts during a Governmental Procurement pursuant to subdivision three al this section.

Instructions:

A Governmental Entity must obtain the required affirmation of understanding and agreement to comply with procedures on procurement lobbying restrictions regarding permissible Contacts in the restricted period for a procurement contract in accordance with State Finance Law § § 139-j and 139-k. It is recommended that this affirmation be obtained as early as possible in the procurement process, such as when the Offerer submits its proposal or bid. The following language can be used to obtain the affirmation.

Offerer affirms that it understands and agrees to comply with the procedures of the Government Entity relative to permissible Contacts as required by State Finance Law § 139-j (3) and § 139-j (6) (b).

Signed: _____ Date: _____

Name: _____

Title: _____

Contractor Name: _____

Contractor Address: _____

Attachment M

Policy Regarding Permissible Contacts under State Finance Law Section 139-j and 139-k,
(applicable to all ESD subsidiaries, including MSDC)

As of January, 2007

**Policy Regarding Permissible Contacts under State Finance Law Section 139-j and 139-k
with respect to procurements by
New York State Urban Development Corporation d/b/a Empire State Development
Corporation and its subsidiaries (including MSDC)**

1. Definitions

The following terms shall have the following meanings:

- a. "contact" or "contacts" shall mean any oral, written or electronic communication with the Corporation under circumstances from which a reasonable person would infer that the communication was intended to influence a procurement by the Corporation.
- b. "Corporation" shall mean ESD or any of its subsidiaries (such as MSDC), as the case may be.
- c. "ESD" shall mean the New York State Urban Development Corporation d/b/a Empire State Development Corporation.
- d. "offerer" shall mean the individual or entity, or any employee, agent or consultant or person acting on behalf-of such individual or entity that makes a contact during the restricted period.
- e. "procurement" shall mean (i) the, preparation of terms of the specifications, bid documents, request for proposals, or evaluation criteria for a procurement contract; (ii) solicitation for a procurement contract; (iii) evaluation of a procurement contract; (iv) award, approval, denial or disapproval of a procurement contract, or (v) approval or denial of an assignment, amendment (other than amendments that are authorized and payable under the terms of the procurement contract as it was finally awarded or approved), renewal or extension of a procurement contract, or any other material change in the procurement contract resulting in a financial benefit to the offerer.
- f. "procurement contract" shall mean any contract or other agreement for a commodity, service, technology, public work, construction. the grant of a franchise or concession, the purchase, sale or lease of real property or an acquisition or granting of other interest in real property which contract or other agreement involves an estimated annualized expenditure in excess of fifteen thousand dollars. Grants, eminent domain transactions and other transactions listed in subdivision (1)(g) of Section 139-j of the State Finance Law shall not be deemed procurement contracts.

g. "restricted period" shall mean the period of time commencing with the earliest written notice or advertisement of the availability of the solicitation document for a procurement contract and concluding with the execution of a final procurement contract.

2. Permissible Contacts during the Restricted Period

a. With respect to each procurement that it conducts, the Corporation shall designate a person or persons who may be contacted by offerers relative to the procurement. All comments and questions from offerers regarding a procurement should generally be in writing and must be addressed only to the contact person(s) identified in the solicitation document or otherwise identified to offerers.

b. During the restricted period, offerers shall only communicate, with respect to any procurement, in the manner and with the individuals set forth in Section 2 (a) of *this* Policy.

c. Notwithstanding Section 2(b) of this Policy, offerers may:

- i. submit proposals in response to a solicitation document;
- ii. submit written questions as may be provided **for in** the solicitation document;
- iii. participate in any pre-bid conference or site visit as may be provided for in the solicitation document;
- iv. make a complaint in writing to the general counsel of the Corporation if a communication by an offerer made in accordance with Section 2(a) of this policy has not been responded to in a timely manner;
- v. after being notified of a tentative award of a procurement contract, engage in communications solely for the purpose of negotiating the terms of the **final** contract or contracts and any interim agreements in advance of the final contract or contract, including any conditional designation document;
- vi. request the review of an award of a procurement contract;
- vii. participate in protests, appeals or other review proceedings (including the apparent successful respondent and its representatives) seeking a final administrative or judicial determination;
- viii. make a complaint to the attorney general, inspector general, district attorney or court of competent jurisdiction regarding alleged improper conduct with respect to the procurement; and
- ix. communicate with a member of the New York State legislature or legislative staff about the procurement.

d. Offerers shall not attempt to influence the conduct of, and award of a contract under, the procurement in a manner that would result in a violation or an attempted violation of Section 73(5) (regarding certain gifts) and Section 74 (code of ethics) of the Public Officers Law.

e. As early as practicable during the restricted period, the Corporation shall seek a written affirmation from each offerer as to its understanding of and agreement to comply with State Finance Law Section 139-j and this Policy regarding permissible contacts during the restricted period. Each respondent to a solicitation who has not submitted such an affirmation prior to submitting a proposal, must submit such a written affirmation with its proposal.

Recording of Contacts

Upon receiving any contact during the restricted period, Corporation staff shall make a record of such contact, including the name, address, telephone number, place of principal employment and occupation of the person or organization making the contact and whether the person or organization making the contact was the potential respondent itself or was retained, employed or designated by or on behalf of the potential respondent.

4. Violations of Requirements Regarding Permissible Contacts

a. Any member, officer or employee of the Corporation who becomes aware that an offerer has violated the provisions of State Finance Law 139-j(3) or Section 2 of this Policy regarding permissible contacts during the restricted period shall immediately notify the General Counsel of the Corporation of the impermissible contact and shall provide the Corporation's General Counsel with a copy of the record of contact.

b. If any member, officer or employee of a governmental entity other than the Corporation becomes aware that violation regarding permissible contacts with respect to a procurement has occurred involving such other governmental entity, then such member, officer or employee shall make a record of such impermissible contact and shall immediately notify the ethics officer, inspector general, if any, or other official of **the** other governmental entity responsible for investigating such matters, who shall in turn notify the Corporation's General Counsel and provide the General Counsel with a copy of the record of contact.

c. Upon receiving notice of an impermissible contact with respect to a procurement, the Corporation's General Counsel will conduct an investigation to determine whether an impermissible contact occurred and, if so, whether such impermissible contact was knowing and willful. The investigation shall include review of the record of contact and may include an interview of the individual making the report and other involved staff. The investigation may include review of such other documents or the interview of such other individuals as the General Counsel in his or her discretion may consider appropriate.

d. The Corporation's General Counsel shall endeavor to make a determination, within ten business days of receiving any notice of impermissible contact, whether sufficient cause exists to believe that the impermissible contact occurred and that such contact was knowing and willful, but in any event shall make such determination before the award of a final procurement contract or contracts. In the event it is determined that sufficient cause exists to

believe that the impermissible contact occurred and *was* knowing and willful, then the General Counsel shall notify the involved offerer of the date and nature of the alleged impermissible contact and of the preliminary determination that such contact was knowing and willful.

e. The offerer shall be provided with an opportunity to submit a written response to the alleged impermissible contact within ten business days of receiving such notice. In the General Counsel's discretion, an interview with the offerer may be granted or required. In making a final determination regarding an allegation of impermissible contact, the General Counsel shall take into consideration any information provided by the offerer during the course of the investigation.

f. In the event the General Counsel makes a final determination that an offerer has knowingly and willfully violated this policy or Section 139-j of the State Finance Law and such violation involved misconduct by a Corporation employee in the implementation of this policy, then the General Counsel shall report such instance of employee misconduct to the Corporation's President.

g. The notice provided for in Section 4(d) above may be sent by facsimile transmission or electronic mail provided that hard copy of such notice is also sent by overnight, personal or other method of delivery providing a delivery receipt, to the offerer at the address listed on the report of contact, in the offerer's proposal or such other address as the General Counsel may deem most appropriate.

h. Prior to awarding any procurement contract, the Corporation shall make a determination of responsibility with respect to the proposed awardee. In making a determination of responsibility with respect to any offerer, the Corporation shall consider the proposed awardee's ability to perform the services provided for in the proposed contract including but not limited to such factors as the offerer's financial capability; level of relevant expertise; depth and qualifications of staff; if applicable, the offerer's prior performance under contracts with ESD or any subsidiary of ESD or other instrumentality of the State of New York; and any prior findings of non-responsibility with respect to such offerer (by any governmental entity, as defined in section (1)(a) of State Finance Law Section 139-j) made within the preceding four years.

i. Notwithstanding any of the criteria set forth in section 4(g) above, either of the following shall result in a determination of non-responsibility with respect to any offerer: (I) a final determination, pursuant to the procedure set forth in this section 4, that such offerer has knowingly and willfully violated the provisions of this policy or State Finance Law Section 139-j, and (II) the failure by such offerer to timely disclose accurate and complete information or otherwise cooperate with the Corporation in administering this policy and the provisions of State Finance Law Section 139-j.

j. In the event an offerer is determined to be non-responsible, such offerer and its subsidiaries and any related or successor entity with substantially similar function. management, board of

directors, officers and shareholders shall not be awarded any contract pursuant to the procurement unless, by action of the Board of Directors, the Corporation finds that the award is necessary to protect public property or public health or safety and that the offerer is the only source capable of performing the contract. Any such action by the Corporation's Board of Directors shall state the basis for the finding of necessity and a record of the action and the basis shall be included in the procurement record.

k. Any subsequent determination of non-responsibility due to a violation of State Finance Law Section 139-j within four years of a determination of non-responsibility due to such a violation shall result in the offerer's being rendered ineligible to submit a proposal on or be awarded any procurement contract for any governmental entity subject to the provisions of State Finance Law Section 139-j for a period of four years from the date of the second determination of non-responsibility.

l. Upon making any determination of non-responsibility or ineligibility under this Section 4, the Corporation shall notify the New York State Office of General Services so that the offerer that is the subject of such determination will be included in the list of all offerers who have been determined to be non-responsible or ineligible, which list is published on the Office of General Services' website and is publicly available.

5. Required Contractual Provisions

Each procurement contract awarded by the Corporation shall contain (a) a certification by the offerer that all information provided to the Corporation with respect to State Finance Law Section 139-j is true, complete and accurate; and (b) a provision authorizing the Corporation to terminate the contract in the event such certification is found to be intentionally false or intentionally incomplete.

6. Procurement Record

a. The Corporation shall maintain a procurement record with respect to the procurement and the ultimate award of contracts thereunder. The procurement record shall contain such documents as evidence the material decisions made and approach taken in the procurement process, including, without limitation, the following:

- i. a full copy of the solicitation document(s) and all addenda thereto;
- ii. a copy of all questions and answers made available to offerers;
- iii. copies of all proposals submitted in response to the solicitation;

- iv. all records of contacts, Offerer Disclosure of Prior Non-Responsibility Determinations and Offerer Affirmation of Understanding of and Agreement pursuant to State Finance Law Section 139-j made or submitted in accordance with said Section of the State Finance Law;
- v. all complaints to the General Counsel made pursuant to this policy; all records of the General Counsel with respect to any investigation into any allegation of a knowing and willful violation of the provisions of this policy and the State Finance Law Section 139-j regarding permissible contacts and all determinations made pursuant to such investigation;
- vi. all determinations of responsibility or non-responsibility and other documentation of evaluations by or on behalf of the Corporation of responses to the solicitation; and
- vii. a statement describing the basis for any action taken to terminate the procurement contract because of a false, incomplete or inaccurate certification of compliance with or other violation of State Finance Law Section 139-j.

b. All documents comprising the procurement record shall be subject to disclosure in accordance with the provisions of the Freedom of Information Law and any other applicable law.

7. Miscellaneous

a. Complaints or other notices to the General Counsel of the Corporation regarding the implementation of this policy shall identify the solicitation with respect to which the complaint or notice is being submitted; the entity conducting the procurement at issue; and the nature of the complaint or notice, and should be submitted to the General Counsel of ESD at the following address, for further forwarding, if necessary:

General Counsel
Empire State Development Corporation
633 Third Avenue
New York, NY 10017

b. This policy is adopted pursuant Sections 139 -j and 139-k of the State Finance Law. Nothing in this policy shall be construed as limiting the application of this law. In the event of a conflict between the provisions of this policy and the provisions of State Finance Law Sections 139-j and 139-k, the provisions of said Law shall govern.

ATTACHMENT N

Forms

Certification Regarding Debarment, Suspension, Ineligibility,
and Voluntary Exclusion (primary contractor)

&

Certification Regarding Debarment, Suspension, Ineligibility,
and Voluntary Exclusion – Lower Tiered Covered Transactions

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER
RESPONSIBILITY MATTERS--PRIMARY COVERED TRANSACTIONS**

Instructions For Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

4. The prospective primary participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled ``Certification Regarding Debarment, Suspension, Ineligibility and

Voluntary Exclusion- Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Non-procurement Programs.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER
RESPONSIBILITY MATTERS--PRIMARY COVERED TRANSACTIONS**

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification;

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

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

Signature/Authorized Certifying Official

Typed Name and Title

Applicant/Organization

Date Signed

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

1. The prospective lower tier participant,

_____, certifies by submission of this bid or proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

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

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

Executed this day _____ of _____, 20_____.

BY SIGNATURE OF AUTHORIZED OFFICIAL

NAME AND TITLE OF AUTHORIZED OFFICIAL

ATTACHMENT O

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

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

The undersigned

(name of authorized officer)

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

- No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form LLL, "Disclosure of Lobbying, Activities" in accordance with its instructions.
- The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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

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

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

Executed this day _____ of _____, 2010

By: _____

Signature of Authorized Official

Official Name and Title of Authorized Official

STANDARD FORM LLL - DISCLOSURE OF LOBBYING ACTIVITIES

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352

<p>1. Type of Federal Action: <input checked="" type="checkbox"/> a. contract <input type="checkbox"/> b. grant <input type="checkbox"/> c. cooperative agreement <input type="checkbox"/> d. loan <input type="checkbox"/> e. loan guarantee <input type="checkbox"/> f. loan insurance</p>	<p>2. Status of Federal Action: <input checked="" type="checkbox"/> a. bid/offer/application <input type="checkbox"/> b. initial award <input type="checkbox"/> c. post award</p>	<p>3. Report Type: <input checked="" type="checkbox"/> a. initial filing <input type="checkbox"/> b. material change</p> <p>For material change only: Year _____ quarter _____ Date of last report _____</p>
<p>4. Name and Address of Reporting Entity:</p> <p><input checked="" type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier _____, if Known: Congressional District, if known:</p>	<p>5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:</p> <p>Congressional District, if known:</p>	
<p>6. Federal Department/Agency:</p>	<p>7. Federal Program Name/Description:</p> <p>CFDA Number, if applicable: _____</p>	
<p>8. Federal Action Number, if known:</p>	<p>9. Award Amount, if known: \$ _____</p>	
<p>10. a. Name and Address of Lobbying Registrant <i>(if individual, last name, first name, MI):</i></p>	<p>b. Individuals Performing Services <i>(including address if different from No. 10a)</i> <i>(last name, first name, MI):</i></p>	
<p>11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This</p>	<p>Signature: _____</p> <p>Print Name: _____</p> <p>Title: _____</p>	

<p>information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.</p>	<p>Telephone No.: _____ Date: _____</p>
<p>Federal Use Only</p>	<p>Authorized for Local Reproduction Standard Form - LLL (Rev. 7-97)</p>

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

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

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

10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.
(b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).
11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

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