



Brooklyn Navy Yard  
Development Corporation  
BrooklynNavyYard.org

Building 77  
141 Flushing Ave, Suite 801  
Brooklyn, NY 11205

# INVITATION FOR BIDS

## Building 132 Roof Replacement

### Contact Information:

Dominika Potoma  
Senior Project Manager  
[dpotoma@bnydc.org](mailto:dpotoma@bnydc.org)

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## A. PROJECT INFORMATION

The Brooklyn Navy Yard Development Corporation (“BNYDC”) is issuing this Invitation for Bids (“IFB”) to seek bids (“Bids” and each, a “Bid”) from entities (“Bidders” and each, a “Bidder”) interested in providing construction services for the project described below, known as the Building 132 Roof Replacement (the “Project”).

1. PROJECT SITE(S): Building 132, 63 Flushing Avenue, Brooklyn, NY 11205
2. DESCRIPTION OF PROJECT:

Building 132 is a one story building with a mezzanine floor totaling approximately 15,500 SF. The intent of this project is to perform a full roof replacement of approximately 11,000 SF. The scope of work includes, but is not limited to: asbestos abatement of existing roofing materials, demolition of existing concrete roof deck, replacement of deteriorated steel purlin, installation of new structural roof metal deck, installation of new PVC membrane roof system with required flashing, replacement of cornice fascia, gutter, downspout and snow guard installation. The scope of work also includes limited masonry work: concrete spall repair, brick crack repair and brick repointing. The full scope of work is set forth in the project drawings and specifications documents provided in the link below.



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3. SCOPE OF WORK; PROJECT DRAWINGS & SPECIFICATIONS DOCUMENTS: Available electronically from the following link:  
[https://brooklynnavyyard.sharepoint.com/:f/s/external\\_sharing/dnc/Egked7\\_eJjZJu\\_n3Nz2sPNIBSjOFrJL\\_tVq0dhKMyia\\_sQ?e=qwgnf](https://brooklynnavyyard.sharepoint.com/:f/s/external_sharing/dnc/Egked7_eJjZJu_n3Nz2sPNIBSjOFrJL_tVq0dhKMyia_sQ?e=qwgnf)
4. All such documents are incorporated herein by reference and form a part of this IFB.

Locally Based Enterprises (“LBEs”) and Minority and Women-owned Businesses (“M/WBEs”) are encouraged to respond to this IFB. Bidders are also encouraged, if applicable, to include LBEs and M/WBEs as sub-contractors. Any Bidder must identify in its bid whether it or, if applicable, any of its proposed sub-contractors are LBEs or M/WBEs.

## **B. PERTINENT DATES & CONDITIONS PRECEDENT FOR BNYDC TO CONSIDER A BID**

1. **MANDATORY PRE-BID SITE VISIT:** A **mandatory** site walk-through will be held at **10:30 AM on November 13, 2024**. All prospective Bidders who plan to attend should contact Dominika Potoma via email (dpotoma@bnydc.org) to provide names of attendees and email addresses so that attendees can receive details for attending the site walk-through.
2. **INQUIRIES.** Any explanation desired by Bidders regarding the meaning or interpretation of this IFB must be emailed and received by BNYDC no later than **5:00 PM on November 27, 2024**. BNYDC will evaluate the need to respond to inquiries received. No verbal responses will be provided, and any information given to a prospective Bidder will be furnished to all prospective Bidders as an addendum to this IFB (an “Addendum”). Except as provided below, all questions must be directed only to Dominika Potoma, Brooklyn Navy Yard Development Corporation, dpotoma@bnydc.org.
3. **BID SUBMISSION DEADLINE.** Written sealed Bids must be received at BNYDC’s office on or no later than **11:00 AM on December 18, 2024**. Bid should be submitted to:  

John Coburn  
Brooklyn Navy Yard Development Corporation  
141 Flushing Avenue, Suite 801  
Brooklyn, NY 11205
4. **BID SECURITY.** Bidder must submit with the Bid either a bid deposit by certified check or a bid bond in the form attached hereto as **Exhibit B** in an amount of ten percent (10%) of the Bid. Note that Bid Security is not required for any Bid submitted for an amount under Two Hundred Fifty-Thousand Dollars (\$250,000).



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5. PASSPORT COMPLIANCE. Bidders are required to be registered and up-to-date in PASSPort prior to submitting a Bid to this IFB. Each Bidder must include its PASSPort identification number on the Confirmation of PASSPort Compliance form attached hereto as Exhibit E.
6. PROJECT SCHEDULE. Below are the following pertinent dates:
  - a. Anticipated notification from BNYDC to selected contractor on or about **December 2024**;
  - b. Upon notification of selection, the selected Bidder must execute a Contract substantially in the form attached hereto as Exhibit H. Please note that, if any Bidder desires any change(s) to the Contract form attached as Exhibit H, it must include any such proposed change(s) as part of its Bid. BNYDC does not agree to necessarily accept any such proposed Contract changes, but BNYDC will not consider any Contract changes that are not provided as part of a Bid. The contents of the selected Bid, together with this IFB and any formal questions and answers provided during the bid process may be incorporated into any final Contract at BNYDC's discretion;
  - c. Commence work on Project on or about **April 2025** or as otherwise stated in the Notice to Proceed issued by BNYDC following execution of the Contract;
  - d. Substantial completion of the Project (as defined in the Contract attached as Exhibit H hereto) no later than **October 1, 2025** and
  - e. Complete all inspections and sign-offs no later than **November 1, 2025** (the "Final Completion Date").

## **C. CONTRACT PARTICULARS**

1. TIME OF COMPLETION. 183 consecutive calendar days
2. Timely performance and completion of Project is of the essence, and such time of the essence requirement shall apply to all dates, time limits, schedules and time requirements set forth in the Contract attached hereto and as further described in this IFB.
3. RETAINAGE. As provided in the Contract attached hereto as Exhibit H.
4. CONTRACT LENGTH. The anticipated Contract length is 7 months.
5. LIQUIDATED DAMAGES. The contractor shall be charged \$1,000 per calendar day beyond the Final Completion Date.

## **D. SPECIAL REQUIREMENTS**

1. MISCELLANEOUS CONDITIONS
  - a. NON-BINDING ACCEPTANCE OF QUALIFICATIONS. This IFB does not commit BNYDC to award a contract for any work or services described herein.
  - b. MODIFICATIONS. Bidders may be asked to make such revisions, additions or deletions to their Bids as may be required by BNYDC.
  - c. RESERVED RIGHTS. All Bid material submitted becomes the property of BNYDC and BNYDC reserves the right at its sole discretion to:
    - i. Reject any and all Bids received in response to this IFB at any time prior to signing of a contract with respect to the Project;



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- ii. Award a contract to other than the lowest Bidder;
- iii. Waive, modify or correct any irregularities in Bids received, after notification to the Bidder;
- iv. Change the structure of the proposed Bid, if such is in the interest of BNYDC;
- v. Negotiate the final scope, staff participation, and Bid before entering into contract with successful Bidder;
- vi. Revise the Bid as BNYDC may require subsequent to receipt of a competitively bid proposal for the Project;
- vii. Extend the time for submission of all Bids after notification to all prospective Bidders;
- viii. Terminate negotiations with a selected Bidder and select the next most responsive Bidder, or take such other action as deemed appropriate if negotiations fail to result in a signed contract within a reasonable amount of time from the commencement of negotiations;
- ix. Terminate or modify the IFB process at any time and reissue the IFB;
- x. Approve or reject any sub-contractor proposed by the Bidder; and
- xi. Request a change of any sub-contractor at any time in the contract process.

## 2. CONTRACT REQUIREMENTS.

- a. Any Bidder awarded a contract as a result of this IFB process will be required to sign a contract substantially in the form as attached hereto as Exhibit H (the "Contract"). If a Bidder desires any material or substantive change(s) to the Contract, it must include any such proposed change(s) in its response to this IFB. The contents of the selected Bid, together with this IFB and any formal questions and answers provided during the Bid processes, may be incorporated into any final Contract at BNYDC's discretion.
- b. Any information which may have been released verbally or in writing prior to the issuance of the IFB shall be deemed preliminary in nature and bind neither BNYDC nor the Bidder.
- c. Any Bidder awarded a contract as a result of this IFB will be required to obtain clearance through the City's Procurement and Sourcing Solutions Portal ("PASSPort"). PASSPort moves the VENDEX process online, eliminating paper submissions. Since PASSPort clearance is a pre-requisite to BNYDC's award of a contract, Bidders are required to be registered and up-to-date in PASSPort prior to submitting their response to this IFB and to include their PASSPort identification number with submission of their Bid. Non-compliance with these submission requirements shall result in the disqualification of the Bid and/or the Bidder and/or the cancellation of any contract after its award.
- d. Notice to Bidders: Pursuant to Local Law 34 of 2007, amending the City's Campaign Finance Law, the City is required to establish a computerized database containing the names of any "person" that has "business dealings with the city" as such terms are defined in the Local Law. In order for the City to obtain necessary information to establish the required database, vendors responding to this solicitation are required to



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complete the Doing Business Data Form attached as Exhibit F hereto and return it with the Bid. (If the responding vendor is a proposed joint venture, the entities that comprise the proposed joint venture must each complete a Data Form.) If the City determines that a vendor has failed to submit a Data Form or has submitted a Data Form that is not complete, the vendor will be notified by the agency and will be given four (4) calendar days from receipt of notification to cure the specified deficiencies and return a complete Data Form to the agency. Failure to do so will result in a determination that the Bid is non-responsive. Receipt of notification is defined as the day notice is e-mailed or faxed (if the vendor has provided an e-mail address or fax number), or no later than five (5) days from the date of mailing or upon delivery, if delivered.

#### **E. BID SUBMISSION DOCUMENTS (“BSDs”)**

BNYDC requires that all BSDs listed below be completed and submitted as instructed in this IFB. Failure to submit the below forms, or submitting them improperly, may result in BNYDC’s rejection of the Bid.

1. Bid Form: Properly executed and sealed in the form attached as Exhibit A.
2. Bid Security: If required per the IFB, completed form attached as Exhibit B.
3. Experience Questionnaire: Completed form attached as Exhibit C.
4. Declaration of Understanding: Completed and executed declaration attached as Exhibit D.
5. Confirmation of PASSPort Compliance: Completed confirmation attached as Exhibit E.
6. Doing Business Data Form: Completed form attached as Exhibit F.
7. M/WBE Information Form: If applicable, completed form attached as Exhibit G.
8. Addenda: Acknowledged receipt of any Addendum to this IFB by attaching a signed copy of the Addendum to Bidder’s Bid.
9. Contract Revisions: If a Bidder desires any material or substantive change(s) to the Contract, Bidder must include any such proposed change(s) in its response to this IFB.

**BNYDC appreciates your interest in this IFB and looks forward to receiving your Bid.**

**EXHIBIT A  
BID FORM  
BROOKLYN NAVY YARD DEVELOPMENT CORPORATION  
BID FOR FURNISHING ALL LABOR AND MATERIAL FOR:**

**PROJECT: Building 132 Roof Replacement**

**CONTRACT #: TBD**

Name of Bidder: \_\_\_\_\_

Bidder is a(n): Individual  Partnership  Corporation  LLC   
(Check one, whichever applies)

Business Address: \_\_\_\_\_  
\_\_\_\_\_

Business Telephone Number: \_\_\_\_\_

Federal Tax Identification Number: \_\_\_\_\_

Home Address (If Individual): \_\_\_\_\_

If Bidder is a Partnership or an LLC, fill in the following blanks:

Name of Partners/Member	Home Address of Partner/Member
1. _____	_____ _____
2. _____	_____ _____
3. _____	_____

If Bidder is a Corporation, fill in the following blanks:

Organized under the laws of the State of: \_\_\_\_\_

Admitted to do business in New York on: \_\_\_\_\_



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Name and Home Address of President: \_\_\_\_\_

\_\_\_\_\_

Name and Home Address of Secretary: \_\_\_\_\_

\_\_\_\_\_

Name and Home Address of Treasurer: \_\_\_\_\_

\_\_\_\_\_

Other Interested Parties, Persons, or Companies (State None if None.)

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

**Bidder certifies, under penalty of perjury (New York State Penal Law §210.45), that:**

- a) Bidder, if an individual or a partner in a partnership, is of lawful age and the only one interested in this bid; and no other person, firm partnership LLC or corporation other Bidder has any interest in this bid, or in the Contract if awarded; and
- b) The prices in this Bid have been arrived at independently without collusion, consultation, communication or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor; and
- c) Unless otherwise required by law, the prices quoted in this bid have not been disclosed by the bidder and will not be disclosed by the bidder prior to bid opening, directly or indirectly, to any other bidder or to any competitor; and
- d) No attempt has been made or will be made by the Bidder to induce any other person, partnership, LLC or corporation to submit or not to submit a bid for the purpose of restricting competition; and
- e) No councilman or other officer, director or employee or person whose salary is payable in whole or in part from the Treasury of the City of New York or BNYDC is directly or indirectly interested in this bid, or in the supplies, materials, equipment, work or labor to which it relates, or in any of the profits thereof; and



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- f) Bidder is not in arrears to the City of New York or BNYDC upon debt or contract or taxes, and is not a defaulter, as surety or otherwise, upon any obligation of the City of New York or BNYDC and has not been declared not responsible, or disqualified, by BNYDC or any agency of the City of New York or State of New York, nor is there any proceeding pending relating to the responsibility of qualification of the bidder to receive public contracts except \_\_\_\_\_  
\_\_\_\_\_; and
- g) Bidder has paid all applicable City income, excise and other taxes for all years it has conducted business activities in New York City; and
- h) Bidder has complied with since its effective date and will continue to comply with the provisions of §6-108 of the Administrative Code of the City of New York; and
- i) Bidder has complied with since its effective date and will continue to comply with the provisions of §220, §220a and §230 of the New York State Labor Law; and
- j) Bidder has complied with since its effective date and will continue to comply with §6-109 of the Administrative Code of the City of New York; and
- k) Bidder has complied with since its effective date and will continue to comply with § 24-216 of the Administrative Code of the City of New York; and
- l) Bidder agrees to post notices setting forth the requirements of the aforesaid laws (items h, i, j and k above) in prominent and conspicuous places in each and every plant, factory, building and structure where employees engaged in the performance of the Contract can readily view it and will continue to keep such notices posted until the supplies, materials and equipment, or work labor and services required to be furnished or rendered by the Bidder have been finally accepted by BNYDC; and
- m) Bidder has complied with since its effective date and will continue to comply with Executive Order No. 50, dated, April 25, 1980, on Equal Employment Compliance of the Contract. The required Employment Report must be submitted as part of the bid.
- n) Bidder by submitting this bid certifies that it now has and will continue to have the financial capability to fully perform the Project required for the Contract. The award of the Contract will be made in reliance upon such certification. Therefore, upon request by BNYDC, Bidder will submit proof of financial capability, as BNYDC requires.

Bidder understands that any breach or violation of the foregoing may subject Bidder to damages, liquidated or otherwise, cancellation of the Contract, if awarded, and suspension of Bidder for a period of three years.





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**BID PRICE – BASE BID TOTAL**

**BASE BID TOTAL PRICE (EXCLUDING ALTERNATES)**

\$ \_\_\_\_\_

**Indicate BASE BID TOTAL PRICE (EXCLUDING ALTERNATES) in words:**

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# SCHEDULE OF VALUES/ BID FORM

**Project Title** BNYDC, BUILDING 132 - ROOF REPLACEMENT

**Contractor**

A	B	C	D	E	F
RAD Code	Description	Unit	Quantity	Scheduled Unit Price	Scheduled Value

GENERAL CONDITIONS					
G1	<p><b>General Conditions:</b> Includes but not limited to the following:</p> <ul style="list-style-type: none"> <li>a. mobilization, supported pipe scaffolding /boom truck/ scissor lifts OR combination to provide access to facilitate roof work/ asbestos abatement / steel deck installation and all required access for work listed on the drawings and in specification. Means of mobilization to be confirmed by Contractor.</li> <li>b. access for Architect's, special inspector's and air monitoring / environmental consultant's inspections;</li> <li>c. miscellaneous equipment, temporary utilities;</li> <li>d. supervisions, project schedules, mock-ups, samples;</li> <li>e. all associated and governing applicable permits, fees and taxes.</li> <li>f. Removal all equipments to remain during the deck demolition and reinstallation during new deck/roofing installation.</li> </ul>	LS	1		
G2	<p><b>Site Protection:</b> Provide temporary protection and cordon off walkways and entrances adjacent to the work with temporary barricades and flagmen. Protection for all interior and exterior materials and equipments to remain.</p>	LS	1		
G3	<p><b>Professional Services:</b> Furnish all required shop drawings, structural calculations, signed and sealed by a Professional Structural Engineer licensed in NYS for required scope of work.</p>	LS	1		
<b>SUBTOTAL GENERAL CONDITIONS:</b>					

<b>BASE BID ITEMS</b>					
CRN 01	Cornice Fascia Replacement At Roof West Rakes	LF	75		
DCK 01	Installation Of New Structural Metal Roof Deck	SF	10,900		
DEM 01	Removal Of Existing Concrete Roof Deck	SF	10,900		
FLA 01	Perimeter Flashing At East Parapet Wall	LF	75		
FLA 02	Flashing At Pipe Penetration	EA	2		
GUT 01	Gutter Replacement And Eave Flashing	LF	320		
LDR 01	Downspout Replacement	EA	8		
MEM 01	Membrane Roof System: Thermoplastic (PVC)	SF	10,900		
SNG 01	Snow Guard Installation	LF	620		
<b>BASE BID - ASBESTOS ABATEMENT ITEMS</b>					
AA-01	Indicates Asbestos containing materials(ACM) and materials in contact with ACM, to be removed including Roof Membranes, Pitch Pockets, Flashing and related layers and materials down to top of roof deck.	SF	10,900		
<b>QUANTITY ALLOWANCES ITEMS</b>					
MAS 01	Brick Crack Repair: Solid Wall	SF	100		
PNT 01	Brick Pointing	SF	200		
PUR 01	Replacement In Kind Of Existing Roof Purlins	EA	12		
				<b>SUBTOTAL BASE BID:</b>	

Insurance	
Overhead and Profit	
Payment and Performance Bond	

<b>BASE BID TOTAL (BASE BID; GENERAL CONDITIONS; INS.; OH&amp;P; PAYM. AND PERF. BOND):</b>	
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<b>ALTERNATE ITEMS</b>					
	<b>General Note for Alternate Items:</b> Pricing for each Alternate Item to include OH & P; Insurance; Mobilization Cost and Access associated with the Alternate Item work scope				
CRN 02	Cornice Fascia Replacement at Roof West Rakes in lieu of CRN 01	SF	75		
COA 01	Coating of steel per breakdown below:				
COA 01A	Roof Trusses (Including Gusset Plates)	SF	3,260		
COA 01B	Roof Purlins (Including Sag Rods)	SF	4,460		
COA 01C	Roof Braces (Including Gusset Plates)	SF	2,600		
SHD 01	Sidewalk Shed (SHD 01) between Building 132 and Building 41	LF	156		
				<b>SUBTOTAL ALTERNATE:</b>	

<b>CONSTRUCTION COST TOTAL (BASE BID TOTAL PLUS ALTERNATES):</b>	
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## Schedule of Unit Prices

Project Title BNYDC, BUILDING 132 - ROOF REPLACEMENT

Contractor

A	B	C	E
RAD Code	Description	Unit	Scheduled Unit Price

A	B	C	E
RAD Code	Description	Unit	Scheduled Unit Price
	<b>General Note for Unit Prices:</b> Pricing for each Unit Price to include OH & P; Insurance; Mobilization Cost and Access associated with the Unit Price work scope		
CRN 01	Cornice Fascia Replacement At Roof West Rakes	LF	
DCK 01	Installation Of New Structural Metal Roof Deck	SF	
DEM 01	Removal Of Existing Concrete Roof Deck	SF	
FLA 01	Perimeter Flashing At East Parapet Wall	LF	
FLA 02	Flashing At Pipe Penetration	EA	
GUT 01	Gutter Replacement And Eave Flashing	LF	
LDR 01	Downspout Replacement	EA	
MEM 01	Membrane Roof System: Thermoplastic (PVC)	SF	
SNG 01	Snow Guard Installation	LF	
AA-01	Indicates Asbestos containing materials(ACM) and materials in contact with ACM, to be removed including Roof Membranes, Pitch Pockets, Flashing and related layers and materials down to top of roof deck.	SF	
MAS 01	Brick Crack Repair: Solid Wall	SF	
PNT 01	Brick Pointing	SF	
PUR 01	Replacement In Kind Of Existing Roof Purlins	EA	
CRN 02	Cornice Fascia Replacement at Roof West Rakes in lieu of CRN 01	SF	
COA 01A	Roof Trusses (Including Gusset Plates)	SF	
COA 01B	Roof Purlins (Including Sag Rods)	SF	
COA 01C	Roof Braces (Including Gusset Plates)	SF	
SHD 01	Sidewalk Shed (SHD 01) between Building 132 and Building 41	LF	



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IN WITNESS WHEREOF, Bidder states that they have visited and examined the site of the Project. Bidder affirms that they have carefully examined the Contract form provided. Bidder agrees that it will execute the Contract unchanged in form and faithfully perform the Project required thereunder for the price set forth above, and have executed this Bid Form on the \_\_\_\_ day of \_\_\_\_\_ 2021.

Bidder's Name: \_\_\_\_\_

By: \_\_\_\_\_  
(Signature of Individual, Partner, Member or Corporate Officer)

Title: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_ (Corporate or LLC Seal)

Attest: Secretary of Corporate or LLC Bidder

ACKNOWLEDGMENT, IF AN INDIVIDUAL

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

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally came \_\_\_\_\_ to me known, who, being by me duly sworn, did depose and say that he/ she resides at \_\_\_\_\_ and that he/she is the Individual described in and who executed the foregoing instrument and that the several matters therein stated are in all respects true.

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

ACKNOWLEDGMENT, IF A PARTNERSHIP

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



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On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally came \_\_\_\_\_ to me known, who, being by me duly sworn, did depose and say that he/ she resides at \_\_\_\_\_ and that he/she is a member of, the firm described in and which executed the foregoing instrument and that the several matters therein stated are in all respects true.

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

ACKNOWLEDGMENT, IF A LIMITED LIABILITY COMPANY

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

On the \_\_\_\_ day of \_\_\_\_\_ in the year 20\_\_\_\_, before me personally came \_\_\_\_\_, to me known, who, being by me duly sworn, did depose and say that that he/she is a member of \_\_\_\_\_ the limited liability company described in and which executed the foregoing instrument; and that he/she signed his/her name thereto by authority of the members of said limited liability company and that the several matters therein stated are in all respects true.

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

ACKNOWLEDGMENT, IF A CORPORATION

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

On the \_\_\_\_ day of \_\_\_\_\_ in the year 20\_\_\_\_, before me personally came \_\_\_\_\_, to me known, who, being by me duly sworn, did depose and say that that he/she is the \_\_\_\_\_ of \_\_\_\_\_ the business described in and which executed the foregoing instrument; and that he/she signed his /her name thereto by authority of the Board of Directors of said corporation and that the several matters therein stated are in all respects true.

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



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**EXHIBIT B  
FORM OF BID BOND**

KNOW ALL MEN BY THESE PRESENTS, that we, the undersigned, \_\_\_\_\_ as Principal, (hereinafter called "Principal") and \_\_\_\_\_ a corporation duly organized under the laws of the State of \_\_\_\_\_ as Surety, (hereinafter called "Surety") are hereby held and firmly bound unto the Brooklyn Navy Yard Development Corporation, the City of New York, and the City of New York Department of Small Business Services or their successors and assigns collectively, as Obligee (hereinafter called ("Obligee")) in the full and just sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) (hereinafter called "Penal Sum"), to the payment of which, well and truly to be made, the Principal and Surety hereby bind themselves, their heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents:

Signed and sealed with our seals and dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

WHEREAS, the Principal has submitted a bid to Obligee based on:

1. Obligee’s Request for Bids; and
2. Obligee’s Information for Bidders; and
3. Obligee’s Bid submission Documents; and
4. The Project Specification Documents issued by Obligee; and
5. Any addenda issued by Obligee in connection with the above documents.
  
6. Documents 1 through 5 above are incorporated herein by reference

For \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_(Project) Project  
number \_\_\_\_\_ (BID)



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WHEREAS, the Condition of the above obligation is such that the Principal has submitted to Obligee the id which requires Principal to enter into a written contract for the performance of the Project.

NOW, THEREFORE,

- A. If the BID is rejected, or
- B. If the BID is accepted and the Principal and Obligee have executed and delivered the required contract in the form set forth in the Information for Bidders, in accordance with the accepted BID (Contract); and
- C. If the Principal furnishes Obligee with the required bond for Principal’s faithful performance the Contract; and
- D. If the Principal furnishes Obligee with the required bond for the payment of all persons performing labor or furnishing materials in connection with the Contract; and
- E. If the Principal shall in all other respects perform the agreements created by Obligee’s acceptance of the Bid
- F. If the Principal shall pay to the Obligee an amount equaling the difference, not to exceed the Penal Sum hereof, between the amount specified in said BID and such larger amount for which the Obligee may in good faith contract with another party to undertake the Project covered by said Bid.

Then this obligation shall be null and void, otherwise to remain in full force and effect.

It is understood and agreed that the liability of the Surety for any and all claims hereunder shall in no event exceed the Penal Sum as shown herein.

The Surety, for value received, hereby stipulates and agrees that the obligations of said Surety under this Bond shall be in no way impaired or affected by any extension of the time within which the Obligee may accept the Bid; and said Surety does hereby waive notice of any such extension.

\_\_\_\_\_  
(Principal)

{SEAL}

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address \_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
(Surety)

{SEAL}





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Development Corporation  
BrooklynNavyYard.org

Building 77  
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Brooklyn, NY 11205

By: \_\_\_\_\_  
(Attorney-In-Fact)  
Address \_\_\_\_\_  
\_\_\_\_\_

**IMPORTANT**

- A. Surety companies executing this bond must be certified and appear on the United States Treasury Department's most recent Circular 570 as amended.
- B. Surety companies can execute this bond only in the amount certified on the United States Treasury Department's most recent Circular 570 as amended.  
Sureties executing this bond must be licensed as a surety by the State of New York.



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### EXHIBIT C EXPERIENCE QUESTIONNAIRE

As used in the questions below the words "YOU" or "YOUR" means, the bidding individual or bidding entity and each and every one of such bidding entity's officers, directors, partners, members or principals (any shareholder owning 10% or more of the company stock is deemed a principal).

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

Bidder's Name: \_\_\_\_\_

Bidder's Office Address: \_\_\_\_\_

Bidder's Telephone Number: \_\_\_\_\_

Bidder's Federal Taxpayer Identification Number: \_\_\_\_\_

Bidder is a(n): Individual  Partnership  Corporation  LLC   
(Check one, whichever applies)

A. What type of construction work are YOU primarily engaged in? \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

B. You have been engaged in such construction work for a) as a Prime Contractor? \_\_\_ years  
and/or b) as a Subcontractor \_\_\_ years

C. Have YOU or any organization YOU have been affiliated with in any capacity ever failed to complete a Contract awarded to YOU? Yes  No

If Yes, for whom, where, when and why? \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_



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D. Have YOU or any organization YOU have been affiliated with in any capacity ever been declared in default by any City, State or Federal Agency or on any Contract?

Yes  No

If Yes where, when, by whom and why? \_\_\_\_\_

\_\_\_\_\_

E. Have YOU or any organization YOU have been affiliated with in any capacity ever been investigated by any City, State or Federal Agency? Yes  No

If Yes where, when, by whom and why? \_\_\_\_\_

\_\_\_\_\_

F. Have YOU or any organization YOU have been affiliated with in any capacity ever when called before a GRAND JURY to testify, refused to sign a WAIVER OF IMMUNITY or answer any relevant questions or have been indicted for any reason whatsoever? Yes  No

If Yes where, when and why? \_\_\_\_\_

\_\_\_\_\_

G. List the names of all organization YOU have been affiliated with in any capacity that are not listed in paragraphs D. E. or F. above.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_



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H. Have YOU ever appeared before the Board of Responsibility of the City of New York? Yes   
No

If Yes when and why \_\_\_\_\_

\_\_\_\_\_

I. In what other businesses do YOU have a financial interest? \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

### **REFERENCES**

List all corporations and individuals for whom YOU have performed significant work for and an official from whom BNYDC can obtain a reference. YOU must include a current address and telephone number for each reference.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

List all cities for which YOU have performed significant work for and an official from whom BNYDC can obtain a reference. YOU must include a current address and telephone number for each reference.

\_\_\_\_\_

\_\_\_\_\_



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List all counties for whom YOU have performed significant work for and an official from which BNYDC can obtain a reference. YOU must include a current address and telephone number for each reference.

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List all States have YOU performed work and an official from whom BNYDC can obtain a reference. YOU must include a current address and telephone number for each reference.

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List all Federal construction projects YOU have performed work on and an official from whom BNYDC can obtain a reference. YOU must include a current address and telephone number for each reference.

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Have YOU filed Performance Record reports with the Bureau of Contract Information, Inc., Washington, D.C.? Yes  No  if Yes list Date(s) \_\_\_\_\_

### **PROJECT EXPERIENCE FORMS AND RESUMES**

#### **Individual Construction Experience**

For each key individual in your organization please attach a resume providing at a minimum the following information:

Name

Education

Professional designations

Professional affiliations

Awards

Relevant experience including size of previous projects, cost of such project, location of such projects, a description of such projects and the key individuals position for each project

I (We) have read and understood all the questions in the foregoing Experience Questionnaire and that I (We) have supplied true, full and complete information and answers I (We) understand that BNYDC will rely on the information contained herein.



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Bidder

Name: \_\_\_\_\_

By: \_\_\_\_\_  
(Signature of Individual, Partner, Member or Corporate Officer)

Title: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Attest: Secretary of Corporate or LLC Bidder (Corporate or LLC Seal)



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ACKNOWLEDGMENT, IF AN INDIVIDUAL

STATE OF NEW YORK)

ss.:

COUNTY OF \_\_\_\_\_)

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally came \_\_\_\_\_  
to me known, who, being by me duly sworn, did depose and say that he/ she resides at  
\_\_\_\_\_ and that he/she is the Individual  
described in and who executed the foregoing instrument and that the several matters therein stated  
are in all respects true.

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

ACKNOWLEDGMENT, IF A PARTNERSHIP

STATE OF NEW YORK)

ss.:

COUNTY OF \_\_\_\_\_)

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally came  
\_\_\_\_\_ to me known, who, being by me duly sworn, did  
depose and say that he/ she resides at  
\_\_\_\_\_ and that he/she is a member  
of, the firm described in and which executed the foregoing instrument and that the several matters  
therein stated are in all respects true.

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





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ACKNOWLEDGMENT, IF A LIMITED LIABILITY COMPANY

STATE OF NEW YORK)

: ss.:

COUNTY OF \_\_\_\_\_)

On the \_\_\_\_ day of \_\_\_\_\_ in the year 20\_\_, before me personally came \_\_\_\_\_, to me known, who, being by me duly sworn, did depose and say that that he/she is a member of \_\_\_\_\_ the limited liability company described in and which executed the foregoing instrument; and that he/she signed his/her name thereto by authority of the members of said limited liability company and that the several matters therein stated are in all respects true.

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

ACKNOWLEDGMENT, IF A CORPORATION

STATE OF NEW YORK)

: ss.:

COUNTY OF \_\_\_\_\_)

On the \_\_\_\_ day of \_\_\_\_\_ in the year 20\_\_, before me personally came \_\_\_\_\_, to me known, who, being by me duly sworn, did depose and say that that he/she is the \_\_\_\_\_ of \_\_\_\_\_ the business described in and which executed the foregoing instrument; and that he/she signed his /her name thereto by authority of the Board of Directors of said corporation and that the several matters therein stated are in all respects true.

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



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**PROJECT EXPERIENCE FORM (To be completed for each of three projects completed within the last 5 years)**

Name of Project: \_\_\_\_\_

Location of Project: \_\_\_\_\_

Owner or Owner's representative familiar with the work performed:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Phone number: \_\_\_\_\_

Brief description of work completed: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Was the work was performed as a prime subcontractor, or joint venture: \_\_\_\_\_

\_\_\_\_\_

Dollar amount of Contract or subcontract: \$\_\_\_\_\_

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

Original Scheduled Completion Date: \_\_\_\_\_

Actual Completion Date: \_\_\_\_\_

If Not Completed By Original Scheduled Date, Give Reasons Therefore:

\_\_\_\_\_



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**PROJECT EXPERIENCE FORM (To be completed for each of three projects)**

Name of Project: \_\_\_\_\_

Location of Project: \_\_\_\_\_

Owner or Owner's representative familiar with the work performed:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Phone number: \_\_\_\_\_

Brief description of work completed: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Was the work was performed as a prime subcontractor, or joint venture: \_\_\_\_\_

\_\_\_\_\_

Dollar amount of Contract or subcontract: \$ \_\_\_\_\_

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

Original Scheduled Completion Date: \_\_\_\_\_

Actual Completion Date: \_\_\_\_\_

If Not Completed By Original Scheduled Date, Give Reasons Therefore:

\_\_\_\_\_



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**PROJECT EXPERIENCE FORM (To be completed for each of three projects)**

Name of Project: \_\_\_\_\_

Location of Project: \_\_\_\_\_

Owner or Owner's representative familiar with the work performed:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Phone number: \_\_\_\_\_

Brief description of work completed: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Was the work was performed as a prime subcontractor, or joint venture: \_\_\_\_\_

\_\_\_\_\_

Dollar amount of Contract or subcontract: \$ \_\_\_\_\_

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

Original Scheduled Completion Date: \_\_\_\_\_

Actual Completion Date: \_\_\_\_\_

If Not Completed By Original Scheduled Date, Give Reasons Therefore:

\_\_\_\_\_



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**EXHIBIT D  
 DECLARATION OF UNDERSTANDING**

**DECLARATION OF UNDERSTANDING**

By signing in the space provided below, the undersigned certifies that the Bidder (i) has read and understands the scope and requirements of this Project, as described in the IFB and all attachments; (ii) has the capacity to execute this Project, (iii) agrees to accept payment in accordance with the requirements of this IFB and the standard Contract, attached hereto as Exhibit H, and (iv) will, if its Bid is accepted, enter into the attached Contract with the Brooklyn Navy Yard Development Corporation.

The undersigned further stipulates that the information in his/her Bid is, to the best of his/her knowledge, true and accurate.

\_\_\_\_\_  
 Authorized Signature, Title Date

\_\_\_\_\_  
 Consultant Firm

\_\_\_\_\_  
 Business Address

\_\_\_\_\_  
 City State Zip

\_\_\_\_\_  
 Telephone Number Fax Number

\_\_\_\_\_  
 Federal Tax Identification Number

- Corporation       Partnership
- Individual         Other (State)

\_\_\_\_\_  
 (Seal, if a Corporation)



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## EXHIBIT E CONFIRMATION OF PASSPORT COMPLIANCE

### CONFIRMATION OF PASSPORT COMPLIANCE

Respondent hereby certifies that:

(Check appropriate box)

- The Respondent has submitted PASSPort questionnaire information through the link below but has not yet received confirmation of PASSPort Compliance. Respondent acknowledges and agrees that Confirmation of PASSPORT Compliance will be required prior to award of any On-Call Contract.
  
- The Respondent has received Confirmation of PASSPort Compliance. It's PASSPort identification number is \_\_\_\_\_.

All VENDEX processes are now completed in the PASSPort Portal, this replaces the paper forms. Please register and complete new questionnaires as soon as possible. PASSPort will not be importing any information from VENDEX. The main purpose of PASSPort is to be a completely paperless interactive system.

Please access to the NYC.gov PASSPort website thru the link below:

<https://www.nyc.gov/site/mocs/passport/about-passport.page>



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**EXHIBIT F  
DOING BUSINESS DATA FORM**

To be completed by the City agency prior to distribution Agency \_\_\_\_\_ Transaction ID \_\_\_\_\_

**Check One**

**Transaction Type (check one)**

- Proposal  Award  Concession  Economic Development Agreement  Franchise  Grant  Pension Investment Contract  Contract

Any entity receiving, applying for or proposing on an award or agreement must complete a Doing Business Data Form (see Q&A sheet for more information). Please either type responses directly into this fillable form or print answers by hand in black ink, and be sure to fill out the certification box on the last page. **Submission of a complete and accurate form is required for a proposal to be considered responsive or for any entity to receive an award or enter into an agreement.**

This Data Form requires information to be provided on principal officers, owners and senior managers. The name, employer and title of each person identified on the Data Form will be included in a public database of people who do business with the City of New York, as will the organizations that own 10% or more of the entity. No other information reported on this form will be disclosed to the public. **This Data Form is not related to the City's PASSPort registration or VENDEX requirements.**

**Please return the completed Data Form to the City office that supplied it.** Please contact the Doing Business Accountability Project at [DoingBusiness@mocs.nyc.gov](mailto:DoingBusiness@mocs.nyc.gov) or 212-788-8104 with any questions regarding this Data Form. Thank you for your cooperation.

**Entity Information**

*If you are completing this form by hand, please print clearly.*

Entity EIN/TIN \_\_\_\_\_ Entity Name \_\_\_\_\_

**Filing Status**

**(Select One)**

**NEW:** Data Forms submitted now must include the listing of **organizations**, as well as individuals, with 10% or more ownership of the entity. Until such certification of ownership is submitted through a change, new or update form, a no change form will not be accepted.

- Entity has never completed a Doing Business Data Form. Fill out the entire form.  
 Change from previous Data Form dated \_\_\_\_\_. Fill out only those sections that have changed, and indicate the name of the persons who no longer hold positions with the entity.  
 No Change from previous Data Form dated \_\_\_\_\_. Skip to the bottom of the last page.

**Entity is a Non-Profit**  Yes  No

**Entity Type**  Corporation (any type)  Joint Venture  LLC  Partnership (any type)  Sole Proprietor  Other (specify) \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Phone \_\_\_\_\_ E-mail \_\_\_\_\_

*Provide your e-mail address in order to receive notices regarding this form by e-mail.*

**Principal Officers**

Please fill in the required identification information for each officer listed below. If the entity has no such officer or its equivalent, please check "This position does not exist." If the entity is filing a Change Form and the person listed is replacing someone who was previously disclosed, please check "This person replaced..." and fill in the name of the person being replaced so his/her name can be removed from the *Doing Business Database*, and indicate the date that the change became effective.

**Chief Executive Officer (CEO) or equivalent officer**

This position does not exist

*The highest ranking officer or manager, such as the President, Executive Director, Sole Proprietor or Chairperson of the Board.*

First Name \_\_\_\_\_ MI \_\_\_\_\_ Last \_\_\_\_\_ Birth Date (mm/dd/yy) \_\_\_\_\_

Office Title \_\_\_\_\_ Employer (if not employed by entity) \_\_\_\_\_

Home Address \_\_\_\_\_

This person replaced former CEO \_\_\_\_\_ on date \_\_\_\_\_

**Chief Financial Officer (CFO) or equivalent officer**

This position does not exist

*The highest ranking financial officer, such as the Treasurer, Comptroller, Financial Director or VP for Finance.*

First Name \_\_\_\_\_ MI \_\_\_\_\_ Last \_\_\_\_\_ Birth Date (mm/dd/yy) \_\_\_\_\_

Office Title \_\_\_\_\_ Employer (if not employed by entity) \_\_\_\_\_

Home Address \_\_\_\_\_

This person replaced former CFO \_\_\_\_\_ on date \_\_\_\_\_

**Chief Operating Officer (COO) or equivalent officer**

This position does not exist

*The highest ranking operational officer, such as the Chief Planning Officer, Director of Operations or VP for Operations.*

First Name \_\_\_\_\_ MI \_\_\_\_\_ Last \_\_\_\_\_ Birth Date (mm/dd/yy) \_\_\_\_\_

Office Title \_\_\_\_\_ Employer (if not employed by entity) \_\_\_\_\_

Home Address \_\_\_\_\_

This person replaced former COO \_\_\_\_\_ on date \_\_\_\_\_



**Principal Owners**

Please fill in the required identification information for all individuals or organizations that, through stock shares, partnership agreements or other means, **own or control 10% or more of the entity**. If no individual or organization owners exist, please check the appropriate box to indicate why and skip to the **Senior Managers** section. If the entity is owned by other companies that control 10% or more of the entity, those companies must be listed. If an owner was identified on the previous page, fill in his/her name and write "See above." If the entity is filing a Change Form, list any individuals or organizations that are no longer owners at the bottom of this section. If more space is needed, attach additional pages labeled "Additional Owners."

**There are no owners listed because (select one):**

- The entity is not-for-profit
- The entity is an individual
- No individual or organization owns 10% or more of the entity

Other (explain) \_\_\_\_\_

**Individual Owners (who own or control 10% or more of the entity)**

First Name \_\_\_\_\_ MI \_\_\_\_ Last \_\_\_\_\_ Birth Date (mm/dd/yy) \_\_\_\_\_

Office Title \_\_\_\_\_ Employer (if not employed by entity) \_\_\_\_\_

Home Address \_\_\_\_\_

First Name \_\_\_\_\_ MI \_\_\_\_ Last \_\_\_\_\_ Birth Date (mm/dd/yy) \_\_\_\_\_

Office Title \_\_\_\_\_ Employer (if not employed by entity) \_\_\_\_\_

Home Address \_\_\_\_\_

**Organization Owners (that own or control 10% or more of the entity)**

Organization Name \_\_\_\_\_

Organization Name \_\_\_\_\_

Organization Name \_\_\_\_\_

**Remove the following previously-reported Principal Owners**

Name \_\_\_\_\_ Removal Date \_\_\_\_\_

Name \_\_\_\_\_ Removal Date \_\_\_\_\_

Name \_\_\_\_\_ Removal Date \_\_\_\_\_

**Senior Managers**

Please fill in the required identification information for all senior managers who oversee any of the entity's relevant transactions with the City (e.g., contract managers if this form is for a contract award/proposal, grant managers if for a grant, etc.). Senior managers include anyone who, either by title or duties, has substantial discretion and high-level oversight regarding the solicitation, letting or administration of any transaction with the City. At least one senior manager must be listed, or the Data Form will be considered incomplete. If a senior manager has been identified on a previous page, fill in his/her name and write "See above." If the entity is filing a Change Form, list individuals who are no longer senior managers at the bottom of this section. If more space is needed, attach additional pages labeled "Additional Senior Managers."

**Senior Managers**

First Name \_\_\_\_\_ MI \_\_\_\_ Last \_\_\_\_\_ Birth Date (mm/dd/yy) \_\_\_\_\_

Office Title \_\_\_\_\_ Employer (if not employed by entity) \_\_\_\_\_

Home Address \_\_\_\_\_

First Name \_\_\_\_\_ MI \_\_\_\_ Last \_\_\_\_\_ Birth Date (mm/dd/yy) \_\_\_\_\_

Office Title \_\_\_\_\_ Employer (if not employed by entity) \_\_\_\_\_

Home Address \_\_\_\_\_

First Name \_\_\_\_\_ MI \_\_\_\_ Last \_\_\_\_\_ Birth Date (mm/dd/yy) \_\_\_\_\_

Office Title \_\_\_\_\_ Employer (if not employed by entity) \_\_\_\_\_

Home Address \_\_\_\_\_

**Remove the following previously-reported Senior Managers**

Name \_\_\_\_\_ removal date \_\_\_\_\_

Name \_\_\_\_\_ removal date \_\_\_\_\_

**Certification**

I certify that the information submitted on these two pages and \_\_\_\_\_ additional pages is accurate and complete. I understand that willful or fraudulent submission of a materially false statement may result in the entity being found non-responsible and therefore denied future City awards.

Name \_\_\_\_\_ Title \_\_\_\_\_

Entity Name \_\_\_\_\_ Work Phone # \_\_\_\_\_

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



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**EXHIBIT G**  
**M/WBE INFORMATION FORM**



Brooklyn Navy Yard  
Development Corporation  
BrooklynNavyYard.org

Building 77  
141 Flushing Avenue, Suite 801  
Brooklyn, NY 11205

Dear Vendor:

The Brooklyn Navy Yard Development Corporation is compiling statistical data on companies that provide construction, professional services, standard services, and goods to our company so that we can comply with the New York City Local Law (LL 129). Please complete the attached information sheet and return it alongside your vendor information forms.

If you are a minority or woman-owned business enterprise (M/WBE) but are not yet certified by the City of New York we strongly urge you to do so. The city has an aggressive program to help certified M/WBEs and it is in your best interest to get certified. For more information on getting certified, we suggest that you call the New York City Department of Small Business Services' Certification Hotline at (212) 513-6311. Addition information can also be obtained through the City's website at: [www.nyc.gov/getcertified](http://www.nyc.gov/getcertified).

We sincerely appreciate your cooperation.

Sincerely,

Brian Linett

Sr. Vice President & Controller



Brooklyn Navy Yard  
Development Corporation  
BrooklynNavyYard.org

Building 77  
141 Flushing Avenue, Suite 801  
Brooklyn, NY 11205

### Vendor Information Form

Name:

Company Title:

Company Name:

Company Address:

Federal Tax ID / SSN:

Email:

Telephone:

Business type: Select One

- Individual/Sole Proprietor
- Corporation

- Partnership
- Other

Business category: Select One

- Construction
- Professional Services
- Standard Services
- Other

- Construction Subcontract
- Professional Services Subcontract
- Goods

### Business Demographics

*A minority- and women- owned business enterprise (M/WBE) is a business owned (51% or greater) by an owner that identifies as Asian-Indian, Asian-Pacific, Black, Hispanic, Native American, and/or female.*

Majority owner M/WBE?       Yes       No

Majority owner female?       Yes       No

Designated MBE Group (select one - if N/A, please leave blank):

- Asian - Indian
- Asian - Pacific
- Black
- Hispanic
- Native American

City or state certification (select all that apply):

- Minority and Women-owned Business Enterprise (M/WBE)
- Locally Based Enterprise (LBE)
- Emerging Business Enterprise (EBE)
- Service-Disabled Veteran-Owned Small Business (SDVOB)

Certification Number:



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**EXHIBIT H**  
**FORM OF CONTRACT**

# BNYDC CONSTRUCTION CONTRACT

CONSTRUCTION CONTRACT NUMBER \_\_\_\_\_ (hereinafter referred to as the "Contract") dated as of \_\_\_\_\_, between **BROOKLYN NAVY YARD DEVELOPMENT CORPORATION**, having an office at Building 77, 141 Flushing Avenue, Suite 801, Brooklyn, New York 11205 (hereinafter referred to as "BNYDC"); and \_\_\_\_\_, having its principal place of business at \_\_\_\_\_ (hereinafter referred to as the "Contractor") for \_\_\_\_\_ (hereinafter referred to as "Project") at \_\_\_\_\_ (hereinafter referred to as "Project Site(s)") which Project Site(s) is located within the Brooklyn Navy Yard (the "Premises"). The Work as defined in Section 1.2 hereof shall commence on \_\_\_\_\_ for a term of \_\_\_\_\_ consecutive calendar days therefrom unless extended (hereinafter referred to as the "Term"). Substantial Completion of the Work, as defined in Section 8.2 of this Contract, shall be completed by \_\_\_\_\_ (the "Substantial Completion Deadline") and Final Completion of the Work, as defined in Section 8.4 of this Contract, shall be completed by \_\_\_\_\_ (the "Final Completion Deadline"). Such Work shall be performed for the total amount of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) (hereinafter referred to as the "Contract Price").

In consideration of the IFB, the BSD the RFB, Contract Price, and the mutual covenants contained herein and other valuable consideration, the parties agree as follows:

## ARTICLE 1

### GENERAL PROVISIONS AND DEFINITIONS

Section 1.1 Contract This Contract is composed of the following items:

- A. Articles 1-17 of this Contract and all Exhibits annexed hereto;
- B. All Change Orders as defined in Section 1.2.5 hereof and, all amendments and addenda to this Contract;
- C. The Information For Bidders (hereinafter referred to as the "IFB"), Bid Submission Documents, (hereinafter referred to as the "BSD") and Request For Bids (hereinafter referred to as the "RFB") issued by BNYDC, together with all addenda to the IFB, BSD, or RFB.

CONSTRUCTION CONTRACT NUMBER \_\_\_\_\_  
CONTRACTOR \_\_\_\_\_

# BNYDC CONSTRUCTION CONTRACT

D. All provisions of laws, rules, regulations and Executive Orders of the United States Government, the State of New York, the City of New York, or any agency or subdivision thereof, which are required to be a part of or apply to this Contract, whether or not any specific reference is made to the same in this Contract.

E. All required bid, payment and performance bonds.

Section 1.2 Definitions The following words shall, whenever they appear in this Contract, have the meanings set for them in this section, unless a different meaning is clear from the context:

- A. "Architect/Engineer" shall mean the entity or entities retained by BNYDC to perform design services for the Project.
- B. "BSD" shall mean the Bid Submission Documents as promulgated by BNYDC upon which Contractor presented its bid in response to the RFB and upon which the Contract Price is based.
- C. "BNYDC's Contractors" shall mean other Contractors or construction managers engaged by BNYDC to perform work on the Project or at the Project Site(s).
- D. "Change Orders" shall mean changed, deleted and/or additional Work to be performed by the Contractor pursuant to Article 6 hereof.
- E. The "City" shall mean the City of New York.
- F. The "City Contract" shall mean the management contract between the City of New York and the Brooklyn Navy Yard Development Corp.
- G. "Construction Documents" shall mean the drawings identified on **Exhibit "C"** and the specifications annexed as **Exhibit "D"**.
- H. "Contract Price" shall mean the total compensation for the Work as set forth on page 1 hereof.
- I. "DSBS" shall mean the City of New York Department of Small Business Services.

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- J. "Extra Work" shall mean Work by Contactor performed at the request of BNYDC or Work performed by Contactor with BNYDC's knowledge and approval for which there is no extra charge
- K. "Federal" shall mean the Government of the United States of America.
- L. "IFB" shall mean the Information For Bidders contained in the RFB promulgated by BNYDC upon which Contractor based its bid and upon which the Bid Submission Documents are based.
- M. "Liquidated Damages" shall mean the liquidated damages rate set forth in the RFB multiplied by the number of calendar days that Substantial Completion (as defined in Section 8.2) of the Work is delayed from the Substantial Completion Deadline set forth in the Recitals to this Contract.
- N. "Premises" shall mean the Brooklyn Navy Yard.
- O. "President" shall mean the President of BNYDC, or the President's designee.
- P. "Project" shall mean the services to be performed under this Contract, as defined on page 1 of this Agreement.
- Q. "Protest Work" shall mean Work the Contractor believes is Change Order Work for which no Change Order has been issued.
- R. "Project Site(s)" shall mean the location within the Brooklyn Navy Yard where the Work is to be performed as defined on page 1 hereof.
- S. "RFB" shall mean the Request For Bids which contained the IFB promulgated by BNYDC upon which Contractor presented its bid on the BSD and upon which the Contract and the Contract Price are based.
- T. "Project Engineer" shall mean a BNYDC's representative whose authority is set forth in Article 8.5 hereof.
- U. "State" shall mean the State of New York.

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V. "Subcontractor(s)" shall mean any entity the Contractor enters into a subcontract or material purchase order (hereinafter referred to as "Subcontract(s)") for purpose of performing the Work. All Subcontractor(s) and Subcontract(s) must be approved by BNYDC.

W. "Tenant", "Subtenant", "Licensee", "Invitee" "Person" or "Visitor" shall mean any person or entity that is on the Premises with or without the permission of BNYDC.

X. "Work" shall mean all labor, equipment, services, permits, approvals, inspections and material necessary for the complete and satisfactory completion of the Project as set forth in this Contract.

Section 1.3 Funding Funds for the payment of Contractor under this Contract may be provided by or through the City, pursuant to the City Contract (hereinafter referred to as City Contract Funded). Therefore if the Project is City Contract Funded, Contractor shall take no action which constitutes a breach of the City Contract. Contractor acknowledges that it has carefully reviewed and completely understands the terms and conditions of the City Contract which was available for review during the bidding period. Contractor further understands and agrees that if the City Contract is terminated this Contract may be assigned by BNYDC to the City.

Section 1.4 Applicable Laws, Rules and Regulations The Work shall be performed in strict compliance with all applicable federal, state and local laws, rules, regulations, codes and orders. Failure by the Contractor to comply with any such law, rule, regulation code or order shall be a material default under this Contract. Without limiting the generality of the foregoing, the Contractor agrees that it shall specifically comply with the following:

- A. Equal Employment The requirements are set forth in **Exhibit "A"**, which is attached hereto and made a part hereof.
- B. Federal Job Training Partnership Act (hereinafter referred to as the "FJTPA") The FJTPA, which specifies that when hiring for the Work, the Contractor shall give consideration to employing City residents who are economically disadvantaged or are eligible under FJTPA, and who have qualifications and skills commensurate with the requirements for the positions available. To the

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greatest extent feasible, the Contractor shall give opportunities for training and employment to lower income persons in the area of the Premises.

- C. Minimum Wages; Payroll Reports The provisions of Sections 220 and 230 of the New York State Labor Law shall apply to all Work under this Contract. If no prevailing wage is applicable, then Contractor will pay workers the minimum hourly rate required by law, unless a higher amount is required pursuant to any other provision of this Contract. The Contractor shall furnish on demand by BNYDC or DSBS or such other agency or office as the President may direct, a verified copy of its payroll, and also any other information required by BNYDC to satisfy BNYDC that the provisions of this Section are being observed.
- D. MacBride Principles The requirements are set forth in **Exhibit "B"**, which is attached hereto and made a part hereof.
- E. Noise Control. The provisions for noise control for the Work at the Project Site(s) and on the Premises are set forth in Section 24-216 of the City's Administrative Code as it may be amended from time to time.
- F. ADA Requirements Title II of the Americans with Disabilities Act, the rules and regulations promulgated thereunder, and any state and local laws establishing construction requirements with respect to access for disabled persons.
- G. Tropical Hardwoods The provisions for the use of Tropical Hardwoods used for the Work at the Project Site(s) and on the Premises are set forth in Section 167-b of the New York State Finance Law, which prohibits the use of tropical hardwoods, except as expressly permitted.
- H. Local Based Enterprise The requirements are set forth in **Exhibit "E"**, which is attached hereto and made a part hereof.
- I. Whistleblower Protection The requirements are set forth in **"Exhibit K"**, which is attached hereto and made a part hereof.
- J. Paid Sick Leave The requirements are set forth in **"Exhibit L"**, which is attached hereto and made a part hereof.

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K. OSHA The Contractor shall ensure that the Work is performed in a location and manner free from recognized hazards and shall comply with Occupational Safety and Health Administration (“OSHA”) standards, rules and regulations. The Contractor shall regularly examine workplace conditions and use safe and well-maintained tools, equipment and Personal Protective Equipment to ensure conformance with applicable OSHA standards.

**Contractor agrees to incorporate, each of the provisions contained in Article 1.4 and each of the exhibits referenced therein into each Subcontract so as to bind each Subcontractor to the provision of Article 1.4.**

Section 1.5 Intent of Contract The intent of this contract is to complete the Project; therefore matters not expressly included in this Contract but which are reasonably inferable therefrom as being necessary to produce the intended results shall be deemed included as a part of the Work. The Contract parts are complementary and cumulative and what is called for by one part shall be as binding as if called for by all.

Section 1.6 The Construction Documents The drawings identified in **Exhibit “C”** which is attached hereto and made a part hereof and the Specifications identified in **Exhibit “D”** are complementary. Anything shown in any of the drawings and not mentioned in the specifications, or mentioned in any of the specifications and not shown in the drawings, shall have the same effect as if shown or mentioned in both. In the event of a conflict between the drawings and the specifications, Contractor shall do the more complete installation, unless directed, in BNYDC’s sole discretion, otherwise in writing.

Section 1.7 Contract Modifications The Contract is to be construed as one coherent overall document. If part of the Contract is Modified for the purpose of varying, modifying, rescinding or adding to the Contract then such modified portions of the Contract must be read together with the unmodified portions of the Contract to which they relate so as to give effect to the provisions of the Contract Documents that remain in full force and effect. Notwithstanding the above, and to the extent BNYDC or Contractor becomes aware of any conflict within any of the Contract, then BNYDC and Contractor shall promptly inform each other of such conflict and BNYDC shall resolve the conflict. BNYDC’s decision is final and binding upon Contractor. Contractor shall proceed with the Work in accordance with BNYDC’s determination. If Contractor performs Work

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before the conflict is resolved such Work is to be done at Contractor's sole risk, cost and expense.

## ARTICLE 2

### THE PROJECT SITE (S) AND CONTRACTOR'S RESPONSIBILITIES

Section 2.1 Project Site(s) The Premises are the former New York Naval Shipyard, which has been in continuous use for over 200 years. As such, there are buried foundations of demolished buildings, railroad and crane tracks set in massive concrete foundations and concrete decks set on various types of piles; therefore, BNYDC makes no representations whatsoever as to any subsurface condition of the Project Site(s). The Contractor assumes all responsibility and liability for all subsurface conditions at the Project Site(s) that could have been discovered by subsurface examination. The Contract Price contemplates whatever subsurface conditions exist. No Change Order will be issued for subsurface conditions at the Project Site(s) materially differing from any assumptions made by Contractor unless the Contractor having notice of the history of the Premises could not have anticipated such subsurface conditions.

If access to the Project Site(s) or Premises shall be denied to the Contractor at any time by BNYDC or any person(s) not associated with BNYDC or by court action, and such access denial reasonably interferes with Contractor's ability to perform the Work, then the Term set forth on page 1 hereof shall be extended for a period equal to any such period of access denial. Notwithstanding the foregoing, the Contractor shall not be entitled to an extension of time for any access denial attributable to the actions of the Contractor. In no event shall any denial of access to the Project Site(s) be a breach of this Contract and no damages or increased costs shall be recoverable on account of such denial of access.

#### Section 2.2 Contractor's Responsibilities

A. Adherence to Contract Documents The Contractor shall perform the Work in strict accordance with the Contract.

B. Supervision The Contractor shall use its best skills to properly administer, coordinate, supervise and superintend the Work. The Contractor shall furnish a competent on-site representative to receive notices, orders and instructions. The Contractor shall at BNYDC's request, report at a meeting between BNYDC and the Contractor on the general progress of the Work at the Project Site(s). The Contractor shall attend in

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person or have a competent and responsible representative attend such progress meetings.

C. Labor The Contractor shall furnish and maintain an adequate staff and work force of skilled, competent, experienced, reliable and honest workers at the Project Site(s) to carry out the Work in an efficient and timely manner until completion of the Work and shall enforce discipline and order among Contractor's and Subcontractor's employees and shall not employ on the Work any unfit person or anyone not properly skilled or trained in the task to which they are assigned.

D. Labor Disputes The Work may not be interrupted by labor disputes. The Contractor shall use such materials, have deliveries made to the Project Site(s), and employ only such Labor as will perform their services in harmony with all other trades performing Work at the Project Site(s), all other BNYDC's Contractors on the Premises, or otherwise. If a labor dispute does occur then the Contractor is responsible for taking all necessary actions to settle such labor dispute. If questions of union jurisdiction do arise, then the Contractor shall immediately take all necessary action to settle such jurisdictional disputes and shall use such labor as will settle such dispute at no additional cost to BNYDC. The Contractor shall be responsible for any time lost due to such dispute. If Contractor cannot settle the Labor disputes expeditiously, BNYDC shall after three (3) days written notice to Contractor have the right to terminate the Contractor pursuant to Article 9.2 of this Contract. BNYDC shall then have the right to enter upon the Project Site(s) and take possession thereof for the purpose of completing the Work.

E. Layout of Work All layout shall be performed by the Contractor, who shall be solely responsible for establishing and maintaining the layout, line and grade tolerances required for its the Work. The Contractor shall verify all established baselines prior to use and shall notify BNYDC of any discrepancies.

F. Cleaning and Rubbish Removal Contractor shall clear all debris and rubbish created by its operations on a daily basis. The debris and rubbish shall be collected and deposited in containers provided by Contractor. If the Contractor fails to clear and collect the debris and rubbish then, BNYDC may do so for the account of the Contractor. Such

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debris and rubbish removal costs shall be deducted from the Contract Price unless sooner paid by Contractor to BNYDC.

Section 2.3 Safety The Contractor shall be solely responsible for:

- A. Construction means, methods and techniques; and
- B. Employing methods of construction, materials, scaffolding, tools, structures and equipment which meet or exceed federal, state and local safety and health related rules and regulations, laws and codes; and
- C. Complying with the requirements of all insurance carriers providing insurance coverage for the work.

The Contractor shall coordinate with BNYDC and all BNYDC's Contractors on the Project Site(s) to ensure that the Project Site(s) complies with all safety regulations promulgated by any governmental agency having jurisdiction over the Project Site(s) or the Work. The Contractor shall cooperate fully with BNYDC and other persons, to prevent loss and accidents with respect to the Work on or at the Project Site(s).

## ARTICLE 3

### TIME OF PERFORMANCE

Section 3.1 Commencement and Coordination of Work Contractor shall commence the Work at the Project Site(s) on the date specified on page 1 of this Contract. Contractor is completely responsible for the coordination of the Work. BNYDC Contractors or third-party Contractors may from time to time work at, on or about the Project Site(s). Contractor agrees to coordinate the Work scheduling to accommodate the needs of such BNYDC Contractors or third-party Contractors.

Section 3.2 BNYDC's Contractors

A. BNYDC reserves the right to have BNYDC's Contractors or third-party Contractors perform work on the Project or at the Project Site(s). Such BNYDC's Contractors or third-party Contractors may provide additional work beyond the Work covered by this Contract including, but not limited to, tenant improvements. Contractor shall, without further compensation, coordinate the Work with the work of BNYDC's Contractors or third-party Contractors. Contractor shall provide BNYDC's Contractors or third-party Contractors access to the Project Site(s) as often and for as long as BNYDC's Contractors or third-

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party Contractors may request. Contractor shall furnish to BNYDC Contractors or third-party Contractors any services that Contractor utilizes or furnishes to its Subcontractors including, but not limited to, use of hoisting facilities and temporary utilities.

B. Contractor shall integrate the schedule of BNYDC's Contractors or third-party Contractors into the Progress Schedule, as defined in Article 3.3.

C. Contractor shall permit BNYDC, BNYDC Contractors and third-party Contractors to install equipment of furnishings in the Project, provided that such installation shall not materially interfere with Contractor's performance of its obligations hereunder.

D. If Contractor causes damage to the property of BNYDC, BNYDC's Contractors or third-party Contractors or to any other work or property on the Project Site(s) or Premises, then Contractor shall promptly pay for such damage. Such payment for damages shall be deducted from the Contract Price unless sooner paid by Contractor to BNYDC.

E. BNYDC's Contractors and third-party Contractors may be required to do work before, or simultaneously with the Work. Contractor agrees that, when requested by BNYDC's Contractor shall stop or suspend the Work to allow BNYDC's Contractors and third-party Contractors to complete their work. When BNYDC makes a request for Contractor to stop, interrupt or suspend Work to the extent that there are delays in the performance of the Work, the period of time during which the Work shall have ceased shall be recognized as a Contemplated Delay.

Section 3.3 Schedules Ten days after the issuance of the Contract Award Letter, Contractor shall submit to BNYDC in writing, on a form provided by or otherwise acceptable to BNYDC, a schedule of all items of Work to be performed showing the relative dollar value of each item, the date when each item of Work is to be commenced, the duration of each item of Work and the date when each item of Work is to be completed (hereinafter referred to as "Progress Schedule"). As required by section 3.2 b) above, the Progress Schedule shall show the interrelationship of each construction activity of the Contractor under this Contract and all other contracts affecting the Work. BNYDC must approve the Progress Schedule before Work commences. BNYDC will promptly review the submitted Progress Schedule and notify the Contractor to change those items that BNYDC deems incomplete, inaccurate or untimely. Upon receipt of such notification by BNYDC Contractor will incorporate the required changes and

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submit a revised Progress Schedule. Upon final approval by BNYDC of the Progress Schedule, Contractor shall strictly adhere to the approved Progress Schedule.

It is a condition precedent that an approved Progress Schedule is on file with BNYDC before payment of any kind will be made to the Contractor.

Section 3.4 Time for Completion Time is of the essence in this Contract. All Work must be completed within the number of calendar days set forth on page 1 hereof, from the date specified on page 1 hereof, subject to the provisions of Article 3.7 below.

Section 3.5 Contemplated Delays BNYDC and Contractor acknowledge that they are aware that delays are common to construction projects (hereinafter referred to as "Contemplated Delays").

The Following circumstances shall be deemed Contemplated Delays:

- A. Errors in the Construction Documents, or discrepancies in the Construction Documents, or Changes to the Construction Documents, or incomplete Construction Documents that necessitate the issuance of corrective Change Orders.
- B. Slow processing of shop drawings.
- C. Interference from BNYDC Contractors or third-party Contractors or visitors to the Project Site(s) as contemplated by this Article 3.
- D. Adverse weather conditions
- E. Delays, disruptions, hindrances, interferences, or acceleration caused by:
  - i. Acts, failures to act, errors or omissions of BNYDC, the Architect/Engineer or other BNYDC consultants (hereinafter referred to as "Consultants") in the performance of their respective obligations on the Project, or their failure to give approvals and/or consents within the time periods set forth in the Progress Schedule that result in delays.
  - ii. Economic, industry-wide strikes; fire; acts of God.
  - iii. Acts of the public enemy.

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- iv. Unavailability of, or inability to obtain, labor or materials by reason of the acts of any governmental body which affect the supply or availability of labor or materials.
- v. Floods.
- vi. Rebellions, riots, insurrections or sabotage.
- vii. Suspension, resequencing, stoppage or interruption of the Work ordered by BNYDC under this Agreement.
- viii. Interruption or failure of utilities, including without limitation, electric, gas, heat, steam and water.

## Section 3.6 Assumption of the Risk for Delays

Notwithstanding any other provisions of this Contract, and for the benefit of BNYDC, Architect/Engineer and the Consultants, Contractor agrees to make no claim against BNYDC, the Architect/Engineer, or the Consultants due to any Contemplated Delays or other delays even if Contractor complies with the provisions of Article 3.7, and Contractor is granted an extension of the Term. Contractor agrees to assume the risk of any and all loss and expense for such other delays in the performance of the Work or any other obligation of Contractor under this Contract.

The intent of this Article 3.6 is to avoid protracted costly litigation as to whether delays, should they occur, were anticipated or unanticipated, foreseeable or unforeseeable, reasonable or unreasonable or as to whether or not they were the fault of BNYDC, Architect/Engineer, Consultants or their representatives. Contractor agrees that for all delays, regardless of duration, the Contractor assumes any and all loss and expense for such delays in the performance of the Work or any other obligation of Contractor under this Contract.

Contractor certifies that it has considered, as an experienced Contractor, the risk of encountering such delays and its assumption of any and all loss and expense for such delays in the performance of the Work in reaching the Contract Price contained in this Contract.

Section 3.7 Extension of Time for Performance. If performance by the Contractor is a Contemplated Delay, Contractor may be allowed a reasonable extension of the Term to complete the Work. Only the President, upon written application by the Contractor, may grant an extension of time.

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Section 3.8 Grounds for Extension If the Contractor has otherwise strictly complied with all of the requirements of this Contract and if Contractor applies, in accordance with Section 3.9 hereof, for an extension of time to complete the Work due to a Contemplated Delay, then Contractor shall be entitled to an extension of the Term to complete the Work. The President shall determine how many days of extension time to grant, but in no event more than the number of days missed due to the contemplated delay.

The Contractor shall not receive separate extensions of time for each of several causes of delay operating concurrently. If one of several causes of delay operating concurrently results from any act, fault or omission of the Contractor or of its Subcontractors or material suppliers, and would of itself (irrespective of the concurrent causes) have delayed the Work, no extension of time will be allowed for the period of delay resulting from such act, fault or omission.

Section 3.9 Applications for Extension of Time to Complete Work. Contractor must within five (5) days after commencement of the Contemplated Delay, submit a written application to the President containing the following:

- A. Contract identification
- B. The nature of each alleged cause of delay in completing the Work
- C. The number of days attributable to each such cause
- D. The date that each such alleged cause of delay began
- E. The anticipated end date of each alleged cause of delay
- F. Original bid amount contained in the BSD
- G. Contract start date
- H. Original completion date
- I. All previous time extensions granted
- J. The extension of time currently requested.

As part of the application for Extension of Time, Contractor must include the following statement: "Contractor understands and agrees that if a time extension

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is granted it is only for purposes of permitting continuation of Work and that, unless otherwise agreed by BNDYC in its sole discretion, Liquidated Damages will continue to accrue for each day Substantial Completion is delayed past the Substantial Completion Deadline.”

Section 3.10 Analyses and Approval of Time Extensions The President shall analyze Contractor’s application for extension of time to complete Work and issue a written acceptance or rejection of said application. If the President accepts the application to extend the time for the performance of the Contract then the Term shall be extended the number of days the President specifies.

Section 3.11 Waiver of Claims The Contractor waives all claims for damages, including all costs and increased costs for labor and material, incurred on account of any delay, hindrance or cause whatsoever, and the Contractor agrees that its sole right and remedy for any delay, hindrance or cause shall be that the Contractor shall be entitled to such extension of the Term as the President may grant. Contractor further agrees that such extension of the Term is full and adequate consideration for all delays, hindrances, or causes.

Section 3.12 Liquidated Damages If the Contractor fails to complete the Work by the Substantial Completion Deadline set forth in the Recitals to this Contract, Contractor shall immediately become liable to BNYDC for the specified Liquidated Damages. The Liquidated Damages shall be deducted from the Contract Price unless sooner paid by Contractor to BNYDC.

BNYDC and Contractor agreed to the assessment of liquidated damages because each recognizes and acknowledges that the actual damages suffered by BNYDC by reason of any delay in the completion of the Work will be of such a nature that they will be unreasonably difficult to determine.

BNYDC reserves the right, in accordance with Article 9 hereof, to terminate this Contract and have the Work completed by others at the expense of the Contractor and in addition, to collect Liquidated Damages.

## ARTICLE 4

### WORK HOURS

The Contractor shall perform Work only between the hours of 7:30 a.m. and 4:30 p.m., Monday through Friday, except as otherwise specified in the RFB. In an emergency or if the Contractor is required to complete the Work in accordance with the Progress Schedule, Work, with the approval of BNYDC, may be

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performed at other hours. No extra compensation for any overtime charges or additional expenses resulting from such work shall be paid to Contractor.

## ARTICLE 5

### PAYMENT; METHOD OF PAYMENT; PAYMENT RECORDS

Section 5.1 Payment BNYDC agrees, upon Final Completion of the Work, to pay the Contractor in full satisfaction for the performance of the Work, and the Contractor agrees to accept, the Contract Price.

Section 5.2 Partial Payment From time to time as the Work progresses, and provided that the Contractor is not in default of this Contract, but not more than once a month, the Contractor shall submit to BNYDC the following required documents (hereinafter referred to as "Required Documents"):

- A. Fully executed and notarized Contractor's Requisition for Progress Payment in the form annexed hereto as **Exhibit "F"**; and
- B. Contractor shall submit for all Work for which Contractor is requesting payment a fully executed and notarized partial release and partial lien waiver, in the form annexed hereto as **Exhibit "I"**; and
- C. Contractor shall submit for each Subcontractor that did Work for which Contractor is requesting payment a fully executed and notarized partial release and partial lien waiver, in the form annexed hereto as **Exhibit "I"**.

BNYDC will review the Required Documents and when satisfied that the documents are accurate and complete, promptly pay the Contractor the amount requested, less retainage as follows: until the Work is substantially complete, 5% of the amount requested.

If BNYDC is not satisfied with the accuracy or completeness of the Required Documents, BNYDC will return the Required Documents to Contractor together with a statement setting forth the items of inaccuracy or incompleteness. The statement from BNYDC shall be conclusive and binding upon the Contractor as to all the items included therein.

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No further progress payments shall be paid to Contractor until Contractor submits and BNYDC accepts the Required Documents.

Section 5.3 Final Requisition On the day that Final Completion of the Work is achieved, Contractor shall submit to BNYDC the following documents (hereinafter referred to as "Final Documents"):

- A. Fully executed and notarized Contractor's Final Requisition for Payment in the form annexed hereto as **Exhibit "F"**; and
- B. Contractor shall submit for all Work for which Contractor is requesting final payment a fully executed and notarized final release and final lien waiver, in the form annexed hereto as **Exhibit "J"**; and
- C. Contractor shall submit for each Subcontractor that did Work on the Project a fully executed and notarized final release and final lien waiver, in the form annexed hereto as **Exhibit "J"**.

BNYDC will review the Final Documents and when satisfied that the Final Documents are accurate and complete, promptly pay the Contractor the final payment less 1% of the final Contract Price as retainage for guaranty or warranty to be held by BNYDC for one (1) year, and return to Contractor excess retainage, if any.

If BNYDC is not satisfied with the accuracy or completeness of the Final Documents, BNYDC will return the Final Documents to Contractor together with a statement setting forth the items of inaccuracy or incompleteness.

The statement from BNYDC shall be conclusive and binding upon the Contractor as to all the items included therein.

Final payment shall not be made to Contractor until Contractor submits and BNYDC accepts the Final Documents.

## Section 5.4 Withholding of Payment

Anything contained in this Agreement to the contrary notwithstanding, BNYDC, reserves the right to withhold from any payment due Contractor any amount that BNYDC deems sufficient to reimburse BNYDC for its actual expenditures made for the account of Contractor.

The right to withhold money from Contractor includes without limitation, all amount payable hereunder. If in BNYDC's opinion there is an actual or potential breach of this Contract, or an actual or potential default under this Contract by

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Contractor and the remaining balance payable to Contractor under this Contract would be insufficient to complete the Work. In connection therewith, BNYDC may nullify, in whole or in part, any previously approved but unpaid Partial Payments.

Section 5.5 Stored Materials BNYDC will allow materials or equipment that are not incorporated in the Work but will be installed in the Project and are delivered (hereinafter referred to as "Material") and suitably stored at the Project Site(s) to be included as an item in the Contractor's Requisition for Progress Payment. If approved in advance by BNYDC, BNYDC will allow eighty percent (80%) of the cost of the Material suitably stored at a location other than at the Project Site(s) to be included as an item in the Contractor's Requisition for Progress Payment so long as Contractor submits paid invoices, bills of sale or such other document satisfactory to BNYDC that establish BNYDC's title to such materials or equipment. Contractor must also protect BNYDC's interest in the Material by providing BNYDC acceptable proof that BNYDC's interest in the material is properly insured. Since off site storage of Material is for the convenience of Contractor transportation to the Project Site(s) of the Material shall not be included as an item in the Contractor's Requisition for Progress Payment.

Section 5.6 Miscellaneous Payment Provisions Nothing contained in this Article 5 shall relieve the Contractor of its obligation to give notice of claims pursuant to any other provision of this Contract. The acceptance of the final payment by the Contractor is a specific waiver and release of any claim the Contractor may have against BNYDC on account of or arising out of the Work. The making of the final payment by BNYDC shall not act as an estoppel against BNYDC or prevent BNYDC from enforcing any right under this Contract or any rights that may accrue or have already accrued at law or in equity.

Section 5.7 Joint Payment All payments by BNYDC shall be in the form of one or more separate checks which together total the amount due, made payable, at the option of BNYDC, either: (1) to the Contractor, (2) to the Contractor and one or more of its suppliers or Subcontractors, or (3) directly to its suppliers or Subcontractors. This provision is strictly for the benefit of BNYDC in order that satisfactory morale and relations with Subcontractors or suppliers is maintained and shall not under any circumstances confer any right upon a third party. In the event BNYDC makes a joint payment to the Contractor and one or more of its suppliers or Subcontractors or pays Contractor's suppliers or Subcontractors directly, then the Contractor shall be notified of such payment and such payment

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shall be reflected in Contractor's next Requisition and applied to the Contract Price.

Section 5.8 Payment Records Contractor agrees that its records pertaining to this Contract, the Project Site(s), the Project, all payments made hereunder, all purchases, and expenses charged hereunder or otherwise expended (hereinafter referred to as "Records") shall be subject to examination, audit and post audit at any time by BNYDC, the Comptroller of the City, the Director of Administrative Services of the City, DSBS, or such other designated official, and/or agent of the City, the State of New York, or the United States Government (hereinafter referred to as "Audit"). The Contractor shall maintain the Records at its business premises for a period of at least six years from the date of final payment. The Contractor shall maintain all Records and additional documents and records required by BNYDC (hereinafter referred to as "Additional Records"). Contract agrees that the maintenance of the Records and Additional Records are a material part of this Contract. Contractor agrees to promptly prepare and furnish to BNYDC such statements, Records, Additional Records, reports, data or information as requested by BNYDC. The Contractor acknowledges that its Subcontractors are subject to the provisions of this Section and will include such terms in all Subcontracts. Contractor undertakes to provide BNYDC such statements, Records, Additional Records, reports, data or information from Subcontractors as requested by BNYDC

If an Audit discloses any discrepancy, then BNYDC and the Contractor shall immediately address and clear such discrepancies. If determined by said audit that BNYDC has overpaid Contractor then Contractor shall immediately return such overpayment to BNYDC. Said return of funds shall be in addition to any claim for damages BNYDC may have as against Contractor. If determined by said audit that Contractor has been underpaid by BNYDC then upon a receipt and approval of a fully executed and notarized requisition for payment, BNYDC will pay Contractor the requested amount.

## ARTICLE 6

### CHANGE ORDERS; PROTEST WORK

Section 6.1 Extra Work BNYDC reserves the right to interpret the Construction Documents and/or to order minor changes in the Work, if those changes do not involve any adjustment in the Contract Price. The Contractor will promptly comply with any such interpretation or order.

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Section 6.2 Field Orders In order to resolve conflicts in the Construction Documents, to order minor changes to avoid conflicts between different trades, or for Extra Work Architect/Engineer and BNYDC's Project Engineer shall have the authority to issue written field orders (hereinafter referred to as "Field Orders"). A Field Order is not a Change Order, only the President under Section 6.3 below has the authority to issue a Change Order.

Section 6.3 Change Orders. BNYDC reserves the right to, from time to time during the course of the Work, change, delete or add Work to the Contract, Such deleted or additional work shall hereinafter be referred to as a "Change Order". The President and the Contractor must sign all Change Orders. An oral directive or a writing not signed by the President and the Contractor shall be void ab initio and of no effect. Contractor upon receipt of a valid Change Order shall promptly perform required Work thereunder. The price for the Work required by the Change Order shall be determined as follows:

- A. If Contractor and BNYDC agree upon a lump sum amount that the Contract Price will be amended by such lump sum amount; and/or
- B. If this Contract the RFB, IFB, or the BSD contains unit prices (hereinafter referred to as "Unit Prices"), which are applicable to the type of work involved in the Change Order, then said Unit Prices will be used to set the amount that the Contract Price will be amended.
- C. If BNYDC and the Contractor cannot agree upon a Change Order price prior to the performance of the Change Order, and if Unit Prices are not applicable to the Change Order, then the Contractor shall be paid for such Change Order Work an amount equal to either
  1. With respect to Change Order Work performed by the Contractor the sum of:
    - a. Contractor's actual, documented to BNYDC's satisfaction, incurred costs defined as:
      - i) Base wages paid to laborers, including all insurance, welfare and other fringe benefits, and payments to labor organizations; and
      - ii) Cost of materials purchased, plus transportation costs, less all Contractor's discounts; and

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- iii) The actual cost of additional insurance necessitated by the Change Order Work; and
  - iv) The cost of installation, maintenance, operation and rental (or rental value of Contractor owned plant and equipment, but not tools) necessitated by the Change Order; and
  - v) The cost of necessary installation and dismantling of such plant and equipment (including transportation to and from the Project Site) (hereinafter referred to as "Actual Costs"); plus
- b. 10% of such Actual Costs as compensation for all other costs, including overhead and small tools (hereinafter referred to as "Additional Costs"); plus
  - c. An additional 10% of such Actual Costs as compensation for profit (hereinafter referred to as "Profit"); or
2. With respect to Change Order Work performed by a Subcontractor, the sum of:
- a. The Subcontractor's Actual Costs; and
  - b. 10% of Actual Costs as compensation for Subcontractor's Additional Costs,
  - c. Not more than 5% of Actual Costs for Subcontractor's profit; and
  - d. Not more than 5% of Subcontractor's Actual Costs for the Contractor's Additional Costs and profit;
  - e. The total of the markups described in (2) (b), (2) (c) and (2) (d) above shall not exceed 20% of the Subcontractor's Actual Costs.
- D. If the Change Order deletes Work, then the Contract Price shall be reduced by an amount equal to the sum of (a) the Actual Costs, plus (6) all unearned Profit and Additional Costs.
- E. If BNYDC and the Contractor cannot agree on a price for the Change Order Work under paragraphs a), b) or c) above, then the Contractor agrees that Contractor shall nevertheless immediately perform or delete the Change Order Work. The price to be paid or the credit to be taken for said Change Order Work shall be determined by BNYDC based upon the current market value for said work (hereinafter referred to as "Actual Market Value"), but in no event shall such Actual Market Value exceed the Actual Costs of performing said Change Order Work. The

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determination of Actual Market Value shall be made by the President and shall be binding upon the Contractor.

Section 6.4 Payment for Change Orders Request for payment of a Change Orders may be included with the Contractor's next Partial Requisition. Such request shall constitute Contractor's agreement that the Change Order relieves BNYDC from any liability for Contractor's loss due to delay, disruption, cost, or expense occasioned by reason of such Change Order and further Contractor releases BNYDC from any further liability therefore.

Section 6.5 Protest Work Contractor must, at least 7 days prior to commencing Protest Work, give BNYDC a formal written notice of the Protest Work together with a detailed explanation of why the contested work is not already covered by the Contract and an itemization of the cost to perform such disputed work. Notwithstanding any such claim of Protest Work, the Contractor shall proceed to diligently perform the Work in question, unless BNYDC shall by written notice direct that such work shall not be performed.

Section 6.6 Protest Work Records Contractor shall, while performing Protest Work, furnish BNYDC daily a written report showing:

- A. The name and social security number of each worker performing Protest Work (hereinafter referred to as a "Protest Worker"); and
- B. The number of hours worked by each Protest Worker; and
- C. The type of work each Protest Worker performed; and
- D. The cost, nature and quantity of all materials accompanied by paid receipts from the vendor from whom such materials were purchased showing date purchased and cost; and
- E. The cost, nature and quantity of all equipment furnished or used in connection with the Protest Work accompanied by certified records showing daily usage costs, paid receipts from the vendor from whom such equipment was purchased or rented showing date purchased or rented and cost.

Failure to comply with the requirements of this Section 6.6 shall be deemed a waiver of any claim for payment on account of Protest Work.

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## ARTICLE 7

### SUBCONTRACTS

Section 7.1 Subcontracts The Contractor is not an agent of BNYDC, the City or DSBS. All Subcontracts are between Contractor and Subcontractor. BNYDC, the City and DSBS have no responsibility for and assume no liability under any Subcontract.

Contractor shall include in each Subcontract a representation and warranty that Subcontractor presently has no interest, and Subcontractor shall not acquire any interest, which would directly or indirectly conflict, in any manner or degree, with the performance of Work on the Project and that no person with any such conflicting interest shall be employed in the performance of the Subcontract; any such interest on the part of the Subcontractor, its employees, agents or assigns must be fully disclosed to BNYDC.

The Contractor shall include and enforce all applicable terms and conditions set forth in this Contract in every Subcontract.

Section 7.2 Investigation Forms for Subcontractors. The Contractor shall cause each Subcontractor to submit to the City, Mayor's Office of Contract Services (hereinafter referred to as MOCS), a Procurement and Sourcing Solutions Portal (hereinafter referred to as "PASSport") profile. The Subcontractor shall not commence Work until BNYDC receives clearance from the MOCS.

Section 7.3 Indemnification of Subcontractor's Lien. To the fullest extent permitted by law, Contractor indemnifies and holds BNYDC, the City, DSBS and the directors, officers, agents and employees of each harmless against any and all Subcontractors' liens which may be filed. If the Contractor fails to promptly discharge all Subcontractors' liens, BNYDC shall make no further payment to the Contractor under this Contract. BNYDC, the City and DSBS shall have the right to discharge any liens which may be filed by any Subcontractor of any tier, and may recover the costs of securing such discharge from the Contractor by withholding such amount from the next payment due or otherwise.

## ARTICLE 8

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## INSPECTION AND COMPLETION OF THE WORK

Section 8.1 Inspection All Work, materials and methods of construction shall at all times be subject to the inspection by BNYDC or its designee, or any City, New York State or Federal agency or department with jurisdiction over the Premises. If any Work, material or method of construction does not meet the approval of BNYDC or its designee, or any City, New York State or Federal agency or department with jurisdiction over the Premises such Work, material or method of construction shall be immediately changed, corrected, replaced and made good, at the Contractor's expense. BNYDC shall be the final judge of the quality and suitability of the Work, materials, and the methods of construction. Acceptance of any Work, material or method of construction shall not relieve the Contractor from any of its obligations under this Contract. BNYDC and its agents shall have no liability or obligation as a result of the inspection and the Contractor shall not be relieved of any Contract obligations by the making of an inspection or any acceptance resulting therefrom.

Section 8.2 Substantial Completion of the Work. When Contractor believes that the Work is complete Contractor shall request in writing that BNYDC inspect the Project. The Project shall be deemed substantially completed (hereinafter referred to as "Substantial Completion") on the date when all of the following shall have occurred:

- A. BNYDC may use and occupy the Project; and
- B. Only minor incomplete or unsatisfactory Work (hereinafter referred to as "Punch Lists"), if any, remains incomplete provided it does not interfere with BNYDC's use and occupancy; and
- C. A Temporary Certificate of Completion or Certificate of Occupancy and/or such other required approval (i.e., a Notice of Completion or a New York City agency sign-off, as may be applicable) shall have been issued by the appropriate local governmental authority for all or a portion of the Project.

Section 8.3 Punch List When BNYDC or its designee prepares a Punch List Contractor shall promptly complete and/or correct said work on the Punch List. The Contractor shall remain fully responsible to perform all Work whether or not there is a Punch List. BNYDC shall be entitled to withhold from any payment, in

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# BNYDC CONSTRUCTION CONTRACT

addition to any other sums properly withheld hereunder, the sum of two times the value of the Punch List, but in no event less than \$1,000.

Section 8.4 Final Completion of the Work. The Project shall be deemed finally completed (hereinafter referred to as "Final Completion") on the date when the Work shall have been finally completed and BNYDC shall have received:

- A. Evidence that all Work including Punch List items, have been fully and satisfactorily completed in a good and workmanlike manner, in conformance with this Contract; and
- B. The Project has received, in full compliance with all applicable laws, rules, requirements and regulations of all government Authorities having jurisdiction over the Project the required signoffs and Certificates of Completion and/or Occupancy; and
- C. Contractor has delivered all final certificates of approval relating to the Work and the contemplated uses of the Project, including, without limitation, all necessary certificates of the Board of Fire Underwriters or any successor thereof, Inspection and approval by the Bureau of Electrical Control, the City Fire Department, the City Department of Environmental Protection, all warranties and all guarantees for the Work and the Certificate of Completion and/or Occupancy, shall have been delivered to BNYDC; and
- D. All required receipts, releases, releases of liens, affidavits, waivers, as-built drawings and any other documents required under this Contract shall have been delivered to BNYDC.

Section 8.5 Project Engineer BNYDC may employ a Project Engineer as BNYDC's representative at the Project Site(s). The Project Engineer shall, subject to review by BNYDC, have the authority, in the first instance, to inspect, supervise and control the performance of the Work.

**NOTE – The Project Engineer, or any other person, does not have the power to issue a Change Order. Only the President, in compliance with section 6.3, has the power to issue a Change Order.**

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Section 8.6 Occupation or Use Prior to Completion BNYDC shall have the right before the Final Completion, to take over, occupy, operate or otherwise use any part of the Project. Contractor shall not interfere with or object to such take over, occupancy, operation or use any part of the Project. BNYDC shall notify Contractor in writing of such take over, occupancy, operation or use part of the Project specifying the date of such take over, occupancy, operation or use of part of the Project. Contractor's guarantee on the part of the Project taken over, occupied, operated or used by BNYDC shall begin on the date of such take over, occupancy, operation or use by BNYDC. If BNYDC shall take over, occupy, operate or use any part of the Project, BNYDC shall first inspect the parts of the Project to be so taken over, occupied, operated or used by BNYDC. Contractor will then be furnished in writing with a statement of Substantial Completion, and a Punch List for such part so taken over, occupied, operated or used by BNYDC.

## ARTICLE 9

### SUSPENSION OF WORK; TERMINATION

Section 9.1 Suspension BNYDC may, at any time, with or without cause, suspend the Work or any portion thereof for a period of not more than 90 days by giving Contractor written notice of such suspension (hereinafter referred to as "Suspension Notice"). Contractor shall immediately stop the Work covered by BNYDC's Suspension Notice and cause all Subcontractors to stop the Work covered by BNYDC's Suspension Notice. Contractor and Subcontractors shall resume the Work on the date set by BNYDC. Contractor and Subcontractors shall not be entitled to any additional compensation for costs attributable to any suspension, but the time for completion of the Work shall be extended by the period of suspension. The Contractor shall secure and make safe the Project Site(s) to BNYDC's satisfaction during any suspension.

Section 9.2 Defaults and Terminations for Cause In addition to any other rights that BNYDC may have, BNYDC shall have the right to declare the Contractor in default and terminate, for cause, this Contract, in whole or in part, if any of the following occur:

- A. The Contractor shall become insolvent; or
- B. The Contractor shall fail to perform the Work in the method and manner required by BNYDC; or

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# BNYDC CONSTRUCTION CONTRACT

C. The Contractor shall fail to complete the Work within the Term; or

D. The Contractor shall fail to assign workers, order materials or enter into Subcontracts in a manner deemed sufficient by BNYDC to permit completion of the Work in accordance with the approved work schedule; or

E. The Contractor's interest in this Contract or its right to receive funds shall be assigned, transferred, conveyed or otherwise disposed of voluntarily or by operation of law without the prior written consent of BNYDC; or

F. The Contractor shall not comply with or violate any provision of this Contract; or

G. The Contractor shall fail to comply with any of the applicable laws, rules, regulations or orders that may be applicable to this Contract, or the Contractor shall be defaulted or debarred by the City, the State of New York or the United States Government; or

H. Any statement or representation of the Contractor in the Contract or in any document submitted by the Contractor with respect to the Work, the Project, or the Contract (or for purposes of securing the Contract) was untrue or incorrect when made.

Section 9.3 Termination for Convenience BNYDC reserves the right to terminate Contract at any time for its own convenience, without fault, and for such reasons as BNYDC deems appropriate (hereinafter referred to as "Convenience Termination"). A Convenience Termination shall take effect immediately upon Contractor receipt of BNYDC's written Convenience Termination notice. Contractor shall be entitled to full payment of sums due hereunder for Work performed prior to such Convenience Termination. Contractor shall not be entitled to profit or overhead on the unperformed portion of the Work.

Section 9.4 Effects of a Default or a Termination Upon termination of this Contract, Contractor and all Subcontractors will immediately cease work and take all necessary steps to remove all hazards so as to make the Project Site(s) safe. After securing the Project Site(s), Contractor shall promptly present BNYDC a statement of costs actually incurred to the date of termination. The Contractor

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shall not recover as part of its costs any unearned or anticipated overhead or profit for itself or for its Subcontractors as a result of any termination.

Section 9.5 Payment Due when Termination not for Cause BNYDC will promptly review the statement of costs submitted by the Contractor by verifying and auditing all canceled checks, Subcontracts, paid receipts, bills from Subcontractors and any other document deemed necessary. BNYDC will notify the Contractor in writing when BNYDC is satisfied that the statement of costs is accurate (hereinafter referred to as "Approved Statement of Costs"). Contractor may then submit a Final Requisition for the balance of the Approved Statement of Costs, Contractors Final Release and Final Lien Waivers, all Subcontractors Final Release and Final Lien Waivers. Receipt of payment from BNYDC of the amount of the Final Requisition shall be full and final payment to the Contractor.

Section 9.6 Payment Due when Termination is for Cause In addition to any other rights BNYDC may have in law, in equity, or under this Contract if termination is for cause, BNYDC may, at its sole discretion, have the Work completed by another Contractor of its choice, or elect not to complete the Work.

BNYDC shall deduct from all monies then due Contractor the sum of:

- A. All expenses incurred in completing the Work; or
- B. The value of the Work not completed (as determined by BNYDC, in its sole discretion; and
- C. all incidental expenses incurred as a result of the termination for cause, including all actual legal fees and accounting fees.

If, after making the above computation, there remains a balance due Contractor BNYDC shall pay such amount to the Contractor upon Contractor submitting a Final Requisition for such balance, Contractors Final Release and Final Lien Waivers, all Subcontractors Final Release and Final Lien Waivers. Receipt of payment from BNYDC of the amount of the Final Requisition shall be full and final payment to the Contractor.

If there is a balance due from the Contractor to BNYDC, then the Contractor shall immediately pay that amount to BNYDC.

No monies shall be due or payable to Contractor, if Contract is terminated for cause, until the Project is completed or BNYDC abandons the Project.

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# BNYDC CONSTRUCTION CONTRACT

BNYDC need not wait until the completion of the Project to seek the enforcement of its rights hereunder.

## ARTICLE 10

### PROTECTION OF PERSONS AND PROPERTY; INDEMNIFICATION

Section 10.1 Protection of Persons and Property The Contractor is responsible for providing safety and protection for all persons at the Project Site(s). The Contractor is responsible for all property damage, loss, injury, theft or vandalism at the Project Site(s) resulting from the Contractor's acts or omissions or those acts or omissions of any Subcontractors or any act or omission by anyone for whose acts Contractor may be liable.

Section 10.2 Indemnification To the fullest extent permitted by law, Contractor agrees to indemnify, keep indemnified, and hold harmless BNYDC and the City and their respective affiliates, officers, directors, members, partners, trustees, beneficiaries, agents and employees (hereinafter referred to as "Indemnities") from and against any and all liability, civil money penalties, fines, claims, losses, suits, damages, demands, judgments, actions, causes of action, settlements, expenses including but not limited to attorney's fees and disbursements, costs and charges of every nature and kind, both legal and otherwise, whether direct or indirect, arising out of (i) the acts or omissions of the Contractor, its Subcontractors, agents, employees or material suppliers, and any and all Persons on the Project Site(s) or in connected to the Work or (ii) any negligence, fault or default of the Contractor, its Subcontractors, agents, employees or material suppliers.

Contractor specifically agrees and acknowledges that there shall be no personal liability on the part of any officer, director, employee or agent of the Indemnities in connection with this Contract or otherwise.

This section 10.2 shall survive any termination of this Contract and remain in full force and effect.

Section 10.3 BNYDC, the City and DSBS not liable BNYDC, the City and DSBS shall not be liable for any damage, injury or liability that may be sustained by Contractor, Subcontractor or any other person whatsoever, or to their goods and chattels from any cause whatsoever arising from or out of the Work at the Project Site(s). Contractor hereby releases and discharges BNYDC, the City and DSBS

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from any and all demands, claims, actions and causes of action arising from the aforesaid.

Contractor shall look solely and exclusively to the funding for this Project for the satisfaction of any claim or cause of action Contractor may have against BNYDC, the City or DSBS in connection with this Contract or the failure of BNYDC to perform any of its obligations hereunder

Section 10.4 Contractor Not an Agent of BNYDC, the City, or DSBS Contractor, Contractor's employees, Subcontractors or Subcontractor's employees are not agents, servants or employees of the Indemnities by virtue of this Contract or by virtue of any approval, permit, license, grant, right or authorization given by BNYDC, the City, DSBS or any of their officers, directors, employees or agents. Contractor, Contractor's employees, Subcontractors, or Subcontractor's employees shall not in any way directly or indirectly represent that they are agents, servants or employees of the Indemnities. The Contractor is solely responsible for the work, direction, compensation and personal conduct of its officers, employees, agents, Subcontractors, Subcontractor's officers, employees, and agents

## ARTICLE 11

### INSURANCE AND BONDS

Section 11.1 Insurance, Performance Bond and Payment Bond Contractor and each Subcontractor shall provide:

- A. Proof of Insurance as set forth in **Exhibit "G"** which is attached hereto and made a part hereof; and
- B. A Performance Bond in the exact form set forth in **Exhibit "H"** which is attached hereto and made a part hereof in the Penal Sum set forth in Attachment 1 of the IFB; and
- C. A Payment Bond in the exact form set forth in **Exhibit "H"** which is attached hereto and made a part hereof in the Penal Sum set forth in Attachment 1 of the IFB.

Section 11.2 Bid Security The bid bond or bid deposit as required by the RFB, the IFB and the BSD shall be retained by BNYDC as security for the Contractor entering into this Contract and commencing Work on the Project. A bid bond will be only be returned to the Contractor in compliance with its own terms. A bid deposit will only be returned to Contractor after the BNYDC receives this

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Contract duly executed by Contractor, the required Performance Bond and the required Payment Bond.

## ARTICLE 12

### LABOR AND MATERIALS; GUARANTEES

Section 12.1 Materials and Equipment All materials and equipment permanently installed in or on the Project shall be new, except as approved by BNYDC or as specified in the Construction Documents. Notwithstanding the foregoing, BNYDC encourages the use of recycled products where practicable. The Contractor shall notify BNYDC if it intends to use recycled products with respect to any materials to be permanently installed on the Project.

All labor performed on the Project shall be performed by skilled workers in their respective trades and shall be of first class quality in accordance with the standards of the construction industry and the particular trade. The Contractor shall obtain in the name of BNYDC all manufacturers' warranties and guarantees on all equipment and materials required by this Contract and installed in or on the Project and shall deliver such warranties and guarantees to BNYDC.

Section 12.2 Guarantee of Work Unless otherwise specifically set forth in the Construction Documents or elsewhere in this Contract, Contractor fully warrants and guarantees the materials, equipment, and Work against any and all defects whether latent or patent for a period of five years from the date Final Completion is achieved (hereinafter referred to as the "Warranty Period"). During the warranty period Contractor shall promptly repair, replace, rebuild or restore (as BNYDC may direct) all defective Work and materials and shall pay all costs for labor and materials necessary to correct such defective Work. Should Contractor fail to promptly repair, replace, rebuild or restore such defective Work, BNYDC shall repair, replace, rebuild or restore such defective Work and Contractor shall promptly pay to BNYDC all costs incurred by BNYDC in connection therewith. BNYDC's certificate setting forth the costs incurred in repairing, replacing, rebuilding or restoring any damaged or defective Work shall be binding and conclusive as to the amount thereof upon the Contractor.

Section 12.3 Security for Materials and Guarantees As security for the Contractor's faithful performance of its obligations under this Article 12, BNYDC will deduct from the Final Completion payment an amount equal to one percent (1%) of the Contract Price or such greater amount fixed in the RFB, the IFB and the BSD (hereinafter referred to as "Retainage"). In BNYDC's sole discretion,

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BNYDC may require Contractor to post in addition to the Retainage security in such amount, as BNYDC deems necessary to guarantee Contractors performance under this Article 12.

If Contractor faithfully performs all its obligations hereunder, BNYDC will as soon as practicable after the expiration of the Warranty Period return to Contractor the Retainage and additional security, if any, without interest. Notice by BNYDC to repair, replace, rebuild and/or restore any defective or damaged Work shall be timely if given up to 10 days after the expiration of the Warranty Period.

Section 12.4 Rights not Exclusive BNYDC's rights under this Article 12 are in addition to all other rights BNYDC may have under this Contract, at law or in equity.

## ARTICLE 13

### TITLE TO THE WORK, MATERIALS AND EQUIPMENT

Section 13.1 Tax Exempt Status Pursuant to Section 1115(a)(15) and (16) of the New York State Tax Law, purchases of tangible personal property by the Contractor or its Subcontractors arising out of this Contract are exempt from the sales and use tax imposed by Article 28 of the New York State Tax Law, to the extent that such property is used to alter, maintain or improve, and becomes an integral component part of City-owned or leased real property which is improved under this Contract. This exemption does not apply to tools, machinery, equipment or other property purchased or leased by the Contractor or its Subcontractors, or to supplies, materials or other property which are consumed in the course of construction or for any other reason not incorporated into the real property which is improved under this Contract.

Section 13.2 Exclusion of Tax From Contract Price Contractor represents and warrants that to the extent applicable state and local sales taxes have been excluded from the Contract Price. Contractor and its Subcontractors shall be responsible for and shall pay any and all applicable taxes, including sales and use taxes imposed upon purchased or leased tools, machinery, equipment, and upon all such unincorporated supplies and materials and other property as provided by law. The Contract Price shall be deemed to include full payment and consideration for the sale of all supplies and materials necessary for the performance of the Contract.

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Section 13.3 Evidence of Title At the request of BNYDC, Contractor shall furnish BNYDC such paid bills, bills of sale and/or other instrument properly executed, acknowledged and delivered as BNYDC may require, proving title for all supplies, materials and equipment permanently installed in or on the Project has passed to the City, free of liens or encumbrances. Contractor shall clearly mark or otherwise identify all such materials as the property of the City.

Section 13.4 Title to Materials Title to all materials used on the Project immediately vests in BNYDC upon the earlier of (1) delivery of such materials to the Premises or (2) payment by BNYDC for such materials. Notwithstanding such transfer of title to the materials until such time as such materials are installed in accordance with the provisions of this Contract and up to Final Completion of the Work, Contractor shall:

- A. Protect the materials against loss or damage, and maintain the materials in proper condition and repair; and
- B. Replace or make good any loss, theft, disappearance, or damage to the materials, and furnish additional materials in place of any that may be lost, stolen or rendered unusable all without cost to BNYDC.

Such transfer of title shall in no way affect any of the Contractor's obligations hereunder.

BNYDC reserves the right, in its sole discretion, to reject any defective or otherwise unsatisfactory materials. Title to any rejected, defective or otherwise unsatisfactory materials shall be deemed to revert to Contractor.

Section 13.5 Subcontracts to Separate Materials from Labor All Subcontracts shall be in a form similar to this Contract with respect to the separation of the sale of materials from the work and labor, services, consumable supplies and any other items to be provided. The Subcontracts shall provide separate prices for (1) materials and (2) all other services and items. Such separation shall actually be followed in practice, including the separation of payments for materials from the payments for other work and labor and other things to be provided.

Section 13.6 Tax Exempt Certificates Contractor and Subcontractors shall obtain, Contractor Exempt Purchase Certificates (Form ST-120.1) and shall furnish to all persons, firms or corporations from which they purchase materials for the performance of the Work such Contractor Exempt Purchase Certificates.

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## ARTICLE 14

### REPRESENTATIONS AND WARRANTIES

Contractor represents and warrants the following:

Section 14.1 Illegal Consideration

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

Section 14.2 Solicitation Contractor has not employed any person to solicit or procure this Contract, and has not made and shall not make, except to full time employees of the Contractor, any payment or any agreement for the payment of any commission, percentage, brokerage, contingent fee or any other compensation in connection with the procurement of this Contract.

Section 14.3 Conflict of Interest Contractor has not acquired nor will it acquire any interest of any nature, direct or indirect (including without limitation, any interest in land in an area related to the Work or any interest in any corporation, partnership, etc. with any such interest), which would conflict in any manner or degree with the performance of the Work and no person having any such conflicting interest shall be employed by the Contractor in the performance of this Contract.

Section 14.4 Investigation Forms All questionnaires and disclosure forms delivered by the Contractor to BNYDC to date are, to the best of the Contractor's knowledge, true and correct in all material respects; no material change has occurred in the circumstances of the Contractor, its principals, or affiliated persons or entities since the respective dates upon which such disclosure forms were executed which would otherwise require disclosure on such forms; and no material disclosed in such disclosure forms contains, to the best of the Contractor's knowledge, any untrue statement of a material fact or omits to state a material fact necessary in order to make any statement contained in such form not misleading.

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# **BNYDC CONSTRUCTION CONTRACT**

Section 14.5 Anti-Boycott Provisions Contractor shall comply in all respects with the provisions of §6-114 of the Administrative Code of the City and the rules and regulations issued by the Comptroller of the City thereunder.

Contractor certifies it is not now participating in, nor shall it participate in, during the term of this Contract, an international boycott in violation of the provisions of the Export Administration Act of 1979, as amended, or the regulations promulgated thereunder.

Upon the final determination by the United States Department of Commerce or any other agency of the Government of the United States that Contractor has participated in an international boycott in violation of the provisions of the Export Administration Act of 1979, as amended, or the regulations promulgated thereunder, BNYDC may, at its sole option, render this Contract forfeit and void.

## **ARTICLE 15**

### **WOMEN OWNED AND MINORITY OWNED BUSINESSES PARTICIPATION**

The Contractor is encouraged to have Women Owned and Minority Owned Business Enterprises (W/MBEs) participate in the Work. If the Contractor submitted a W/MBE Plan, pursuant to and as defined in the IFB, the Contractor represents and warrants that, pursuant to the W/MBE Plan, the Contractor shall provide for the participation of W/MBEs, as defined in and certified pursuant to the requirements of the IFB, in the Work at a level equal to or greater than the total aggregate W/MBE Participation Dollar Value and the total aggregate W/MBE Bid Percentage, as each is defined in the IFB and set forth in the W/MBE Plan. The Contractor may substitute other certified W/MBEs for those identified in the W/MBE Plan, but all W/MBEs must be approved by BNYDC before being employed, either as subcontractors or as materials suppliers, in respect of the Work. If the successful (Bid Proposal) includes a W/MBE Plan, the Contractor may also add additional W/MBEs to the W/MBE Plan provided that neither the W/MBE Participation Dollar Value nor the W/MBE Bid Percentage falls below that identified in the W/MBE Plan. The Contractor, whether or not it submitted a W/MBE Plan, hereby covenants and agrees that it shall provide BNYDC with report(s) as often and with such details as may be reasonably required by BNYDC of any W/MBEs used in the Work.

## **ARTICLE 16**

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# BNYDC CONSTRUCTION CONTRACT

## INVESTIGATION

Section 16.1 Cooperation with Investigation The parties to this Contract agree to cooperate fully and faithfully with any investigation, audit or inquiry conducted by BNYDC. The parties to this Contract agree to cooperate fully and faithfully with any investigation, audit or inquiry conducted by a State or City governmental agency or authority that is empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath, or the Inspector General of a governmental agency that is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit or license that is the subject of the investigation, audit or inquiry. If any person who has been advised that his/her statement, and any information from such statement, will not be used against him/her in any subsequent criminal proceeding refuses to testify before a grand jury or other governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to take testimony under oath, or the Inspector General of the governmental agency that is a party in interest, and is seeking testimony, concerning the award of or performance under any transaction, agreement, lease, permit, contract, or license entered into with BNYDC, The City, the State, or any political subdivision or public authority thereof, or the Port Authority of New York and New Jersey, or any local development corporation within the City, or any public benefit corporation organized under the Laws of the State of New York, or, if any person refuses to testify for a reason other than the assertion of his/her privilege against self incrimination in any such investigation, then BNYDC and/or the Commissioner whose agency is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license shall convene a hearing, upon not less than five days written notice to the parties involved, to determine if any penalties should attach for the failure of a person to testify.

If any non-governmental party to the hearing requests an adjournment, BNYDC or the Commissioner who convened the hearing may, upon granting the adjournment, suspend any contract, lease, permit or license, pending the final determination, without the City or BNYDC incurring any penalty or damages for delay or otherwise.

Section 16.2 Penalties The penalties that may attach after a final determination by BNYDC or the Commissioner may include but shall not exceed:

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# BNYDC CONSTRUCTION CONTRACT

- A. The disqualification, for a period not to exceed five years from the date of an adverse determination for any person or any entity of which such person was a member at the time the testimony was sought, from submitting bids for, or transacting business with, or entering into or obtaining any contract, lease, permit or license with or from BNYDC and/or the City; and/or
- B. The cancellation or termination of any and all such existing BNYDC and/or City contracts, leases, permits or licenses that the refusal to testify concerns and that have not been assigned as permitted under this Contract, nor the proceeds of which pledged, to an unaffiliated and unrelated institutional lender for fair value prior to the issuance of the notice scheduling the hearing, without the City or BNYDC incurring any penalty or damages on account of such cancellation or termination; monies lawfully due for goods delivered, work done, rentals or fees accrued prior to the cancellation or termination shall be paid by the BNYDC or the City.

Section 16.3 Factors in Assessing Penalties BNYDC and/or The Commissioner shall consider and address in reaching his/her determination and in assessing an appropriate penalty the factors in subparagraphs (a) and (b) below. BNYDC and/or The Commissioner may also consider, if relevant and appropriate, the criteria established in subparagraphs (c) and (d) below, in addition to any other information, which may be relevant and appropriate:

- A. The party's good faith endeavors or lack thereof to cooperate fully and faithfully with any governmental investigation or audit, including but not limited to the discipline, discharge or disassociation of any person failing to testify, the production of accurate and complete books and records, and the forthcoming testimony of all other members, agents, assignees or fiduciaries whose testimony is sought.
- B. The relationship of the person who refused to testify to any entity that is a party to the hearing, including but not limited to, whether the person whose testimony is sought has an ownership interest in the entity and/or the degree of authority and responsibility the person has within the entity.

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# BNYDC CONSTRUCTION CONTRACT

- C. The nexus of the testimony sought to the subject entity and its contracts, leases, permits or licenses with BNYDC and the City.
- D. The effect a penalty may have on an unaffiliated and unrelated party or entity that has a significant interest in an entity subject to penalties as described above, provided that the party or entity has given actual notice to BNYDC and/or the Commissioner upon the acquisition of the interest, or at the hearing called for gives notice and proves that such interest was previously acquired. Under either circumstance the party or entity shall present evidence at the hearing demonstrating the potential adverse impact a penalty will have on such person or entity.
1. The term "license" or "permit" as used in this Article 16 shall be defined as a license, permit, franchise or concession not granted as a matter of right.
  2. The term "person" as used in this Article 16 shall be defined as any natural person doing business alone or associated with another person or entity as a partner, director, officer, principal or employee.
  3. The term "entity" as used in this Article 16 shall be defined as any firm, partnership, corporation, association, joint venture, limited liability company or person that receives monies, benefits, licenses, leases or permits from or through the City or otherwise transacts business with the City.
  4. The term "member" as used in this Article 16 shall be defined as any person associated with another person or entity as a partner, member of a limited liability company, director, officer, principal or employee.

Section 16.4 Termination In addition to and notwithstanding any other provision of this Contract, the President and/or the Commissioner may in his/her sole discretion terminate this Contract upon not less than three days written notice in the event the Contractor fails to promptly report in writing to BNYDC and the Commissioner of the Department of Investigations of the City any solicitation of money, goods, requests for future employment or other benefit or thing of value, by or on behalf of any employee of the City or other person, firm, corporation or

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# BNYDC CONSTRUCTION CONTRACT

entity for any purpose which may be related to the procurement or obtaining of this Contract by the Contractor, or affecting the performance of this Contract.

## ARTICLE 17

### MISCELLANEOUS PROVISIONS

Section 17.1 Notices All notices, demands and requests required or permitted to be given under this Contract shall be in writing and shall not be effective unless personally delivered, sent by United States registered or certified mail, postage paid, return receipt optional, or sent by an overnight courier service of recognized reputation, addressed as hereinafter provided. All such notices, demands and requests mailed to BNYDC shall be addressed to BNYDC as follows:

Brooklyn Navy Yard Development Corporation  
Building 77  
141 Flushing Avenue, Suite 801  
Brooklyn, New York 11205  
Attention: Counsel

Or at such other address as BNYDC may from time to time designate by written notice to Contractor. All such notices, demands and requests mailed to Contractor shall be addressed to Contractor at Contractor's address as stated on page 1 hereof. Or at such other address as Contractor may from time to time designate by written notice to BNYDC.

Notices, demands and requests which shall be served in the manner aforesaid shall be deemed given for all purposes hereunder at the time such notice, demand, or request is deposited in any post office or branch post office or official depository regularly maintained by the United States Postal Service.

Section 17.2 Severability If any provision of this Agreement shall contravene or be invalid under the laws of the United States or the State, it is agreed that such provision shall not invalidate the whole Contract but the Contract shall be construed as if not containing the particular provision or provisions held to be invalid.

Section 17.3 Claims and Actions Against BNYDC Contractor shall look solely to the funds available to and appropriated by BNYDC under the City Contract for

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# BNYDC CONSTRUCTION CONTRACT

this particular project for the satisfaction of any claim or cause of action the Contractor may have against BNYDC in connection with this Contract. No director, officer, employee, agent or other person authorized to act on behalf of BNYDC shall have any personal liability in connection with this Contract or any failure of BNYDC to perform its obligations hereunder. The Contractor agrees that it shall have no claim against BNYDC for damages, or in any action or proceeding at law or in equity, unless the Contractor shall give notice of the existence of such claims to BNYDC within sixty (60) days after the cause of action arose, or the damages first became ascertainable, whichever shall occur first. The notice of claim must strictly comply as to form with all of the provisions required by law regarding claims against the City as provided for in §7-201 of the New York City Administrative Code (except for the time to file such claim which shall be sixty (60) days) with service of the same to be made by personal delivery upon an officer or agent of BNYDC.

Serving the notice of claim in strict accordance with this Article shall be a necessary and non-waivable jurisdictional element of any claim by the Contractor. Any action or proceeding by the Contractor against BNYDC must be commenced within sixty (60) days after the service of said notice of claim, but not before thirty (30) days after the service of the notice of claim.

Contractor acknowledges that it will be adequately compensated by money damages alone for any act or omission of BNYDC and, therefore, specifically waives all rights that it may have for equitable relief, including injunctive relief. The filing of a Notice of Appeal by BNYDC in any judicial proceeding shall stay the enforcement of any judgment against BNYDC, pending a resolution and final determination of that appeal, without BNYDC posting any security and without any court order being obtained.

In addition to any other contractual statute of limitations set forth herein, the Contractor agrees that no action against BNYDC shall lie or be maintained if BNYDC is barred by any statute or time limitation whatsoever at the time the Contractor institutes its suit or for twenty (20) days thereafter, from maintaining, prosecuting or instituting any claim against the City, the State of New York, the United States Government, any insurance company which may be liable, or any of them, based upon the same facts alleged by the Contractor, either as a third-party plaintiff or in a plenary action.

Section 17.4 Governing Law & Venue. This Contract is deemed executed in the City of New York, State of New York and shall be governed by and construed in

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# BNYDC CONSTRUCTION CONTRACT

accordance with the laws of the State of New York. The parties agree that any and all claims asserted by or against BNYDC, the City or DSBS arising under this Contract or related hereto shall be heard and determined either in the courts of the United States ("Federal Courts") located in New York City or in the courts of the State of New York ("New York State Courts") located in the City and County of New York.

Section 17.5 Service of Process If BNYDC, the City or DSBS initiates any action against the Contractor in Federal Court or in New York State Courts, personal service of process may be made on the Contractor either in person, wherever the Contractor may be found, or by registered mail addressed to the Contractor at its address as set forth on page 1 of this Contract, or to such other address as the Contractor may have provided to BNYDC, the City or DSBS, as the case may be.

Section 17.6 Waiver by the Contractor With respect to any action between BNYDC, the City or DSBS and the Contractor in New York State Court, the Contractor expressly waives and relinquishes any rights it might otherwise have (1) to move to dismiss on grounds of forum non conveniens, (2) to remove to Federal Court, and (3) to move for a change of venue to a New York State Court outside New York County. With respect to any action between BNYDC, the City or DSBS and the Contractor in Federal Court located in New York City, the Contractor expressly waives and relinquishes any rights it might otherwise have to move to transfer the action to a Federal Court outside New York City.

Section 17.7 Change of Venue If the Contractor commences any action against the City or DSBS in a court located other than in the City and State of New York, upon request of BNYDC, the City or DSBS, as the case may be, the Contractor shall either consent to a transfer of the action to a court of competent jurisdiction located in the City and State of New York or, if the court where the action is initially brought will not or cannot transfer the action, the Contractor shall consent to dismiss such action without prejudice and may thereafter reinstitute the action in a court of competent jurisdiction in New York City.

Section 17.8 Assignment Contractor can neither assign this Contract, nor the right to receive the funds to be paid under this Contract, without the express written consent of BNYDC. BNYDC can either assign this Contract or the rights hereunder to the City without the consent of the Contractor.

Section 17.9 Contract Interpretations In the event any interpretation of this Contract is required after execution, or if any actual or apparent conflict between

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# BNYDC CONSTRUCTION CONTRACT

any two or more provisions of the Contract is discovered, then the Contract or such conflict shall be interpreted by the President and that interpretation shall be conclusive and binding on the parties hereto. In the event of any dispute between BNYDC and the Contractor as to whether or not the Work is completed, the inspection report of BNYDC or its agent shall be considered binding, final and conclusive.

Section 17.10 Titles The titles to any article or any subdivision of this Contract are for organizational purposes only.

Section 17.11 Merger This Contract may not be modified orally. This Contract may be supplemented, amended or revised only in writing by the mutual agreement of the BNYDC and Contractor. This Contract supersedes all previous agreements and/or Contracts whether oral or written between the BNYDC and Contractor.

Section 17.12 Non-Waiver Forbearance, neglect or failure by BNYDC to enforce any and all of the provisions of this Contract or to insist upon strict compliance by Contractor shall not be construed as a waiver of any rights or privileges of BNYDC. A waiver by BNYDC of a past act or circumstance shall not constitute or be a course of conduct or waiver of any subsequent act or circumstance.

Section 17.13 Contractor's Performance Evaluation Provisions Contractor's performance of the Work may be evaluated by BNYDC (i) upon the vouchering of 50% of the Contract Price and/or (ii) upon Substantial Completion of the Work. BNYDC will send a copy of the evaluation to the Contractor after such evaluation and the Contractor may respond in writing to such evaluation. The response will be filed with the evaluation. The evaluation may be filed with the City.

**By executing this Contract Contractor verifies that Contractor has carefully and completely reviewed and understands the terms and conditions this Contract.**

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CONTRACTOR \_\_\_\_\_

# BNYDC CONSTRUCTION CONTRACT

IN WITNESS WHEREOF, the parties have hereunto set their hands and seal the day and year first above written.

(SEAL)

BROOKLYN NAVY YARD  
DEVELOPMENT CORPORATION

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

(SEAL) (if any)

CONTRACTOR

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

## ACKNOWLEDGMENT OF BNYDC

STATE OF NEW YORK)

ss:

COUNTY OF KINGS )

On the \_\_\_\_ day of \_\_\_\_\_ in the year 20\_\_, before me personally came \_\_\_\_\_, to me known, who, being by me duly sworn, did depose and say that /she is the \_\_\_\_\_ of BROOKLYN NAVY YARD DEVELOPMENT CORPORATION, the corporation described in and which executed the above instrument; and that s/he signed her/his name thereto by authority of the Board of Directors of said corporation.

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

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CONTRACTOR \_\_\_\_\_

# BNYDC CONSTRUCTION CONTRACT

## ACKNOWLEDGMENT, IF A PARTNERSHIP

STATE OF \_\_\_\_\_)

ss.:

COUNTY OF \_\_\_\_\_)

On this day of \_\_\_\_\_, 20\_\_, before me personally came \_\_\_\_\_, \_\_\_\_\_ to me known and known to me to be one of the partners of the firm of \_\_\_\_\_ described in and which executed the foregoing instrument and \_\_\_he acknowledged to me that \_\_\_he executed the same as and for the act and deed of said firm.

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

## ACKNOWLEDGMENT, IF AN INDIVIDUAL

STATE OF \_\_\_\_\_)

ss.:

COUNTY OF \_\_\_\_\_)

On this day of \_\_\_\_\_, 20\_\_, before me personally came \_\_\_\_\_, \_\_\_\_\_ to me known to be the individual described in and who executed the foregoing instrument and \_\_\_he acknowledged to me that \_\_\_he executed foregoing instrument.

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

## ACKNOWLEDGMENT, IF A CORPORATION

STATE OF \_\_\_\_\_)

ss:

COUNTY OF \_\_\_\_\_)

On the \_\_\_ day of \_\_\_\_\_ in the year 20\_\_, before me personally came \_\_\_\_\_, to me known, who, being by me duly sworn, did depose and say that he is the \_\_\_\_\_ of \_\_\_\_\_, the corporation described in and

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CONTRACTOR \_\_\_\_\_



# BNYDC CONSTRUCTION CONTRACT

which executed the above instrument; and that he signed his name thereto by authority of the Board of Directors of said corporation.

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

DRAFT

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CONTRACTOR \_\_\_\_\_

# BNYDC CONSTRUCTION CONTRACT

## EXHIBIT A

### E.O. 50 CONSTRUCTION RIDER

#### A. EQUAL EMPLOYMENT OPPORTUNITY

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

- (1) It will not engage in any unlawful discrimination against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability, marital status or sexual orientation with respect to all employment decisions including, but not limited to, recruitment, hiring, upgrading, demotion, downgrading, transfer, training, rates of pay or other forms of compensation, layoff, termination, and all other terms and conditions of employment;
- (2) When it subcontracts it will not engage in any unlawful discrimination in the selection of Subcontractors on the basis of the race, creed, color, national origin, sex, age, disability, marital status or sexual orientation of the owner, manager or any other officer, director, agent or employee of such Subcontractors;
- (3) It will state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that all qualified applicants will receive consideration for employment without regard to race, creed, color, national origin, sex, age, disability, marital status or sexual orientation, or that it is an equal employment opportunity employer;
- (4) It will send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or memorandum of understanding, written notification of its equal employment opportunity commitments under E.O. 50 and the rules and regulations promulgated thereunder; and
- (5) It will furnish all information and reports (which are required by E. O. 50, the rules and regulations promulgated thereunder, and orders of the Director of

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# BNYDC CONSTRUCTION CONTRACT

the New York City Department of Small Business Services, Division of Labor Services ("DLS"), including an Employment Report if the Contract Price is \$1,000,000 or more), before the award of the Contract and will permit access to its books, records and accounts by DLS for the purposes of investigation to ascertain compliance with such rules, regulations, and orders.

The Contractor understands that in the event of its noncompliance with the nondiscrimination clauses of this Contract or with any of such rules, regulations, or orders, such noncompliance shall constitute a material breach of this Contract and noncompliance with E.O. 50 and the rules and regulations promulgated thereunder. After a hearing held pursuant to the rules of DLS, the Director of DLS may direct the imposition upon the Contractor found to be in noncompliance of any or all of the following sanctions:

- (i) Disapproval of the Contractor;
- (ii) Suspension or termination of this Contract;
- (iii) Declaring the Contractor in default; or
- (iv) In lieu of any of the foregoing sanctions, the Director of DLS may impose an employment program.

The Director of DLS may recommend to BNYDC that a hearing be convened for purposes of declaring a Contractor who has repeatedly failed to comply with E. O. 50 and the rules and regulations promulgated thereunder to be non-responsible.

If the Contract Price is \$1,000,000 or more, the Contractor further agrees as follows:

(i) It shall employ trainees for training level jobs and it shall participate in on-the-job training programs, other than apprenticeship programs, that are approved by DLS and, where required by law, the U.S. Department of Labor, Bureau of Apprenticeship Training or the New York State Department of Labor;

(ii) It shall make a good faith effort to achieve the ratio of one "trainee" (which means an economically disadvantaged person who qualifies for and receives training in one of the construction trades pursuant to a program, other than an apprenticeship program, approved by DLS and, where required by law, the New York State Department of Labor and the United States Department of Labor, Bureau of Apprenticeship and Training) to four journey-level employees of each job group on each construction project. The Contractor shall be considered to employ four journey-level employees in a particular job group

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# BNYDC CONSTRUCTION CONTRACT

when he or she employs any number of journey-level employees in that craft whose aggregate work hours equal the number of hours four full time journey-level employees would have worked in a work week as defined by the prevailing practice in the industry for the particular craft, i.e., 40 hours, 37 hours, 35 hours, etc. For example, in a craft where there is a 40 hour work week, the employment of four journey-level employees results in 160 hours of employment (4 x 40). Hence, any number of journey-level employees which results in 160 hours of work is considered for purposes of the training program to equal four journey-level employees, i.e., three journey-level employees who work 53 hours (3 x 53 = 160). The training requirement shall not apply to any trade in which the employment of four or more journey-level employees and the trainee shall be for less than four weeks; provided, that four weeks shall mean four weeks of full time work as defined by the prevailing practice in the industry for the particular craft, i.e., 160 hours (4 weeks x 40 hours), 150 hours (4 weeks x 37 hours), 140 hours (4 weeks x 35 hours), etc.;

(iii) It shall attempt to provide continuous employment for trainees after the completion of this Contract to enable them to complete their course of training;

(iv) It shall, to the extent it is a party to any collective bargaining agreement, refer, recommend and sponsor for union membership any of its trainees who can perform the duties of a qualified journey-level employee or who have successfully completed the training program. Such former trainees shall be paid full journey-level wages and fringe benefits, whether or not union membership is granted after such referral, recommendation or sponsorship, and the Contractor shall make good faith efforts to continue the employment of such persons; and

(v) If the Contractor fails to provide training to the required number of trainees for the required number of weeks, the Contractor's compensation shall be decreased by an amount (the "Credit") equal to the difference between the wages and fringe benefits paid by the Contractor to the trainees and the wages and fringe benefits which would have been paid to the trainees had the number and duration of the positions been as required unless the Contractor can demonstrate that it made a good faith effort to provide training and was unsuccessful. The wages and fringes deducted will be whatever a first term trainee would receive under the prevailing wage schedule in effect at the time the trainees should have been employed. For purposes hereof, a good faith effort includes but is not limited to:

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# BNYDC CONSTRUCTION CONTRACT

- (a) Documented efforts to secure trainees from approved training programs,
- (b) Documented outreach efforts to community and civil rights groups to identify candidates for training positions and sponsorship of those persons by the Contractor for entrance into an approved training program, and
- (c) Written notification to DLS that the Contractor has been unable to secure trainees pursuant to subsections (a) and (b) above and requesting DLS's assistance in securing trainees; provided, that neither the provisions of any collective bargaining agreement nor the refusal by a union with which the Contractor has a collective bargaining agreement to recognize the validity of the training program shall excuse the Contractor's obligation to provide training pursuant to E.O. 50 and these regulations.

If the Contract Price is \$1,000,000 or more, the Contractor shall include the provisions of the foregoing paragraph in every subcontract in the amount of \$750,000 or more to which it becomes a party unless exempted by E.O. 50 and the rules and regulations promulgated thereunder, so that such provisions will be binding upon each subcontractor. If the Contract Price is less than \$1,000,000, the Contractor shall include the provisions of this rider (other than the provisions of the immediately preceding paragraph) in every subcontract or purchase order in excess of \$50,000 to which it becomes a party unless exempted by E.O. 50 and the rules and regulations promulgated thereunder, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as may be directed by the Director of DLS as a means of enforcing such provisions including sanctions for noncompliance and/or the taking of a Credit.

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

## **B. CONSTRUCTION EMPLOYMENT REPORT SUBMISSION REQUIREMENTS**

Pursuant to Executive Order No. 50 (April 25, 1980) as amended and the implementing rules and regulations, all Contractors with contracts of \$1,000,000 or more, and all subcontractors with contracts of \$1,000,000 or more, must complete and

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# BNYDC CONSTRUCTION CONTRACT

submit an Employment Report (ER) and EEO-1 report. If you submit an ER you must comply with the training requirements set forth above.

If you are a Contractor with a contract of less than \$1,000,000 you must complete the attached certification of less than \$1,000,000 contract.

DRAFT

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# BNYDC CONSTRUCTION CONTRACT

DEPARTMENT OF SMALL BUSINESS SERVICES  
DIVISION OF LABOR SERVICES  
LESS THAN \$1,000,000 CONTRACT CERTIFICATE

CONTRACTOR \_\_\_\_\_

ADDRESS \_\_\_\_\_

TELEPHONE # ( \_\_\_\_\_ ) \_\_\_\_\_

NAME & TITLE OF SIGNATORY \_\_\_\_\_

CONTRACTING ENTITY *BROOKLYN NAVY YARD DEVELOPMENT CORPORATION*

CONTRACT AMOUNT \_\_\_\_\_

PROJECT NUMBER \_\_\_\_\_

DESCRIPTION AND ADDRESS OF PROPOSED CONTRACT

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I, (fill in name of person signing) \_\_\_\_\_ hereby affirm that I am authorized by the above named Contractor to certify that said Contractor's proposed contract with the above named entity or City agency is less than \$1,000,000.

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

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CONTRACTOR \_\_\_\_\_

# BNYDC CONSTRUCTION CONTRACT

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

DRAFT

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CONTRACTOR \_\_\_\_\_



# BNYDC CONSTRUCTION CONTRACT

## EXHIBIT B

### MACBRIDE PRINCIPLES RIDER

For purposes of this rider, the "Contractor" means the Contractor, as defined in the Contract to which this rider is attached, and the "contracting entity" means Brooklyn Navy Yard Development Corporation.

### ARTICLE I. MACBRIDE PRINCIPLES

#### PART A

The Contractor stipulates that such Contractor and any individual or legal entity in which the Contractor holds a ten percent or greater ownership interest and any individual or legal entity that holds a ten percent or greater ownership interest in the Contractor either (a) have no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations they have in Northern Ireland in accordance with the MacBride Principles, and shall permit independent monitoring of their compliance with such principles.

#### PART B

For purposes hereof, "MacBride Principles" shall mean those principles relating to nondiscrimination in employment and freedom of work place opportunity which require employers doing business in Northern Ireland to:

- (1) Increase the representation of individuals from underrepresented religious groups in the work force, including managerial, supervisory, administrative, clerical and technical jobs;
- (2) Take steps to promote adequate security for the protection of employees from underrepresented religious groups both at the workplace and while traveling to and from work;
- (3) Ban provocative religious or political emblems from the workplace;
- (4) Publicly advertise all job openings and make special recruitment efforts to attract applicants from underrepresented religious groups;
- (5) Establish layoff, recall and termination procedures which do not in practice favor a particular religious group;
- (6) Abolish all job reservations, apprenticeship restrictions and different employment criteria which discriminate on the basis of religion;

CONSTRUCTION CONTRACT NUMBER \_\_\_\_\_  
CONTRACTOR \_\_\_\_\_

# BNYDC CONSTRUCTION CONTRACT

- (7) Develop training programs that will prepare substantial numbers of current employees from underrepresented religious groups for skilled jobs, including the expansion of existing programs and the creation of new programs to train, upgrade and improve the skills of workers from underrepresented religious groups;
- (8) Establish procedures to assess, identify and actively recruit employees from underrepresented religious groups with potential for further advancement; and
- (9) Appoint a senior management staff member to oversee affirmative action efforts and develop a timetable to ensure their full implementation.

## ARTICLE II. ENFORCEMENT OF ARTICLE I

The Contractor agrees that the covenants and representations in Article I above are material conditions to this contract. In the event the contracting entity receives information that the Contractor who made the stipulation required by this rider is in violation thereof, the contracting entity shall review such information and give the Contractor an opportunity to respond. If the contracting entity finds that a violation has occurred, the contracting entity shall have the right to declare the Contractor in default and/or terminate this contract for cause and procure the supplies, services or work from another source in any manner the contracting entity deems proper. In the event of such termination, the Contractor shall pay to the contracting entity, or the contracting entity in its sole discretion may withhold from any amounts otherwise payable to the Contractor, the difference between the contract price for the uncompleted portion of this contract and the cost to the contracting entity of completing performance of this contract either itself or by engaging another Contractor or Contractors. In the case of a requirements contract, the Contractor shall be liable for such difference in price for the entire amount of supplies required by the contracting entity for the uncompleted term of its contract. In the case of a construction contract, the contracting entity shall also have the right to hold the Contractor in partial or total default in accordance with the default provisions of this contract, and/or may seek debarment or suspension of the Contractor. The rights and remedies of the contracting entity hereunder shall be in addition to, and not in lieu of, any rights and remedies the contracting entity has pursuant to this contract or by operation of law.

CONSTRUCTION CONTRACT NUMBER \_\_\_\_\_  
CONTRACTOR \_\_\_\_\_

# BNYDC CONSTRUCTION CONTRACT

## EXHIBIT C

### LIST OF CONTRACT DRAWINGS

[TO BE INSERTED]

DRAFT

CONSTRUCTION CONTRACT NUMBER \_\_\_\_\_  
CONTRACTOR \_\_\_\_\_

# BNYDC CONSTRUCTION CONTRACT

## EXHIBIT D

### SPECIFICATIONS

[TO BE INSERTED]

DRAFT

CONSTRUCTION CONTRACT NUMBER \_\_\_\_\_  
CONTRACTOR \_\_\_\_\_

# BNYDC CONSTRUCTION CONTRACT

## EXHIBIT E

### LOCALLY BASED ENTERPRISE PROGRAM

- a) This Contract is subject to the requirements of Administrative Code §6-108.1 and the regulations promulgated thereunder. No contract shall be awarded unless and until these requirements have been complied within their entirety.
- b) Unless specifically waived by BNYDC with the approval of the Office of Economic and Financial Opportunity, if any portion of the contract is subcontracted, not less than 10 percent of the total dollar amount of the contract shall be awarded to locally based enterprise ("LBE's"); except that where less than ten percent of the total dollar amount of the contract is subcontracted, such lesser percentage shall be so awarded.
- c) The prime Contractor shall not require performance and payment bonds from LBE subcontractors.
- d) If the Contractor has indicated prior to award that no work will be subcontracted, no work shall be subcontracted without the prior approval of the BNYDC, which shall be granted only if the Contractor makes a good faith effort beginning at least six weeks before the work is to be performed to obtain LBE subcontractors to perform the work.
- e) If the Contractor has not identified sufficient LBE subcontractors prior to award, it shall sign a letter of compliance stating that it complies with Administrative Code §6-108-1, recognizes that achieving the LBE requirement is a condition of its contract, and shall submit documentation demonstrating its good faith efforts to obtain LBE's. After award, the Contractor shall begin to solicit LBE's to perform subcontracted work at least six weeks before the date such work is to be performed and shall demonstrate that a good faith effort has been made to obtain LBEs on each subcontract until it meets the required percentage.
- f) Failure of the Contractor to comply with the requirements of Administrative Code §6-108-1 and the regulations promulgated thereunder shall constitute a material breach of contract. Remedy for such breach of contract may include the imposition of any or all of the following sanctions:

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1. Reducing a Contractor's compensation by an amount equal to the dollar value of the percentage of the LBE subcontracting requirement not complied with;
2. Declaring the Contractor in default;
3. Where non-compliance is by an LBE, de-certifying and declaring the LBE ineligible to participate in the LBE program for a period of up to three years."

DRAFT

CONSTRUCTION CONTRACT NUMBER \_\_\_\_\_  
CONTRACTOR \_\_\_\_\_

# BNYDC CONSTRUCTION CONTRACT

## EXHIBIT F

### CONTRACTORS REQUISITION FOR PROGRESS PAYMENTS

ESTIMATE FOR PARTIAL PAYMENT NO. \_\_\_\_\_

- a. Value of Work Completed To Date \$ \_\_\_\_\_
- b. Retainage \$ \_\_\_\_\_
- c. Net Amount Earned (a - b) \$ \_\_\_\_\_
- d. Amount Due for Stored Material \$ \_\_\_\_\_
- e. Total Amount Due This Estimate (c + d) \$ \_\_\_\_\_
- f. Total Previously Approved \$ \_\_\_\_\_
- g. Net Amount Due This Payment (e - f) \$ \_\_\_\_\_
- h. Less Amount Withheld by BNYDC\* \$ \_\_\_\_\_  
\*Reason:  
\_\_\_\_\_  
\_\_\_\_\_
- i. Payment Due This Estimate (g - h) \$ \_\_\_\_\_
- j. Total of All Requisitions Approved to Date  
by BNYDC (f + i) \$ \_\_\_\_\_

CONSTRUCTION CONTRACT NUMBER \_\_\_\_\_  
CONTRACTOR \_\_\_\_\_

# BNYDC CONSTRUCTION CONTRACT

## CONTRACTOR'S CERTIFICATE

I/We certify that:

- a. All items, units, quantities and prices for work and material shown on this estimate are true and correct; and
- b. All work has been performed and material supplied in full compliance with the terms and conditions of the Contract to which this Certificate applies; and
- c. All contract provisions relating to prevailing wages and benefits have been complied with and payroll documentation is attached; and
- d. All outstanding claims for labor, materials and equipment for the performance of said contract have been paid in full in accordance with the requirements of the Contract; and
- e. The above Payment Due This Estimate is a true and correct as of the last day of the period covered by this **CONTRACTORS REQUISITION FOR PROGRESS PAYMENTS**.
- f. All subcontractors have been paid in full.

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

Title: \_\_\_\_\_

## BNYDC'S CERTIFICATE

We have verified this **CONTRACTORS REQUISITION FOR PROGRESS PAYMENTS**

Contract Time: \_\_\_\_\_ Cal. Days

Consumed Contract Time: \_\_\_\_\_ Cal. Days

% of Contract Completed: \_\_\_\_\_%

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

Title

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

## BNYDC APPROVAL

CONSTRUCTION CONTRACT NUMBER \_\_\_\_\_  
CONTRACTOR \_\_\_\_\_



**BNYDC CONSTRUCTION CONTRACT**

Payment Approval Amount: \$ \_\_\_\_\_

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

Title

DRAFT

CONSTRUCTION CONTRACT NUMBER \_\_\_\_\_  
CONTRACTOR \_\_\_\_\_

# BNYDC CONSTRUCTION CONTRACT

## EXHIBIT G

The following is minimum acceptable insurance coverage requirements for Contracting Services:

I. Insurance Requirements

- A. Commercial General Liability Policy issued on an Occurrence form with a combined single limit for Bodily Injury, Personal Injury and Property Damage of at least \$1,000,000 per occurrence and \$2,000,000 in the aggregate. Coverage shall include endorsements for: Products/Completed Operations; Underground Hazards where applicable; Contractual Liability for tort liability assumed under contract, Personal Injury; Waiver of Subrogation; Policy Aggregate shall apply on per project basis; Mobile Equipment if such equipment not subject to any motor vehicle statutory law.

Additional Insured endorsement as per Insurance Services Organization (a/k/a ISO) form CG 20 10 07 04 Additional Insured Scheduled Organization and form CG 20 37 07 04 Additional Insured – Completed Operations. Such endorsement shall include BNYDC and any other designated party as Additional Insured, as required by written contract to which this Exhibit is attached and part of.

There shall be no coverage restrictions or coverage exclusions on the General Liability Policy pertaining to, but not limited to: gravity related injuries, unsafe workplace, injuries sustained by employee of Contractor or sub-contractor, Third Party over type actions, construction operations, and construction activity.

The insurance procured by the Contractor shall be primary and non-contributory to any other insurance that may be in effect.

- B. Statutory Workers Compensation Policy and Employer's Liability Policy of minimum \$1,000,000 for work operations in State where project work is performed, including any applicable other states coverage endorsement.
- C. Automobile Liability Insurance Policy for Bodily Injury and Property Damage in the amount of \$1,000,000 per occurrence covering all owned, non-owned, hired, borrowed vehicles subject to statutory motor vehicle law.
- D. Contractors Pollution Liability policy of at least \$1,000,000 for damages arising out of bodily injury, property damages, environmental damages caused by a pollution incident from Contractors work, completed operations, or transportation whether work performed by or on behalf of Contractor.
- E. Umbrella/Excess Liability Policy of at least \$5,000,000 per occurrence. Umbrella Liability policy is to be provided on at least a follow form basis of the underlying General Liability Insurance policy, Automobile Insurance Policy, and Workers' Compensation Insurance policy. The insurance procured by the Contractor shall be primary and non- contributory to any other insurance that may be in effect.
- F. Professional Liability (Errors and Omissions) of at least \$1,000,000 each claim for wrongful acts while performing and/or providing professional services. Coverage shall continue for at least three (3) years beyond the final performance of services.
- G. The following are to be included as additional insured(s) for coverage required in sections A,C,D and E. Each additional insured listed below shall be issued a separate Certificate of Insurance.

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CONTRACTOR \_\_\_\_\_

# BNYDC CONSTRUCTION CONTRACT

## Certificate Holder

Brooklyn Navy Yard Development Corporation  
Building 77  
141 Flushing Avenue, Suite 801  
Brooklyn, New York 11205

And as Additional Insureds  
Brooklyn Navy Yard Development Corporation  
City of New York

## Certificate Holder

City of New York  
c/o City of New York Department of Small Business Services  
One Liberty Plaza, 165 Broadway  
New York, NY 10006

And as Additional Insureds  
City of New York  
Brooklyn Navy Yard Development Corporation

- H. A Certificate of insurance using the ACCORD 25 form is to be provided to the Additional Insured and the Certificate must specifically include a copy of the stipulated additional insured endorsement as required in Section A. Certificate Holder must be notified of any cancellation, non-renewal or material modification of existing policy. Notice is to be received 30 days prior to any change in status. In addition to ACCORD 25 form, a completed New York Construction Certificate of Liability Insurance Addendum (ACCORD 855 form) shall be provided.
- II. If the Contractor utilizes the services of subcontractor for work performed, the same provisions of this Insurance Requirement Exhibit shall be required of those parties. It is the sole responsibility of the Contractor to maintain compliance of such.
- III. Insurance coverage shall be maintained with responsible insurance companies licensed and admitted to do business in the State of New York and such companies shall have an A.M. Best Rating of A- VII. If a Non-Admitted Insurance Company is used, an AM Best rating of A- shall apply.
- IV. Any self-insured insurance retentions and, or any deductibles utilized on any of the above required insurance coverage is the sole responsibility of the Contractor, and Contractor agrees to satisfy those retention and or deductible obligations directly with their insurance company.
- V. The policies required hereunder shall contain the following provisions:
- “A. Notices from the insurer (the “Insurer”) to BNYDC (“BNYDC”) and the City of New York (the “City”), in connection with this policy, shall be addressed to the General Counsel, BNYDC, at Building 77, 141 Flushing Avenue, Suite 801, Brooklyn, New York 11205 (with a copy to BNYDC’s Deputy General Counsel at the same address);

CONSTRUCTION CONTRACT NUMBER \_\_\_\_\_  
CONTRACTOR \_\_\_\_\_

# BNYDC CONSTRUCTION CONTRACT

B. The Insurer shall accept notice of accident from BNYDC or the City, within 120 days after receipt by an official of such Additional Insured (as identified above) of notice of such accident as valid and timely notice under this policy;

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

The Insurer understands and agrees that notice of accident or claim to such Insurer by any one of the following entities shall be deemed notice by all under the policy:

Contractor; or

BNYDC; or

The City; or

Any other Additional Insured.

E. This policy shall not be canceled, terminated or modified by the Insurer or Contractor unless 30 days prior written notice is sent by registered mail to BNYDC or the City, nor shall this policy be canceled, terminated or modified by the Contractor without prior written consent of BNYDC;

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

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

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

CONSTRUCTION CONTRACT NUMBER \_\_\_\_\_  
CONTRACTOR \_\_\_\_\_

# BNYDC CONSTRUCTION CONTRACT

## EXHIBIT H

### PERFORMANCE AND PAYMENT BONDS

#### **Form of Performance Bond**

KNOW ALL MEN BY THESE PRESENTS, that \_\_\_\_\_  
(hereinafter called the "Principal") and \_\_\_\_\_ a  
corporation organized and existing under the laws of the State of \_\_\_\_\_ (hereinafter  
called the "Surety"), as Surety, are held and firmly bound unto the Brooklyn Navy Yard  
Development Corporation the City of New York and The City of New York Department  
of Small Business Services (hereinafter collectively called the "Obligee") in the sum of  
\_\_\_\_\_ Dollars (\$\_\_\_\_\_) for the payment of which sum  
well and truly to be made, the said Principal and Surety bind themselves, and their  
respective heirs, administrators, executors, successors and assigns, jointly and severally,  
firmly by these presents.

**WHEREAS**, Principal and Obligee, have entered into Construction Contract  
Number \_\_\_\_\_ dated \_\_\_\_\_ (hereinafter referred to as "Construction Contract").

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that  
if the above bounden Principal shall:

- A. Well and truly perform all the undertakings, covenants, terms,  
conditions, and agreements of said Construction Contract within the time  
provided therein and any extensions thereof that may be granted by the  
Obligee, and during the life of any guaranty required under said Contract;  
and
- B. Shall also well and truly perform all the undertakings, covenants,  
terms, conditions, and agreements of any and all duly authorized  
modifications of said Contract that may hereafter be made; and
- C. Shall as required by the Construction Contract indemnify and save  
harmless Obligee from any and all loss, damage, fines, penalties and/or  
expense including costs and attorney's fees, which the said Obligee may  
sustain;

Then this obligation shall be null and void; otherwise it shall remain in full force  
and effect.

CONSTRUCTION CONTRACT NUMBER \_\_\_\_\_  
CONTRACTOR \_\_\_\_\_

# BNYDC CONSTRUCTION CONTRACT

Surety agrees that no change, extension of time, alteration, addition, omission, or other modification of the terms of either the said Construction Contract or in the said Work to be performed thereunder, or in the specifications thereunder, or in the plans thereunder, shall in anyway affect Surety's obligation on this Bond, and Surety does hereby waive notice of any such changes, extensions of time, alterations, additions, omissions, and other modifications.

The Surety, for value received, agrees, if requested to do so by the Oblige, to perform fully and complete the obligations of the Principal mentioned and described in said Construction Contract and any and all modifications thereof pursuant to and in accordance with the undertakings, covenants, terms, conditions and agreements thereof, if the Principal fails, neglects and/or refuses to so perform fully and completely said obligations, and further agrees to commence the performance and completion of said obligations within twenty (20) days after notice from the Oblige of such failure, neglect and/or refusal of the Principal and to perform and complete the same within the time required under said Contract and any and all modifications thereof as extended by the period of time elapsing between the date of such failure, neglect and/or refusal of the Principal and the date of the giving of such notice by the Oblige to the Surety.

Anything contained herein to the contrary notwithstanding, the Surety hereby agrees that a payment or payments made by the Oblige to the Principal which may be at variance with the terms of said contract or any other act of the Oblige which is at variance with, or in violation of, the terms of said contract, shall not serve to release the Surety from its obligations hereunder, in whole or in part, it being the intent of this bond that the Surety's obligations to complete shall be absolute and that any disputes relating to the performance of said contract shall be disposed of at a later date and without interference in, or with the performance of, said Construction Contract.

IN WITNESS WHEREOF, the above bounden parties have executed this instrument under their several seals this \_\_\_ day of \_\_\_\_\_ 20\_\_ the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

**PRINCIPAL**

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

(Name)

Attest: \_\_\_\_\_

Secretary

\_\_\_\_\_

(Business Address)

CONSTRUCTION CONTRACT NUMBER \_\_\_\_\_  
CONTRACTOR \_\_\_\_\_

# BNYDC CONSTRUCTION CONTRACT

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

(Signature)

Name:

Title:

## SURETY

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

(Name)

Attest: \_\_\_\_\_

Secretary

(Business Address)

\_\_\_\_\_

(Business Address)

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

(Signature)

Name:

Title:

## ACKNOWLEDGMENT OF SURETY

STATE OF \_\_\_\_\_)

ss.:

COUNTY OF \_\_\_\_\_)

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

\_\_\_\_\_  
Notary Public (SEAL)

## ACKNOWLEDGMENT OF PRINCIPAL, IF AN INDIVIDUAL

STATE OF \_\_\_\_\_)

CONSTRUCTION CONTRACT NUMBER \_\_\_\_\_

CONTRACTOR \_\_\_\_\_

# BNYDC CONSTRUCTION CONTRACT

ss.:

COUNTY OF \_\_\_\_\_)

On this \_\_\_\_\_ day of \_\_\_\_\_ in the year 20\_ before me personally came \_\_\_\_\_ to me known and to be the person described in and who executed the foregoing instrument and he duly acknowledged that he executed the same.

\_\_\_\_\_  
Notary Public (SEAL)

## ACKNOWLEDGMENT OF PRINCIPAL, IF A PARTNERSHIP

STATE OF \_\_\_\_\_)

ss.:

COUNTY OF \_\_\_\_\_)

On this \_\_\_\_\_ day of \_\_\_\_\_ in the year 20\_ before me personally came \_\_\_\_\_ to me known and known to me to be a partner of the firm of \_\_\_\_\_ described in and who executed the foregoing instrument, and he duly acknowledged to me that he executed the same for an in behalf of said firm.

\_\_\_\_\_  
Notary Public (SEAL)

## ACKNOWLEDGMENT OF PRINCIPAL IF A CORPORATION

STATE OF \_\_\_\_\_)

ss.:

COUNTY OF \_\_\_\_\_)

On this \_\_\_\_\_ day of \_\_\_\_\_ in the year 20\_ before me personally came \_\_\_\_\_ to me known, who being by me duly sworn, did depose and say that he is the \_\_\_\_\_ of \_\_\_\_\_, the corporation described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such seal; that it was

CONSTRUCTION CONTRACT NUMBER \_\_\_\_\_  
CONTRACTOR \_\_\_\_\_



# BNYDC CONSTRUCTION CONTRACT

so affixed by order of the Board of Directors of said corporation and that \_\_\_he signed his name thereto by like order.

\_\_\_\_\_  
Notary Public (SEAL)

## ACKNOWLEDGMENT OF PRINCIPAL IF A LIMITED LIABILITY COMPANY

STATE OF \_\_\_\_\_)

ss.:

COUNTY OF \_\_\_\_\_)

On this \_\_\_\_\_ day of \_\_\_\_\_ in the year 20\_ before me personally came \_\_\_\_\_ to me known, who being by me duly sworn, did depose and say that \_he is a member of \_\_\_\_\_, the limited liability company described in and which executed the above instrument; that \_\_\_he knows the seal of said limited liability company; that the seal affixed to said instrument is such seal; that it was so affixed by order of the Members of said limited liability company and that \_\_\_he signed his name thereto by like order.

\_\_\_\_\_  
Notary Public (SEAL)

CONSTRUCTION CONTRACT NUMBER \_\_\_\_\_  
CONTRACTOR \_\_\_\_\_

# BNYDC CONSTRUCTION CONTRACT

## Form of Payment Bond

KNOW ALL MEN BY THESE PRESENTS, that \_\_\_\_\_  
(hereinafter called the "Principal") and \_\_\_\_\_ a  
corporation organized and existing under the laws of the State of \_\_\_\_\_ (hereinafter  
called the "Surety"), as Surety, are held and firmly bound unto the Brooklyn Navy Yard  
Development Corporation the City of New York and The City of New York Department  
of Small Business Services (hereinafter collectively called the "Obligee") in the sum of  
\_\_\_\_\_ Dollars (\$ \_\_\_\_\_) for the payment of which sum  
well and truly to be made, the said Principal and Surety bind themselves, and their  
respective heirs, administrators, executors, successors and assigns, jointly and severally,  
firmly by these presents.

**WHEREAS**, Principal and Obligee, have entered into Construction Contract  
Number \_\_\_\_\_ dated \_\_\_\_\_ (hereinafter referred to as "Construction Contract").

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that  
if the above bounden Principal shall promptly pay all persons having just claims for:

- A. Labor, materials, services, insurance, supplies, machinery, equipment, rentals,  
fuels, oils, implements, tools and/or appliances and all other items of  
whatever nature, furnished for, used or consumed in the prosecution of the  
Work called for by said Construction Contract and any and all modifications  
thereof, whether lienable or non-lienable and whether or not permanently  
incorporated in said work; and
- B. Pension, welfare, vacation and/or other supplemental employee benefit  
contributions payable under collective bargaining agreements with respect to  
persons employed upon said Work; and
- C. All federal, state and local taxes and/or contributions required by law to be  
withheld and/or paid with respect to the employment of persons upon said  
work;

then this obligation shall be null and void; otherwise it shall remain in full force and  
effect.

Surety agrees that no change, extension of time, alteration, addition, omission, or  
other modification of the terms of either the said Construction Contract or in the said  
Work to be performed thereunder, or in the specifications thereunder, or in the plans  
thereunder, shall in anyway affect Surety's obligation on this Bond, and Surety does

CONSTRUCTION CONTRACT NUMBER \_\_\_\_\_  
CONTRACTOR \_\_\_\_\_

# BNYDC CONSTRUCTION CONTRACT

hereby waive notice of any such changes, extensions of time, alterations, additions, omissions, and other modifications.

Principal and Surety agree that this Bond inures to the benefit of all persons supplying labor and material in the prosecution of the Work provided for in said Construction Contract, as well as to the Obligee, and that such persons may maintain independent actions upon this Bond in their own names.

IN WITNESS WHEREOF, the above bounden parties have executed this instrument under their several seals this \_\_\_\_\_ day of \_\_\_\_\_ 20\_ the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

**PRINCIPAL**

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

(Name)

Attest: \_\_\_\_\_

Secretary

\_\_\_\_\_  
(Business Address)

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

(Signature)

Name:

Title:

**SURETY**

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

(Name)

Attest: \_\_\_\_\_

Secretary

(Business Address)

\_\_\_\_\_  
(Business Address)

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

(Signature)

Name:

Title:

CONSTRUCTION CONTRACT NUMBER \_\_\_\_\_  
CONTRACTOR \_\_\_\_\_

# BNYDC CONSTRUCTION CONTRACT

## ACKNOWLEDGMENT OF SURETY

STATE OF \_\_\_\_\_)

ss.:

COUNTY OF \_\_\_\_\_)

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

\_\_\_\_\_  
Notary Public (SEAL)

## ACKNOWLEDGMENT OF PRINCIPAL, IF AN INDIVIDUAL

STATE OF \_\_\_\_\_)

ss.:

COUNTY OF \_\_\_\_\_)

On this \_\_\_\_\_ day of \_\_\_\_\_ in the year 20\_\_ before me personally came \_\_\_\_\_ to me known and to be the person described in and who executed the foregoing instrument and he duly acknowledged that he executed the same.

\_\_\_\_\_  
Notary Public (SEAL)

## ACKNOWLEDGMENT OF PRINCIPAL, IF A PARTNERSHIP

STATE OF \_\_\_\_\_)

ss.:

COUNTY OF \_\_\_\_\_)

CONSTRUCTION CONTRACT NUMBER \_\_\_\_\_  
CONTRACTOR \_\_\_\_\_

# BNYDC CONSTRUCTION CONTRACT

On this \_\_\_\_ day of \_\_\_\_\_ in the year 20\_\_ before me personally came \_\_\_\_\_ to me known and known to me to be a partner of the firm of \_\_\_\_\_ described in and who executed the foregoing instrument, and he duly acknowledged to me that he executed the same for an in behalf of said firm.

\_\_\_\_\_  
Notary Public (SEAL)

## ACKNOWLEDGMENT OF PRINCIPAL IF A CORPORATION

STATE OF \_\_\_\_\_)

ss.:

COUNTY OF \_\_\_\_\_)

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

\_\_\_\_\_  
Notary Public (SEAL)

## ACKNOWLEDGMENT OF PRINCIPAL IF A LIMITED LIABILITY COMPANY

STATE OF \_\_\_\_\_)

ss.:

COUNTY OF \_\_\_\_\_)

On this \_\_\_\_ day of \_\_\_\_\_ in the year 20\_\_ before me personally came \_\_\_\_\_ to me known, who being by me duly sworn, did depose and say that he is a member of \_\_\_\_\_, the limited liability company described in and which executed the above instrument;

CONSTRUCTION CONTRACT NUMBER \_\_\_\_\_  
CONTRACTOR \_\_\_\_\_

# BNYDC CONSTRUCTION CONTRACT

that \_\_\_he knows the seal of said limited liability company; that the seal affixed to said instrument is such seal; that it was so affixed by order of the Members of said limited liability company and that \_\_\_he signed his name thereto by like order.

\_\_\_\_\_  
Notary Public (SEAL)

DRAFT

CONSTRUCTION CONTRACT NUMBER \_\_\_\_\_  
CONTRACTOR \_\_\_\_\_

# BNYDC CONSTRUCTION CONTRACT

## EXHIBIT I PARTIAL RELEASE AND PARTIAL LIEN WAIVER

**OWNER:** BROOKLYN NAVY YARD DEVELOPMENT CORPORATION and  
THE CITY OF NEW YORK

**PROJECT:** \_\_\_\_\_

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

**CONTRACTOR**, in consideration of the current payment of \$ \_\_\_\_\_, a portion of the current total contract value of \$ \_\_\_\_\_, the current payment bringing the total of all payments to date to \$ \_\_\_\_\_, in addition to which retainage of \_\_\_% is withheld as Maintenance and Guarantee per the contract terms, the execution of this Partial Release and Partial Lien Waiver, receipt of which is hereby acknowledged, represents that it has been paid to the date hereof in full for all labor, services, equipment, or material furnished to **OWNER** on the **PROJECT** including extra work claims and does hereby forever release **OWNER** from any and all claims that **CONTRACTOR** may have against **OWNER** arising to the date hereof from the **PROJECT**.

**OWNER'S NOTICE:** THIS DOCUMENT WAIVES CONTRACTOR'S RIGHTS UNCONDITIONALLY AND STATES THAT CONTRACTOR HAS BEEN PAID FOR GIVING UP THOSE RIGHTS. THIS DOCUMENT IS ENFORCEABLE AGAINST CONTRACTOR IF CONTRACTOR SIGNS IT, EVEN IF CONTRACTOR HAS NOT BEEN PAID. IF CONTRACTOR HAS NOT BEEN PAID, USE A CONDITIONAL RELEASE FORM.

**CONTRACTOR:** Acknowledges that it is not permitted to file any mechanic's lien against land and improvements owned by **OWNER** and Warrants that it will not file a mechanic's lien or other lien against land and improvements owned by **OWNER** and has not and will not assign any claims for payment or right to perfect a lien against such land and improvements.

**CONTRACTOR:** Warrants and represents that (1) All workmen employed by it or its subcontractor upon this **PROJECT** have been paid applicable prevailing wages and in full to the date hereof; 2) All material men from which the undersigned or its subcontractors have purchased materials used in the **PROJECT** have been paid in full

CONSTRUCTION CONTRACT NUMBER \_\_\_\_\_  
CONTRACTOR \_\_\_\_\_

# BNYDC CONSTRUCTION CONTRACT

for materials delivered on or prior to the date hereof; (3) All union fringe benefits, dues or other obligations have been paid in full on or prior to the date hereof; (4) None of such workman and material men has any claim or demand or right of lien against the land and improvements owned by OWNER; and (5) Represents that the signatory hereto is an authorized officer of **CONTRACTOR** with full power to execute this Final Release and Final Lien Waiver.

In addition to the rights and obligations provided by the Contract for the **PROJECT** (which is incorporated herein by reference and made a part hereof), to the fullest extent permitted by law, the undersigned further agrees to defend, indemnify and hold **OWNER**, its successors and assigns, harmless from all claims, actions, and liens filed by the undersigned's subcontractors, suppliers, material men, and laborers, and those interposed by labor organizations for union fringe benefits and/or other union dues or responsibilities, who performed labor or furnished materials in connection with the work performed to the date hereof at the **PROJECT**.

**CONTRACTOR** agrees that the **OWNER**, any lender and any title insurer may rely upon this waiver.

**In witness whereof**, we have here to set our hand and seal this \_\_\_ day of \_\_\_\_\_ 20\_\_.

\_\_\_\_\_  
**CONTRACTOR**

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

Title: \_\_\_\_\_

CONSTRUCTION CONTRACT NUMBER \_\_\_\_\_  
CONTRACTOR \_\_\_\_\_



# BNYDC CONSTRUCTION CONTRACT

STATE OF NEW YORK)

ss:

COUNTY OF \_\_\_\_\_)

On the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_ before me personally came \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same.

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

STATE OF NEW YORK)

ss:

COUNTY OF \_\_\_\_\_)

On the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ before me personally came \_\_\_\_\_, to me known, who, being by me duly sworn, did depose and say that he resides at \_\_\_\_\_; that he is the \_\_\_\_\_ of \_\_\_\_\_ the business described in and which executed the above instrument; and that he signed his name thereto by authority of the Board of Directors of said corporation.

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

CONSTRUCTION CONTRACT NUMBER \_\_\_\_\_  
CONTRACTOR \_\_\_\_\_

# BNYDC CONSTRUCTION CONTRACT

## EXHIBIT J FINAL RELEASE AND FINAL LIEN WAIVER

**OWNER:** BROOKLYN NAVY YARD DEVELOPMENT CORPORATION and  
THE CITY OF NEW YORK

**PROJECT:** \_\_\_\_\_

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

**CONTRACTOR** in consideration of the current payment of \$ \_\_\_\_\_, being the final payment for a total contract value of \$ \_\_\_\_\_, receipt of which is hereby acknowledged, represents that it has been paid in full for all labor, services, equipment, or material furnished to **OWNER** on the **PROJECT** including extra work claims and does hereby forever release **OWNER** from any and all claims that **CONTRACTOR** may have against **OWNER** arising from the **PROJECT**.

**OWNER'S NOTICE:** THIS DOCUMENT WAIVES CONTRACTOR'S RIGHTS UNCONDITIONALLY AND STATES THAT CONTRACTOR HAS BEEN PAID FOR GIVING UP THOSE RIGHTS. THIS DOCUMENT IS ENFORCEABLE AGAINST CONTRACTOR IF CONTRACTOR SIGNS IT, EVEN IF CONTRACTOR HAS NOT BEEN PAID. IF CONTRACTOR HAS NOT BEEN PAID, USE A CONDITIONAL RELEASE FORM.

**CONTRACTOR:** Acknowledges that it is not permitted to file any mechanic's lien against land and improvements owned by **OWNER** and Warrants that it will not file a mechanic's lien or other lien against land and improvements owned by **OWNER** and has not and will not assign any claims for payment or right to perfect a lien against such land and improvements.

**CONTRACTOR:** Warrants and represents that (1) All workmen employed by it or its subcontractor upon this **PROJECT** have been paid applicable prevailing wages and in full to the date hereof; 2) All material men from which the undersigned or its subcontractors have purchased materials used in the **PROJECT** have been paid in full for materials delivered on or prior to the date hereof; (3) All union fringe benefits, dues or other obligations have been paid in full on or prior to the date hereof; (4) None of such workman and material men has any claim or demand or right of lien against the land and improvements owned by **OWNER**; and (5) Represents that the signatory

CONSTRUCTION CONTRACT NUMBER \_\_\_\_\_  
CONTRACTOR \_\_\_\_\_

# BNEYDC CONSTRUCTION CONTRACT

hereto is an authorized officer of **CONTRACTOR** with full power to execute this Final Release and Final Lien Waiver.

In addition to the rights and obligations provided by the Contract for the **PROJECT** (which is incorporated herein by reference and made a part hereof), to the fullest extent permitted by law, the undersigned further agrees to defend, indemnify and hold **OWNER**, its successors and assigns, harmless from all claims, actions, and liens filed by the undersigned's subcontractors, suppliers, material men, and laborers, and those interposed by labor organizations for union fringe benefits and/or other union dues or responsibilities, who performed labor or furnished materials in connection with the work performed at the **PROJECT**.

**CONTRACTOR** agrees that the **OWNER**, any lender and any title insurer may rely upon this waiver.

**In witness whereof**, we have here to set our hand and seal this \_\_\_ day of \_\_\_\_\_ 20\_\_.

\_\_\_\_\_  
**CONTRACTOR**

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

Title: \_\_\_\_\_

CONSTRUCTION CONTRACT NUMBER \_\_\_\_\_  
CONTRACTOR \_\_\_\_\_

# BNYDC CONSTRUCTION CONTRACT

STATE OF NEW YORK)

ss:  
COUNTY OF \_\_\_\_\_)

On the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ before me personally came \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same.

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

STATE OF NEW YORK)

ss:  
COUNTY OF \_\_\_\_\_)

On the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ before me personally came \_\_\_\_\_, to me known, who, being by me duly sworn, did depose and say that he resides at \_\_\_\_\_; that he is the \_\_\_\_\_ of \_\_\_\_\_ the business described in and which executed the above instrument; and that he signed his name thereto by authority of the Board of Directors of said corporation.

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

CONSTRUCTION CONTRACT NUMBER \_\_\_\_\_  
CONTRACTOR \_\_\_\_\_

# BNYDC CONSTRUCTION CONTRACT

## EXHIBIT K

### WHISTLEBLOWER PROTECTION EXPANSION ACT

1. In accordance with Local Law Nos. 30-2012 and 33-2012, codified at sections 6-132 and 12-113 of the New York City Administrative Code, respectively,

- (a) Contractor shall not take an adverse personnel action with respect to an officer or employee in retaliation for such officer or employee making a report of information concerning conduct which such officer or employee knows or reasonably believes to involve corruption, criminal activity, conflict of interest, gross mismanagement or abuse of authority by any officer or employee relating to this Contract to (i) the Commissioner of the Department of Investigation, (ii) a member of the New York City Council, the Public Advocate, or the Comptroller, or (iii) the City Chief Procurement Officer, ACCO, Agency head, or Commissioner.
- (b) If any of Contractor's officers or employees believes that he or she has been the subject of an adverse personnel action in violation of subparagraph (a) of paragraph 1 of this rider, he or she shall be entitled to bring a cause of action against Contractor to recover all relief necessary to make him or her whole. Such relief may include but is not limited to: (i) an injunction to restrain continued retaliation, (ii) reinstatement to the position such employee would have had but for the retaliation or to an equivalent position, (iii) reinstatement of full fringe benefits and seniority rights, (iv) payment of two times back pay, plus interest, and (v) compensation for any special damages sustained as a result of the retaliation, including litigation costs and reasonable attorney's fees.
- (c) Contractor shall post a notice provided by the City in a prominent and accessible place on any site where work pursuant to the Contract is performed that contains information about:
  - (i) how its employees can report to the New York City Department of Investigation allegations of fraud, false claims, criminality or corruption arising out of or in connection with the Contract; and
  - (ii) the rights and remedies afforded to its employees under New York City Administrative Code sections 7-805 (the New York City False Claims Act) and 12-113 (the Whistleblower Protection Expansion Act) for lawful acts taken in connection with the reporting of allegations of fraud, false claims, criminality or corruption in connection with the Contract.

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CONTRACTOR \_\_\_\_\_

# BNYDC CONSTRUCTION CONTRACT

(d) For the purposes of this rider, “adverse personnel action” includes dismissal, demotion, suspension, disciplinary action, negative performance evaluation, any action resulting in loss of staff, office space, equipment or other benefit, failure to appoint, failure to promote, or any transfer or assignment or failure to transfer or assign against the wishes of the affected officer or employee.

(e) This rider is applicable to all of Contractor’s subcontractors having subcontracts with a value in excess of \$100,000; accordingly, Contractor shall include this rider in all subcontracts with a value a value in excess of \$100,000.

2. Paragraph 1 is not applicable to this Contract if it is valued at \$100,000 or less. Subparagraphs (a), (b), (d), and (e) of paragraph 1 are not applicable to this Contract if it was solicited pursuant to a finding of an emergency. Subparagraph (c) of paragraph 1 is neither applicable to this Contract if it was solicited prior to October 18, 2012 nor if it is a renewal of a contract executed prior to October 18, 2012.

CONSTRUCTION CONTRACT NUMBER \_\_\_\_\_  
CONTRACTOR \_\_\_\_\_

# BNYDC CONSTRUCTION CONTRACT

## REPORT

***CORRUPTION, FRAUD, UNETHICAL CONDUCT***  
**RELATING TO A NYC-FUNDED CONTRACT**  
**OR PROJECT**

**CALL THE NYC DEPARTMENT OF INVESTIGATION**

**212-825-5959**



**DOI CAN ALSO BE REACHED BY MAIL OR IN PERSON AT:**

New York City Department of Investigation (DOI)  
80 Maiden Lane, 17th floor  
New York, New York 10038  
Attention: COMPLAINT BUREAU

**OR FILE A COMPLAINT ON-LINE AT:**  
[www.nyc.gov/doi](http://www.nyc.gov/doi)

**All communications are confidential**

**THE LAW PROTECTS EMPLOYEES OF  
CITY CONTRACTORS WHO REPORT CORRUPTION**

- Any employee of a City contractor, or subcontractor of the City, or a City contractor with a contract valued at more than \$100,000 is protected under the law from retaliation by his or her employer if the employee reports wrongdoing related to the contract to the DOI.
- **To be protected by this law, an employee must report to DOI – or to certain other specified government officials** – information about fraud, false claims, corruption, criminality, conflict of interest, gross mismanagement, or abuse of authority relating to a City contract valued at more than \$100,000.
- Any employee who makes such a report and who believes he or she has been dismissed, demoted, suspended, or otherwise subject to an adverse personnel action because of that report is entitled to bring a lawsuit against the contractor and recover damages



← **Scan the QR Code at Left to File a Complaint**

CONSTRUCTION CONTRACT NUMBER \_\_\_\_\_  
CONTRACTOR \_\_\_\_\_

# BNYDC CONSTRUCTION CONTRACT

## EXHIBIT L

### PAID SICK LEAVE LAW

#### Introduction and General Provisions

The Earned Sick Time Act, also known as the Paid Sick Leave Law (“PSLL”), requires covered employees who annually perform more than 80 hours of work in New York City to be provided with paid sick time.<sup>1</sup> Contractors of the City of New York or of other governmental entities may be required to provide sick time pursuant to the PSLL.

<sup>1</sup> Pursuant to the PSLL, if fewer than five employees work for the same employer, as determined pursuant to New York City Administrative Code §20-912(g), such employer has the option of providing such employees uncompensated sick time.

The PSLL became effective on April 1, 2014, and is codified at Title 20, Chapter 8, of the New York City Administrative Code. It is administered by the City’s Department of Consumer Affairs (“DCA”); DCA’s rules promulgated under the PSLL are codified at Chapter 7 of Title 6 of the Rules of the City of New York (“Rules”).

Contractor agrees to comply in all respects with the PSLL and the Rules, and as amended, if applicable, in the performance of this agreement. Contractor further acknowledges that such compliance is a material term of this agreement and that failure to comply with the PSLL in performance of this agreement may result in its termination.

Contractor must notify the Agency Chief Contracting Officer of the City agency or other entity with whom it is contracting in writing within ten (10) days of receipt of a complaint (whether oral or written) regarding the PSLL involving the performance of this agreement. Additionally, Contractor must cooperate with DCA’s education efforts and must comply with DCA’s subpoenas and other document demands as set forth in the PSLL and Rules.

The PSLL is summarized below for the convenience of Contractor. Contractor is advised to review the PSLL and Rules in their entirety. On the website [www.nyc.gov/PaidSickLeave](http://www.nyc.gov/PaidSickLeave) there are links to the PSLL and the associated Rules as well as additional resources for employers, such as Frequently Asked Questions, timekeeping tools and model forms, and an event calendar of upcoming presentations and webinars at which Contractor can get more information about how to comply with the PSLL. Contractor acknowledges that it is responsible for compliance with the PSLL notwithstanding any inconsistent language contained herein.

Pursuant to the PSLL and the Rules:

CONSTRUCTION CONTRACT NUMBER \_\_\_\_\_  
CONTRACTOR \_\_\_\_\_



# BNYDC CONSTRUCTION CONTRACT

## Applicability, Accrual, and Use

An employee who works within the City of New York for more than eighty hours in any consecutive 12-month period designated by the employer as its “calendar year” pursuant to the PSSL (“Year”) must be provided sick time. Employers must provide a minimum of one hour of sick time for every 30 hours worked by an employee and compensation for such sick time must be provided at the greater of the employee’s regular hourly rate or the minimum wage. Employers are not required to provide more than forty hours of sick time to an employee in any Year.

An employee has the right to determine how much sick time he or she will use, provided that employers may set a reasonable minimum increment for the use of sick time not to exceed four hours per day. In addition, an employee may carry over up to forty hours of unused sick time to the following Year, provided that no employer is required to allow the use of more than forty hours of sick time in a Year or carry over unused paid sick time if the employee is paid for such unused sick time and the employer provides the employee with at least the legally required amount of paid sick time for such employee for the immediately subsequent Year on the first day of such Year.

An employee entitled to sick time pursuant to the PSSL may use sick time for any of the following:

- such employee’s mental illness, physical illness, injury, or health condition or the care of such illness, injury, or condition or such employee’s need for medical diagnosis or preventive medical care;
- such employee’s care of a family member (an employee’s child, spouse, domestic partner, parent, sibling, grandchild or grandparent, or the child or parent of an employee’s spouse or domestic partner) who has a mental illness, physical illness, injury or health condition or who has a need for medical diagnosis or preventive medical care;
- closure of such employee’s place of business by order of a public official due to a public health emergency; or
- such employee’s need to care for a child whose school or childcare provider has been closed due to a public health emergency.

An employer must not require an employee, as a condition of taking sick time, to search for a replacement. However, an employer may require an employee to provide: reasonable notice of the need to use sick time; reasonable documentation that the use of sick time was needed for a

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CONTRACTOR \_\_\_\_\_

# BNYDC CONSTRUCTION CONTRACT

reason above if for an absence of more than three consecutive work days; and/or written confirmation that an employee used sick time pursuant to the PSL. However, an employer may not require documentation specifying the nature of a medical condition or otherwise require disclosure of the details of a medical condition as a condition of providing sick time and health information obtained solely due to an employee's use of sick time pursuant to the PSL must be treated by the employer as confidential.

If an employer chooses to impose any permissible discretionary requirement as a condition of using sick time, it must provide to all employees a written policy containing those requirements, using a delivery method that reasonably ensures that employees receive the policy. If such employer has not provided its written policy, it may not deny sick time to an employee because of non-compliance with such a policy.

Sick time to which an employee is entitled must be paid no later than the payday for the next regular payroll period beginning after the sick time was used.

## Exemptions and Exceptions

Notwithstanding the above, the PSL does not apply to any of the following:

- an independent contractor who does not meet the definition of employee under section 190(2) of the New York State Labor Law;
- an employee covered by a valid collective bargaining agreement in effect on April 1, 2014 until the termination of such agreement;
- an employee in the construction or grocery industry covered by a valid collective bargaining agreement if the provisions of the PSL are expressly waived in such collective bargaining agreement;
- an employee covered by another valid collective bargaining agreement if such provisions are expressly waived in such agreement and such agreement provides a benefit comparable to that provided by the PSL for such employee;
- an audiologist, occupational therapist, physical therapist, or speech language pathologist who is licensed by the New York State Department of Education and who calls in for work assignments at will, determines his or her own schedule, has the ability to reject or accept any assignment referred to him or her, and is paid an average hourly wage that is at least four times the federal minimum wage;
- an employee in a work study program under Section 2753 of Chapter 42 of the United States Code;

CONSTRUCTION CONTRACT NUMBER \_\_\_\_\_  
CONTRACTOR \_\_\_\_\_

# BNYDC CONSTRUCTION CONTRACT

- an employee whose work is compensated by a qualified scholarship program as that term is defined in the Internal Revenue Code, Section 117 of Chapter 20 of the United States Code; or
- a participant in a Work Experience Program (WEP) under section 336-c of the New York State Social Services Law.

## Retaliation Prohibited

An employer may not threaten or engage in retaliation against an employee for exercising or attempting in good faith to exercise any right provided by the PSSL. In addition, an employer may not interfere with any investigation, proceeding, or hearing pursuant to the PSSL.

## Notice of Rights

An employer must provide its employees with written notice of their rights pursuant to the PSSL. Such notice must be in English and the primary language spoken by an employee, provided that DCA has made available a translation into such language. Downloadable notices are available on DCA's website at <http://www.nyc.gov/html/dca/html/law/PaidSickLeave.shtml>.

Any person or entity that willfully violates these notice requirements is subject to a civil penalty in an amount not to exceed fifty dollars for each employee who was not given appropriate notice.

## Records

An employer must retain records documenting its compliance with the PSSL for a period of at least three years, and must allow DCA to access such records in furtherance of an investigation related to an alleged violation of the PSSL.

## Enforcement and Penalties

Upon receiving a complaint alleging a violation of the PSSL, DCA has the right to investigate such complaint and attempt to resolve it through mediation. Within 30 days of written notification of a complaint by DCA, or sooner in certain circumstances, the employer must provide DCA with a written response and such other information as DCA may request. If DCA believes that a violation of the PSSL has occurred, it has the right to issue a notice of violation to the employer.

DCA has the power to grant an employee or former employee all appropriate relief as set forth in New York City Administrative Code 20-924(d). Such relief may include, among other remedies, treble damages for the wages that should have been paid, damages for unlawful retaliation, and damages and reinstatement for unlawful discharge. In addition, DCA may impose on an employer found to have violated the PSSL civil penalties not to exceed \$500 for a first violation,

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CONTRACTOR \_\_\_\_\_

# BNYDC CONSTRUCTION CONTRACT

\$750 for a second violation within two years of the first violation, and \$1,000 for each succeeding violation within two years of the previous violation.

## More Generous Policies and Other Legal Requirements

Nothing in the PSLL is intended to discourage, prohibit, diminish, or impair the adoption or retention of a more generous sick time policy, or the obligation of an employer to comply with any contract, collective bargaining agreement, employment benefit plan or other agreement providing more generous sick time. The PSLL provides minimum requirements pertaining to sick time and does not preempt, limit or otherwise affect the applicability of any other law, regulation, rule, requirement, policy or standard that provides for greater accrual or use by employees of sick leave or time, whether paid or unpaid, or that extends other protections to employees. The PSLL may not be construed as creating or imposing any requirement in conflict with any federal or state law, rule or regulation.

CONSTRUCTION CONTRACT NUMBER \_\_\_\_\_  
CONTRACTOR \_\_\_\_\_