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GENERAL CONDITIONS  
FOR  
THE DECONSTRUCTION CONTRACT

by and between

LOWER MANHATTAN DEVELOPMENT CORPORATION

and

[ ]

for the  
cleaning and deconstruction of  
130 Liberty Street  
New York, NY

dated as of

\_\_\_\_\_, 2005

**GENERAL CONDITIONS**

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## **GENERAL CONDITIONS**

### **CHAPTER I**

#### **GENERAL PROVISIONS**

##### **1. DEFINITIONS**

The following words and phrases whenever they occur in this Contract or any of the other documents forming a part of the Contract shall be construed as follows:

"ACM" means asbestos (friable or non-friable), asbestos material (friable or non-friable), asbestos-containing material (friable or non-friable), and/or asbestos waste (friable or non-friable), including (i) building materials containing asbestos which were present in the Building prior to September 11, 2001, and (ii) any and all materials impacted by asbestos (solely excluding non-porous solid items impacted by asbestos if and only if said non-porous solid items have previously been properly cleaned and released in accordance with all Legal Requirements to the satisfaction of all of the applicable federal, state, and local Governmental Authorities). Governmental Authorities have stated (and such statements are deemed a Legal Requirement for purposes of this Contract) that (a) WTC Dust and debris and (b) all materials impacted by WTC Dust and debris must be treated as asbestos material and disposed of as asbestos waste, and, accordingly, all of these materials are included in the definition of ACM herein.

"Allowance" means a specific amount included within the Lump Sum for the costs of certain Extra Work specified in such allowance. If LMDC issues a Change Order for Extra Work to be charged to an Allowance, Contractor's compensation for such Extra Work shall be priced in accordance with Article 7 and charged to the Lump Sum to the extent of such Allowance. If Contractor is entitled to compensation for Extra Work beyond that which is provided in the Allowance, then extra payment will be made for the difference between such amounts, upon the terms and conditions for payment of Extra Work. In every other respect, the provisions of this Contract with respect to Change Orders and Extra Work apply to Work performed on an Allowance basis.

"Building" or "130 Liberty Street" means all buildings and structures located on the real property commonly known as 130 Liberty Street, New York, New York 10006, also being known as New York City Block 54, Lot 1. "Building" shall be deemed to include all Building Contents unless specifically stated to the contrary.

"Building Contents" means all contents of the Building, including any and all fixtures, personal property, debris, wreckage, and/or other materials or things of any nature whatsoever in, on, or about the Building which are not permanently affixed to the Building.

"Certificate of Final Completion" is defined in Article 28.

"Change Order" or "change order" means a written change order issued by LMDC authorizing Extra Work pursuant to Article 22 upon and subject to the terms and conditions of this Contract.

"Characterization" means that certain Initial Building Characterization Study Report prepared for LMDC by The Louis Berger Group, Inc. and dated September 2004, those certain Supplemental Investigation Summary Reports prepared for LMDC by TRC Environmental Corporation dated February 2005, and any other characterization or environmental assessments obtained by LMDC with respect to the Site.

The terms "construction site," "Site," "Site of the Work," "Project Site," "project site," or words of similar import shall mean the Building, the land on which the Building is located, and all areas in and about the Building and/or included within New York City Block 54, Lot 1.

"Contract" is defined in the Deconstruction Contract. The Contract as so defined shall constitute the complete and exclusive statement of the terms of the agreement between the parties.

"Contract Assumptions" means the assumptions set forth in Annex "5" to the Deconstruction Contract. Other assumptions relating to the Project and Contractor's Work are set forth elsewhere in the Contract Documents.

"Contractor's Implementation Plan" means a detailed plan, as more particularly described in the Scope of Work and Specifications, setting forth Contractor's means and methods, techniques, equipment, transportation plan, and all other details as to Contractor's manner and methodology for undertaking and completing all Work required by the Contract Documents, which plan shall be consistent with the Deconstruction Plan and all Legal Requirements (including the Variance).

The term "date of this Contract" or words of similar import mean the date first set forth in the Deconstruction Contract.

The term "days" or "calendar days" in reference to a period of time shall mean consecutive calendar days, Saturdays, Sundays and holidays, included.

"Deconstruction Plan" shall mean the final approved Deconstruction Plan(s) as and when issued by LMDC and approved by the applicable Governmental Authorities, and any drafts or earlier versions of same issued by LMDC pending final approval by applicable Governmental Authorities.

The term "delay" means any and every delay, obstruction, hindrance, interference, loss of productivity and/or inefficiency of any kind.

"Deconstruction" (or "deconstruction") or to "Deconstruct" (or "to deconstruct") or "Demolition" or ("demolition") or "to Demolish" (or "to demolish") or words of similar impact mean the abatement and removal of all interior and exterior materials (including Hazardous Materials), deconstruction and demolition of the Building in accordance with the Contract Documents, including (a) cleaning and preparing the Building for demolition, (b) deconstructing and demolishing the Building, (c) undertaking environmental monitoring inside and outside the Building during the demolition of the Building, (d) transporting all waste and debris from the site and disposing of the same at approved disposal sites in accordance with Legal Requirements, (e) obtaining all permits or permissions in order to complete the foregoing, and (f) performing all other Work required under the Contract Documents—all in accordance with, and subject to, Legal Requirements and all other requirements of this Contract.

"Demolition Consultant" means JS Held, Incorporated, who has been appointed by the Prior Insurers and who has certain access and other rights as set forth herein (or such other person as the Prior Insurers shall designate by Notice to LMDC from time to time).

"Documents" or "documents" are defined as documents, records, books, papers, contracts, memoranda, invoices, correspondence, notes, photographs, drawings, charts, graphs, other writings, recording tapes, recording discs, mechanical or electronic information storage or recording elements (including any information stored in or on a computer hard drive, computer memory or website).

"Environmental Laws" means any federal, state or local law, statute, regulation, ordinance, rule or common law, decrees, orders, judgments or other Legal Requirements relating to pollution or protection of the environment, natural resources or public health, safety and welfare (and any variances or permits under the foregoing) including those pertaining to land use, the release or threatened release of Hazardous Materials, exposure to Hazardous Materials, or generation, use, storage, treatment, disposal, transportation or remediation of Hazardous Materials, including *inter alia*, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Resource Conservation and Recovery Act ("RCRA"), the Clean Water Act, the Clean Air Act, the Toxic Substances Control Act, Occupational Safety and Health Act, regulations of the New York City Department of Environmental Protection, regulations of the New York State Department of Labor, the National Emission Standards for Hazardous Pollutants Asbestos Regulations, the New York State Navigation Law, National Historic Preservation Act and the New York State Historic Preservation Act, each as amended and applicable to the Site as if owned by LMDC or a private party, which is more stringent.

"Excusable Delay" means any delay in the Work caused by: (a) fire, earthquake, explosion, landslide, lightning or flood; or other acts of God; (b) adverse weather not reasonably anticipated; (c) riots or civil disturbance; (d) epidemic; (e) strikes (other than a strike caused by, or within the control of, Contractor or any subcontractor); (f) lockouts by persons other than Contractor or any subcontractor; (g) acts of terrorism; enemy action, or war; (h) blockades; (i) acts or omissions of LMDC; (j) the delay of any Governmental Authority in issuing any permits necessary to perform any Work (provided that Contractor uses commercially reasonable efforts to secure all such permits and does not contribute to the failure of the Governmental Authority to timely issue any such permits); (k) changes in Legal Requirements after the signing of this Contract; and/or (l) any other cause beyond Contractor's control. For the avoidance of doubt, "Excusable Delay" shall not include any delay resulting from (i) uncovering, removal, replacement or repair of defective or incorrect Work previously performed by or under the direction of Contractor; (ii) Work required by reason of Contractor's fault; (iii) any delay occurring during any period when any policy of insurance or Bonds required by the Contract to be secured and maintained by Contractor are not in effect; (iv) Contractor's failure to place timely orders for delivery of labor, materials, equipment or services; (v) Contractor's failure to perform or to take any action with reference to the Work which by industry practice is an obligation of the Contractor or its subcontractors; (vi) Contractor's failure to employ an adequate construction force (number and quality); and (vii) Contractor's failure to appropriately supervise or coordinate the Work of subcontractors; and/or (viii) any other loss of time resulting from Contractor's error, mismanagement, fault, or neglect. References to "Contractor" in this definition specifically also mean and include all "subcontractors" and "Materialmen" (and without limiting similar treatment elsewhere in the Contract). (Article 12 sets forth the conditions for extensions of time for Excusable Delays.)

"Extra Work" means: (a) Work required by a written Change Order issued by LMDC pursuant to Article 22 hereof which adds substantial scope or program to the Scope of Work or (b) Work required to handle, remediate, remove and/or dispose of Non-ACM Building Component HazMat if and to the extent that the same will impact Contractor's Work under this Contract (or the terms set forth in Article 2). For the avoidance of doubt, "Extra Work" does not include (without limitation): (a) development of details reasonably inferable from or implied by, but not explicit in, the Contract Documents (and taking into account Contractor's prior review of the same); (b) the inclusion or exclusion of any item which should be included or excluded in accordance with good construction practice, whether or not shown or set forth in a drawing or specification; (c) any matters resulting from, or attributable to, mistake, error, omission, delay, failure to adequately coordinate, or negligence of Contractor or any of its subcontractors; (d) any Work required by reason of any conditions of any kind on the interior or exterior of the Building, whether or not foreseeable (except that Extra Work may involve Work relating to Non-ACM Building Component HazMat as stated above); (e) any changes in sequencing or site logistics required to maintain Contractor's schedule; (f) any Work required by reason of any change in Legal Requirements (except that Extra Work

may include Work required by a Statutory Change); and/or (g) Work required by reason of any risk or obligation assumed by Contractors in any part of the Contract Documents.

"Final Completion" means the completion of all Work (including Extra Work, if any) required under the Contract Documents, as evidenced by LMDC's issuance of a Certificate of Final Completion.

"Final Completion Date" means \_\_\_\_\_, subject to extensions of time for Excusable Delay pursuant to Article 12.

"General Conditions" means these General Conditions for the Contract. Schedules "A" through "J" and Exhibits "1" through "5" attached hereto are part of these General Conditions as though fully set forth herein.

"Governmental Authority" means the United States, the State of New York, the Port Authority of New York and New Jersey, the City of New York, and any and every other agency, authority, department, board, bureau, court, commission, or instrumentality or political subdivision of any of the foregoing.

"HASp" means the Health and Safety Plan in effect for the Building as it may be modified from time to time (if and only if any such modification is approved by LMDC and all relevant Governmental Authorities) and all requirements referenced in, or incorporated by reference in, said Health and Safety Plan.

"Hazardous Materials" means any substance, pollutant, contaminant, waste or other material defined as hazardous or toxic and regulated as such under any Environmental Law, including ACM.

"Integrity Monitor" means Stier Anderson LLC (or a successor firm designated by LMDC from time to time to provide integrity monitoring services).

"Interim Arbitrator" means the present Executive Director of the Lower Manhattan Construction Command Center and any successor in that office. If the Executive Director of the Lower Manhattan Construction Command Center is unable to act as Interim Arbitrator, the Interim Arbitrator shall be an officer or employee of another Governmental Authority designated by LMDC.

"Legal Requirement" or "Law" or "law" means (a) any statute, ordinance, code, law, rule, regulation, permit, agency notice or order, approval, consent decree, order, decision, determination, or other written requirement, standard or procedure enacted, adopted or applied by any Governmental Authority, or any administrative or judicial interpretation thereof, together with all related amendments, implementing regulations, and reauthorizations including any judgment, writ, order, injunction, award or decree of any court, judge, justice or magistrate, including any arbitrator in any binding arbitration; (b) for the avoidance of doubt, all Environmental Laws; (c) any binding judgment, writ, order, injunction, award or decree of any court, judge, justice, magistrate, administrative agency or other governmental authority (or of any arbitrator in any binding arbitration), implementing, applying or otherwise relating to any item included in clause (a) or (b) above; (d) any variances issued by Governmental Authorities (including all variances issued to date as well as those issued in the future); and (e) the Deconstruction Plan. As used in this Agreement, actions taken "in order to comply with any Legal Requirement," or actions "necessary to comply with any Legal Requirement" shall include actions taken in order to meet a Legal Requirement in the absence of a written order or other such directive mandating such actions. For the avoidance of doubt, as set forth elsewhere in this Contract, Contractor must comply with all Legal Requirements in undertaking and completing the Work and all means and methods relating thereto.

"Lump Sum" is defined in Article 4 of the Deconstruction Contract.

"Materialman" means anyone who furnishes materials, plant or equipment (including temporary or consumable materials) to Contractor or any subcontractor for use at or about the construction site in the performance of Work. "Materialman" or "subcontractor," however, shall exclude Contractor or any subsidiary or parent of Contractor or any person, firm or corporation which has a substantial interest in Contractor or in which Contractor or the parent or the subsidiary of Contractor, or an officer or principal of Contractor or of the parent or the subsidiary of Contractor has a substantial interest, provided, however, that for the purpose of Article 25 hereof the exclusion in this paragraph shall not apply to anyone but Contractor itself.

"Non-ACM Building Component HazMat" means Hazardous Materials other than and not including any and all of the following (irrespective of quantity or location): (i) any and all ACM and/or COPCs located in or on the structure, interior, exterior, and/or components of the Building; (ii) any and all Hazardous Materials identified or referenced in the most recent Waste Sampling and Management Plan section of the Deconstruction Plan; (iii) any and all Hazardous Materials identified in the Characterization, LMDC studies, as-built drawings of the Building or any other drawings of the Building, or any other written reports or written information included as reference materials in the Contract Documents or otherwise given to or made available to Contractor before the date of this Contract; (iv) any and all Hazardous Materials brought onto or released on or about the Site by or on behalf of the Contractor or by any other person or entity on or after the date of this Contract; (v) any and all Hazardous Materials owned, used, leased, caused, created, or released by the Contractor or anyone working on its behalf or otherwise on or about the Site on the Contractor's behalf; and (vi) any and all WTC Dust or any other Hazardous Materials deposited in or on the Building or any portion thereof as a result of the attacks of September 11, 2001.

"Notice" or "notice" means a written notice.

"Owner's Representative" means URS Corporation-New York (or a successor firm designated by LMDC from time to time to provide owner's representation/project representation services).

"Prior Insurers" means, collectively, the two insurers who had previously issued policies of insurance covering the Building - Allianz Global Risks US Insurance Company ("Allianz") and AXA Corporate Solutions Insurance Company as successor to AXA Global Risks US Insurance Company ("AXA").

The phrase "reasonably inferable" means that an experienced contractor in the applicable industry or trade would reasonably believe that an item of Work (whether or not specifically delineated) was required by the particular Project Document in accordance with good practice, standard procedures, or customary expectations of or in such industry or trade.

"RFI" means a request for information issued by Contractor to LMDC or vice-versa.

"Scope of Work" or "SOW" means the Scope of Work attached as Annex "6" to the Deconstruction Contract.

"Shop Drawings" means all drawings, diagrams, illustrations, schedules, including supporting data, which are specifically prepared for this Contract and submitted by Contractor pursuant to the requirements of the Specifications or LMDC to illustrate some portion of the Work. The terms "shop drawings", "placing drawings" and "working drawings" are used interchangeably in this Contract.

"Specifications" is defined in the Deconstruction Contract.

"Statutory Change" means a change in statute enacted after the date of this Contract by the Congress of the United States, the New York State Legislature, or the New York City Council, or a change in rule or regulation formally promulgated by a Governmental Authority. For the avoidance of doubt, Statutory Change does not include any change in interpretations of existing statutes, rules or regulations.

"Subcontractor" or "subcontractor" means every person or party who performs Work (other than or in addition to the furnishing of materials, plant or equipment) at or about the construction site, directly or indirectly (i.e., of whatever tier) for or on behalf of Contractor (and whether or not in privity of contract with Contractor), but shall not include any person who furnished merely their own personal labor or their own personal services. References to "Contractor" in this Contract (whether or not so stated or implied) shall be deemed to include all subcontractors and Materialmen and their employees unless specifically provided otherwise.

"Variance" or "Variances" means the May 11, 2005 New York State Department of Labor ("NYS DOL") Ruling on the Request for Variance, attached hereto as Exhibit 5, as well as any and all variances issued, and/or decisions or variances rendered, after May 11, 2005 by NYSDOL.

"Work" means all structures, equipment, plant, labor, materials and other facilities and all other things necessary or proper for, or incidental to, performing the cleaning and deconstruction of the Building as required under the Contract Documents and otherwise in compliance with the requirements of this Contract. "Work" shall include the furnishing of all labor, services, cranes, hoists, scaffolding, transportation, insurance, temporary facilities, and other things and services of every kind for the full performance and completion of all of Contractor's obligations under this Contract, including documentation and record-keeping requirements; and "performance of Work" and words of similar import shall mean the furnishing of such facilities and the doing of all such things.

"Work required by the Contract Documents in their present form" or words of similar import shall include all Work required by the Contract Documents in their present form (whether or not mentioned in the Contract Documents), and all Work involved in or incidental to the accomplishment of the results required by the Contract Documents in its present form and/or reasonably inferable therefrom (whether or not mentioned therein or shown thereon).

"Work Day" or "Work day" means a day other than a Saturday, a Sunday, a New York State or Federal legal holiday, or September 11<sup>th</sup>. Work Day also includes any other day or period of time when Work must be performed pursuant to Legal Requirements or the Contract Documents.

"Worker" or "worker" means any employee of Contractor or of a subcontractor who performs personal labor or personal services at the construction site.

"WTC Dust" means dust and debris caused by and/or resulting from the terrorist attacks and other events of September 11, 2001.

Whenever they refer to the Work or its performance, "directed," "required," "permitted," "ordered," "designated," "prescribed" and words of similar import shall mean directed, required, permitted, ordered, designated or prescribed by LMDC (as applicable); and "approved," "acceptable," "satisfactory" and words of similar import shall mean approved by or acceptable or satisfactory to LMDC (as applicable); and "necessary," "reasonable," "proper," "correct" and words of similar import shall mean necessary, reasonable, proper or correct in the judgment of LMDC (as applicable), upon and subject to other terms and conditions of this Contract (including Articles 7 and 22 hereof).

Whenever "including," "include," "such as" or words of similar import are used, the specific things thereafter enumerated shall not limit the generality of the things preceding such words and shall be construed to mean, also, "without limitation" or "but not limited to".

Certain other words and phrases are defined elsewhere in the Contract Documents and other parts of the Contract and these General Conditions and (unless otherwise specified) have the same meanings throughout the Contract.

## **2. GENERAL PROVISIONS REGARDING THE WORK**

The enumeration in this Contract and in the Contract Documents of particular things to be furnished or done at Contractor's expense, or without cost or expense to LMDC, or without additional compensation to Contractor shall not be deemed to imply that only things of a nature similar to those enumerated shall be so furnished and done; but, notwithstanding whatever obstacles or unforeseen conditions may arise or be encountered, Contractor shall perform all Work as required under this Contract for the Lump Sum without other compensation other than payments for Extra Work as specifically provided in this Contract.

The Contract Assumptions set forth in Annex "5" to the Deconstruction Contract are incorporated by reference in this Article.

Because of the complexity of the scope of the demolition covered by this Contract, and because of the public attention which is expected to be focused on such demolition, Contractor understands and accepts that such complexity and attention may impact Contractor's schedule; and Contractor has provided for such impact in the Lump Sum and in Contractor's schedule, upon and subject to the terms and conditions of this Contract.

Contractor acknowledges that Contractor has had ample time to review to its satisfaction the Contract Documents; and LMDC makes no warranty or representation whatsoever, express or implied, as to the feasibility, constructability or suitability of the Contract Documents.

Contractor warrants and agrees that the Work shall satisfy the requirements of the Contract Documents and shall (without limitation): (a) conform to the Contract Documents; (b) be of the quality required under the Contract Documents and, if not specified, then of a quality appropriate to a first class governmental or major New York City office building deconstruction project; (c) be free of liens or other encumbrances caused or created by Contractor or any subcontractor of or consultant of Contractor (except to the extent in any particular case that LMDC has failed to make a specific payment as and when properly due under this Contract which is the basis for a particular lien); and (d) comply with, and be cleaned and deconstructed by means and methods complying with, Laws and applicable requirements of the insurance policies to be obtained pursuant to Article 34 hereof.

LMDC has caused to be prepared a Deconstruction Plan, which defines the main requirements for the cleaning, abatement, removal and disposal of interior and exterior materials, and the Deconstruction of the Building. LMDC has also obtained from certain Governmental Authorities one or more Variances relating to various Legal Requirements applicable to Contractor's Work under this Contract. Contractor will be responsible for preparing Contractor's Implementation Plan setting forth Contractor's means and methods, techniques, equipment, transportation plan, and all other details as to Contractor's manner and methodology for undertaking and completing all Work required by the Contract Documents, which plan shall be consistent with the Deconstruction Plan and all Legal Requirements (including the Variances). Contractor's Implementation Plan shall be subject to LMDC's review and acceptance pursuant to this Contract. Contractor shall also be responsible for obtaining any and every permit of any Governmental

Authority required for approval of Contractor's Implementation Plan and the performance and completion of the Work.

Notwithstanding anything to the contrary in these Contract Documents, if Contractor discovers any Non-ACM Building Component HazMat which will impact Contractor's Work under this Contract, Contractor will notify LMDC immediately and will then prepare and submit to LMDC and all necessary Governmental Authorities a plan for handling, remediation, removal, and disposal of the same in accordance with all Legal Requirements. Upon obtaining approval of such plan by LMDC and the necessary Governmental Authorities, Contractor will handle, remediate, remove, and dispose of such Non-ACM Building Component HazMat in accordance with such approved plan and all Legal Requirements; and the foregoing Work shall be Extra Work for which LMDC will issue a Change Order pursuant to Article 7 of these General Conditions.

Contractor agrees that amounts received by Contractor from LMDC shall be held in trust in accordance with the New York Lien Law and shall be used first (i.e., before application for any other purpose) to pay for labor, materials, services, or equipment furnished in connection with the Work, or any portion thereof, and for premiums on the Bonds and insurance policies required to be maintained by Contractor.

For each proposed waste site and for each proposed transporter of waste, Contractor shall provide the information set forth in Schedule "J" attached hereto. Contractor shall not utilize any waste site or transporter without LMDC's prior written consent.

Unless specified to the contrary in other provisions of the Contract, Contractor shall perform the Work in a good and workerlike manner in accordance with current good standards of industry practice and shall supervise, direct and coordinate all portions of the Work competently and efficiently. Subject to LMDC's right to approve Contractor's Implementation Plan, Contractor shall have exclusive responsibility for all applications, means, methods, techniques, sequences, and procedures necessary or desirable for the correct, prompt, and orderly prosecution and completion of the Work as required by the Contract, subject, however, to LMDC's right to reject means and methods proposed by Contractor which: (a) will constitute or create a hazard to the Work or to persons or property; (b) do not comply with Legal Requirements and/or (c) will not result in Deconstruction in accordance with the schedule and other requirements of the Contract Documents. LMDC's approval of (or failure to reject) any of Contractor's means and methods of construction and/or demolition for the reasons specified in (a), (b), or (c) above shall not relieve Contractor of any obligations under the Contract or entitle Contractor to any Extra Payment or other additional compensation.

### **3. ACCESS TO RECORDS; OWNERSHIP OF DOCUMENTS**

Contractor shall keep and maintain at Contractor's office at the Site the following (the "Books and Records"):

- A. complete accounts and cost records of all payments by LMDC to Contractor and/or by Contractor to any subcontractor or other person in connection with the Work, including records of all Extra Work performed;
- B. copies of all documents of any kind prepared, issued, or received by Contractor in connection with the Work or the Project including all contract documents, bulletins, requests for information, bonds, subcontracts, purchase orders, correspondence (including correspondence with government entities or relating to funding), claims, anticipated cost reports, shop drawings, change orders, change order logs, handbooks, warranties, guarantees, operating manuals, rate manuals, technical standards and specifications,

instructions, permits, licenses, certificates, inspection/investigation reports, notices of lien, certifications of "Prevailing Rate of Wage," documents served in legal proceedings, and insurance documentation;

- C. all books of account, bills, vouchers, invoices, payroll records, receiving documents, time books, job diaries and reports, cost analyses, cancelled checks, sales or excise tax filings and returns (or exemptions therefrom), other government filings, and other documents showing acts or transactions in connection with (or relating to or arising by reason of) the Work, this Contract, or each subcontract;
- D. samples received;
- E. Project schedules (and all revisions thereof);
- F. photographs and/or a video record of the Work (as required under the Specifications);
- G. environmental samples, test results, laboratory data, air monitoring results, and any and all other similar information; and
- H. written policies and procedures; subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, etc., for the Project); original estimates; estimating work sheets; change order files (including documentation covering negotiated settlements); backcharge logs and supporting documentation; general ledger entries detailing cash and trade discounts earned; credits, rebates and refunds of any kind and type whatsoever including without limitation equipment rental rebates, insurance rebates and dividends; and any other Contractor records which may have a bearing on matters of interest to LMDC in connection with the Work.

The Book and Records shall be open to inspection and subject to audit and/or reproduction at any time upon reasonable notice, except in an emergency, during normal business hours by LMDC and its authorized representatives to the extent necessary to adequately permit evaluation and verification of Contractor's compliance with all terms, conditions, obligations and requirements of the Contract and compliance with provisions for pricing and submitting Change Orders, invoices and claims submitted by the Contractor or any of its payees. In those situations where Contractor's records have been generated from computerized data (whether mainframe, mini-computer, or personal computer based computer systems), Contractor agrees to provide LMDC's representatives with extracts of data files in computer readable format on data disks or suitable alternative computer data exchange formats.

Contractor shall require all Subcontractors and other payees (including material suppliers and subconsultants) when working under any type of contract (including lump sum agreements, unit price agreements, time and material agreements, cost plus agreements or lump sum major material purchase orders) to comply with the provisions of this Article by insertion of the requirements hereof in the written agreement between Contractor and such payee. Such requirements shall include flow-down audit provisions in substantially the same form as these provisions.

Contractor shall cooperate fully and shall cause all of Contractor's payees to cooperate fully in furnishing or in making available to LMDC from time to time whenever requested in an expeditious manner any and all such information, materials and data required by this Article.

LMDC or its authorized representatives shall have access to Contractor's facilities near 130 Liberty Street and at the project trailer, shall be allowed to interview all current or former employees to discuss matters

pertinent to the performance of this Contract, shall have access to all necessary Documents, and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with this Article.

All plans, drawings, specifications, reports, tests, and other documents of any kind, and all samples, shop drawings, and other submittals, prepared by Contractor or any subcontractor (including any licensed engineer or other licensed professional engaged by Contractor for any aspect of this Project) in connection with the Work, together with all other Books and Records, and all rights in the foregoing (including rights of use, copyright, and trademark), shall be and remain the sole and confidential property of LMDC (whether or not LMDC undertakes, terminates, or completes the Work, or this Contract is terminated for any reason whatsoever, with or without cause, and regardless of any disputes between the parties); and, for the avoidance of doubt, Contractor hereby irrevocably and unconditionally assigns all the foregoing to LMDC. Submission or description of any document (whether or not authorized) described in the foregoing sentence to any person or Governmental Authority for purposes of, or in connection with, the Work shall not be construed as publication in derogation of LMDC's rights under this Contract (but this sentence shall not be construed to authorize any submission or description of a document other than as permitted by this Contract).

As a part of and a condition to the issuance of the Certificate of Final Completion (or upon any earlier termination of this Contract by either LMDC, or Contractor for any reason whatsoever or at any other time at LMDC's request for any reason), Contractor shall deliver to LMDC a complete set of the Books and Records. Upon prior notice to LMDC from time to time, Contractor shall have access for six (6) years to the Books and Records which are stored by LMDC after completion of the Work under this Contract.

No provision in this Contract giving LMDC a right of access to records and documents is intended to impair or affect any right of access to records and documents which LMDC would have in the absence of such provision.

In the event that any audit pursuant to this Article discloses overcharges by Contractor or any Subcontractor greater than 5% of the total amount requisitioned by Contractor for any particular month and paid by LMDC, Contractor shall reimburse LMDC upon demand for LMDC's reasonable costs of conducting the audit that disclosed such overcharges; and Contractor shall also repay to LMDC upon demand the full amount of any such overcharge, whether more or less than such 5%. (Alternatively, LMDC may, in its sole discretion, take a credit against amounts next becoming due and payable to Contractor for the amount of any such overcharge and for the reasonable expenses of conducting such audit.)

For purposes of this Article, references to "LMDC" shall be deemed to include the Prior Insurers, the Owner's Representative, the Integrity Monitor and other auditors, the United States Department of Housing and Urban Development ("HUD"), and their authorized representatives.

For the avoidance of doubt, each subcontractor shall also be subject to and bound by the provisions of this Article.

#### **4. EXEMPTION FROM NEW YORK SALES TAXES**

LMDC, a subsidiary of Empire State Development Corporation, an urban development corporation, is exempt from the payment of New York State and City sales and use taxes, as provided in Sections 1116(a) and 1230(a) of the New York Tax Law.

LMDC may delegate agency authority to Contractor for the purchase of any materials, equipment or supplies, or the rental of any equipment, required for the performance of the Work, and Contractor hereby expressly consents and accepts such appointment if made. Contractor may delegate such agency to Contractor's subcontractors, in which event the Contractor shall secure the subcontractor's express consent to such appointment.

LMDC will provide Contractor with an exempt organization certificate to comply with the provisions of the New York Tax Law. Contractor shall furnish all subcontractors and other vendors with LMDC's exempt organization certification.

Contractor represents and warrants to LMDC that Contractor has included no sales tax on any materials, equipment, supplies, or rental of equipment within the Lump Sum.

All purchase orders to be issued for the purchase of materials, equipment, and supplies or to be issued for the rental of equipment required to perform the Work shall clearly state that Contractor is acting as the agent of the LMDC and shall specifically identify LMDC as the exempt organization purchaser. Further, the purchases shall be billed or invoiced by the vendor to LMDC or to the Contractor as agent for LMDC.

All property purchased for the Work by Contractor or its subcontractor as agent for the LMDC shall become property of LMDC upon such purchase, and title to such property shall at no time vest on the Contractor or any subcontractor.

The delivery of all materials, equipment and supplies shall be made to the Site; or under certain circumstances (such as where the materials require additional fabrication before installation on the Site or for storage to protect the materials from theft or vandalism prior to use at the Site) deliveries of such materials, equipment and supplies may be made to a place other than the Site, providing the ultimate delivery of such materials, equipment and supplies is made to the Site. Where delivery is made to a place other than the job site, the purchases must be billed or invoiced by the vendor to LMDC or to Contractor as agent, identify the place of delivery, LMDC's full name and address and the Site location where the materials will ultimately be delivered for installation.

The agency created in this Article shall continue until terminated by either LMDC or the Contractor. Such termination shall be effective after three days written notice, in which event neither the Contractor nor any subcontractor shall represent itself as agent for the LMDC, and all subsequent purchase orders shall be modified accordingly. The agency created in this Article is limited to its terms and shall not be construed as having any broader meaning. Any materials, equipment and supplies purchased, rented or leased pursuant to this agency shall be deemed part of the "Work" for purposes of this Contract. This agency shall not be deemed an authorization by LMDC to Contractor to purchase, rent or lease or provide any materials, equipment, tools, or services, except those required for the Work pursuant to this Contract.

## **5. COORDINATION WITH OTHER CONTRACTORS**

LMDC shall not be liable for any damages suffered by Contractor by reason of the failure or refusal of any other contractor or subcontractor promptly to comply with the directives issued by LMDC or any construction manager related to coordination or scheduling of the work, including acceleration. Should Contractor sustain any damage resulting from any such failure or refusal of another contractor, Contractor agrees to have no claim against LMDC for such damage but shall have a right to recover such damage from the contractor at fault. Contractor further agrees to accept liability and responsibility to pay for any costs or damages sustained by any other contractor on the Project arising out of Contractor's failure or refusal to comply with directives issued by LMDC related to coordination or scheduling, including acceleration. Similar provisions establishing the right to recover damages for failure or refusal to comply

with the directives of LMDC as set forth above shall be contained in each of LMDC's subcontracts for the Project.

In addition, Contractor shall bear all risk, delay costs and liability resulting from the lack of proper coordination of Contractor's subcontractors.

## **CHAPTER II**

### **ADJUSTMENTS AND PAYMENTS**

#### **6. DELETED WORK**

If any Work required by the Contract Documents in their present form shall be deleted or reduced, such deletion or reduction shall be reflected in a Change Order issued by LMDC; and, if Contractor and LMDC do not agree on the amount of the reduction in the Lump Sum by reason of such deletion or reduction, Contractor's compensation shall be reduced by an amount equal to the actual cost in money of the labor and materials that would have been required for the deleted or reduced Work (without mark-up), netted against any compensation for Extra Work required by the same change order (for clarification, Extra Work shall be priced in accordance with Article 7; and the adjustment for deleted or reduced Work shall then be subtracted from such computation of Extra Work).

LMDC shall have authority to agree in writing with Contractor for adjustments by way of reduction in the Lump Sum in lieu of those for which provision is heretofore made in this Article.

#### **7. COMPENSATION FOR EXTRA WORK**

LMDC and Contractor may agree upon lump sum or other compensation for Extra Work in lieu of the compensation for which provision is hereinafter made in this Article.

If Contractor and LMDC do not agree on a lump sum or other compensation for particular Extra Work, and the Extra Work is performed, the compensation of Contractor and the applicable subcontractor(s) shall be increased solely by an amount equal to the actual net cost in money of the labor and materials required for such Extra Work plus fifteen percent (15%) of such net cost for all overhead, profit and general conditions<sup>1</sup> costs plus actual incremental costs for bond and insurance costs of Contractor, and first tier subcontractors only, for such Extra Work.

In proposing a lump sum or other compensation for Extra Work for consideration by LMDC, Contractor shall in any event prepare and present to LMDC an estimate of the costs for such Extra Work computed pursuant to the foregoing paragraph to demonstrate the reasonableness of Contractor's proposal.

As used in this Article (and in this Article only):

"Labor" means foremen, surveyors, laborers, mechanics and other employees below the rank of superintendent, exclusive of timekeepers, directly employed at the construction site, whether employed by Contractor or by its subcontractors, subject to LMDC's approval (not to be unreasonably withheld) as to what employees of any category are "required for Extra Work" and as to the portion of their time allotted to Extra Work; and "cost of labor" means the wages actually paid to and received by such employees plus

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<sup>1</sup> As used herein, "general conditions" means all labor, materials, expenses and costs incurred by the Contractor (or the subcontractors, as applicable) other than incremental increases in bond and insurance costs for Contractor for Extra Work, to execute the Work which is not covered (or intended to be covered) by a subcontract and which has been approved by LMDC in a Change Order.

a proper proportion of (a) premiums, if any, actually paid by the employer for workers' compensation insurance upon the basis of such wages, (b) vacation allowances and union dues and assessments which the employer actually pays pursuant to contractual obligation upon the basis of such wages, and (c) taxes actually paid by the employer pursuant to law upon the basis of such wages. "Employees" as used above means only the employees of one employer.

"Materials" means temporary and consumable materials as well as permanent materials; and "cost of materials" means the price (including taxes actually paid by Contractor pursuant to law upon the basis of such materials) for which such materials are sold for cash by the manufacturers or producers thereof, or by regular dealers therein, whether or not such materials are purchased directly from the manufacturer, producer or dealer (or if Contractor is the manufacturer or producer thereof, the reasonable cost to Contractor of the manufacture and production), plus the reasonable cost of delivering such materials to the construction site in the event that the price paid to the manufacturer, producer or dealer does not include delivery and in case of temporary materials, less their salvage value, if any.

The hourly rates for Contractor's own Labor are set forth in Annex "3" to the Deconstruction Contract.

In reference to an item of equipment, if the particular item of equipment is actually utilized at the construction site by Contractor or subcontractors under this Contract on a Saturday, Sunday or legal holiday said day shall be deemed a Work day.

The rental for equipment, whether owned by Contractor or subcontractors or rented from others and notwithstanding the actual price of any rental or actual costs associated with such equipment, shall be computed by LMDC on the basis of the following:

A.

- 1.) Hourly rental for those items of equipment listed in the "Rental Rate Blue Book" (published by Machinery Information Division, K-III Directory Corporation, 1735 Technology Drive, Suite 410, San Jose, California 95131-2398), (hereinafter called "the Blue Book") shall be 100% of the applicable rates as listed in said book, reduced to an hourly basis (see formula below) except that such applicable rates shall be reduced by 50% for all hours of rental payable hereunder in excess of 8 hours each day. The edition of this publication to be used shall be the one in effect on the date of the actual rental of the equipment. The "Estimated Operating Cost per Hour" as set forth for such item of equipment in the Blue Book shall be added to the hourly rental for each hour that such equipment is actually engaged in performing Extra Work. No amount for operating cost will be allowed during periods when such equipment is not actually engaged in performing Extra Work (i.e., standby rental time). None of the provisions of the Blue Book shall be deemed referred to or included in this Contract except as specifically set forth in this Article.
- 2.) If no listing of rental rate and/or hourly operating cost for the item of equipment is in the Blue Book, LMDC shall determine the reasonable rate of rental and/or hourly operating cost of the particular item of equipment by such other means as LMDC finds appropriate.

- B. When utilizing the rental rates appearing in the Blue Book, LMDC shall determine the applicable rate and the hourly rental determined therefrom by applying the following criteria:

- 1.) The rate to be applied for an item of equipment used on a particular Extra Work order shall be the daily, weekly or monthly rates from the foregoing publication based on the total number of Work days or portions thereof that a particular item of equipment or substitute item of equipment is at the construction site for use by Contractor or subcontractors whether under this Contract or any other contract with LMDC. Included within this period will be (i) Work days of idleness of the equipment at the construction site whether such idleness results from acts or omissions of Contractor, LMDC or third persons, breakdowns in the equipment or any other cause, (ii) Work days on which the equipment is removed from the construction site solely to enable the performance of repairs thereon, and (iii) Work days intervening between the removal of equipment from the construction site for repairs and the delivery to the construction site of the same or substitute equipment. The number of Work days in the period for each rate shall be as indicated below:

Three Work days or less.	Daily Rate
More than three Work days but not more than fifteen Work days.	Weekly Rate
More than fifteen Work days.	Monthly Rate

The pro rata portion which one hour bears to the applicable rate shall be determined in accordance with the following formula:

Hourly rate based on daily rental.	1/8 of daily rental from Blue Book
Hourly rate based on weekly rental.	1/40 of weekly rental from Blue Book
Hourly rate based on monthly rental.	1/176 of monthly rental from Blue Book

- 2.) The rental rate shall be multiplied by the applicable regional adjustment factor shown for such item of equipment in the Blue Book. The adjustment factor shall not apply to the hourly operating cost.
- 3.) If LMDC should determine that the nature or size of the equipment used by Contractor in connection with Extra Work is larger or more elaborate, as the case may be, than the size or nature of the minimum equipment determined by LMDC to be suitable for the Extra Work, the reasonable rental will not be based upon the equipment used by Contractor but will be based on the smallest or least elaborate equipment determined by LMDC to have been suitable for the performance of the Extra Work, unless Contractor can demonstrate improved economy or scheduling by utilizing such larger or more elaborate equipment.
- (a) In the case of equipment utilized only for Extra Work: (a) in addition to amounts determined as provided in subparagraphs A and B above, there will be added to the rental as computed above the taxes on the rental actually paid by Contractor or subcontractor and the reasonable cost of transporting such equipment to and from the construction site, and (b) notwithstanding the number of hours during which such equipment is utilized, the minimum rental therefor will be for a period of eight hours. The rates to be used are the Blue Book rates applicable to work

performed in New York City. The Blue Book additions applicable to equipment subject to extraordinarily hard usage are expressly applicable.

In computing Contractor's compensation insofar as it is based upon Extra Work, and notwithstanding any provision to the contrary appearing in the Blue Book, no consideration shall be given to any items of cost or expense not expressly set forth above, it being expressly agreed that the costs and percentage additions hereinbefore provided cover items of cost and expense to Contractor of every type whatsoever, including administration, overhead, taxes (other than those enumerated above), clean-up, consumables including gas and oil, drafting (including printing or other reproduction), coordination, field measurements, maintenance, repairs, insurance, profit to Contractor and small tools.

Whenever any Extra Work is performed (unless LMDC has approved in writing a lump sum for such Extra Work), Contractor shall, at the end of each day, submit to LMDC (a) daily time slips showing the name and number of each workman employed on such Work, the number of hours which he is employed thereon, the character of his duties, and the wages to be paid to him, (b) a memorandum showing the rates and amounts of workers' compensation insurance premiums, if any, and state and federal taxes based on such wages, and vacation allowances and union dues and assessments which the employer actually pays pursuant to contractual obligation upon the basis of such wages (c) a memorandum showing the amount and character of the materials furnished for such Work, from whom they were purchased and the amount to be paid therefor, and (d) a memorandum of equipment used in the performance of such Work, together with the rental claimed therefor. Such memoranda and time slips are for the purpose of enabling LMDC to determine the amounts to be paid by LMDC under this Article; and accordingly, they shall constitute a condition precedent to such payment and the failure of Contractor to furnish them with respect to any Work shall constitute a conclusive and binding determination on Contractor's part that such Work is not Extra Work and shall constitute a waiver by Contractor of claims for payment for such Work. In the event that LMDC and Contractor shall agree in writing upon a lump sum or other compensation for Extra Work in lieu of compensation as provided in the second paragraph of this Article, the daily time slips and memoranda required by this paragraph shall not be required subsequent to the date on which such agreement has been reached.

Contractor shall maintain a register of Change Orders in a form approved by LMDC and a cumulative record of changes in the Project schedule and scheduled dates for completion which shows the cumulative costs of Change Orders, the reasons/causes for each Change Order, and the compensation by reason of each Change Order. Contractor shall give LMDC a monthly report showing all Change Orders claimed or pending as of the date of such report and all unresolved claims for extra payment by subcontractors. This report shall reflect any and all pending claims, whether written or otherwise presented to Contractor and/or LMDC, as of the date of such report. All pending claims shall be annotated by Contractor to include Contractor's assessment of the claim and the potential impact of the claim on the Project schedule.

## **8. MONTHLY PAYMENTS; MONTHLY REPORTS**

On or about the first day of each month, Contractor shall furnish to LMDC and to the Owner's Representative:

- A. a requisition for payment showing the percentage of Work completed during the prior month and for the entire Project to date, itemized separately by line-item according to the Schedule of Values set forth in Annex "2" to the Deconstruction Contract; and a separate section of such requisition shall show the amount of Extra Work (if any) performed during the period covered by the requisition and the compensation due the Contractor under the terms of the applicable Change Order;

- B. a certification by Contractor that the payments so requested are properly due and payable under the Contract;
- C. a certification in writing in such form as may be required pursuant to Article 21 hereof that Contractor has paid and caused Contractor's subcontractors to pay at least the prevailing rate of wage and supplements required by such Article;
- D. Contractor's affidavit and waivers of lien from Contractor and every subcontractor (in the forms set forth in Exhibit "2") covering all payments to Contractor pursuant to previous requisitions; and
- E. any other documents specifically required to be delivered with Contractor's monthly requisition pursuant to this Contract.

Five (5) Work Days before submitting the requisition as described above, Contractor shall submit to LMDC a "pencil draft" of such requisition with as much detail as possible and LMDC shall provide Contractor with LMDC's comments to the "pencil draft". Within ten (10) Work Days after submission of the final requisition, LMDC will either approve or disapprove (in whole or in part) or request additional information with respect to such requisition. LMDC shall pay Contractor the undisputed sums determined by LMDC to be properly due and payable to Contractor, minus, however, retainage in the amount of five percent (5%) of such sum and minus all prior advances and payments to Contractor or for Contractor's account, within thirty days after LMDC has approved the respective requisition covering such sums. LMDC shall pay Contractor the undisputed amount of the foregoing retainage pursuant to Article 9 after Final Completion has been achieved.

Within seven days of receipt of any sum attributable to Work performed by a subcontractor or materialman or within such later period as is provided in the subcontract or purchase agreement, Contractor shall pay to such subcontractor or materialman (and each of them shall pay their respective subcontractors and Materialmen, as applicable) said sum, less such amount, if any, as Contractor is authorized to retain under the subcontract or purchase agreement. If (i) LMDC receives notice that Contractor has, without LMDC's approval, failed to pay any subcontractor or Materialman an amount properly due to such subcontractor or Materialman from funds previously paid by LMDC to Contractor within such seven day period and (ii) Contractor fails to persuade LMDC (in LMDC's reasonable judgment) that the funds are withheld for good cause, then, within seven days after Notice from LMDC, Contractor shall immediately pay the amount properly due to such subcontractor or Materialman, or (if LMDC so specifies) shall return such funds to LMDC with interest at an annual rate equal to the Prime Rate published by the Wall Street Journal plus one percentage point from the date when due. Subject to the proviso set forth below, LMDC shall thereafter have the right, in its sole discretion, to directly pay any and/or all subcontractors and Materialmen who perform Work for or furnish material to Contractor in connection with the Work of this Contract; and if LMDC makes any such payments to the applicable Contractor or Materialman, LMDC shall have the right to deduct any and all such payments from any amounts due from LMDC to Contractor pursuant to this Contract. For the avoidance of doubt, any payment made directly by LMDC to a subcontractor or Materialman shall not be construed to place LMDC in privity of contract with such subcontractor or Materialman or release Contractor from any responsibility or other authority under this Contract.

Prior to approving any amount for payment hereunder, LMDC may require that Contractor submit a certification accurately and fully setting forth the total amount due and payable to each subcontractor and supplier for Work performed or materials provided by such subcontractor or supplier in connection with the Work of this Contract. Any payment made by LMDC to a subcontractor or supplier pursuant to the provisions of this Article shall be made in reliance upon such certification and all such payments shall be

considered as advances to Contractor of the compensation payable hereunder. No such payment shall relieve Contractor of any of its obligations hereunder.

LMDC is entitled to, and Contractor shall pay to LMDC, any credits, rebates, refunds, discounts, rewards or allowances obtained from any consultant, Subcontractor, vendor, or equipment or material supplier on account of the Work, whether received by Contractor during the performance, or after the completion, of the Work.

Within ten (10) days after signing this Contract, Contractor shall submit to LMDC a listing and copies of all subcontract and material supply agreements entered into by Contractor for the performance of Work required by this Contract. Such listing shall include the names and addresses of each such subcontractor and supplier, the amounts payable under each such agreement, and the hourly rates thereunder. As and when any modifications are made to such agreements or any additional subcontracts or supply agreements are entered into, Contractor shall inform LMDC of such and shall indicate the amounts payable thereunder.

Nothing contained herein shall be deemed to create any additional rights in such subcontractors or suppliers or to alter the rights of LMDC as such are set forth in Article 10 hereof.

On or before the 10th day of each month, Contractor shall deliver to LMDC, with respect to the prior month, the following ("Contractor's Monthly Report"):

- 1.) a detailed summary of all Change Orders approved by LMDC, and any Change Orders requested by Contractor to date;
- 2.) all environmental testing results, air-quality results or similar air monitoring reports prepared or received by Contractor during the prior month;
- 3.) any other documents or information which LMDC reasonably requests (including evidence of amounts previously paid or owing to any subcontractor or employee of Contractor);
- 4.) any other reports or information required under this Contract or by Legal Requirements as of the applicable date or otherwise reasonably requested by LMDC;
- 5.) a cumulative list of delays to the Work (whether Excusable Delays or otherwise);
- 6.) a list of all RFIs previously submitted to or by Contractor;
- 7.) a report of all sales-tax exempt purchases;
- 8.) the reports required under Schedule C hereto; and
- 9.) the Section 3 Workforce Report, substantially in the form attached hereto as Exhibit A-1.

It shall be a condition to payment of Contractor's payment requisition for the current month that Contractor has submitted Contractor's Monthly Report for the prior month.

## 9. FINAL PAYMENT

After the delivery of the Certificate of Final Completion and upon receipt from LMDC of such information as may be required, LMDC shall determine and certify to Contractor the total compensation earned by Contractor and also the amount of the retainage then held by LMDC.

Contractor shall thereupon, as a condition to receiving Final Payment: (i) certify to LMDC in writing, in such form as may be required pursuant to Article 21 hereunder, that Contractor has paid and caused Contractor's subcontractors to pay at least the prevailing rate of wage and supplements required by such Article; (ii) furnish to LMDC a sworn statement detailing all outstanding claims of Contractor against LMDC relating to the Work, including the specified liquidated amount sought in satisfaction of each such claim; (iii) furnish to LMDC a detailed, true, correct, and complete sworn statement of all claims, just and unjust, of subcontractors, Materialmen and other third persons then outstanding and which Contractor has reason to believe may thereafter be made on account of the Work; and (iv) deliver the Books and Records to LMDC as required under Article 3.

Within sixty days after issuance of such certificate of total compensation earned (or within 60 days after receipt of the documents provided for in the immediately preceding paragraph, if required), and after Contractor has delivered to LMDC general releases and final waivers of lien (in form approved by LMDC) from every subcontractor engaged by Contractor for Work under this Contract (and in any event from all parties listed in Contractor's sworn statement as having outstanding claims), LMDC shall pay to Contractor the amount of the retainage specified in the foregoing certificate and any other amount due and payable to Contractor as specified in such certificate, less all other payments and advances whatsoever to or for the account of Contractor (including a credit to LMDC for the amount of any unspent Allowance), except that LMDC shall not subtract amounts for claims against which Contractor is obligated to indemnify LMDC pursuant to this Contract and for which adequate insurance coverage is available, in LMDC's determination, provided that the applicable insurers have agreed in writing with LMDC that such claim(s) is (are) covered by the respective insurance policy and have accepted in writing the obligation to defend the same.

The acceptance by Contractor, or by anyone claiming by or through Contractor, of Final Payment shall be and shall operate as a release to LMDC of all claims and of all liability to Contractor for all things done or furnished in connection with the Contract and for every act and neglect of LMDC and others relating to or arising out of the Contract, including claims arising out of breach of contract, *quantum meruit* and claims based on claims of third persons. No payment, however, final or otherwise, shall operate to release Contractor or Contractor's sureties from any obligations in connection with this Contract or the Performance and Payment Bond.

Contractor's agreement as provided in the immediately preceding paragraph above shall be deemed to be based upon the consideration forming part of this Contract as a whole and not to be gratuitous; but in any event even if deemed gratuitous and without consideration, such agreement as provided in the immediately preceding paragraph above shall nevertheless be effective. Such release shall include all claims, whether or not in litigation and even though still under consideration by LMDC or the Owner's Representative. Such release shall be effective notwithstanding any purported reservation of right by Contractor to preserve such claim. The acceptance of any check designated as "Final Payment" or bearing any similar designation shall be conclusively presumed to demonstrate the intent of Contractor that such payment was intended to be accepted as final, with the consequences provided in this Article, notwithstanding any purported reservation of rights.

Contractor agrees that Contractor shall not be entitled to, and hereby waives any right Contractor might otherwise have to, and shall not seek any judgment whether under this Contract or otherwise for any such

Final Payment or for an amount equivalent thereto or based thereon, or for any part thereof, if such judgment would have the effect of varying, setting aside, disregarding or making inapplicable the terms of this Article 9 or have the effect in any way of entitling Contractor to accept such Final Payment or an amount equivalent thereto or based thereon or any part thereof other than in the same fashion as a voluntary acceptance of a Final Payment subject to all the terms of this Contract including this Article 9.

#### **10. WITHHOLDING OF PAYMENTS**

If (1) Contractor fails to perform any of Contractor's obligations under this Contract (including Contractor's obligation to LMDC to pay any claim lawfully made against Contractor by any Materialman, subcontractor or Worker or other person which arises out of or in connection with the performance of this Contract or any other agreement with LMDC) or (2) any claim (just or unjust) which arises out of or in connection with this Contract is made against LMDC by any person or entity or (3) any subcontractor of Contractor under this Contract fails to pay any claims lawfully made against such subcontractor by any Materialman, subcontractor, worker or other person which arises out of or in connection with this Contract, or (4) if in the opinion of LMDC any of the aforesaid contingencies is likely to arise; then, in any such event, LMDC shall have the right, in its discretion, to withhold out of any payment (final or otherwise and even though such payment has already been certified as due) such sums as LMDC may deem ample to protect LMDC against delay or loss or to assure the payment of just claims of third persons, and to apply such sums in such manner as LMDC may deem proper to secure such protection or satisfy such claims. All sums so applied shall be deducted from Contractor's compensation due under this Contract. Omission by LMDC to withhold out of any payment, final or otherwise, a sum for any of the above contingencies, even though such contingency has occurred at the time of such payment, shall not be deemed to indicate that LMDC does not intend to exercise its right with respect to such contingency. Neither the above provisions for rights of LMDC to withhold and apply monies nor any exercise or attempted exercise of, or omission to exercise, such rights by LMDC shall create any obligation of any kind to such Materialmen, subcontractors, workmen or other third persons. At such time as (and to the extent that) the cause of a withholding of payment under this Article is removed, LMDC shall pay Contractor the relevant amount so withheld.

Until actual payment to Contractor, Contractor's right to any amount to be paid under this Contract (even though such amount has already been certified as due) shall be subordinate to the rights of LMDC under this Article 10.

### **CHAPTER III**

#### **PROVISIONS RELATING TO TIME**

#### **11. [OMITTED]**

#### **12. EXTENSIONS OF TIME FOR EXCUSABLE DELAYS**

The Final Completion Date shall be extended (subject to the conditions of this Article 12) if Contractor is necessarily delayed in achieving Final Completion of all Work by the Final Completion Date solely and directly by an Excusable Delay (or Excusable Delays) and upon Contractor's compliance with the requirements of this Article.

In any event, even though an Excusable Delay meets all the above conditions, an extension of time for Contractor's performance shall be granted only to the extent that (i) the performance of the Work and the Final Completion Date are actually and necessarily delayed and (ii) the effect of such cause cannot be anticipated and avoided or mitigated by the exercise of reasonable precautions, efforts and measures

(including planning, scheduling and rescheduling), whether before or after the occurrence of the cause of such delay, and an extension shall not be granted for a cause of delay which would not have affected the performance of the Contract were it not for Contractor's error, mismanagement, fault, or neglect or for other delay for which Contractor is not entitled to an extension of time.

The period of any extension of time shall be that necessary to make up the time actually lost, subject to the provisions of this Article, and shall be only for the portion of the Work actually delayed. LMDC may defer all or part of its decision on an extension pending LMDC's receipt from Contractor of all information reasonably necessary for LMDC's decision. Contractor shall not be entitled to a separate extension of time for each of several causes of delay operating concurrently but only for the overall delay regardless of the number of causes.

No Work shall be performed outside of Normal Working Hours without LMDC's approval; and, subject to other Excusable Delays, Contractor shall not be entitled to an extension of time or an adjustment of the Lump Sum if Contractor is unable to complete the Work before the Final Completion Date performing the Work during Normal Working Hours. However, this paragraph shall not be deemed to limit Contractor's obligation to provide additional labor (and overtime labor subject to LMDC's approval) if and as needed for Contractor to maintain schedule and achieve Final Completion on or before the Final Completion Date.

As a condition precedent to any extension of time, Contractor shall give written notice to LMDC within 15 days after the time when Contractor knows or should know of any cause which might under any circumstances result in an Excusable Delay for which Contractor claims or may claim an extension of time (including those causes which LMDC is responsible for or has knowledge of), specifically stating that an extension is or may be claimed, identifying such cause and describing, as fully as practicable at the time, the nature and expected duration of the delay and its effect on the various portions of the Contract (and for this purpose, but without limitation, Contractor shall submit a time impact analysis showing the impact of the subject delay on the CPM Schedule). Since the possible necessity for an extension of time may materially alter the scheduling, plans and other actions of LMDC, and since, with sufficient opportunity, LMDC might, if it so elects, attempt to mitigate the effect of a delay for which an extension of time might be claimed, and since merely oral notice may cause disputes as to the existence or substance thereof, the giving of written notice as above required shall be of the essence of Contractor's obligations and failure of Contractor to give written notice within the time, and containing the information, specified above shall be a conclusive waiver of an extension of time in the particular case.

It shall in all cases be presumed that no extension, or further extension, of time is due unless Contractor shall affirmatively demonstrate to the reasonable satisfaction of LMDC that it is so due. To this end Contractor shall maintain adequate records supporting any claim for an extension of time, and in the absence of such records, the foregoing presumption shall be deemed conclusive.

**13. [OMITTED]**

**14. DELAYS TO CONTRACTOR**

Except for extensions of time for Excusable Delays granted Contractor in accordance with Article 12, Contractor assumes the risk of all suspensions of or delays in performance of the Contract of every kind whatsoever, regardless of the length thereof, arising from all causes whatsoever, whether or not relating to this Contract, including acts or omissions of LMDC, and its officers, agents, employees and contractors; and Contractor shall bear the burden of all costs, loss, damage, expenses and liabilities which Contractor may incur or pay out (or which may be asserted against Contractor) in connection with all delays of any nature whatsoever, whether or not provided for in this Contract; and all such delays, costs, expenses and

liabilities shall conclusively be deemed to have been foreseeable and within the contemplation of the parties.

Contractor agrees to make no claim for damages for delay in the Work (or the performance thereof) of any kind whatsoever, whether foreseeable or unforeseeable, and agrees that any such claim shall be compensated for solely by an extension of time to complete performance of the Work when the provisions of Article 12 hereof allow same.

Notwithstanding any provisions of this Contract, whether relating to time of performance or otherwise, LMDC makes no representation or guaranty as to when the Site or any part thereof will be available for the performance of the Contract or as to whether conditions at the Site will be such as to permit the Contract to be performed thereon without interruption or by any particular sequence or method or as to whether the performance of the Contract can be completed by the time required under this Contract or by any other time.

Wherever in connection with this Contract it is required, expressly or otherwise, that LMDC shall perform any act relating to the Contract, including making available or furnishing any real property, materials, or other things, no guaranty is made by LMDC as to the time of such performance and the delay of LMDC in fulfilling such requirement shall not result in liability of any kind on the part of LMDC except only to the extent, if any, that an extension of time may be due as expressly provided for in Articles 12. Moreover, Contractor shall have no right to rescind or terminate this Contract, and Contractor shall have no cause of action under any theory of quasi-contract or *quantum meruit*, by reason of any delay of any kind or duration whatsoever.

For the avoidance of doubt, and without limitation, the provisions of this Article override and supercede any provision of the Specifications dealing with delays and extensions of time.

#### **15. CANCELLATION FOR DELAY**

If the performance of the Contract or any portion of it shall, in the opinion of LMDC, be materially delayed, whether or not through the fault of Contractor, by any cause which affects Contractor's ability to perform the Contract without affecting to the same degree LMDC's own ability to perform it, either directly or through others, LMDC shall have the right at any time during the existence of such delay to cancel this Contract as to any portion not yet performed, without prejudice to the rights, liabilities and obligations of the parties under this Contract arising out of portions already performed. In the event of such cancellation, no allowance shall be made for anticipated profits. This provision supplements (and does not restrict) Article 16 hereof.

### **CHAPTER IV**

#### **CONDUCT OF CONTRACT**

#### **16. TERMINATION BY LMDC**

If at any time it shall be, from the viewpoint of LMDC, impracticable or undesirable in LMDC's sole judgment to proceed with or continue the performance of the Contract or any part thereof, whether or not for reasons beyond the control of LMDC and for any reason or for no reason (i.e., with or without cause), LMDC shall have authority to suspend performance of any part or all of the Contract until such time as LMDC may deem it practicable or desirable to proceed. Moreover, if at any time it shall be, from the viewpoint of LMDC, impracticable or undesirable in LMDC's judgment to proceed with or continue the performance of the Contract or any part thereof for any reason or for no reason (i.e., with or without

cause), LMDC shall have authority to cancel this Contract as to any or all portions not yet performed and as to any materials not yet installed even though delivered. Such cancellation shall be without prejudice to the rights and obligations of the parties arising out of portions already performed. For such cancellation, Contractor shall receive as its entire remaining compensation a cancellation payment consisting of the following: (a) all amounts due but not yet paid Contractor under the Contract for Contractor's Work completed prior to the cancellation date, less the amount of any credit for unspent Allowances; (b) direct costs of any supplies, materials, machinery, equipment, or other property specially purchased by Contractor or any subcontractor for the Work and not capable of installation or use elsewhere except as a part of the Work under this Contract; (c) other reasonable costs for which Contractor is obligated under non-cancelable agreements, even though Contractor has not yet received delivery or performance of the applicable Work (but limited as though all subcontractors of Contractor have received a cancellation notice effective as of the same date and are bound by similar provisions in the Subcontracts); (d) any reasonable loss sustained by Contractor on other materials or equipment previously purchased for the Work and resold in a commercially reasonable manner for less than the purchase price; and (e) any reasonable documented out-of-pocket direct costs associated with demobilization incurred by Contractor resulting from the cancellation; but (f) no allowance shall be made for mark-up on the foregoing or other profit or compensation to Contractor except that Contractor shall receive 2.5% on the sum of the costs specified in (a) through (e) above to cover administrative costs of cancellation.

## **17. INTERPRETATIONS AND DISPUTE RESOLUTION**

Inasmuch as the public interest requires that the Project to which this Contract relates shall be performed in the manner which LMDC deems best, LMDC shall have authority, in the first instance, subject to this Article 17, to determine what is or is not necessary or proper for or incidental for the Project. In the exercise of this authority, LMDC shall have power to alter the Scope of Work; to require the performance of Work not required by the Contract Documents in their present form, even though of a totally different character from that now required; and to vary, increase and diminish the character, quantity and quality of, or to countermand, any Work now or hereafter required, subject, however, to Articles 7 and 22. Such variation, increase, diminution or countermanding need not be based on necessity but may be based on convenience.

Subject to this Article 17, to resolve all disputes and to prevent litigation prior to completion of the Work, LMDC and Contractor authorize the Interim Arbitrator to decide all questions of any nature whatsoever arising out of, under, or in connection with, or in any way related to or on account of, this Contract (including claims in the nature of breach of Contract or fraud or misrepresentation before or subsequent to signing of this Contract and claims of a type which are barred by the provisions of this Contract) upon and subject to the terms and conditions in this Article. The Interim Arbitrator's decision may be based on such assistance as the Interim Arbitrator may find desirable. The effect of the Interim Arbitrator's decision shall not be impaired or waived by any negotiations or settlement offers in connection with the question decided, whether or not he participated therein himself, or by any prior decision of others, which prior decisions shall be deemed subject to review, or by any termination or cancellation of this Contract.

All such questions shall be submitted in writing by Contractor or LMDC to the Interim Arbitrator for his 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 LMDC relating to any such question, Contractor must allege in Contractor's 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 Interim Arbitrator, except to the extent that the party proposing to introduce or rely upon the same establishes that such evidence or information was not reasonably available or reasonably understood to be significant at the time of the proceeding before the

Interim Arbitrator. For the avoidance of doubt, Contractor may only invoke the provisions of this Article 17 with respect to disputes with LMDC.

If Contractor or LMDC gives written notice of dispute to the other (or if Contractor or LMDC otherwise dispute any action of the other or of the Interim Arbitrator and they fail to resolve their dispute within 21 days after written notice from one party to the other advising of the dispute and specifying this Article 17), either party may submit a notice of dispute to the Interim Arbitrator. Each such submission to the Interim Arbitrator shall specify in reasonable detail:

- (a) the nature of the dispute, or any information or interpretation requested by the party (the "petitioner") giving notice to the Interim Arbitrator;
- (b) the date when the petitioner reasonably requires a decision; and
- (c) the petitioner's proposed determination to resolve the dispute.

The petitioner shall include with such request all documents and other materials which the petitioner deems relevant. The petitioner shall promptly furnish any other information which the Interim Arbitrator requests in connection with any such matter. The petitioner shall give copies to the other party (the "respondent") of all documents or other materials submitted by the petitioner to the Interim Arbitrator.

The Interim Arbitrator shall review each matter submitted and shall allow the respondent an opportunity to submit a written statement of the respondent's position, together with any documents or materials which the respondent deems relevant (which shall be given to the petitioner). The Interim Arbitrator may also confer with both parties to discuss the dispute and may allow either party to submit a further written statement (or statements) of its position or oral presentation or testimony. In considering or rendering any decision, the Interim Arbitrator shall construe, interpret, and apply the Contract strictly in accordance with its terms. The Interim Arbitrator shall deliver a decision to Contractor and LMDC within 30 days after the parties have submitted their final presentations as above. The decision of the Interim Arbitrator may follow the "baseball" format—that is, the Interim Arbitrator may select either the determination proposed by LMDC or the determination proposed by Contractor without modification; or the Interim Arbitrator may issue a decision based on the Interim Arbitrator's own determination of the relevant issue. Contractor and LMDC shall comply promptly with decisions of the Interim Arbitrator.

Contractor shall not stop Work (and shall have no right to stop Work) during the pendency of any dispute.

A surety issuing any Bond with respect to the Contract shall be bound by decisions of the Interim Arbitrator to the same extent as Contractor. Moreover, by issuing its Bond such surety shall be deemed to have agreed that submission of any matter to the Interim Arbitrator, and/or any decision or other action of the Interim Arbitrator, shall not discharge, release, amend, or waive such Bond or any rights of LMDC thereunder.

## **18. LMDC'S REVIEWS AND INSPECTIONS**

Subject to Article 17: (a) in the performance of the Contract, Contractor shall conform to all orders, directions and requirements of LMDC and shall perform the Contract to the satisfaction of LMDC at such times and places, by such methods and in such manner and sequence as required by the Specifications, and the Contract shall at all stages be subject to LMDC's inspection; (b) LMDC shall determine the amount, quality, acceptability and fitness of all parts of the Work and shall interpret the Contract Documents, Specifications and any orders for Extra Work and (c) Contractor shall employ no equipment, materials, methods or men to which LMDC objects, and shall remove no materials, equipment or other

facilities from the construction site without permission. Upon request, LMDC shall confirm in writing any oral order, direction, requirements or determination.

Contractor is requested to advise LMDC promptly in writing of questions pertaining to the Work as they arise.

The enumeration herein or in the Contract Documents of particular instances in which the opinion, judgment, discretion or determination of LMDC shall control or in which the Contract shall be performed to LMDC's satisfaction or subject to LMDC's inspection, shall not imply that only the matters of a nature similar to those enumerated shall be so governed and performed, but without exception the entire Contract shall be so governed and so performed.

LMDC has engaged the Owner's Representative to provide project management and owner's representative services with respect to the Contract (all as set forth in separate agreement(s) between LMDC and the Owner's Representative). Unless and until LMDC gives Contractor notice to the contrary, throughout the Work Contractor shall work with and take direction and instruction from the Owner's Representative (except that all written approvals and Change Orders must be signed by LMDC's authorized representative). Contractor shall submit to LMDC and the Owner's Representative copies of all submissions and deliveries of documents and other materials which Contractor is required to submit to either LMDC or the Owner's Representative under this Contract. Such submissions shall be made to LMDC at the address set forth in Article 8 of the Deconstruction Contract. For the avoidance of doubt, references to "LMDC" in this Agreement shall also be deemed to be references to the Owner's Representative unless specifically stated otherwise. Also, Owner's Representative shall be deemed included in all indemnifications for the benefit of LMDC under the Contract.

## **19. NOTICE REQUIREMENTS**

No claim against LMDC shall be made or asserted in any action or proceeding at law or in equity, and Contractor shall not be entitled to allowance of such claim, unless Contractor shall have complied with all requirements relating to the giving of Notice of the information with respect to such claim as provided in this Article. The failure of Contractor to give such Notice and information as to any claim shall be conclusively deemed to be a waiver by Contractor of such claim, such Notice and information being conditions precedent to such claim. As used herein "claim" shall include any claim arising out of, under, or in connection with, or in any way related to or on account of, this Contract (including claims in the nature of breach of Contract or fraud or misrepresentation before or subsequent to the signing of this Contract and claims of a type which are barred by the provisions of this Contract) for damages, payment or compensation of any nature or for extension of any time for performance of any part of this Contract.

The requirements as to the giving of Notice and information with respect to claims shall be as follows:

- A. In the case of any claims for Extra Work, extension of time for completion, or any other matter for which requirements are set forth elsewhere in this Contract as to notice and information, the respective requirements set forth in the applicable provision of this Contract shall apply.
- B. In the case of all other types of claim, Notice shall have been given to LMDC, personally, as soon as practicable, and in any case, within five days, after occurrence of the act, omission, or other circumstance upon which the claim is or will be based, stating as fully as practicable at the time all information relating thereto. Such information shall be supplemented with any further information as soon as practicable after it becomes or should become known to Contractor, including daily records showing all costs which

Contractor may be incurring or all other circumstances which will affect any claim to be made, which records shall be submitted to LMDC, personally.

The above requirements for Notices and information are for the purpose of enabling LMDC to cancel or revise any order, change its plans, mitigate or remedy the effects of circumstances giving rise to a claim or take such other action as may seem desirable and to verify any claimed expense or circumstances as they occur, and the requirements herein for such Notice and information are essential to this Contract and are in addition to any notice required by statute with respect to suits against LMDC.

The Notices and information referred to above are required whether or not LMDC is aware of the existence of any circumstances which might constitute a basis for a claim and whether or not LMDC has indicated it will consider a claim.

No act, omission, or statement of any kind shall be regarded as a waiver of any of the provisions of this Article or may be relied upon as such waiver except only either a written statement signed by LMDC expressly stating that a waiver is intended as to any particular provision of this Article, and more particularly no discussion, negotiations, consideration, correspondence, or requests for information with respect to a claim by any director, officer, employee or agent of LMDC shall be construed as a waiver of any provision of this Article or as authority or apparent authority to effect such a waiver.

Since merely oral notice or information may cause disputes as to the existence or substance thereof, and since notice, even if written, to other persons than LMDC may not be sufficient to come to the attention of the representative of LMDC with the knowledge and responsibility of dealing with the situation, only Notice and information complying with the express provisions of this Article 19 shall be deemed to fulfill Contractor's obligation under this Contract.

**20. NON-DISCRIMINATION AND AFFIRMATIVE ACTION; OPPORTUNITY DOWNTOWN PLAN; OTHER LMDC REQUIREMENTS**

Contractor shall comply with all terms, covenants, conditions and provisions of Schedule "C" hereto which set forth requirements regarding Non-Discrimination and Affirmative Action as if fully set forth herein; and the same are incorporated herein by reference.

Contractor shall also comply with all requirements set forth in Schedule "A" hereto.

Schedule "F" hereto sets forth the "Opportunity Downtown Plan" which Contractor and LMDC have jointly adopted to reflect the goal and procedures of Contractor to encourage and promote participation in this Project by women-owned, minority-owned, and downtown Manhattan-owned business enterprises and by the categories of individuals described in such plan. The Opportunity Downtown Plan is incorporated herein and compliance therewith will be deemed Contractor's compliance with the requirements of clauses I.5 and II of Schedule "C."

Contractor shall (and Contractor shall cause its subcontractors to) follow LMDC's procedures to confirm that all persons employed on the site are either citizens of the United States or legal aliens with valid work visas. To this end Contractor shall submit for LMDC's review the form of application for employment and certification of status to be used for such purposes (as well as Contractor's procedure for verifying the information in such application).

## 21. PREVAILING RATE OF WAGE

Contractor shall pay or provide (and shall cause all subcontractors to pay or provide) to Contractor's or subcontractors' Workers, laborers and mechanics (who are employed by Contractor or them to work on an hourly or daily basis at any trade or occupation at or about the construction site or elsewhere in connection with the Work) at least the prevailing rate of wage and supplements for others engaged in the same trade or occupation in the locality in which the Work is being performed as determined by LMDC.

For purposes of this Contract, the prevailing rates 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 Work is to be performed. The applicable rates shall be those which are in effect on the date of the signing of this Contract.

The provisions of this Article 21 are inserted in this Contract for the benefit of such Workers, laborers and mechanics as well as for the benefit of LMDC; and if Contractor or any subcontractor shall pay or provide any such Worker, laborer or mechanic less than the rates of wages and supplements above described, such Worker, laborer or mechanic shall have a direct right of action against Contractor or such subcontractor for the difference between the wages and supplements actually paid or provided and those to which she is entitled under this Article. If such Worker, laborer or mechanic is employed by any subcontractor whose subcontract does not contain a provision substantially similar to the provisions of this Article (requiring the payment or provision of at least the above minimum, and providing for a cause of action in the event of the subcontractor's failure to pay or provide such wages and supplements) such Worker, laborer or mechanic shall have a direct right of action against Contractor. LMDC shall not be a necessary party to any action brought by any Worker, laborer or mechanic to obtain a money judgment against Contractor or any subcontractor pursuant to this Article.

Nothing herein contained shall be construed to prevent Contractor or any subcontractor from paying higher rates of wages or providing higher supplements than the minimum hereinbefore prescribed; and nothing herein contained shall be construed to constitute a representation or guarantee that Contractor or any subcontractor can obtain Workers, laborers and mechanics for the minimum herein before prescribed.

In an area of Contractor's office at the Site of the Work which is accessible to Contractor's employees, Contractor shall display printed material setting forth information for the employees of Contractor and Contractor's subcontractors concerning the wage and supplemental benefit requirements set forth in this Article. Contractor shall also cause each of Contractor's subcontractors to display such material in a similarly accessible place in any office which the subcontractor maintains at the Site of the Work.

LMDC may at any time (including with each monthly requisition) request that Contractor and each subcontractor certify in writing that Contractor (and the applicable subcontractor) has paid or provided (and has caused all subcontractors to pay or provide) at least the prevailing rates of wage and supplements required by this Article 21 and Contractor shall comply (and cause its subcontractors to comply) with any such request within ten (10) calendar days of Contractor's receipt thereof. Contractor shall include in Contractor's certification such detail as LMDC may require with respect to hourly wages and supplements actually paid or provided by Contractor or any subcontractor to each of Contractor's or their laborers, Workers and mechanics employed as described in this Article, records of which shall be prepared by Contractor and maintained as required by Article 3 hereof (and Contractor shall cause such records to be prepared and maintained in the same manner by subcontractors). Contractor's certification shall be executed by a corporate officer, if Contractor is a corporation; a partner, if Contractor is a partnership; a manager, if Contractor is a limited liability company; or the owner, if Contractor is a sole proprietorship.

Contractor's failure to comply with any provision of this Article 21 shall be deemed a substantial breach of this Contract.

## **22. EXTRA WORK ORDERS**

No Extra Work shall be performed except pursuant to a Change Order of LMDC expressly and unmistakably indicating LMDC's intention to treat the Work described therein as Extra Work, subject to the next paragraph.

If Contractor is of the opinion that any Work ordered to be done as Work pursuant to the Contract Documents is instead Extra Work ("Disputed Work"), Contractor shall nevertheless comply with such order, but shall within 72 hours give written notice thereof to LMDC, stating why Contractor deems it to be Extra Work, and shall moreover furnish to LMDC time slips and memoranda as required by Article 7 hereof. Said notice, time slips and memoranda are for the purpose of affording to LMDC an opportunity to verify Contractor's claim at the time and (if Contractor desires so to do) to cancel promptly such order, direction or requirement, of affording to LMDC an opportunity of keeping an accurate record of the materials, labor and other items involved, and generally of affording to LMDC an opportunity to take such action as it may deem desirable in light of Contractor's claims. Accordingly, the failure of Contractor to serve such notice or to furnish such time slips and memoranda shall be deemed to be a conclusive and binding determination on Contractor's part that the direction, order or requirement does not involve the performance of Extra Work, and shall be deemed to be a waiver by Contractor of all claims for additional compensation or damages by reason thereof, such written notice, time slips and memoranda being a condition precedent to such claims. For any Extra Work that is not Disputed Work, Contractor shall not be obligated to perform such Extra Work prior to Contractor's receipt of a written order from LMDC in accordance with the provisions of this Article 22. Contractor shall not stop Work by reason of any dispute as to whether or not a particular task is Extra Work.

## **23. PERFORMANCE OF EXTRA WORK**

The provisions of this Contract relating generally to Work and its performance shall apply without exception to any Extra Work required and to the performance thereof. Moreover, the provisions of the Contract Documents relating generally to the Work and its performance shall also apply to any Extra Work required and to the performance thereof, except to the extent that a written order in connection with any particular item of Extra Work may expressly provide otherwise.

## **24. ACCESS TO WORK; INSPECTIONS; TESTING**

During the progress of the Work through final completion, Contractor shall at all times afford LMDC, the Owner's Representative, ESDC, the Interim Arbitrator, the Prior Insurers, the Demolition Consultant and any other persons designated by LMDC, access to the Work and every reasonable, safe, and proper facility for inspecting or examining all Work at the Site.

Contractor shall conduct all tests or inspections specifically required of Contractor or any of its subcontractors under this Contract (or which are otherwise required by any Laws which place the responsibility for conducting such test or inspection on Contractor). Contractor shall give three days' advance notice of a test or inspection to LMDC or other persons who will be affected by (or who should necessarily or properly be present for) such test or inspection. Contractor shall engage a licensed engineer to conduct or witness any test or inspection which is the responsibility of Contractor under this Section. Contractor shall give LMDC copies of all field inspection certificates within seven days after Contractor receives the same.

LMDC may at any time conduct (or cause to be conducted) such on-site inspections and such structural, environmental, mechanical, electrical, chemical, or other tests as LMDC deems necessary or desirable to ascertain whether the Work complies with the Contract or for any other reason. LMDC will pay for a test or inspection requested by LMDC as Extra Work, unless such test or inspection reveals a failure of the Work to comply with this Contract or Laws, in which event Contractor shall bear all expenses of such inspection or test.

Contractor shall secure and deliver to LMDC promptly all certificates of inspection, test reports, work logs, or approvals with respect to the Work as and when required by this Contract (or by Laws which place responsibility for the same on Contractor).

## **25. ASSIGNMENTS AND SUBCONTRACTS; PRE-APPROVED SUBCONTRACTORS**

Any assignment or other transfer by Contractor of this Contract or any part hereof or of any of Contractor's rights hereunder or of any monies due or to become due hereunder and any delegation of any of Contractor's duties hereunder without the express consent in writing of LMDC shall be void and of no effect as to LMDC, provided, however, that Contractor may subcontract portions of the Work to such persons as LMDC may, from time to time, expressly approve in writing as set forth below. For each individual or entity proposed by Contractor as a Contractor in addition to those already approved and listed on Annex "1" to the Deconstruction Contract, Contractor shall submit to LMDC such information as LMDC may require to ascertain the qualification and experience of the prospective Contractor, including the submission of a completed LMDC Standard Business Background Questionnaire in the form attached hereto as Exhibit "3".

Annex "1" to the Deconstruction Contract lists all subcontractors of Contractor approved by LMDC as of the signing of this Contract. The forms of agreement between Contractor and every subcontractor and the hourly rates of such subcontractors shall be subject to LMDC's review and approval, and Contractor shall ensure that such agreements are substantially in the form of this Contract. Further subcontracting by Contractor and/or any subcontractor shall be subject to (a) approval of LMDC in its sole discretion; and (b) qualification by the subcontractor with all documentation, approval and filing requirements which would apply if such subcontractor were seeking to be approved as a direct contractor of the City of New York. Approval of a subcontractor may be rescinded for, among other things, failure of Contractor to furnish the subcontractor's certificate of insurance within the time set forth in Schedule "I" attached hereto. Contractor shall give LMDC a complete copy of every subcontract signed by a subcontractor for this Project.

No consent to any assignment or other transfer, and no approval of any subcontractor, shall under any circumstances operate to relieve Contractor of any of Contractor's obligations; no subcontract, no approval of any subcontractor and no act or omission of LMDC or the Owner's Representative shall create any rights in favor of such subcontractor and against LMDC; and as between LMDC and Contractor, all assignees, subcontractors, and other transferees shall for all purposes be deemed to be agents of Contractor.

If LMDC objects to the performance of any subcontractor, LMDC may give Contractor a written notice of objection that states LMDC's reasons for objection; and Contractor shall take such action as necessary or appropriate to correct and cure the problems in performance by such subcontractor which are the subject of LMDC's Notice. All acts, omissions, and failure or inability to perform by any subcontractor shall be deemed those of Contractor under this Contract.

Each Subcontract shall include a provision under which the subcontractor agrees that the Subcontract shall be assigned to LMDC, at LMDC's written election, upon a termination of Contractor's rights to

perform the Contract (such assignment to become effective upon LMDC's giving written notice to the subcontractor).

## **26. CLAIMS OF THIRD PERSONS; DISCHARGE OF LIENS**

Contractor undertakes to pay all claims lawfully made against Contractor by subcontractors, Materialmen and workmen, and all claims lawfully made against Contractor by other third persons arising out of or in connection with or because of the performance of this Contract and to cause all subcontractors to pay all such claims lawfully made against them.

If any subcontractor, Materialman or any other person claiming to have been employed (directly or indirectly) by or through Contractor or any subcontractor files a lien (unless as a result of LMDC's failure to pay an amount properly due under this Contract), Contractor shall satisfy, remove or discharge such lien at Contractor's expense by bonding, payment or otherwise within thirty (30) days after notice to LMDC of the filing thereof. If Contractor fails to do so, LMDC may satisfy, remove or discharge such lien; and, at LMDC's election:

- A. LMDC may deduct the cost thereof (including all applicable fees and costs, including attorney's fees) from Contractor's next succeeding requisition(s) (or may invalidate all or a portion of any previously-approved but unpaid requisitions) until LMDC recoups the total cost thereof; or
- B. Contractor shall pay the same to LMDC upon demand.

## **27. CERTIFICATES OF PARTIAL COMPLETION**

If at any time prior to the giving of the Certificate of Final Completion, any portion of the Work has been satisfactorily completed, and if in the judgment of LMDC such portion of the Work is not necessary for the operations of Contractor but will be immediately useful to and is needed by LMDC for other purposes, LMDC may give to Contractor a certificate in writing to that effect (herein called a "Certificate of Partial Completion"), and thereupon or at any time thereafter LMDC may take over and use the portion of the Work described in such Certificate and exclude Contractor therefrom.

The giving of a Certificate of Partial Completion shall not be construed to constitute an extension of Contractor's time to complete the portion of the Work to which it relates in the event that Contractor has failed to complete the same in accordance with the terms of this Contract. Moreover, the issuance of a Certificate of Partial Completion shall not operate to release Contractor or Contractor's sureties from any obligations under or upon this Contract or the Performance and Payment Bond.

## **28. FINAL COMPLETION**

After the satisfactory completion of all Work whatsoever required and the making of such tests and inspections as may be necessary or desirable, LMDC shall give to Contractor a certificate in writing (herein called the "Certificate of Final Completion") certifying that in LMDC's opinion all Work under this Contract, including Extra Work, has been completed in accordance with the Contract Documents, and certifying the date as of which it was so completed.

The giving of the Certificate of Final Completion shall not be construed to constitute an extension of Contractor's time for performance in the event that Contractor has failed to complete the Work in accordance with the terms of this Contract. Moreover, the issuance of the Certificate of Final Completion

shall not operate to release Contractor or Contractor's sureties from any obligations under or upon this Contract or the Performance and Payment Bond.

Upon Final Completion, or upon a termination of Contractor's right to perform the Contract, Contractor shall:

- A. unless LMDC directly or otherwise takes possession of and uses the same under Article 35, promptly remove from the Project Site all equipment, implements, machinery, tools, temporary facilities of any kind and other property owned, leased, or rented by Contractor or subcontractors (including sheds, trailers, workshops, and toilets), and repair any damage caused by such removal;
- B. provide for the termination and removal of any temporary utilities or other services used in connection with the Work;
- C. clean the Project Site, the Work and all areas of the Project Site previously occupied by Contractor, and leave the same in a neat and orderly condition;
- D. complete and comply with all other close-out requirements in the Contract Documents; and
- E. promptly cause all employees of Contractor and any subcontractors to vacate the Project Site.

If Contractor fails to comply with any obligation under this Article, LMDC may perform the action contemplated after two (2) Work Days' written notice to Contractor; and, at LMDC's election, LMDC may deduct the entire cost (or any portion thereof) from the unpaid amount due to Contractor; or Contractor shall pay the entire cost (or any portion thereof) upon demand, notwithstanding that any other person or entity may have defaulted in taking similar action or occupied the same areas or otherwise had any responsibility for the condition involved. Contractor shall have no right to further payments under any payment application until Contractor has complied with all obligations under this Article.

## **29. NO GIFTS, GRATUITIES, OFFERS OF EMPLOYMENT, ETC.; NO MEMORABILIA**

During the term of this Contract, Contractor shall not offer, give or agree to give anything of value either to a LMDC employee, agent, job shopper, consultant, construction manager or other person or firm representing LMDC, or to a member of the immediate family (i.e., a spouse, child, parent, brother or sister) of any of the foregoing, in connection with the performance by such employee, agent, job shopper, consultant, construction manager or other person or firm representing LMDC of duties involving transactions with Contractor on behalf of LMDC, whether or not such duties are related to this Contract or any other LMDC contract or matter. Any such conduct shall be deemed a material breach of this Contract.

As used herein, "anything of value" shall include but not be limited to any (a) favors, such as meals, entertainment, transportation (other than that contemplated by the Contract or any other LMDC contract), etc., which might tend to obligate a LMDC employee to Contractor, 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 term shall not include compensation contemplated by this Contract or any other LMDC contract.

Contractor shall report to LMDC's Investigation Division (212-587-9325) directly and without undue delay any information concerning conduct which Contractor learns may involve: (x) corruption, criminal activity, conflict of interest, gross mismanagement or abuse of authority; or (y) any solicitation of money, goods, requests for future employment or benefit of thing of value, by or on behalf of any government employee, officer or public official, any Contractor employee, officer, agent, subcontractor, Materialman, or labor official, or other person for any purpose which may be related to the procurement of this Contract by Contractor, or which may affect performance of this Contract in any way.

Neither Contractor nor any subcontractor or Materialman, nor any employee of any of them, shall retain any material or items of any kind salvaged from the Building as memorabilia or souvenirs relating to September 11, 2001 or otherwise. (This paragraph shall not be construed, however, to prevent commercial salvage and reuse in accordance with the Contract Documents provided that no aspect of such salvage and reuse makes reference to September 11, 2001).

Contractor shall not communicate (nor permit any subcontractor or Materialman to communicate) with the media, any governmental officials, or any community organization with respect to any aspect of the Work, without the prior written approval of LMDC.

Contractor shall require that all contracts with all subcontractors and Materialmen shall include the provisions set forth in this Article; and Contractor shall be responsible for informing its own principals and employees to the same effect.

## **CHAPTER V**

### **WARRANTIES MADE AND LIABILITY ASSUMED BY THE CONTRACTOR**

#### **30. CONTRACTOR'S WARRANTIES**

Contractor represents and warrants to LMDC:

- A. That Contractor is financially solvent, that Contractor is experienced in and competent to perform the type of services contemplated by this Contract, that the facts stated or shown in any papers submitted or referred to LMDC by Contractor prior to the signing of this Contract are true, and that Contractor is authorized to perform this Contract;
- B. That Contractor has carefully examined and analyzed the provisions and requirements of this Contract and inspected the Building, the Site, and the Building Contents; that from Contractor's own investigations Contractor has satisfied itself as to the nature of all things needed for the performance of this Contract, the general and local conditions and all other matters which in any way affect this Contract or its performance, and that the time available to Contractor for such examination, analysis, inspection and investigations was adequate, including any related to or required by ACM or other Hazardous Materials disclosed by the Characterization or otherwise present in the Building, any other studies of the Building by LMDC or anyone else (including DB or the Prior Insurers), or otherwise; and that Contractor accepts and agrees to bear the risk of the Contract Assumptions;
- C. That the Contract is feasible of performance in accordance with all its provisions and requirements and that Contractor can and will perform it in strict accordance with such provisions and requirements;

- D. That Contractor has reviewed and is familiar with all Legal Requirements (including the requirements set forth in the Variances and Deconstruction Plan) applicable to the Work required of Contractor under this Contract as of the date of this Contract;
- E. That Contractor has substantial experience in the cleaning, deconstruction and demolition of large-scale buildings in urban areas with histories of environmental problems; and that Contractor has substantial experience performing all areas of the type of Work required of Contractor pursuant to this Contract (including all planning, design, and engineering required thereby);
- F. That Contractor has planned and adequately provided for the logistics, mobilization, staffing, testing, management, coordination, and other planning and administration as necessary to timely complete the Work as required of Contractor under this Contract;
- G. That Contractor has made or will make all inspections and investigations of the physical structure, condition and components of the Building; the Building Contents; any easements previously disclosed to Contractor in writing; and plans and other documents delivered to Contractor by LMDC or Owner's Representative which Contractor, in Contractor's judgment, deems necessary or desirable for Contractor's performance of the Work under this Contract;
- H. That Contractor has made or will make appropriate inquiry of the Metropolitan Transit Authority, any applicable utility companies, and the City of New York as to subsurface or transportation installations, water lines, utility installations or other facilities that may have an impact on the Work;
- I. That Contractor has made all reviews and analyses of the Contract Documents which Contractor deems necessary or desirable for Contractor's timely performance of the Work as required under this Contract;
- J. That no officer, director, agent or employee of LMDC is personally interested directly or indirectly in this Contract or the compensation to be paid hereunder;
- K. That, except only for those representations, statements or promises expressly contained in this Contract (including the Contract Documents), no representation, statement or promise, oral or in writing, of any kind whatsoever by LMDC, their respective officers, directors, agents, employees or consultants has induced Contractor to enter into this Contract or has been relied upon by Contractor, including any with reference to: (1) the meaning, correctness, suitability, or completeness of any provisions or requirements of this Contract; (2) the nature, existence, quantity or location of materials, structures, obstructions, utilities or conditions, surface or subsurface, which may be encountered at the Building and/or the construction site including ACM and/or other Hazardous Materials; (3) the nature, quantity, quality or size of the materials, equipment, labor and other facilities needed for the performance of this Contract; (4) the general or local conditions which may in any way affect this Contract or its performance; (5) the price of the Contract; or (6) any other matters, whether similar to or different from those referred to in (1) through (5) immediately above, affecting or having any connection with this Contract, the bidding thereon, any discussions thereof, the performance thereof or those employed therein or connected or concerned therewith;

- L. That LMDC makes no warranty or representation whatsoever, express or implied, as to the feasibility, constructability or suitability of the Contract Documents. Contractor agrees that the Lump Sum fully and completely compensates Contractor for all Work required to implement the Contract Documents; and
- M. That the information provided in the Standard Business Background Questionnaire submitted by Contractor and related documents remain true and accurate as of the date hereof and that Contractor will immediately notify LMDC if there is any material change in the information contained therein.

Each of the foregoing representations is intended to supplement, and not to limit, the other representations and the other provisions of this Contract.

Moreover, Contractor accepts the conditions in, on, and/or about the Building (including all Building Contents) and otherwise at the construction site as they exist or may eventually be found to exist (including the Contract Assumptions) and warrants and represents that Contractor can and will perform the Contract under such conditions and that all materials, equipment, labor and other facilities required because of any unforeseen conditions (physical or otherwise) shall be wholly at Contractor's own cost and expense, anything in this Contract to the contrary notwithstanding (except for Non-ACM Building Component HazMat which may involve Extra Work as set forth above).

Nothing in the Contract Documents or any other part of the Contract is intended as or shall constitute a representation by LMDC as to the feasibility of performance of this Contract or any part thereof. Moreover, LMDC does not warrant or represent by any provision of this Contract or the Contract Documents as to time for performance or completion or otherwise that the Contract may be performed or completed by the times required herein or by any other times.

Contractor further represents and warrants that Contractor was given ample opportunity and time and by means of this paragraph was requested by LMDC to review thoroughly all documents forming this Contract (including the Contract Documents) prior to signing this Contract in order that Contractor might request inclusion in this Contract of any statement, representation, promise or provision which Contractor desired or on which Contractor wished to place reliance; that Contractor did so review said documents, that either every such statement, representation, promise or provision has been included in this Contract or else, if omitted, that Contractor expressly relinquishes the benefit of any such omitted statement, representation, promise or provision and is willing to perform this Contract without claiming reliance thereon or making any other claim on account of such omission.

Contractor further recognizes that the provisions of this Article 30 (though not only such provisions) are essential to LMDC's consent to enter into this Contract and that without such provisions, LMDC would not have entered into this Contract.

### **31. RISKS ASSUMED BY CONTRACTOR**

Contractor assumes the following distinct and several risks, whether they arise from acts or omissions of Contractor, of LMDC, or of third persons, or from any other cause, and whether such risks are within or beyond the control of Contractor and/or are known or unknown, and foreseeable or unforeseeable:

- A. The risk of loss or damage to the Building or the Work prior to the rendition of the Certificate of Final Completion (other than Work which must be removed in any event as part of the Demolition of the Building), provided Contractor shall forthwith secure and make safe such damaged Work for future intended removal;

- B. The risk of loss or damage to the Building or any structures to be demolished occurring prior to completion of demolition by Contractor if and to the extent that any such structures would not be removed as part of the Demolition (such structures being still included, however, in the term "Work"). In the event of such loss, damage or alterations, Contractor shall nevertheless complete the performance of the Work, including the demolition, without additional cost to LMDC and without compensation for lost salvage value;
- C. The risk of claims, loss, liability, damage, expense, fines or penalties, just or unjust, made or asserted by third persons or assessed by courts or Governmental Authorities or entities against Contractor, LMDC or any other Indemnitee on account of injuries (including wrongful death), loss, damage or liability of any kind whatsoever arising or alleged to arise out of or in connection with the performance of the Work (whether or not actually caused by or resulting from the performance of the Work) or out of or in connection with Contractor's operations or presence at or in the vicinity of the construction site and/or the Building, (including claims against Contractor or LMDC for the payment of workers' compensation), whether such claims, loss, liability, damage, expense, fines or penalties are made or assessed and whether such injuries, damage, loss, liability, damage and/or expense are sustained at any time both before and/or after the rendition of the Certificate of Final Completion;
- D. The risk of loss or damage to any property of Contractor (or to the scaffolding and hoist(s) that are Contractor's responsibility), and of claims made or asserted against Contractor, LMDC or any other Indemnitee for loss or damage to any property of Scaffolding Contractor, subcontractors, Materialmen, workmen and others performing the Work, occurring at any time prior to final completion and the removal of such property from the construction site and/or the Building or the vicinity thereof;
- E. The risk of locating, dealing with, and removing any and all Building Contents, fixtures, equipment, materials, and/or other conditions of the Building;
- F. The risk of price fluctuation;
- G. The risk that subsurface soil conditions are inadequate for the proposed scope of cleaning, deconstruction and site Work;
- H. Any and all risks associated with the presence of ACM, Hazardous Materials, or COPCs in, on, or about the Building and/or the Building Contents, including any and all potential ACM, Hazardous Materials, or COPC excursions or exceedances (whether in air monitoring or otherwise) existing in the Building and/or the Building Contents and occurring during this Project, and their impacts during the Project (except for Non-ACM Building Component HazMat which may involve Extra Work as set forth above);
- I. The risk that the exterior of the Building, including any netting, is and/or may become contaminated with any and all Hazardous Materials;
- J. The risk of all regulatory and other Governmental Authority delays;
- K. The risk of all time delays and cost impacts due to acquiring of drafting of any and all variances, permits, and/ or additional work plans, and final work plan approval required in order to proceed and perform removal of ACM and WTC dust related work;

- L. The risk of all delays or extended schedules caused by waste characterization sampling including direct costs, Contractor supervision and labor, general conditions, and overhead and profit. Contractor assumes the risk of delays due to testing of waste materials prior to shipment of said materials from site and that waste materials will have to be stored on site for waste stream testing purposes;
- M. Without limiting any matters or subjects covered by A through L above, the risk of claims, loss, liability, damage, expense, tax, fines or penalties, just or unjust, made or asserted by third persons or assessed by courts or governmental agencies or entities against Contractor, LMDC or any other Indemnitee by reason of, or resulting in whole or in part from, Contractor's failure to comply with Legal Requirements;
- N. Loss, liability, damage, expense, tax, fines, or penalties, just or unjust, paid or incurred by LMDC by reason of Contractor's failure to keep, observe, and perform Contractor's obligations under this Contract; and
- O. All other risks described in the Contract Assumptions if not described above.

Contractor shall indemnify all Indemnitees (as defined below) against all claims described in subparagraphs A through O above paid or incurred by any of the Indemnitees, or asserted against any of the Indemnitees, and for all expense incurred by any of them in the defense, settlement or satisfaction thereof, including reasonable expenses of attorneys, except to the extent that such indemnity would be precluded by applicable law. If so directed, Contractor shall defend against any claim (including an allegation that an Indemnitee was negligent or engaged in willful misconduct) described above by counsel approved by the Indemnitee, unless and except to the extent that it is established by an initial court order or judgment that the applicable Indemnitee was negligent or engaged in willful misconduct. Nor shall Contractor settle any such claims without the prior written consent of all Indemnitees against whom such claims have been asserted unless the effect of such settlement is to release unconditionally from complete liability every Indemnitee against whom the applicable claim was asserted.

The provisions of this Article 31 shall also be for the benefit of all Indemnitees, so that they shall have all the rights which they would have under this Article 31 if they were named at each place above at which LMDC is named, including a direct right of action against Contractor to enforce the foregoing indemnity.

Neither the issuance of a Certificate of Final Completion nor the making of Final Payment shall release Contractor from Contractor's obligations under this Article 31. Moreover, neither the enumeration in this Article 31 nor the enumeration elsewhere in this Contract of particular risks assumed by Contractor or of particular claims for which Contractor is responsible, nor the securing by Contractor, LMDC, or any Indemnitee of any insurance coverage contemplated under Article 34, shall be deemed (a) to limit the effect of the provisions of this Article 31 or of any other provision of this Contract relating to such risks or claims, (b) to imply that Contractor assumes or is responsible for risks or claims only of the type enumerated in this Article 31 or in any other provision of this Contract, or (c) to limit the risks which Contractor would assume or the claims for which Contractor would be responsible in the absence of such enumerations.

In this Contract "Indemnitees" means LMDC; Empire State Development Corporation ("ESDC"); the Owner's Representative; and each employee, officer, director and consultant of each of them.

### **32. CERTAIN RIGHTS OF PRIOR INSURERS; NO OTHER THIRD PARTY RIGHTS**

By separate agreement, the Prior Insurers and LMDC have agreed that the Demolition Consultant shall have the following rights under and with respect to this Contract, and Contractor hereby agrees that the Demolition Consultant shall have the following rights under and with respect to this Contract—that is, the right to:

- A. attend as an observer all regularly scheduled meetings between LMDC and any Government Authority;
- B. attend all regularly scheduled meetings between LMDC and the Contractor;
- C. have reasonable access to the Site prior to and during the Deconstruction;
- D. have reasonable access to the Books and Records of the Contractor pertaining to the Contract or the Deconstruction;
- E. have reasonable access to any test results generated by Contractor or its consultants during the Deconstruction;
- F. receive from LMDC copies of any written communications to or from any Governmental Authority relating to the Deconstruction;
- G. consult with LMDC and, together with LMDC, consult with Contractor, regarding the form and substance of any application or permit pertaining to the Deconstruction; and
- H. consult with LMDC and, together with LMDC, consult with Contractor, regarding the application to the Deconstruction of any Legal Requirement not contemplated by the Contract.

With respect to each of the foregoing, such right shall be subject to (a) the execution by the Prior Insurers and the Demolition Consultant of appropriate confidentiality, insurance, and other customary access agreements in form specified by LMDC (and, previous to the signing of this Contract, the foregoing documents have been signed by the Prior Insurers, the Demolition Consultant, and LMDC); (b) any Legal Requirement applicable to LMDC and/or Contractor; and (c) the provision by the Demolition Consultant of reasonable notice prior to seeking the access provided in (C), (D), and (E) above.

Except as set forth in the foregoing paragraph, nothing contained in this Contract is intended for the benefit of third persons other than LMDC, ESDC and the Port Authority, except to the extent that the Contract specifically provides otherwise by use of the words "benefit" or "direct right of action." LMDC, ESDC and the Port Authority shall be third-party beneficiaries of this Contract.

### **33. OBLIGATIONS UPON TERMINATION**

Upon any termination of Contractor's right to perform this Contract, Contractor shall:

- A. stop Work on the date and to the extent specified by LMDC;
- B. take all action as necessary (or as LMDC may direct) to protect and preserve all materials, equipment, tools, facilities and other property and Persons;

- C. deliver to LMDC correct and complete copies of all Subcontracts, together with a complete and accurate statement of:
  - 1.) the items ordered and not yet delivered pursuant to each agreement;
  - 2.) the expected delivery dates of all such items;
  - 3.) the total cost of each agreement and the terms of payment;
  - 4.) the estimated costs of canceling each agreement; and
  - 5.) sums paid under contracts and all other sums due and outstanding;
- D. and, if LMDC so requests (at their respective option), Contractor shall assign to LMDC Contractor's rights under any Subcontracts designated in writing;
- E. deliver to LMDC promptly a correct and complete list of all supplies, materials, machinery, equipment and other property previously delivered or fabricated by Contractor or any subcontractor or other person or entity but not yet incorporated into the Work;
- F. advise LMDC promptly of any special circumstances which might limit or prohibit cancellation of any Subcontract;
- G. give written notice promptly to every surety which has issued a Bond with respect to this Contract (with a copy of each such notice to LMDC);
- H. unless LMDC requests an assignment thereof under clause C above, terminate each Subcontract and make no additional agreements with subcontractors with respect to the Work or this Contract;
- I. as directed by LMDC, transfer free and clear title to LMDC by appropriate instruments of title, and deliver to the Project Site (or such other place as LMDC may specify), all property paid for by LMDC;
- J. notify LMDC promptly in writing of any legal proceedings against Contractor by any subcontractor relating to the termination of the Work (or any Subcontracts);
- K. deliver to LMDC promptly all plans, drawings, manuals, books, records, and other documents which the Contract would otherwise have required Contractor to deliver to LMDC prior to (or upon) Final Completion;
- L. give written notice promptly (if required) under each policy of insurance (with a copy of each such notice to LMDC), but continue to maintain all policies of insurance required under this Contract unless and until LMDC directs otherwise; and
- M. take such other actions, and execute such other documents, as LMDC may reasonably request to effectuate and confirm the foregoing matters, or as may be necessary or desirable to minimize LMDC's costs, and take no action which will increase any amount payable by LMDC under the Contract.

**34. INSURANCE PROCURED BY CONTRACTOR**

As part of the Lump Sum, Contractor shall provide and maintain the insurance coverages specified in Schedule "I" hereto upon and subject to the terms and conditions set forth in Schedule "I".

**CHAPTER VI**

**RIGHTS AND REMEDIES**

**35. RIGHTS AND REMEDIES OF LMDC**

LMDC shall have the following rights in the event LMDC shall deem Contractor guilty of a breach of any term whatsoever of this Contract:

- A. The right to take over and complete the Work, or any part thereof, at the expense of Contractor, either directly or through other contractors (and whether or not LMDC terminates this Contract or Contractor's right to perform the Work or any part thereof and whether or not for a temporary period or for the duration of this Project);
- B. The right to cancel this Contract as to any or all of the Work yet to be performed; and/or
- C. The right to specific performance, an injunction or any other appropriate equitable remedy; and/or
- D. The right to money damages.

The enumeration in this Article or elsewhere in this Contract of specific rights and remedies of LMDC shall not be deemed to limit any other rights or remedies which LMDC would have in the absence of such enumeration; and no exercise by LMDC of any right or remedy shall operate as a waiver of any other of LMDC's rights or remedies not inconsistent therewith or to estop LMDC from exercising such other rights or remedies.

For the avoidance of doubt, the following will be deemed breaches of this Contract:

- E. Whether or not the time has yet arrived for performance of an obligation under this Contract:
  - 1.) Contractor gives a written statement to any representative of LMDC indicating that Contractor cannot or will not perform any one or more of Contractor's obligations under this Contract;
  - 2.) any material act or omission of Contractor occurs which makes it improbable at the time that Contractor will be able to perform any one or more of Contractor's obligations under this Contract; and
  - 3.) any suspension of or failure to proceed with any part of the Work by Contractor occurs which makes it improbable at the time that Contractor will be able to perform any one or more of Contractor's obligations under this Contract;
- F. Contractor fails to commence the performance of the Work within 15 days of the date hereof, unless the time is extended pursuant to Article 12;

- G. Contractor abandons the Work in violation of Contractor's obligations under this Contract;
- H. Contractor fails to comply with any Legal Requirements; provided that, (except where such failure to cure will result in an imminent threat to safety or health, in which event Contractor shall comply immediately): (i) LMDC has given Contractor a Notice of such noncompliance; and (ii) Contractor has failed to give Notice to LMDC within five days of the receipt of such Notice of noncompliance describing in reasonable detail Contractor's proposed cure and the time period in which Contractor shall effect such cure, which proposal and time period shall be subject to LMDC's approval; and/or that Contractor thereafter fails to effect such cure in accordance with Contractor's proposal and time period if and as so approved by LMDC;
- I. Contractor reduces Contractor's work force to a number which would be insufficient to complete the Work in accordance with the project schedule and Contractor fails, after seven (7) days' written notice from LMDC, to increase the work force to a number sufficient so as to complete the Work;
- J. Contractor subcontracts Contractor's rights or obligations hereunder, except as permitted under this Contract; or Contractor assigns this Contract (or any part of Contractor's rights or obligations hereunder) in contravention of this Contract;
- K. Contractor fails to secure and maintain all insurance required of Contractor by this Contract;
- L. Contractor does not complete the Work within thirty (30) days of the Final Completion Date (as extended under Article 12);
- M. the unpaid balance of the Lump Sum is clearly insufficient to complete the Work and to pay all liens which are Contractor's responsibility under this Contract (and not yet bonded or discharged), and Contractor fails to confirm in writing, after seven (7) days written notice from LMDC, that Contractor shall complete the Work in accordance with this Contract;
- N. Contractor:
  - 1.) seeks, consents to, acquiesces in, or suffers the appointment of, a receiver of all or a material part of Contractor's property or income;
  - 2.) admits in writing Contractor's inability to pay Contractor's debts as they mature;
  - 3.) makes a general assignment for the benefit of creditors;
  - 4.) files a voluntary petition in bankruptcy, or a petition or an answer seeking reorganization or an arrangement with creditors or an advantage under any present or future federal, state or other law relating to bankruptcy, reorganization, insolvency, readjustment of debt, dissolution or liquidation or similar relief; or files an answer admitting the material allegations of a petition filed against Contractor in any proceeding under any such law; and/or

- 5.) is adjudicated an insolvent or is subject to an involuntary petition in bankruptcy, and such adjudication or filing is not set aside or terminated within thirty (30) days;
- O. An attachment is levied or a judgment is executed against all or any material part of Contractor's property or income and the same is not discharged within thirty (30) days;
- P. Any statement, certification, or representation of Contractor in this Contract, or any other document submitted by Contractor with respect to the Work or the Contract (or for purposes of securing the Contract) is false, fraudulent, or materially untrue or incorrect when made;
- Q. Contractor fails to satisfy, remove, bond, or discharge any lien if, as and when required under this Contract;
- R. There occurs a change in Contractor's financial condition which has (or clearly will have) a material adverse effect on Contractor's ability to perform its obligations under this Contract;
- S. Contractor (or the chairman or president, or any vice president, treasurer, or any shareholder owning more than twenty percent (20%) of Contractor's issued and outstanding capital stock, or the sole proprietor of Contractor or any general partner or joint venturer of Contractor) is finally determined to be guilty of a felony related or pertaining to the business activities of Contractor; and/or
- T. Except as covered by (E) through (R) above, Contractor materially fails to perform or observe any other term, covenant, condition and provision of the Contract for thirty (30) days after written notice from LMDC specifying the nature of Contractor's failure; provided, however, that if curing or correcting such failure requires Work to be performed, acts to be done, or conditions to be removed which cannot be performed, done, or removed within such thirty (30) days, no breach of this Contract shall be deemed to have occurred if Contractor:
  - 1.) gives written notice to LMDC within such thirty (30) days acknowledging that Contractor intends to take all actions necessary to remedy the matter involved with due diligence;
  - 2.) promptly commences to cure and correct the matter involved; and
  - 3.) cures and corrects the matter involved within a reasonable time, taking into account the relevant circumstances.

If LMDC cancels this Contract as to any or all of the Work for Contractor's breach and if it is determined subsequently for any reason that a breach of the Contract did not occur or that Contractor had cured such breach in a timely manner in accordance with the Contract provisions, then LMDC's cancellation of this Contract shall be deemed to have been an elective termination of the Contract pursuant to Article 16 hereof.

### **36. RIGHTS AND REMEDIES OF CONTRACTOR**

Inasmuch as Contractor can be adequately compensated by money damages for any breach of this Contract which may be committed by LMDC, Contractor expressly agrees that no default, act or omission of LMDC shall constitute a material breach of this Contract entitling Contractor to cancel or rescind it or (unless LMDC shall so direct) to suspend or abandon performance, except as set forth in the third paragraph of this Article.

Contractor shall not bring any legal proceeding against LMDC or any other Indemnitee under the Contract, or with respect to any aspect of the Work, unless Contractor commences same no later than three hundred sixty five (365) days after the earlier of: (a) the issuance of the Certificate of Final Completion; (b) the date on which Contractor's forces leave the Site after completion of Work thereon; (c) any termination of Contractor's right to perform the Work under Articles 15, 16 or 35 hereof; and/or (d) any earlier abandonment of the Project or purported termination by Contractor based upon any alleged default by LMDC. This Article 36 shall not be construed to (a) revive any claim of Contractor previously waived under other provisions of the Contract; (b) release any third-party claim against an Indemnitee and to the extent such claim is based on negligent acts or willful misconduct of an Indemnitee; or (c) to deprive Contractor of any defense in any legal proceeding commenced against Contractor by LMDC or any other person or entity, or of any counterclaim against LMDC or any other person or entity relating to any subject other than LMDC's payments (or non-payment) to Contractor for Work after the expiration of any period (or periods) specified in this Article 36. With respect to any legal proceeding against the Port Authority, Contractor shall not bring any legal proceeding unless Contractor complies with the requirements of Sections 7101 through 7109 of the Unconsolidated Laws of the State of New York.

### **37. PERFORMANCE OF REMEDIAL WORK**

In the exercise of its right to take over and complete Work, or if LMDC terminates this Contract by reason of a breach by Contractor, in either case for which provision is made in Article 35 hereof, LMDC shall have the right to take possession of and use or permit the use of any and all plant, materials, equipment and other facilities provided by Contractor for the purpose of the Work and Contractor shall not remove any of the same from the site of the Work without express permission. Unless expressly directed to discontinue the performance of all Work, or unless LMDC terminates this Contract, Contractor shall continue to perform the remainder thereof in such manner as in no way will hinder or interfere with the portions taken over by LMDC.

In the certificate of total compensation earned, for which provision is made in Article 9 hereof, the certificate shall separately state the amount of Work so performed by LMDC, or incurred by LMDC to engage another contractor or contractors to complete the portion of the Work left unfinished by Contractor upon a termination by LMDC for Contractor's breach of this Contract; shall credit to LMDC the cost thereof; and shall credit to Contractor (as if Contractor had received the same) the compensation earned with respect thereto; and the difference between them shall be payable by Contractor to LMDC, or vice versa as the case may be. If such difference is in its favor, LMDC may deduct it from any moneys due Contractor, and if such moneys be insufficient, the balance thereof shall be payable to LMDC within thirty (30) days of demand therefor (with interest on any balance not paid by such thirtieth day at the annual interest rate specified in Article 10); if in Contractor's favor, it shall constitute part of the Final Payment.

The exercise by LMDC of its right to take over the Work, or to complete unfinished Work after a termination of this Contract for a breach of it by Contractor, shall not release Contractor or Contractor's sureties from any of Contractor's or such sureties' obligations or liabilities under this Contract or the Performance and Payment Bond.

**38. NO ESTOPPEL OR WAIVER**

LMDC shall not be precluded or estopped by any acceptance, certificate or payment, final or otherwise, issued or made under this Contract or otherwise issued or made by it, the Owner's Representative, or any officer, agent or employee of LMDC, from showing at any time the true amount and character of Work performed, or from showing that any such acceptance, certificate or payment is incorrect or was improperly issued or made; and LMDC shall not be precluded or estopped, notwithstanding any such acceptance, certificate or payment, from recovering from Contractor any damages which it may sustain by reason of any failure on Contractor's part to comply strictly with this Contract, and any moneys which may be paid to Contractor or for Contractor's account in excess of those to which Contractor is lawfully entitled.

Neither the acceptance of the Work or any part thereof, nor any payment therefor, nor any order or certificate issued under this Contract or otherwise issued by LMDC, the Owner's Representative, or any officer, agent or employee of LMDC, nor any permission or direction to continue with the performance of Work, nor any performance by LMDC of any of Contractor's duties or obligations, nor any aid lent to Contractor by LMDC in Contractor's performance of such duties or obligations, nor any other thing done or omitted to be done by LMDC, its directors, officers, agents or employees shall be deemed to be a waiver of any provision of this Contract or of any rights or remedies to which LMDC may be entitled because of any breach thereof, excepting only a resolution of its directors, providing expressly for such waiver. No cancellation, rescission or annulment hereof, in whole or as to any part of the Work, because of any breach hereof, shall be deemed a waiver of any money damages to which LMDC may be entitled because of such breach. Moreover, no waiver by LMDC of any breach of this Contract shall be deemed to be a waiver of any other or any subsequent breach.

**CHAPTER VII**

**MISCELLANEOUS**

**39. SUBMISSION TO JURISDICTION**

Contractor hereby irrevocably submits to the exclusive jurisdiction of the Supreme Court of the State of New York, New York County and the United States District Court for the Southern District of New York in regard to any controversy (whether arising by reason of commencement of legal proceedings, defense, counter-claims, or otherwise) arising out of, connected with, or in any way concerning this Contract. Contractor agrees that service of process on Contractor in relation to such jurisdiction may be made, at the option of LMDC, either by registered or certified mail addressed to the applicable office as provided for in Article 8 of the Deconstruction Contract, by registered or certified mail addressed to any office actually maintained by Contractor or by actual personal delivery to Contractor if Contractor be an individual, to any partner if Contractor be a partnership or to an officer, director or managing or general agent if Contractor be a corporation.

Such service shall be deemed to be sufficient when jurisdiction would not lie because of the lack of basis to serve process in the manner otherwise provided by law. In any case, however, process may be served as stated above whether or not it might otherwise have been served in a different manner.

**40. PROVISIONS OF LAW DEEMED INSERTED**

Each and every provision of law and Article required by law 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 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 Contract shall forthwith be physically amended to make such insertion.

**41. INVALID CLAUSES**

If any provision of this Contract shall be such as to destroy its mutuality or to render it invalid or illegal, then, if it shall not appear to have been so material that without it the Contract would not have been made by the parties, it shall not be deemed to form part thereof but the balance of the Contract shall remain in full force and effect.

**42. NON-LIABILITY OF PERSONNEL**

No officer, director, agent, or employee of LMDC, ESDC, the Port Authority or the Owner's Representative shall be charged personally by Contractor with any liability or held liable to Contractor under any term or provision of this Contract, or because of its execution or attempted execution, or because of any breach hereof.

**43. [OMITTED]**

**44. MODIFICATION OF CONTRACT**

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

## SCHEDULE A

### CERTAIN LMDC REQUIREMENTS

#### ARTICLE I

**A1.1 [omitted]**

**A1.2 CONTRACTOR AS INDEPENDENT CONTRACTOR.** Except as set forth in Article 4 and notwithstanding any other provision of this Contract, Contractor's status (and that of any subcontractor) shall be that of an independent contractor and not that of an agent or employee of LMDC. Accordingly, neither Contractor nor any subcontractor shall hold itself out as, or claim to be acting in the capacity of, an employee or agent of LMDC.

**A1.3 [omitted]**

**A1.4 APPROVALS OR ACCEPTANCE BY LMDC.** Whenever action is to be taken, or approval or acceptance given, by LMDC, such action, approval or acceptance shall be deemed to have been taken or given only if so taken or given by an authorized representative of LMDC, by the official of LMDC who signed this Contract on behalf of LMDC, or by another officer or employee of LMDC duly designated by such signing officer to represent LMDC in connection therewith. LMDC shall notify Contractor in writing of the giving or withholding of each such approval or acceptance within a reasonable period of time. LMDC's acceptance or approval of any specifications, drawings, plans, reports or other materials prepared by Contractor hereunder shall in no way relieve Contractor of responsibility and/or liability for such material.

**A1.5 CONFLICT-OF-INTEREST.** Contractor represents and warrants that:

(a) Contractor has not now, and will not acquire, any interest, direct or indirect, present or prospective, in the project to which Contractor's work relates or the real estate which is the subject of the project, or in the immediate vicinity thereof and has not employed and will not knowingly employ in connection with work to be performed hereunder any person or entity having any such interest during the term of this Contract.

(b) No officer, employee, agent or director of LMDC shall be permitted by Contractor to share in any benefit to Contractor that arises from Contractor's work hereunder.

(c) Contractor shall not permit any officer, employee, agent or director of LMDC, or any of its subsidiaries to participate in any decision relating to this Contract which affects the personal interest of the aforementioned individuals, or the interests of any corporation, partnership, or association in which those individuals are directly or indirectly interested; nor shall any officer, agent, director or employee of LMDC be permitted by Contractor to have any interest, direct or indirect, in this Contract or the proceeds thereof.

(d) Contractor shall cause, for the benefit of LMDC, every contract or agreement with any Contractor to include the representations contained in subsections (a), (b), (c) of this Section A1.5. Contractor will take such action in enforcing such provisions as LMDC may direct, or, at its option, assign such rights as it may have to LMDC for enforcement by same.

**A1.2 NO BROKER.** Contractor represents that it has not employed any person, corporation or partnership, to solicit or procure this Contract, and has not made, and will not make, any payment or

agreement for the payment of any commission, percentage, brokerage or contingent fee, or other compensation in connection with the procurement of this Contract.

## ARTICLE II

### DOCUMENTS AND RECORDS

**A.2.1 SUBMISSION AND PRODUCTION OF RECORDS.** Please refer to Article 3 of the Contract.

## ARTICLE III

### PROVISIONS REQUIRED BY LAW

**A3.1 CONTRACTOR TO COMPLY WITH LEGAL REQUIREMENTS.** Contractor in performing its obligations and in preparing all documents required under this Contract shall comply with Legal Requirements. All provisions required by such Legal Requirements to be included in this Contract shall be deemed to be included in this Contract with the same effect as if set forth in full. Such laws shall include, but are not limited to, the following laws referenced in this Section A3.1.

Contractor shall comply with all applicable HUD guidelines relating to Community Development Block Grant ("CDBG") funding, as modified or waived with respect to LMDC and published by HUD at 67 F.R. 12707 and 67 F.R. 36017. Contractor shall comply with applicable provisions of the Housing and Community Development Act of 1974, as amended, section 434 of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2002 (Public Law 107-73), the 2001 Emergency Supplemental Appropriations Act for Recovery from and Response to Terrorist Attacks on the United States (Public Law 107-38), and other applicable laws, including but not limited to:

- (a) Anti-discrimination and Labor Laws, including but not limited to:
  - (1) The Housing and Urban Development Act of 1968 (12 U.S.C. § 1701u) as supplemented by HUD regulations (24 CFR part 135) with respect to efforts to provide to the greatest extent feasible employment and other economic opportunities to low- and very low-income individuals;
  - (2) Section 109 of Title I of the Housing and Community Development Act of 1974, as amended;
  - (3) Nondiscrimination in program administration and activities (29 U.S.C. § 794, 42 U.S.C. § 5309(a) and § 6101 *et seq.*);
  - (4) Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*);
  - (5) Title VIII of the Civil Rights Act of 1968, as amended;
  - (6) Section 504 of the Rehabilitation Act of 1973;
  - (7) The Age Discrimination Act of 1975;
  - (8) Executive Order 11063;

- (9) Executive Order 11246 (as amended by Executive Orders 11375, 11478, 12106 and 12086)
- (10) The Fair Housing Act (42 U.S.C. §§ 3601-20);
- (11) The Copeland "Anti-Kickback" Act (18 U.S.C. § 874) as supplemented in the U.S. Department of Labor ("DOL") regulations (29 CFR parts 1, 3, 5 and 7) with respect to all contracts for construction or repair;
- (12) The Davis-Bacon Act (42 U.S.C. § 5310, 40 U.S.C. §§ 276a to 276a-7), as supplemented by DOL regulations (29 CFR part 5), with respect to construction contracts in excess of \$2000; and
- (13) Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-330) as supplemented by DOL regulations (29 CFR part 5) with respect to construction contracts in excess of \$2000, and in excess of \$2500 for other contracts which involve the employment of mechanics or laborers.

(b) Safe and Accessible Facilities and Services. Contractor must provide safe and accessible facilities and services in accordance with applicable law, including but not limited to:

- (1) Americans with Disabilities Act (42 U.S.C. §§ 4151-4157);
- (2) The Lead-Based Paint Poisoning and Prevention Act (42 U.S.C. §§ 4821-4846);
- (3) All applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. § 1857(h)), section 508 of the Clean Water Act (33 U.S.C. § 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15); and
- (4) Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871) (53 FR 8068, 8087, Mar. 11, 1988, as amended at 60 FR 19639, 19642, Apr. 19, 1995).

(c) Privacy Act. Contractor must comply with the Privacy Act (5 U.S.C. § 552a) and ensure that all personal information obtained from the public is handled in compliance with the Privacy Act. Contractor must ensure the minimum required access to any such personal information collected or received from the public and will hire a bonded clerk to ensure compliance with the Privacy Act as to any such information in its possession.

(d) Drug Free Workplace. Contractor shall or shall continue to provide and maintain a drug-free workplace by implementing a workplace drug policy that includes:

- (1) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
- (2) Establishing an ongoing drug-free awareness program to inform employees about ( ) the dangers of drug abuse in the workplace, ( ) the grantee's policy of

maintaining a drug-free workplace, () any available drug counseling, rehabilitation, and employee assistance programs; and () the penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

- (3) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by subparagraph (1) herein;
- (4) Notifying the employee in the statement required by subparagraph (1) herein that, as a condition of employment under the grant, the employee will: () abide by the terms of the statement; and () notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;
- (5) Notifying LMDC, in writing, within five (5) calendar days after receiving notice under subparagraph 4(ii) from an employee or otherwise receiving actual notice of such conviction; and
- (6) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph 4(ii), with respect to any employee who is so convicted:
  - (i) taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
  - (ii) requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency.

(e) Anti-Lobbying. To the best of Contractor's knowledge and belief:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;

If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions; and

It will require that the certification language of this paragraph (e) 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.

(f) Section 3. The Work to be performed under this Contract is a project assisted under a program providing direct Federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. § 1701u). Contractor shall comply with the following provisions of Section 3:

- (1) The Work to be performed under this Contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. § 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- (2) Contractor agrees to comply with HUD's regulations in 24 CFR part 135, which implement Section 3. As evidenced by Contractor's execution of this contract, Contractor certifies that Contractor is under no contractual or other impediment that would prevent Contractor from complying with the part 135 regulations.
- (3) Contractor agrees to send to each labor organization or representative of workers with which Contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of Contractor's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the Project Site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the Work shall begin.
- (4) Contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. Contractor will not subcontract with any Contractor where Contractor has notice or knowledge that the Contractor has been found in violation of the regulations in 24 CFR part 135.
- (5) Contractor will certify that any vacant employment positions, including training positions, that are filled (1) after Contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent Contractor's obligations under 24 CFR part 135.
- (6) Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this Contract for default, and debarment or suspension from future HUD assisted contracts.
- (7) With respect to Work performed in connection with Section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act also applies to the work to be performed under this Contract.

Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Contractor is subject to the provisions of Section 3 and Section 7(b) and agrees to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with Section 7(b).

- (8) Contractor will be required to report on its efforts and the results of its efforts to comply with Section 3 on a quarterly basis, utilizing the Section 3 Workforce Report attached hereto as Exhibit A-1.

(g) September 11, 2001 Recovery. Contractor will make efforts to employ for the Work individuals affected by September 11, 2001, specifically, but not limited to, individuals who (a) lost wages from their work below Houston Street due to September 11, 2001, or (b) lived below Houston Street on September 11, 2001 or currently reside there. Contractor shall submit quarterly reports to LMDC substantially in the form attached hereto as Exhibit A-3, regarding its efforts to satisfy its obligations under this clause (g).

**A3.2 CONTRACTOR TO OBTAIN PERMITS, ETC.** Except as otherwise instructed in writing by LMDC, Contractor shall obtain and comply with all legally required licenses, consents, approvals, orders, authorizations, permits, restrictions, declarations and filings required to be obtained by LMDC or Contractor in connection with the Work.

## **ARTICLE IV**

### **OTHER STANDARD PROVISIONS**

**A4.1 ASSIGNMENT BY LMDC.** LMDC may transfer and assign any and all of its rights and obligations under this Contract, including transferring and assigning its rights to Contractor's performance of any or all Work or Services under the Contract Documents, to any partnership, firm, limited liability company, corporation, Governmental Authority, or department or other entity. LMDC shall give Contractor written notice of any such transfer and assignment. Such transfer shall relieve LMDC of any liability or obligation under this Contract from and after the date of such assignment and transfer. (For the avoidance of doubt, this Article specifically permits such an assignment and transfer to any contractor engaged in the abatement and removal of interior materials and/or deconstruction of the Building.)

**A4.2 GOVERNING LAW.** This Contract shall be construed and enforced in accordance with the laws of the State of New York (without giving effect to principles of conflicts of laws).

**A4.3 ENTIRE AGREEMENT/AMENDMENT.** This Contract constitutes the entire Contract between the parties hereto and no statement, promise, condition, understanding, inducement, or representation, oral or written, expressed or implied, which is not contained herein shall be binding or valid and this Contract shall not be changed, modified or altered in any manner except by an instrument in writing executed by the parties hereto.

**A4.4 CONFIDENTIALITY.** Contractor hereby agrees that all data, recommendations, reports and other materials developed in the course of any study or work performed in connection with this Contract are strictly confidential between Contractor and LMDC and Contractor may not at any time reveal or disclose such data, recommendations or reports in whole or in part to any third party without

first obtaining permission from LMDC. Notwithstanding the preceding sentence, Contractor shall cooperate fully with such third parties as LMDC may designate by written request. Such cooperation shall include making available to such parties, data, information and reports used or developed by Contractor in connection with this Contract.

**A4.5 ASSISTANCE.** Contractor hereby agrees to assist LMDC in its efforts to include the public in the development of the Work, which may include presentations to the local community board(s) and other local civic and community groups and incorporating comments from these groups in the implementation of the Work.

**A4.6 LMDC RECOGNITION.** Contractor hereby agrees to insure recognition of the role of HUD and of LMDC in the manner provided in Exhibit A-2 attached hereto.

**A4.7 SUBCONTRACT PROVISIONS.** Contractor shall include the provisions of Articles II and III and this Section A4.7 of this Schedule "A" in every Subcontract or purchase order it awards, specifically or by reference, so that such provisions will be binding upon each of the subcontractors and their subcontractors and vendors.

**A4.8 ENVIRONMENTAL CONDITIONS.**

(a) Contractor agrees to comply with all Environmental Laws, all Variances, and the Deconstruction Plan.

(b) Additional Deconstruction Measures. Contractor agrees to meet all commitments included in or as mandated by (1) the World Trade Center Memorial and Redevelopment Plan Record of Decision and Findings Statement (the "ROD"), dated June 2004, (attached hereto as Exhibit A-4) or (2) the Coordinated Construction Act for Lower Manhattan (the "Act") (attached hereto as Exhibit A-5) as relevant to deconstruction activities, including, without limitation, the following:

1. Prior to deconstruction activities, prepare and implement a site-specific Health and Safety Plan, dust control measures, and contaminated soil and groundwater management plans pursuant to section 3.2.9 of the ROD;

2. All off-road construction equipment of 50 horsepower or greater must be retrofitted to include oxidation catalysts, particulate filters or other best available control technology to reduce air emissions (including, without limitation, particulate emissions) to the lowest extent practicable and must utilize ultra-low sulfur fuel as mandated by the Act and as discussed in section 3.2.20 of the ROD;

3. In order to avoid or minimize adverse effects to historic resources within and adjacent to the Project Site (as defined by the ROD), all deconstruction activities must adhere to any Construction Protection Plans prepared pursuant to section 3.2.20 of the ROD.

(c) Environmental Performance Commitments. To the degree not otherwise provided elsewhere in this Agreement, Contractor agrees to implement the Lower Manhattan environmental performance commitments set forth in Exhibit A-6, attached hereto. Contractor will identify the specific measures implemented and may include additional commitments and specific measures as part of the Project's governmental entities coordination plan, construction environmental plan, design documents, and contracts.

**A4.9 MISCELLANEOUS.** This Schedule A supplements (and is not intended to limit or restrict) the other provisions of the Contract. The parties agree that this Schedule A shall be controlling in the event of any inconsistencies or conflicts between the terms of this Schedule A and any other part of this Contract, subject to Article 20 and Schedule "F" hereof.

**EXHIBIT A-1**

**Section 3 Workforce Report**

Type of Report (Check One) // Total Workforce // Contract Specific Workforce							
Type of Service (Check One) // Professional, Construction, Consultant // Service/ Consultant // Commodities							
Contractor Name:				Contractor Start Date:			
Address:				Reporting Period:			
// Quarterly Report // Semi-Annual Report							
Telephone Number				Project Name:			
Federal ID NO:				Project Location:			
Check One: // Prime Contractor // Contractor				County:		Zip:	
Contract Number:				Product/Services Provided:			
Contract Amount:							
<b>Number of Employees</b>							
Federal Occupational Category	Total Number of Employees Working on this Project	Low Income Employees Residing in Metropolitan Area	Very Low Income Employees Residing in Metropolitan Area	Low Income Employees Residing in Service Area or Neighborhood in which Project is Located	Very Low Income Employees Residing in Service Area or Neighborhood in which Project is Located	Low Income Employees Participating in Other HUD Programs	Very Low Income Employees Participating in Other HUD Programs
Official/Administrator							
Professionals							
Technicians							
Sales Workers							
Office & Clerical							
Craft Workers							
Operatives							
Laborers							
Service Workers							
<b>TOTALS</b>							
<p>Certification:</p> <p>I, _____ (Print Name) the, _____ (Title) of _____ (Print Company Name) do certify that (i) I have read this Workforce Utilization Report on Section 3 and (ii) to the best of my knowledge, information, and belief the information herein is complete and accurate.</p> <p>Signature: _____</p>							

## **EXHIBIT A-2**

### **LMDC and HUD Recognition**

Please find below guidelines for recognition of HUD and LMDC with respect to the Work. Note, any public information and all of the items below must be approved by LMDC in advance of publication or posting.

#### **Written documents**

All written documents for public release must include the following language, unless otherwise specified in writing by LMDC:

1. "This [project] is made possible by funding from the Lower Manhattan Development Corporation, which is funded through Community Development Block Grants from the U.S. Department of Housing and Urban Development."
2. Written documents should also include the LMDC logo and the names of the Governor, Mayor, Chairman of LMDC, and President of LMDC.

#### **Internet information and e-mail information**

1. Internet information must include all of the items required for written documentation and a link to LMDC's website.

#### **Offices open to the public providing services funded by LMDC**

1. All offices must include a sign including all of the items required for written documentation.

#### **Construction Signs**

1. All construction signs must include a sign including all of the items required for written documentation.
2. All construction signs must also include the name of the project, an expected end date for the Work, the name of LMDC and Contractor, and a phone number for the public to call to obtain information about the Work. This must be a phone number maintained by LMDC, Contractor or one of the subcontractors.

**EXHIBIT A-3**

**Workforce Utilization Report on Employees Impacted by September 11, 2001**

Type of Report (Check One) // Total Workforce // Contract Specific Workforce	
Type of Service (Check One) // Professional, Construction, Consultant // Service/ Consultant // Commodities	
Contractor Name:	Contractor Start Date:
Address:	Reporting Period:
	// Quarterly Report // Semi-Annual Report
Telephone Number	Project Name:
Federal ID NO:	Project Location:
Check One: // Prime Contractor // Contractor	County: <span style="float:right">Zip:</span>
Contract Number:	Product/Services Provided:
Contract Amount:	

**Number of Employees**

Federal Occupational Category	Total Number of Existing Employees Working on this Project	Total Number of New Employees Hired for this Project	Existing Employees that Lost Job or Wages as a Result of September 11, 2001	New Employees that Lost Job or Wages as a Result of September 11th, 2001	Low-Income Existing and New Employees that Lost Job or Wages as a Result of September 11th, 2001	Moderate-Income Existing and New Employees that Lost Job or Wages as Result of September 11th, 2001	Low-Income Existing and New employees that live below Houston Street	Moderate-Income Existing and New Employees that Live Below Houston Street
Official/Administrator								
Professionals								
Technicians								
Sales Workers								
Office & Clerical								
Craft Workers								
Operatives								
Laborers								
Service Workers								
<b>TOTALS</b>								

Certification:

I, \_\_\_\_\_ (Print Name) the, \_\_\_\_\_ (Title) of \_\_\_\_\_ (Print Company Name) do certify that (i) I have read this Workforce Utilization Report on Employees Impacted by September 11, 2001 and (ii) to the best of my knowledge, information, and belief the information herein is complete and accurate.

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

**EXHIBIT A-4**

**RECORD OF DECISION AND FINDINGS STATEMENT**

See files on LMDC's website at [http://www.renewnyc.com/plan\\_des\\_dev/rod\\_contents.asp](http://www.renewnyc.com/plan_des_dev/rod_contents.asp).

**EXHIBIT A-5**

**COORDINATED CONSTRUCTION ACT FOR LOWER MANHATTAN**

[attached]

**EXHIBIT A-6**

**ENVIRONMENTAL PERFORMANCE COMMITMENTS  
DECONSTRUCTION CONTRACT**

<b>Air Quality:</b>
Use ultra low sulfur diesel fuel in off-road construction equipment with engine horsepower (HP) rating of 50 HP and above.
Use diesel engine retrofit technology in off-road equipment to further reduce emissions. Such technology may include Diesel Oxidation Catalyst / Diesel Particulate Filters, engine upgrades, engine replacements, or combinations of these strategies.
Limit unnecessary idling times on diesel powered engines to 3 minutes.
Locate diesel powered exhausts away from fresh air intakes.
Control dust related to construction site through a Soil Erosion Sediment Control Plan that includes, among other things: <ul style="list-style-type: none"><li>a. spraying of a suppressing agent on dust pile (non-hazardous, biodegradable);</li><li>b. containment of fugitive dust; and</li><li>c. adjustment for meteorological conditions as appropriate.</li></ul>
<b>Noise and Vibration:</b>
Implement a Construction Environment Plan which reduces noise and vibration.
Where practicable, schedule individual project construction activities to avoid or minimize adverse impacts.
Coordinate construction activities with projects under construction in adjacent and nearby locations to avoid or minimize impacts.
Consider condition of surrounding buildings, structures, infrastructure, and utilities where appropriate.
Prepare contingency measures in the event established limits are exceeded.
Develop a materials staging and construction access plan prior to start of construction. Truck staging zones are to be placed for minimum disruption and impact.
<b>Cultural and Historic Resources:</b>
Coordinate with other projects to avoid or minimize interruption in access to cultural and historic sites.
Participate in public information and outreach regarding the project.
Monitor noise and vibration during construction at such sites as appropriate.
<b>Access and Circulation:</b>
Establish a project-specific pedestrian and vehicular maintenance and protection plan.
Promote public awareness through mechanisms such as: <ul style="list-style-type: none"><li>a. signage;</li><li>b. telephone hotline (as may be available); and</li><li>c. LMDC web site updates.</li></ul>
Ensure sufficient alternate street, building, and station access during construction period.
Communicate regularly with New York City Department of Transportation and Lower Manhattan Construction Command Center regarding construction coordination efforts.
<b>Economic Effects:</b>

Minimize residential and retail impacts by adding appropriate signage for affected businesses and amenities.
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<b>Design for the Environment:</b>
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Conserving Materials and Resources
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Environmentally-friendly Operations & Maintenance
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Waste Management and Recycling
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**SCHEDULE B**

[omitted]

## SCHEDULE C

### LMDC NON-DISCRIMINATION AND AFFIRMATIVE ACTION PROVISIONS

In this Schedule, "Contracting Party" means Contractor and any other parties included below in the definition of "Contracting Party".

#### **I. Policy**

It is the policy of the State of New York, Empire State Development Corporation ("ESDC"), and LMDC to comply with all federal, State and local law, policy, orders, rules and regulations which prohibit unlawful discrimination because of race, ethnicity, creed, color, national origin, sex, sexual orientation, age, disability, marital status or status with regard to public assistance, and to take affirmative action to ensure that Minority and Women-owned Business Enterprises (M/WBEs), Minority Group Members and women share in the economic opportunities generated by LMDC's participation in projects or initiatives, and/or the use of LMDC 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, ethnicity, creed, color, national origin, sex, sexual orientation, age, disability, marital status, or status with regard to public assistance, (ii) undertake or continue existing programs of affirmative action to insure that all employment practices are free from such discrimination and 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 LMDC, 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) Upon commencement of the contract services and quarterly thereafter during the term of the Contract, the Contracting Party shall submit to LMDC, a Workforce Employment Utilization Report (Attachment 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 LMDC. 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 LMDC in writing.

(3) The Contracting Party will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice advising the labor union or worker's representative of the Contracting Party's commitments hereunder, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The Contracting Party will, in all solicitations or advertisements for employees placed by or on behalf of the Contracting Party, state that it is an Equal Opportunity or Affirmative Action employer.

(5) The Contracting Party shall provide written or electronic notification to LMDC no later than five days prior to posting notification of procurement for goods, services, and or construction related activities contemplated by this Contract. This notification shall include type of procurement and information on how to obtain bid documents. The Contracting Party shall provide LMDC written or electronic notification no later than five days after award of contract for goods, services, or construction related activities contemplated by this Contract. This notification shall include name of the Contracting Party, contact name and phone number for the Contracting Party, type of services, and contract size. LMDC may publish notification of procurement and award of contract on LMDC's website and in regular mailings to small businesses, minority and women owned organizations, government agencies, and interested individuals. LMDC may facilitate meetings between contractors and the above groups for contracts awarded over \$1 million using HUD CDBG funds granted to LMDC. The Contracting Party shall be required to attend these meetings.

The Contracting Party shall include, or cause to be included, the provisions of Articles (1) through (5) above in every Contract or purchase order that it enters into in order to fulfill its obligations under this 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 Minority and Women-Owned Business Enterprise Participation**

(a) The Contracting Party is required to use its best efforts to achieve an overall M/WBE participation goal of 20% of the total dollar value of this Contract.

(b) The goal for M/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 M/WBEs will be determined as: (i) the dollar value of the work subcontracted to M/WBEs; (ii) where the Contracting Party is a joint venture, association, partnership or other similar entity including one or more M/WBEs -- the contract price multiplied by the percentage of the entity's profits/losses which are to accrue to the M/WBE(s) under the Contracting Party's agreement; or (iii) where the M/WBE is the Contracting Party -- the contract price.

(d) The Contracting Party shall include, or cause to be included, the provisions of Articles (a) through (c) in every Contract or purchase order that it enters into in order to fulfill its obligations under this 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 LMDC 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 Attachments C-1 and C-2 (M/WBE Compliance Report to be filed monthly), with LMDC, detailing compliance with the provisions of these non-discrimination and affirmative action Articles. An owner or officer of the Contracting Party shall certify to the accuracy of the information contained in the reporting documentation.

## **IV. Non-Compliance and Sanctions**

In the event that any Contracting Party fails to use its best efforts to comply with the provisions herein, LMDC may impose such sanctions on the Contracting Party by reason of the failure of the Contracting Party to use best efforts.

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.

## **ESDC AND LMDC NON-DISCRIMINATION AND AFFIRMATIVE ACTION DEFINITIONS**

### **Affirmative Action**

Shall mean the actions to be undertaken by 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 in Section II herein, and developed by ESDC or LMDC.

### **Affirmative Action Officer ("AAO")**

Shall mean LMDC's Project Manager-M/WBE Monitoring, or his/her designee, managing the affirmative action program for LMDC in coordination with LMDC's Legal Affairs Department.

### **Best Efforts - Minority and Women-owned Business Enterprise Participation**

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

- (a) Dividing the 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 M/WBEs, including circulation of solicitations to minority and women's trade associations. Each Contracting Party shall maintain records detailing the efforts made to provide for meaningful M/WBE participation in the work. Such record keeping must include the names and addresses of all M/WBEs contacted and, if a M/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 M/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 M/WBE participation on the Contract;
- (e) Utilizing the resources of LMDC and ESDC's Affirmative Action Unit (AAU) to identify New York State certified M/WBE 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 (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 LMDC funds and (ii) any loan or grant agreement funded in whole or in part with LMDC funds.

**Contracting Party**

Shall mean (i) Contractor and 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 ESDC and/or LMDC and (ii) any borrower or grantee receiving funds from ESDC or LMDC pursuant to a loan or grant document.

**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 (A) one of the following racial groups: (i) American Indian or Alaska native, (ii) Asian, (iii) Black or African American, (iv) Native Hawaiian or Other Pacific Islander, OR (B) a Hispanic or Latino ethnic group.

**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 ESDC funds or LMDC with funds from the U.S. Department of Housing and Urban Development.

**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.

**Minority and Women Business Enterprise Listings**

The ESDC Affirmative Action Unit (AAU) is available to assist you in identifying M/WBEs certified by the State of New York that can provide goods and services in connection with existing and proposed contracts. If you require M/WBE listings, please call the AAU at (212) 803-3224 or use ESDC's M/WBE database at <http://205.232.252.35/>.

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For additional assistance, contact LMDC's Project Manager-M/WBE Monitoring at (212) 962-2300.



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: ___\$				<b>COMPANY EMPLOYMENT DATA</b>											
				<b>A.</b>  TOTAL COMPANY  EMPLOYEES (at the  <i>Beginning of project</i>  Male   _____ Female   _____				<b>B.</b>  TOTAL COMPANY  EMPLOYEES (at  <i>the end of project</i>  Male   _____ Female   _____				<b>C. NET INCREASE</b> <i>(applies only to changes, if any, in Company's Employee makeup at the end of project)</i>  <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td colspan="2" style="text-align: center;">TOTAL MALE</td> <td colspan="2" style="text-align: center;">TOTAL FEMALE</td> </tr> <tr> <td style="text-align: center;">C1. EMPLOYEES</td> <td style="text-align: center;">C2. OCCUPATIONAL CODES/# OF EMPLOYEES</td> <td style="text-align: center;">C3. EMPLOYEES</td> <td style="text-align: center;">C4. OCCUPATIONAL CODES/# OF EMPLOYEES</td> </tr> </table>				TOTAL MALE		TOTAL FEMALE		C1. EMPLOYEES	C2. OCCUPATIONAL CODES/# OF EMPLOYEES	C3. EMPLOYEES	C4. OCCUPATIONAL CODES/# OF EMPLOYEES
TOTAL MALE		TOTAL FEMALE																					
C1. EMPLOYEES	C2. OCCUPATIONAL CODES/# OF EMPLOYEES	C3. EMPLOYEES	C4. OCCUPATIONAL CODES/# OF EMPLOYEES																				
TOTAL TRAINEES						TOTAL TRAINEES																	
GRAND TOTAL						GRAND TOTAL																	

CERTIFICATION: I, \_\_\_\_\_ (Print Name), the \_\_\_\_\_ (Title), do certify that (i) I have read this Monthly Employment Utilization Report and (ii) to the best of my knowledge, information and belief the information contained herein is complete and accurate.

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

**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 Lower Manhattan Development Corp. ("LMDC").

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: LMDC 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:

*Beverly Bobb*  
*Lower Manhattan Development Corp.*  
*One Liberty Plaza, 20<sup>th</sup> Floor*  
*New York, NY 10006*  
[bbobb@RenewNYC.com](mailto:bbobb@RenewNYC.com)  
*(212) 962-2300 Phone*  
*(212) 962-2431 Fax*

SCHEDULE C, Attachment C-2

**MBE/WBE COMPLIANCE REPORT**  
**CONSTRUCTION**  
 (To be filed monthly)

PROJECT SPONSOR/DEVELOPER: \_\_\_\_\_

LMDC AA REPRESENTATIVE: Beverly Bobb \_\_\_\_\_

ADDRESS: \_\_\_\_\_

PROJECT NAME: \_\_\_\_\_

\_\_\_\_\_

PROJECT START DATE: \_\_\_\_\_ PERCENT COMPLETE:

TELEPHONE: \_\_\_\_\_

ACTUAL COMPLETION: \_\_\_\_\_

CONTACT PERSON: \_\_\_\_\_

**Attach M/WBE contract documentation, i.e. executed contracts, signed purchase orders or canceled checks. This report should be completed by an officer of the reporting company, and forwarded to the LMDC with the appropriate documentation.**

PRIME CONTRACTOR (Name, Address, Contact Person and Phone)	TYPE OF CONTRACT (Trade/Service)	CONTRACT AMOUNT	SUB CONTRACTOR NO. & AMT.	MBE/WBE SUBCONTRACTOR (Name, Address, Contact Person and Phone)	SCOPE OF SERVICES	AMOUNT CONTRACTED TO MBE/WBE

CERTIFICATION:

I, \_\_\_\_\_ (Print Name), the \_\_\_\_\_ (Title), do certify that (i) I have read this Compliance Report and (ii) to the best of my knowledge, information and belief the information contained herein is complete and accurate.

**SIGNATURE** \_\_\_\_\_ **DATE** \_\_\_\_\_

**Forward to:**  
Beverly Bobb, Lower Manhattan Development Corp., One Liberty Plaza, 20<sup>th</sup> Floor, New York, NY 10006, [bbobb@RenewNYC.com](mailto:bbobb@RenewNYC.com), (212) 962-2300 Phone, (212) 962-2431 Fax

**SCHEDULE D**

[omitted]

**SCHEDULE E**

[omitted]

## **SCHEDULE F OPPORTUNITY DOWNTOWN PLAN**

**The Lower Manhattan Development Corporation is committed to ensuring that minorities and women participate in the rebuilding of Lower Manhattan.**

It is the policy of the Lower Manhattan Development Corporation (LMDC) to comply with all federal, State and local law, policy, orders, rules and regulations which prohibit unlawful discrimination because of race, ethnicity, creed, color, national origin, sex, sexual orientation, age, disability or marital status, and to take affirmative action to ensure that Minority and Women-owned Business Enterprises (M/WBEs), Minority Group Members and women share in the economic opportunities generated by LMDC's participation in projects or initiatives, and/or the use of LMDC funds. LMDC is a subsidiary of the Empire State Development Corporation (ESDC) and applies ESDC's non-discrimination and affirmative action policy to LMDC activities and contracts. The ESDC Affirmative Action Unit (AAU) is available to assist you in identifying M/WBEs certified by the State of New York that can provide goods and services in connection with existing and proposed contracts.

### **OPPORTUNITY DOWNTOWN PROGRAM HISTORY**

In cooperation with Silverstein Properties, Tishman Construction, the Port Authority of New York and New Jersey, the Metropolitan Transportation Authority, the Manhattan Borough President's Office and the City and State of New York, the *Opportunity Downtown –Rebuilding Conference for Minority and Women Business Owners* was held on January 13, 2004 at Pace University to launch this initiative and provide information on contracting opportunities for minority- and women-owned businesses.

Building on the success of the first event, LMDC partnered with the Downtown Alliance, Manhattan Chamber of Commerce, the New York City Department of Small Business Services and the City and State of New York for the March 16, 2004 *Opportunity Downtown: Business to Business Exchange Event* – in an effort to identify and facilitate mutually beneficial procurement opportunities between Lower Manhattan's small businesses and corporations.

On March 31, 2004, LMDC, Non-Traditional Employment for Women, NOW Legal Defense and Education Fund, the Building Trade Employer's Association, and the General Contractor's Association sponsored *Opportunity Downtown: Women Working*. This free informational conference highlighted jobs in construction and the construction trades for women looking to change careers. The event included several hands-on demonstrations and a panel discussion with women who are in the industry. Additionally, an information session provided attendees information and access to pre- apprenticeship and training programs in the trades.

### **130 LIBERTY STREET**

LMDC intends to deconstruct the existing structure at 130 Liberty Street (Project). Contractor will be providing certain services for the Project, as elaborated in this Contract.

LMDC and Contractor agree to coordinate their efforts to achieve the goals of LMDC in incorporating MBE & WBE concerns and to include minority and women employees into the project workforce. This Plan outlines the partnering efforts of LMDC and Contractor to achieve the goals of this Plan.

In accordance with this Plan, Contractor shall use best efforts to meet or exceed the following goals in satisfaction of the applicable opportunity-related provisions included within the Agreement:

- 20% participation of M/WBEs as certified by the State of New York.
- 25% participation of minorities in construction trades on the Project.
- 14% participation of women in construction trades on the Project.

This Plan outlines the terms and conditions of Contractor's obligation to use best efforts to achieve these goals, as well as LMDC's commitment to use best efforts to assist Contractor in achieving these goals.

### **PART I: Minority and Women Owned Business Enterprises**

LMDC and Contractor agree to cooperate in the identification of qualified M/WBEs to be engaged in connection with the Project. The list of qualified M/WBEs will then be a resource to the first tier subcontractors of Contractor. Throughout the process of identifying and establishing a list of enterprises, LMDC and Contractor shall coordinate their efforts. All communication with community groups and other outside organizations shall be through LMDC, unless specifically noted otherwise in this Plan.

#### ***1. M/WBE Programs.***

LMDC shall arrange and host public M/WBE Programs, solely intended to inform the M/WBE community of the Project and the work and services to be performed in connection with the Project.

In connection with all such M/WBE Programs, Contractor shall:

- a.) Participate (and require all first tier subcontractors to participate). Provide an overview of the Project identifying anticipated Project needs (such as contracting and purchasing needs). Such presentation shall include a description of the procurement methods and bidding requirements imposed by each subcontractor involved in the Project. (It is mutually acknowledged that such programs may occur after-hours or on non-work days.)
- b.) Provide an M/WBE questionnaire to be completed by each M/WBE seeking to be engaged in connection with the Project.
- c.) Be available (and require all first tier subcontractors to be available) for one-on-one discussions with individual M/WBEs seeking to be engaged in connection with the Project.
- d.) Provide literature to all conference attendees, which shall include the name, contact and other relevant information for Contractor and all other subcontractors engaged in the Project.
- e.) At LMDC's request, consent to the inclusion on LMDC website (or in LMDC-prepared literature relating to the Project) of contact information and other relevant information for Contractor and its subcontractors.

#### ***2. General Outreach Program***

LMDC shall provide to Contractor (and Contractor shall provide to its first tier subcontractors), LMDC's current list of M/WBEs. Contractor shall require all first tier subcontractors to incorporate this information into their individual subcontractor/vendor lists and shall include these entities in their process of securing services.

During the course of the Project, it is expected that additional firms shall express an interest in performing services with respect to the Project. LMDC and Contractor shall promptly notify the other of any such indications of interest received during the Project. Contractor shall require all subcontractors to notify

them of any such indications of interest received during the Project. Contractor shall review such indications of interest and forward Information Questionnaires to each such M/WBE for completion. At LMDC's request, Consultant shall consult with LMDC in such review.

Any M/WBEs added to the list through this subsequent qualification process shall be shared with the first tier subcontractors. The actual inclusion of any such M/WBEs into the Project shall be subject to the terms and conditions of this Plan.

In connection with these general outreach programs, Contractor shall:

- a.) Require the first tier subcontractors to provide an outline of the services required for their individual scopes of work and those services to be subcontracted.
- b.) Obtain from the first tier subcontractors the names of those M/WBEs which the subcontractors have previously used and those the subcontractors intend to use for the services listed.
- c.) Distribute an M/WBE questionnaire to those firms received from the subcontractors and create a consolidated list of firms for the subcontractors to contact for services and to invite to M/WBE programs described hereunder.
- d.) With the assistance of LMDC, consolidate any newly identified M/WBEs onto a master list of M/WBEs, which list shall be provided to all first tier subcontractors for use on the Project.

## **PART II: Minorities and Women in the Workforce**

LMDC is committed to ensuring that women and minorities are afforded the opportunity to participate in the workforce. LMDC shall host conferences for recruiting minorities and women who currently serve in the trades or are eligible for apprenticeship programs to participate in the Project.

In consultation with, and with the reasonable assistance of LMDC, Contractor shall:

- 1) Interact with the local labor unions and organizations in meetings to identify and recruit minority and women to be well represented in the Project workforce.
- 2) Participate in any conferences held by LMDC to identify minorities and women in the unions or those who are eligible for apprenticeship programs who are interested in participating in the Project. Provide an overview of the Project and the membership procedures for the various unions to be engaged in the Project. (It is mutually acknowledged that such conferences may occur after-hours or on non-work days.)
- 3) Require at least one responsible party from each first tier subcontractor to participate in all such conferences and meetings.
- 4) Facilitate introductions between minority and women workers and key personnel from the subcontractors and unions involved in the Project.
- 5) As requested by LMDC, meet separately with minority and/or women's groups or labor forces to identify potential employment opportunities (and require all first tier subcontractors to take part in such meetings) as they may occur.

- 6) As requested by LMDC, cooperate with LMDC in advertising and other public information activities aimed at informing minority and women workers as to the time and location of any conferences to be held and any other actions such workers may take to participate in the Project.

**SCHEDULE G**

[omitted]

**SCHEDULE H**

[omitted]

## SCHEDULE I

### CONTRACTOR INSURANCE REQUIREMENTS

1. The required insurance under this Contract means and includes, for Contractor, all coverages described below (the "Required Contractor Insurance").

2. Contractor shall secure and maintain the following coverages, with the following minimum limits of coverage:

(a) workers' compensation insurance as required by Laws for New York or any other states in which Contractor conducts operations for all persons employed in connection with the Work, with additional coverage under the Federal Employers' Liability Act for one million dollars (\$1,000,000) each accident;

(b) commercial general liability insurance<sup>2</sup>, such insurance to insure against liability for bodily and/or personal injury and death and for property damage in an amount of one hundred million dollars (\$100,000,000), combined single limit (including primary and umbrella coverages), covering and responding to Articles 26 and 31 of this Contract and covering the Project Site and all streets, alleys and sidewalks adjoining or appurtenant to the Project Site, and which shall include:

(i) operations-premises liability;

(ii) completed operations coverage (to be kept in force for not less than two (2) years after completion of the Work);

(iii) broad form contractual liability, including coverage within 50 feet of any railroad property;

(iv) broad form property damage coverage; and

(v) a broad form commercial general liability endorsement (including explosion, collapse, and underground property damage).

(c) comprehensive automobile liability insurance for all owned, non-owned, leased, rented and/or hired vehicles insuring against liability for bodily and/or personal injury and death and for property damage in an amount of two million dollars (\$2,000,000), except that with respect to trucks involved in the Work, coverage shall be in an amount of five million dollars (\$5,000,000), which may be satisfied out of primary or umbrella coverage.

3. Except as specified for completed operations coverage under paragraph 2(b)(iii) above, Contractor shall maintain all coverages of Required Contractor Insurance from the date of this Contract through Final Completion and thereafter during any period while Contractor and/or any Subcontractor is

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<sup>2</sup> For all purposes of this Contract, Contractor's liability insurance, as required pursuant to this Schedule "I," shall be effective as of the date of this Contract as if Contractor had commenced full operations under this Contract.

performing any Work (including any warranty or corrective work) or furnishing any services pursuant to the Contract.

4. Contractor shall require that all subcontractors carry workers' compensation insurance, general liability insurance, commercial automobile liability insurance, and property damage insurance on tools and equipment of the same categories as specified in paragraphs 2 and 3 and subject to the coverage amounts specified below; and Contractor shall require each subcontractor to furnish the same documentation of such coverage as required of Contractor hereunder, unless and except as LMDC agrees otherwise in writing. The amount of insurance coverage to be maintained by each subcontractor shall be at least five million dollars (\$5,000,000) or such amounts that the Contractor believes are reasonable for the type of Work being performed by each Contractor, subject to LMDC's reasonable approval.

5. Contractor is advised that LMDC does not maintain, nor intend to maintain, any insurance which would cover Contractor's or any Contractor's temporary plant and equipment used in connection with the Work. Accordingly, Contractor assumes all risk of damage or loss to such plant and equipment and releases LMDC from any and all liability in connection with any damage or loss to any such plant and equipment.

6. Each insurance policy of Required Contractor Insurance (including policies for subcontractors) shall contain the following (whether or not requiring additional premium):

(a) an agreement by the insurer that such policy shall not be cancelled, denied renewal (including cancellation or non-renewal for non-payment of premium), amended, or any coverages reduced, without at least thirty (30) days prior written notice by mail to LMDC (with copies to ESDC and Owner's Representative) at the address specified in this Contract;

(b) policy language or an endorsement providing for cross liability/severability of interests of all insured parties;

(c) an endorsement designating LMDC and all other Indemnitees (as defined in Article 31) as additional insureds (except for the coverage required pursuant to paragraph 2(a));

(d) ISO endorsement CG 24 14 11 85 relating to the insurer's waiver of the right to assert governmental immunity; and

(e) a provision that a notice of accident or claim to the insurer by LMDC shall be deemed notice by all insureds under the policy.

All insurance policies required to be maintained by Contractor shall be primary protection for losses due to the Contractor's operations, and no Indemnitee shall be called upon to contribute to any loss.

7. Contractor and each subcontractor shall deliver to LMDC certificates of insurance evidencing the Required Contractor Insurance with evidence of payment of premiums provided by the insurers, before bringing any personnel, materials, or equipment to the Project Site, or otherwise commencing the Work, whether on the Project Site, or elsewhere. Not later than five (5) days before any renewal premiums become due, Contractor shall deliver endorsements or other evidence of the renewal of all insurance.

8. All the foregoing coverages shall be evidenced by valid and enforceable policies issued by a company or companies which are licensed to do business in the State of New York and having Best's Ratings of "A-" and "14" or better (or which are otherwise reasonably acceptable to LMDC, such

acceptance to be in writing). All liability insurance required to be provided and kept in force under this Schedule shall be written on the "occurrence" basis.

9. At the request of any insured, certified copies of original policies shall be submitted by the Contractor and each Contractor.

NOTE: Subject to the requirement below, Contractor is responsible at Contractor's expense, for securing any contractor pollution liability insurance policy (or similar coverage) which Contractor may deem necessary or desirable to cover Contractor, its subcontractors, and all their employees for all Work under this Contract and all activities, acts, or omissions relating to the building or the Project. Contractor agrees that LMDC will not include Contractor or its subcontractors on any contractor pollution liability insurance, pollution legal liability insurance, or similar coverage; and Contractor and its subcontractors agree not to seek any such coverage or protection from LMDC. It is a requirement of this Contract, however, that Contractor obtain for itself and its subcontractors contractor's pollution liability coverage of at least ten million dollars (\$10,000,000), in dedicated limits of liability specific to Contractor's work under this Contract at or related to the Site with an aggregate deductible of no more than \$100,000, naming LMDC as an additional insured, which policy shall be primary before any other coverage obtained by LMDC.

## **SCHEDULE J**

### **REQUIREMENTS FOR PROPOSED WASTE SITES AND WASTE TRANSPORTERS**

Contractor shall provide the following information to LMDC for each proposed waste site:

- (1) Standard Business Background Questionnaires ("SBBQs"), including FEIN number;
- (2) The identity of the type of waste going to each facility as well as an estimate of the waste volume;
- (3) All necessary permit information (under Part 360 of the New York State solid waste regulations (6 NYCRR 360) or its functional equivalent for facilities outside of New York State or otherwise) establishing that the facility is properly licensed to accept the proposed waste;
- (4) A copy of the facility's requirements for waste acceptance;
- (5) A copy of the facility's standard form of contract;
- (6) Insurance coverage information (including name of insurers, policy numbers, policy summaries, and limits of liability) for the facility; and
- (7) A suitable representation from the facility certifying that the facility assumes control and liability for the proper management and disposal of the waste received and a release and indemnity of LMDC from all related liabilities.

Contractor shall provide the following information to LMDC for each proposed transporter:

- (1) SBBQs, including FEIN number;
- (2) The identity of the type of waste the transporter will be shipping and the facility to which it will travel as well as an estimate of the waste volume;
- (3) All waste transporter permits (under Part 364 or otherwise) establishing that the transporter is licensed to transport the proposed waste;
- (4) Department of Transportation registration for each state through which the waste will be transported;
- (5) A copy of the transporter's standard form of contract and bill of lading;
- (6) Insurance coverage information (including name of insurers, policy numbers, policy summaries, and limits of liability) for the transporter;
- (7) A suitable representation from the transporter certifying that the transporter assumes control and liability for the proper shipment of the waste received and a release and indemnity of LMDC from all related liabilities; and

(8) All of the following: (a) tractor and trailer titles, registrations, proof of inspection, and over weight permits (where applicable) and (b) copies of the drivers licenses of the proposed drivers to insure they have an appropriate license with any required HAZMAT or other necessary certification.

**EXHIBIT 1**  
**PERFORMANCE AND PAYMENT BONDS**

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS that we, the undersigned Contractor, a corporation organized under the laws of the State of \_\_\_\_\_, and surety company, as principal and surety, respectively,

Contractor \_\_\_\_\_ Surety \_\_\_\_\_

are hereby held and firmly bound unto \_\_\_\_\_ (hereinafter called "LMDC") and its heirs, executors, administrators and successors in the penal sum of \_\_\_\_\_ Dollars and zero Cents (\$ \_\_\_\_\_), for the payment of which sum of money, well and truly to be made, we and each of us hereby jointly and severally bind ourselves, our heirs, representatives, executors, administrators, successors and assigns.

Signed this \_\_\_\_\_ day of \_\_\_\_\_ 2005

The condition of the above obligation is that:

WHEREAS, the above named principal (referred to herein as "principal" and/or "Contractor") has entered into a contract with LMDC dated as of \_\_\_\_\_, 2005, a copy of which contract is by reference made a part hereof and is hereinafter referred to as the "Trade Contract," and

WHEREAS, LMDC has required this bond for the faithful performance of the Work (as defined in the Trade Contract) to be performed under the Trade Contract;

NOW THEREFORE, if the said principal shall promptly, well and faithfully do and perform the Work agreed by such principal to be done and performed according to the terms and true intent and meaning of the Trade Contract, then this obligation shall be void, otherwise to remain in full force and effect. It is expressly understood and agreed that the aggregate liability of the surety for any and all claims hereunder shall in no event exceed the penal amount of this obligation as hereinbefore stated.

In the event that LMDC terminates the Trade Contract as a result of Contractor's breach of the Trade Contract, the surety shall:

(a) complete all Work in accordance with the terms, covenants, conditions and provisions of the Trade Contract, or

(b) obtain a bid or bids for completing the Work from bidders satisfactory to LMDC and, upon a determination by LMDC and the sureties of the lowest responsible bid, arrange a contract between LMDC and such bidder upon terms and conditions satisfactory to LMDC (hereinafter referred to as a "Completion Contract"); and the surety shall make available as work progresses under a Completion Contract sufficient funds to pay the cost of completion of the Work thereunder, less the Balance of the Contract Price; but not exceeding, including all other loss and expense for which the sureties may be liable under this bond, the penal sum. The term "Balance of the Contract Price" shall mean the Lump Sum under the Trade Contract less all amounts previously paid to Contractor.

The term "Work" as used herein shall have the same meaning as in the Trade Contract.

Surety shall be bound by decisions of the Interim Arbitrator to the same extent as Contractor. Surety agrees that submission of any matter to the Interim Arbitrator, and/or any decision or other action of the Interim Arbitrator, shall not discharge, release, amend, or waive this Performance Bond or any rights of LMDC thereunder.

Any suit by LMDC under this bond must be instituted before the earlier of: (a) the expiration of two (2) years from the Final Completion Date, or (b) two (2) years after the principal ceased performing the Work under the Trade Contract. If the limitation set forth in this bond is void or prohibited by law, the minimum period of limitation available to the surety as a defense in the jurisdiction of the suit shall be applicable, and said period of limitation shall be deemed to have accrued and shall commence to run no later than (y) the Final Completion Date or (z) the date the principal ceased performing Work, whichever occurs first.

The surety, for value received, hereby stipulates and agrees that its obligations under this bond shall be in no way impaired or affected by any extensions of time, modification, omission, addition or change in or to the Trade Contract, or by any supervision or inspection or omission to supervise or inspect the Demolition; and said surety does hereby waive notice of any and all of such extensions, modifications, omissions, additions, changes, or waivers.

The amount of this bond shall be reduced by and to the extent of any payment or payments made by surety in good faith hereunder whether made directly to LMDC or otherwise in discharge of principal's obligations. No demand made under this bond shall constitute a waiver of the right of LMDC to make a subsequent demand under this bond, provided, however that the surety's liability hereunder to LMDC is limited, singly, or in the aggregate, to the penal sum of the bond set forth herein. This bond shall not afford coverage for any liability of the principal for tortious acts, whether or not said liability is direct or is imposed by the Trade Contract, and shall not serve as or be a substitute for or supplemental to any liability or other insurance required by the Trade Contract.

This bond shall be governed by, and construed in accordance with, the laws of the State of New York, without giving effect to conflict of law principles.

[SIGNATURE PAGE FOLLOWS THIS PAGE]

IN WITNESS WHEREOF, the principal and the sureties have hereunto set their hands and seals, and such of them as are corporations have caused their corporate seals to be hereto affixed and these presents to be signed by their proper officers, the day and year first set forth above.

Principal: \_\_\_\_\_

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

Name:

Title:

(Seal)

Surety: \_\_\_\_\_

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

Name:

Title:

APPROVED AS TO ACCEPTABILITY OF SURETY:

[LMDC]

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

Name:

Title:

**ACKNOWLEDGMENT OF PRINCIPAL**

State of \_\_\_\_\_

SS:

County of \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally came and appeared \_\_\_\_\_ to me known, who being by me duly sworn, did depose and say that he resides at \_\_\_\_\_; that he is the \_\_\_\_\_ of \_\_\_\_\_ the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that one of the seals affixed to said instrument is such seal; that it was so affixed by order of the directors of said corporation, and that he signed his name thereto by like order.

(Seal) \_\_\_\_\_

**AFFIX ACKNOWLEDGMENT AND JUSTIFICATION OF SURETY**

PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS that we, the undersigned Contractor, a corporation organized under the laws of the State of \_\_\_\_\_, and surety company, as principal and surety, respectively,

Contractor \_\_\_\_\_ Surety \_\_\_\_\_

are hereby held and firmly bound unto \_\_\_\_\_ (herein called "LMDC") and its heirs, executors, administrators and successors in the penal sum of \_\_\_\_\_ Dollars and zero Cents (\$ \_\_\_\_\_), for the payment of which sum of money, well and truly to be made, we and each of us hereby jointly and severally bind ourselves, our heirs, representatives, executors, administrators, successors and assigns.

Signed this \_\_\_\_\_ day of \_\_\_\_\_ 2005

The condition of the above obligation is that:

WHEREAS, the above named principal (referred to herein as "principal" and/or "Contractor") has entered into a contract with LMDC dated as of \_\_\_\_\_, 2005, a copy of which contract is by reference made a part hereof and is hereinafter referred to as the "Trade Contract," and

WHEREAS, LMDC has required this bond for the prompt payment of all lawful claims of Claimants arising out of the performance of the Trade Contract;

NOW THEREFORE, if the said principal shall promptly, well and faithfully pay all amounts due from principal according to the terms and true intent and meaning of the Trade Contract, and if all lawful claims of Claimants arising out of the performance of the Work under the Trade Contract are paid, then this obligation shall be void, otherwise to remain in full force and effect. It is expressly understood and agreed that the aggregate liability of the surety for any and all claims hereunder shall in no event exceed the penal amount of this obligation as hereinbefore stated.

Every Claimant who has not been paid all monies due to such Claimant for Labor or Materials furnished by such Claimant may sue on this bond for the use of such Claimant, prosecute the suit to final judgment for such sum or sums as may be justly due Claimant, and have execution thereon. LMDC shall not be liable for the payment of any costs or expenses of any such suit. A "Claimant" is any person who has furnished Labor or Material to the Contractor or to a subcontractor of the Contractor in the prosecution of the Work. "Labor" shall include all wages and compensation for labor performed. "Materials" shall include all materials and supplies (whether or not incorporated in the Work), as well as machinery and equipment rented or purchased for the Work. Labor and Materials shall include, also, water, gas, power, light, heat, oil, gasoline, telephone, and other utilities. "Work" shall have the same meaning as in the Trade Contract.

The above-named principal and surety hereby jointly and severally agree with LMDC that every Claimant as herein defined who has not been paid in full before the expiration of a period of ninety (90) days after the date on which the last of such Claimant's work or labor was done or performed or materials were furnished by such Claimant, may bring suit on this bond, prosecute the suit to final judgment for the

amount due under Claimant's contract for the labor and/or materials supplied by the Claimant which were used, consumed or incorporated in the performance of the Work, and have execution thereon; provided, however, that a Claimant having a direct contractual relationship with a subcontractor of the principal shall have a right of action on this bond only if said Claimant notifies the surety in writing of its claim within ninety (90) days from the date on which said Claimant did or performed the last labor and/or materials for which the claim is made. LMDC shall not be liable for the payment of any costs or expenses of any such suit.

Surety shall be bound by decisions of the Interim Arbitrator to the same extent as Contractor. Surety agrees that submission of any matter to the Interim Arbitrator, and/or any decision or other action of the Interim Arbitrator, shall not discharge, release, amend, or waive this Payment Bond or any rights of LMDC thereunder.

No suit or action shall be commenced hereunder by any Claimant (a) after the expiration of the earlier of: (1) one year after the day on which the Claimant last supplied the labor and/or materials for which the claim is made; or (b) the limitation period set forth in the public works bond statutes, if any, in the location where the Work is being performed. Any limitation contained in this bond which is prohibited by any law controlling in the state where the suit is filed shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by the law of that state; and other than in a state court of competent jurisdiction in the county or other political subdivision of the state in which the project, or any part thereof, is situated, or in the United States District Court for the district in which the project, or any part thereof, is situated, and not elsewhere.

This undertaking is for the benefit of all Claimants having lawful claims arising out of the performance of said Contract, and all such Claimants shall have a direct right of action upon this bond.

The surety shall give the General Counsel of LMDC written notice of surety's payment of any claim of a Claimant hereunder, within ten (10) days of the date of such payment, at the following address: General Counsel, Lower Manhattan Development Corporation, One Liberty Plaza, New York, NY 10006.

The surety, for value received, hereby stipulates and agrees that its obligations under this bond shall be in no way impaired or affected by any extensions of time, modification, omission, addition or change in or to the Trade Contract, or by any supervision or inspection or omission to supervise or inspect the Demolition, or by any payment thereunder before the time required therein; and said surety does hereby waive notice of any and all of such extensions, modifications, omissions, additions, changes, payments, or waivers.

The amount of this bond shall be reduced by and to the extent of any payment or payments made by surety in good faith hereunder to any Claimant(s). The surety's liability hereunder to all Claimants is limited, singly, or in the aggregate, to the penal sum of the bond set forth herein. This bond shall not afford coverage for any liability of the principal for tortious acts, whether or not said liability is direct or is imposed by the Trade Contract, and shall not serve as or be a substitute for or supplemental to any liability or other insurance required by the Trade Contract.

This bond shall be governed by, and construed in accordance with, the laws of the State of New York, without giving effect to conflict of law principles.

[SIGNATURE PAGE FOLLOWS THIS PAGE]

IN WITNESS WHEREOF, the principal and the sureties have hereunto set their hands and seals, and such of them as are corporations have caused their corporate seals to be hereto affixed and these presents to be signed by their proper officers, the day and year first set forth above.

Principal: \_\_\_\_\_

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

Name:

Title:

(Seal)

Surety: \_\_\_\_\_

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

Name:

Title:

APPROVED AS TO ACCEPTABILITY OF SURETY:

[LMDC]

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

Name:

Title:

**ACKNOWLEDGMENT OF PRINCIPAL**

State of \_\_\_\_\_

SS:

County of \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally came and appeared \_\_\_\_\_, to me known, who being by me duly sworn, did depose and say that he resides at \_\_\_\_\_; that he is the \_\_\_\_\_ of \_\_\_\_\_ the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that one of the seals affixed to said instrument is such seal; that it was so affixed by order of the directors of said corporation, and that he signed his name thereto by like order.

(Seal) \_\_\_\_\_.

**AFFIX ACKNOWLEDGMENT AND JUSTIFICATION OF SURETY**

**AFFIDAVIT AND WAIVERS OF LIEN**

**CONTRACTOR'S  
AFFIDAVIT**

STATE OF \_\_\_\_\_ )  
 ) ss.:  
 COUNTY OF \_\_\_\_\_ )

\_\_\_\_\_, being duly sworn, deposes and says:

1. That he [she] is the \_\_\_\_\_ of \_\_\_\_\_ ("Contractor"), which has entered into a Deconstruction Contract dated as of \_\_\_\_\_, 2005 (the "Contract") with Lower Manhattan Development Corporation, a subsidiary of Empire State Development Corporation with offices at One Liberty Plaza, New York, New York 10006 ("Owner"), covering the Work for the Project known as the demolition of 130 Liberty Street. Words and phrases defined in the Contract have the same meanings in this Affidavit.
2. That this Affidavit is made for the purpose of inducing Owner to make payment under Requisition No. \_\_\_\_ dated \_\_\_\_\_, 200\_\_ (the "Requisition"), in accordance with the terms of the Contract, and that Owner will rely on the truth of the statements contained herein in making such payment.
3. That Contractor has paid in full and without any improper or illegal deductions or rebates, but less agreed retainages, in accordance with the Contract, for all Work (including labor, materials and services, and all social security, unemployment insurance, sales, and other taxes applicable thereto) supplied, furnished or performed through the date of Contractor's previous Requisition.
4. That as of the date hereof no claims have been made against Contractor for any unpaid Work, with the exception of the following, and as to such unpaid claims (except with respect to Work not in compliance with the Contract) Owner is hereby authorized, at Owner's option, and on Contractor's behalf, to make direct payment to such claimants and charge the amounts of such payments to Contractor as follows:

NAME AND ADDRESS	ITEM	AMOUNT

5. That no payment made to Contractor shall be deemed Owner's acceptance of defective Work or shall operate as an admission on the part of Owner or Owner's Representative that Contractor has complied with the Contract or any part thereof.
6. That annexed hereto as Schedule "A" is a list of all Subcontractors who, prior to the date of this Affidavit, have supplied, furnished or performed Work (or portions thereof).

7. That all sums received by Contractor shall be held in trust to pay for the Work before being used for any other purpose.

---

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

Subscribed and sworn to before me  
this \_\_\_ day of \_\_\_\_\_, 200\_\_

---

Notary Public

SCHEDULE A

The following Subcontractors have, as of the date hereof, performed Work under the Contract and the status of payments under their Subcontracts is as set forth below:

<u>SUBCONTRACTOR</u>	<u>TRADE</u>	<u>ADJ. CONTRACT PRICE</u>	<u>AMOUNT PAID TO DATE</u>	<u>AMOUNT OF MOST RECENT PAYMENT</u>	<u>CHECK NUMBER OF MOST RECENT PAYMENT</u>
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CONTRACTOR'S PARTIAL RELEASE AND WAIVER OF LIEN

\_\_\_\_\_ ("Contractor"), in connection with the deconstruction of a building owned by THE LOWER MANHATTAN DEVELOPMENT CORPORATION, a subsidiary of NEW YORK STATE URBAN DEVELOPMENT CORPORATION, d/b/a EMPIRE STATE DEVELOPMENT CORPORATION with offices at One Liberty Plaza (165 Broadway), New York, New York 10006 ("LMDC"), commonly known as 130 Liberty Street, New York, New York ("Project"), and the payment to Contractor of certain sums requisitioned by pursuant to its Application for Payment No. \_\_\_\_\_ dated \_\_\_\_\_, \_\_\_\_\_ (the "Requisition") for Work supplied, furnished or performed for the Project to the date of the Requisition, for LMDC's benefit, DOES HEREBY CERTIFY AND ACKNOWLEDGE that Contractor has received payment in the amount of \$ \_\_\_\_\_, which constitutes all sums due and owing to Contractor in accordance with Contractor's agreement with LMDC with respect thereto (the "Contract"), other than sums (if any) withheld by LMDC in accordance with such agreement, for Work supplied, furnished or performed for the Project to the date of the Requisition next preceding the Requisition<sup>3</sup> (the "Prior Requisition Date") and DOES HEREBY FOREVER RELEASE AND WAIVE for Contractor, its successors and assigns any and all rights, claims and demands Contractor has or may have against LMDC or the Port Authority of New York and New Jersey (the "Port Authority") (including any rights which Contractor has or may have pursuant to the New York Lien Law to file any lien or notice of lien against the Project or any property of LMDC or the Port Authority on account of or deriving from Work performed or furnished for the Project to the Prior Requisition Date). As used herein, "Work" means labor, materials, supplies, furnished, or performed by Contractor with respect to the Project.

IN WITNESS WHEREOF, Contractor has caused this Waiver of Lien to be duly executed and the seal of Contractor to be affixed as of the date of the Requisition by the undersigned officer who is duly authorized to do so.

(Contractor)

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

Subscribed and sworn to before me  
this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_  
Notary Public

<sup>3</sup> For purposes of this lien waiver, the "Requisition next preceding the Requisition" means the last Requisition with respect to which LMDC has made payment.

SUBCONTRACTOR'S PARTIAL RELEASE AND WAIVER OF LIEN

\_\_\_\_\_ ("Subcontractor"), in connection with the demolition of a building owned by THE LOWER MANHATTAN DEVELOPMENT CORPORATION, a subsidiary of NEW YORK STATE URBAN DEVELOPMENT CORPORATION, d/b/a EMPIRE STATE DEVELOPMENT CORPORATION with offices at One Liberty Plaza (165 Broadway), New York, New York 10006 ("LMDC"), commonly known as 130 Liberty Street, New York, New York ("Project"), and the payment to \_\_\_\_\_ ("Contractor") of certain sums requisitioned by Contractor pursuant to its Application for Payment No. \_\_\_\_\_ dated \_\_\_\_\_, \_\_\_\_\_ (the "Requisition") for Work supplied, furnished or performed for the Project to the date of the Requisition, for LMDC's benefit, DOES HEREBY CERTIFY AND ACKNOWLEDGE that Subcontractor has received payment in the amount of \$ \_\_\_\_\_, which constitutes all sums due and owing to Subcontractor in accordance with Subcontractor's agreement with Contractor with respect thereto (the "Subcontract"), other than sums (if any) withheld by Contractor in accordance with such agreement, for Work supplied, furnished or performed for the Project to the date of the Requisition next preceding the Requisition<sup>4</sup> (the "Prior Requisition Date") and DOES HEREBY FOREVER RELEASE AND WAIVE for Subcontractor, its successors and assigns any and all rights, claims and demands Subcontractor has or may have against LMDC or the Port Authority of New York and New Jersey (the "Port Authority") (including any rights which Subcontractor has or may have pursuant to the New York Lien Law to file any lien or notice of lien against the Project or any property of LMDC or the Port Authority on account of or deriving from Work performed or furnished for the Project to the Prior Requisition Date). As used herein, "Work" means labor, materials, supplies, furnished, or performed by Subcontractor with respect to the Project.

IN WITNESS WHEREOF, Subcontractor has caused this Waiver of Lien to be duly executed and the seal of Subcontractor to be affixed as of the date of the Requisition by the undersigned officer who is duly authorized to do so.

(Subcontractor)

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

Subscribed and sworn to before me  
this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_  
Notary Public

<sup>4</sup> For purposes of this lien waiver, the "Requisition next preceding the Requisition" means the last Requisition with respect to which LMDC has made payment.

**EXHIBIT 3**

[omitted]

[omitted]

**VARIANCE**

See the files on LMDC's website at [http://www.renewnyc.com/plan\\_des\\_dev/130liberty/variances.asp](http://www.renewnyc.com/plan_des_dev/130liberty/variances.asp).