



RE: REQUEST FOR PROPOSAL FOR GENERAL CONTRACTING SERVICES AT WHITE PLAINS PLAZA

Cushman & Wakefield U.S., Inc. (C&W) currently manages the commercial office buildings located at 1 North Broadway & 445 Hamilton Avenue, White Plains, New York, also known as White Plains Plaza (WPP). C&W is currently seeking qualified contractors to general contracting services at WPP. Your firm has been selected as a qualified bidder to participate in the RFP process.

Included is a Bid Submission Confirmation form (Enclosure 2) which must be completed and returned with the bid package. If you do not intend to bid or will be unable to, please complete the "Decline to Bid" form (Enclosure 3) and return it as soon as possible.

In addition to your bid, please include the following:

- a) Marketing and sales information
- b) Client list with contact names and phone numbers
- c) Past and current financial information, including your firm's most recent annual report
- d) The names and resumes of individuals who will be responsible for this account
- e) Any additional information that will demonstrate your firm's experience in the work currently under consideration

A mandatory pre-bid meeting and building walk through will be held on **April 29, 2022. Please meet in the Lobby at 445 Hamilton Avenue at 10:00 AM.** The purpose of this meeting is to review the specifications and scope of services and tour the facility so that any revisions or clarifications to the scope or specifications can be reviewed with all perspective bidders. Due to space constraints, we ask that you please limit attendance to two (2) members of your firm. Firms who choose not to attend the mandatory pre-bid walk-through may be disqualified **unless prior approval has been obtained from the property manager to be excused.** Please price the work as indicated in the RFP.

Aside from the instructions and specifications addressed in Exhibits A, the following requirements must be met.

General Specifications and Conditions:

- Owner is WP Plaza Owner LLC.
- Manager is Cushman & Wakefield U.S., Inc.
- Contractor will be the accepted bidder.
- Contractor shall hold and save harmless the Owner and Manager from all claims by tenants or others whose personnel or property may be damaged by Contractor, its operators, and including but not limited to the use of any of equipment or materials.
- Contractor shall make reasonable and prompt restitution by cash, replacement, or repairs, subject to the approval of the Owner or Manager, for any damages for which the Contractor is liable of which the Owner or Manager shall be sole judge.
- Contractor shall ensure that its associates and agents conform to all Federal (OSHA), State and Municipal Safety and Health regulations and shall assume all responsibility for any violations and/or non-compliance with such regulations.
- Contractor shall ensure that all of its associates and agents shall abide by all safety rules and regulations which may promulgate from time to time by either party as they pertain to the Contractor's operations (including those applicable to the disadvantaged). The contractor will also be responsible for conducting regularly scheduled safety meetings with all associates, as per any federal and/or local regulations.
- Contractor shall comply, at all times, with any and all local, state, or federal rules, regulations and laws regarding anti-discrimination and equal opportunity in employment.
- Contractor must submit to Manager a list of at least three (3) emergency telephone numbers of management level supervisory personnel, other than the local branch office number or answering service, who are authorized to dispatch backup working crews in the event of a request by Manager or Owner for such services. The Contractor will update these emergency telephone numbers as required throughout the term of the contract.
- The Manager makes no warranty to Contractor of the security of the building against conversion, damage, or vandalism to Contractor's equipment, supplies, or property. Any loss or damage thereto, unless occasioned by the sole negligence of the Manager, shall be borne by Contractor without right of recovery against Manager or the Owner.

Contract Terms and Requirements:

- **June 1, 2022** *estimated* Contract commencement date.
- Contract to be by and between Cushman & Wakefield U.S., Inc. (Manager) and Contractor.
- The Service Agreement (Enclosure 5) cannot be modified or altered and Contractor must agree and accept contract as provided.
- Pricing should be detailed for each type of service
- Provide as part of your bid the lead-time for all materials that are not readily available.
- Contractor shall comply with the Buildings Rules and Regulations (Enclosure 4)

Special Requirements:

- Contractor's employees are to be in company uniform whenever on-site.
- Contractors are responsible for managing the appearance and conduct of its employees in a manner that is compatible with the business environment.
- As part of the requirements, the contractor shall provide full time supervision throughout the duration of the contract, including any overtime or after-hours work to be performed. This cost shall be included as part of the general conditions. Contractor shall insure that all trades on the project work in harmony with other trades that may be present on site without disruption.
- The successful bidder will be responsible for all permits and licenses that may be required and shall include cost for such in their bid.
- Included with this bid package are the insurance requirements that must be met by the successful bidder. Prior to the commencements of any work on site, a Certificate of Insurance must be received that lists Cushman & Wakefield U.S., Inc. as the certificate holder and the following as additional insured: WP Plaza Owner LLC, Cushman & Wakefield U.S., Inc. All sub-contractors shall be required to provide a Certificate of Insurance subject to the same requirements as the general contractor with the exception that minimum excess liability coverage shall not be less than \$2,000,000.

Special Requirements (cont.):

- See attached Exhibit A

Insurance Requirements:

- **Commercial General Liability**

As defined in the attached Construction Contract Agreement.

- **Umbrella Liability Coverage**

As defined in the attached Construction Contract Agreement.

- **Worker's Compensation and Employer's Liability**

As defined in the attached Construction Contract Agreement.

- **Fidelity Bonds**

As defined in the attached Construction Contract Agreement.

- **Additional Insured**

All Certificates shall name Owner and Manager as Additional Insured.

- **Automobile Liability**

Coverage for all owned, non-owned and hired vehicles as defined in the attached Construction Contract Agreement.

- **Cancellation Notice Period**

Cancellation notice should be sent to Owner and Manager in case of cancellation or non-renewal by Contractor/Vendor **at least 30 days prior** to such action.

“Cushman & Wakefield U.S., Inc. and WP Plaza Owner LLC, any and all subsidiaries as their interest may appear” shall be named as an additional insured under the Contractor’s Comprehensive Bodily Injury and Property Damage Liability and Automobile Public Liability and Property Damage Insurance coverage.

Additional Information Requested:

Please include the following information along with your bid submittal:

- **MBE/WBE Status** - Is your firm a Minority-Owned Business Enterprise (MBE) or a Woman-Owned Business Enterprise (WBE)? If so, please describe.
- **Insurance Requirements** - Insurance Certificate reflecting in sufficient detail all of the requirements of this Request for Proposal. Please include your insurance agent's name and direct dial phone number.
- **Firm History** - List information about your firm that would be helpful in our decision-making process. Include a listing of all officers and individuals that have an ownership interest in your firm.
- **Billing Example** - Please include a sample of a typical billing for projects similar in size and scope to the Projects.
- **Field Inspection Reports** - Please include a copy of a typical field inspection report with an explanation of each test as performed by the regional supervisor.
- **References** - Please submit a list of 6 references from projects located in the White Plains area similar to the size and complexity of the Project(s). Individual's names, company names and phone numbers should be listed.
- **Safety Manual** - Please submit a copy of your company Safety and Procedures Manual with any additional information necessary to show compliance with all Federal, State, or local regulations.

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Please submit two (2) sealed copies of your proposal to:

Christina Damiano
Senior Property Manager
Cushman & Wakefield U. S., Inc.
One North Broadway, 2nd Floor
White Plains, NY 10601

Proposals must be submitted in an envelope clearly marked **“Sealed Bid – Do Not Open”**. Proposals must be delivered no later than **12:00 p.m. on May 9, 2022**. Any proposal received after this deadline will be disqualified. Proposals must be presented on the attached BID FORM (Enclosure #1). All line items must be filled in completely. The Owner and C&W reserve the right to accept or reject any or all of the bids at their sole discretion.

Manager will notify bidders after the selection review process has been completed. This is estimated to be approximately one (1) week.

Thank you for your interest in providing service to Cushman & Wakefield U.S., Inc.

Very truly yours,

Clifford J. Mortara
Director

Enclosures: 1) Exhibit A – Bid Pricing Form
 2) Bid Submission Confirmation
 3) Decline to Bid Form
 4) Contractor Rules and Regulations
 5) Service Agreement

Enclosure #1

BID FORM

Project
Name: _____

Date: _____

Contractor
Name: _____

TRADE/DESCRIPTION

COMMENTS

Demolition

Drywall

Carpentry

Hardware

Millwork

HVAC

Electrical

Painting

Wallcovering

Flooring

Sprinkler

General Conditions

Profit

Filing & Permits

TOTAL

Enclosure #2

Bid Submission Confirmation

Contractor Name: _____

Project: _____

Date: _____

Proposal (Name) from: _____

We have reviewed the unit pricing documents and subject premises and agree that the conditions under which the work is to be performed have been examined and that all things necessary to perform said work at the subject premises will be provided and are included as part of the Bid Submission.

The scope of work shall not necessarily be limited to the work described on the Bid Documents.

The proposal shall be in effect for (60) sixty days after the date of submission.

Signature

Title

Enclosure #3

Decline for Bid

We are in receipt of your request for proposal to provide general contracting services for Metropolitan Center and hereby decline to respond to this request.

Contractor Name: _____

Address: _____

Date: _____

Authorized Signature: _____

Name (Print): _____

Title: _____

Reason: _____

Enclosure #4

White Plains Plaza Building Information

Contractor Rules & Regulations

The following outlines the regulations and requirements that apply to all firms working at or in

White Plains Plaza. These regulations and requirements apply to general construction, tenant lease space construction, and performance of all service contracts, whether performed for the building or an individual tenant. No deviation or exceptions without the express written approval of WP Plaza Owner, LLC, which serves as building manager for the property.

Questions or comments should be directed to: WP Plaza Owner, LLC, One North Broadway, White Plains, NY 10601, Attention: Property Manager.

Contractors who violate any of these rules will be fined the following unless otherwise mentioned in the following list of rules and regulations:

1st Offense - \$250

2nd Offense - \$500

3rd Offense - \$750 and/or removal from the property

1. All workers shall enter and exit the building through the loading dock area only and sign in at the main lobby security desk every day. All Contractors and contractors' personnel are to use the service elevator for transportation of men and materials. No materials, equipment or personnel are permitted within the finished passenger cars. These are reserved for occupants of the building and their guests. In the event the service elevator is not operating, Building Management will be notified and will prepare an elevator for your use. Workers are restricted to certain areas. Access to toilet areas will be limited to those specially approved by Property Management.
2. All workers must be properly, permanently, and visually identified through uniformed/branded t-shirts or ID tag. The identification system must be approved prior to start of any work.
3. All the workers shall maintain a professional manner while at the building including but not limited to:
 - a. No abusive language.
 - b. No smoking or drinking anywhere in the building.
 - c. No standing in lobbies except to board service elevators.
 - d. No use of radios/tapes
 - e. No alcoholic beverages or firearms.
4. All work areas are to be broom cleaned daily of trash, debris, and non-useful materials. All public areas are to be kept clean of any construction materials, debris, or dust always. Contractor must protect existing air conditioning, vents, and ductwork to prevent dust debris from entering the system. Failure to do so will result in WP Plaza Owner, LLC providing the service and charging the Contractor and/or Tenant accordingly.

5. No storage of flammable substance shall be allowed in the building unless approved by the Building Management and in accordance with applicable building codes and regulations.

6. Any contractor who anticipates working on the building's life safety (sprinkler, smoke detectors, fire command speakers) or whose work may affect the systems, fire alarms, etc. will submit a Building Service Request Form to WP Plaza Owner, LLC to shut these systems down at least 48 hours prior so that engineering is notified of the commencement of such work.

Failure to so will result in WP Plaza Owner, LLC fining the Contractor and Tenant: \$500.00 for First offense, \$1000 for second, third offense the contractor will be removed from the site. Excessive dust, painting and furniture refinishing will set off the fire alarm. The Building Service Request Form can be found at the security desk on the Lobby Level. There will be an hourly fee charged for these services.

7. All required exits shall remain free and unobstructed at all times and all emergency lighting maintained.

8. All life safety equipment shall be maintained, including a contractor-provided fire watch during welding, gutting and sprinkler work at the site. Hot Work includes welding, cutting, and brazing. OSHA has specific guidelines for hot work operations. As such, it is necessary for us to have a policy regarding hot work being conducted in our buildings. Please see HOT WORK section for details on the above.

9. Contractors may not begin work that will disrupt the building's electrical, plumbing or air conditioning service without at least 48 hours prior notice to WP Plaza Owner, LLC through a Building Service Request Form.

10. No interviewing of job applicants or sub-contractors will occur on site without prior approval by the Building Management and scheduled appointment.

11. There will be absolutely no use of tenant and/or building property such as, but not limited to, telephones, dollies, vending machines, copiers, etc., unless specially approved by the tenant and/or the building in advance of their use.

12. All deliveries will be scheduled with WP Plaza Owner, LLC. A prior notification of at least 24 hours as required. Scheduling of the elevator time and use of the loading dock for deliveries and trash removal will be responsibility of the General Contractor.

13. No storage of supplies or trash will be allowed in the loading dock area at any time.

14. Contractor must observe all applicable OSHA requirements, federal, state, and local rules and regulations for each project as required. Contractor and/or tenant shall obtain, at its cost, all necessary permits, and fees, and provide copies of it to Building Management.

15. Contractor may not perform any work that will prevent the enjoyment of the property by tenants. Work producing excessive noise or odor is prohibited during normal business hours (8:00a.m. to 6:00p.m. weekdays). WP Plaza Owner, LLC reserve the right to stop any work at its sole discretion.

16. All contractors working in the building must provide a Certificate of Insurance, prior to any work commencing. (See Attached Sample COI.)

17. Masonite panels and other padding must be used to protect any walls, floors and elevators from damage that may be caused by moving demolition debris or construction materials through any part of the building. Panels must be taped-to one another to eliminate the risk of tripping. Do not tape panels onto carpeting. Walk off mats must also be used to prevent tracking dust onto other common areas in the building.

18. Contractor is to use rubber wheeled carts in removing debris and trash from tenant floors. Under no circumstance will metal wheeled carts be allowed. All doors are to be protected with paper and cardboard. Dumpsters cannot be left at the loading dock without building management approval.

19. Delivery of materials and hauling debris is routed via loading dock at White Plains Plaza with access from One North Broadway. No parking is available in the loading dock for any reason other than delivery and pick-up. Vehicles will be towed if they are parked in the Loading Dock area for more than 15 minutes.

20. Contractor may not use restroom sinks for cleaning tools or materials or soil tenant's restrooms. Slop sinks are available. No paint, cement, adhesive, etc., are to be deposited into drains.

21. Contractors and/or tenants will be responsible at their sole cost for satisfactory repair or replacement (as reasonably determined by WP Plaza Owner, LLC) of any public areas, materials or building systems damaged as a result of contractor's work.

22. No Signage, tape or paint may be affixed to windows. Any damage to the solar tint on the inside of the windows will require replacement at contractor's expense. Any damaged solar tint on windows must be noted to Property Mgmt. prior to start of construction. If not, any damage will be assumed to have occurred during construction and Contractor will be liable for replacement.

23. When working on the tenant occupied floor, all deliveries are to be delivered, accepted or moved to site within a reasonable time period as not to interrupt with building operations.

24. No construction waste or debris may be placed in the building dumpster/compactor. The contractor will provide removal of waste and debris from the building at contractor's expense. If any debris is left on the premises, the contact and/or tenant will be billed for the removal plus \$500.

25. Contractor will close off temporary openings with polyurethane.

26. No gasoline operated devices (i.e. concrete saws, core machines, welding machines, etc.) shall be permitted within the building premises. All work that requires such devices shall be means of electrically operated substitutes.

27. Construction personnel are not permitted to block open stairway doors and electrical room doors. These doors provide fire protection required by the White Plains fire code. Violation of this provision will result in a \$100.00 fine to the contractor and possible dismissal.

28. No tobacco smoking or chewing will be permitted anywhere in the building.
29. No radios or other sound-producing equipment will be permitted on occupied floors.
30. Owner's representative reserves the right to inspect work, to stop work and/or have a worker removed from the job at any time during the contract.
31. The contractor will be required to furnish the Property Manager with a list of sub-contractors prior to the commencement of the job. This list will include telephone numbers and copies of contracts for each sub-contractor, including home and emergency phone numbers.
32. All Contractor parking is at their own risk at the 275 Main Street Parking lot. Parking fees are not validated during construction.
33. Access to the construction sites is limited to only those authorized to enter the work area. Unannounced visitors of the tenant company will not be permitted access during construction.
34. Contractor must hire Johnson Control to assist in the demo process of the buildout, then finally bring them back in to perform final terminations, programing, and fire alarm tests.
35. Albireo Energy still needs to be retained to update the CAD files of the floor in the BMS. This should be part of the project close out. Confirmation will need to be provided to Property Management that this has been completed.
36. ALL LOCKS MUST BE KEYED TO BUILDING MASTER. Please reach out to Property Management office to obtain the master for the building you are working in.
37. Follow the Interim Guidance For Construction Activities During The Covid-19 Public Health Emergency and provide affirmation that you have read the document and will be following protocols detailed.
38. Any union disputes will be immediately addressed by the GC in order avoid direct issues for WP Plaza Owner, LLC, and its affiliates.

[.https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/ConstructionMasterGuidance.pdf](https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/ConstructionMasterGuidance.pdf)

The building reserves the right to add other restrictions to those listed above as may be deemed necessary for the comfort and safety of all tenants of White Plains Plaza.

- Johnson Control is the fire alarm company (1-845-774-4120).
- Sprinkler system work is performed by either: W&M Sprinkler (914-741-2222) (or Northeastern Sprinkler (914-773-1960 x 308)
- Albireo Energy, LLC is the BMS vendor (732-243-4858)

Enclosure #5

CONTRACT

CONSTRUCTION CONTRACT

Effective Date: [\[Click here to select a date\]](#) (hereinafter “**Effective Date**”)

Contract Number: [\[Click here to enter the Contract Number\]](#)

Address of property (hereinafter “Property”): [\[Insert Property Address\]](#)
[\[City, State Zip\]](#)

Owner (hereinafter “Owner”): [\[Owner Entity\]](#)
[\[Mailing Address\]](#)
[\[City, State Zip\]](#)
Attention: _____

Managing Agent (hereinafter “Agent”): [\[Select the C&W entity on the PMA...\]](#)_____, Inc.
[\[Mailing Address\]](#)
[\[City, State Zip\]](#)
Attention: _____

Contractor (hereinafter “Contractor”): [\[Contractor Entity\]](#)
[\[Mailing Address\]](#)
[\[City, State Zip\]](#)
Attention: _____
E-Mail: [\[Enter E-Mail Address\]](#)

Work: The work as more particularly described in Exhibit “**A**” attached hereto and made a part hereof (hereinafter “**Work**”) to be provided by Contractor in accordance with the terms hereof.

Contract Time: The Work shall commence on the Commencement Date, and Contractor shall achieve Substantial Completion by the Substantial Completion Date, as both dates are set forth in Exhibit “**A**”.

Contract Sum and Payment Terms: As set forth on Exhibit “**B**” annexed hereto and made a part hereof.

This Construction Contract, together with the Construction Contract Terms, Exhibit “**A**” (Description of the Work), Exhibit “**B**” (Contract Sum and Payment Terms), Exhibit “**C**” (Contractor Insurance Requirements), Exhibit “**D**” (Contractor Certification Affidavit), and Exhibit “**E**” (Building Rules and Regulations) [and Exhibit “F” \(Contract Clauses Required Under Federal Contracts\)](#) attached hereto and made a part hereof (collectively, the “**Agreement**”), is entered into as of the Effective Date, shall constitute the entire agreement between Contractor and Owner, and shall supersede all prior discussions with respect to the subject matter hereof. No modification of this Agreement will be effective unless made in writing and signed by both Contractor and Owner (or Agent on behalf of Owner).

OWNER:
[Click here to enter Owner Name](#)

CONTRACTOR:
[Click here to enter Contractor Name](#)

By: [\[Select the C&W entity on the PMA...\]](#)_____, Inc.,
as Agent for Owner ***[Note: for contracts of over \$1
million, delete this paragraph. Owner should sign
directly.]***

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

CONSTRUCTION CONTRACT TERMS

1. WORK AND CONTRACT TIME.

(a) Contractor agrees to perform the Work and any additional work which may be directed by Owner or Agent from time to time via change order signed by the Owner and Contractor. All operational logs and records relating to the Work prepared and/or maintained by Contractor or in the custody of Contractor shall not be destroyed without the prior written consent of Owner or Agent. Contractor agrees to furnish at its expense all labor, supplies, tools, equipment and materials necessary to properly perform the Work. Contractor shall permit and facilitate inspection of the Work by Owner and its representatives (including, but not limited to, Agent) and public authorities at all times. Failure of Agent or Owner during the term of this Agreement to discover or reject unacceptable Work, or Work not performed in accordance with this Agreement, shall not be deemed an acceptance thereof nor a waiver of Agent's and Owner's right to the proper execution of the Work or any part thereof by Contractor.

(b) The Contractor shall commence the Work on the Commencement Date and achieve Substantial Completion of the entire Work not later than the required Substantial Completion Date set forth in Exhibit "A." "**Substantial Completion**" shall mean the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use in all material respects, and without material interference or lack of usability resulting from Work remaining to be completed. Upon execution of this Agreement, the Contractor shall prepare and submit a construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

(c) Contractor acknowledges and agrees that time is of the essence of this Agreement. Contractor agrees to take any and all actions necessary to substantially complete the Work within the Contract Time. Contractor acknowledges that Owner will incur severe harm and damages if the Work is not timely completed. However, Owner's damages would likely be difficult to calculate. Accordingly, without limiting any other remedies available to Owner at law or equity, Contractor agrees that Owner will be entitled to liquidated damages from Contractor (to be paid by Contractor upon Owner's demand, or, at Owner's election, to be deducted from any unpaid amounts of the Contract Sum) in the amount of daily liquidated damages rate set forth in Exhibit "A," per day for each day after the Substantial Completion Date as to which Substantial Completion has not been achieved. Contractor acknowledges and agrees that said liquidated damages are a fair and reasonable approximation of Owner's damages in the event of such delayed completion, and are not penal in nature.

(d) If the Contractor is delayed at any time in the commencement or progress of the Work by changes ordered in the Work by Owner, by labor disputes, fire, unusual delay in deliveries, abnormal adverse weather conditions not reasonably anticipatable, unavoidable casualties or any causes beyond the Contractor's control, or by other causes may justify delay, then the Contract Time shall be extended by change order for such reasonable time as the Owner may determine. Extension of the Contract Time is the Contractor's sole and exclusive remedy for such delay.

2. PERMITS, LICENSES. If any government permit, license or authorization shall be required or necessary for the proper and lawful performance of the Work hereunder or if the failure to secure such license, permit or authorization would, in any way, affect the Property, Agent or Owner, then Contractor, at Contractor's expense, shall duly procure and thereafter maintain such license, permit or authorization and submit the same to Agent for inspection, if requested. Contractor, at Contractor's expense, shall at all times, comply with the terms and conditions of

each such license, permit and authorization and shall notify Agent immediately should any such license, permit or authorization no longer be in effect or in good standing. Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as other permits, fees, licenses and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

3. **WAIVER OF TRIAL BY JURY.** THE PARTIES HERETO SHALL AND THEY HEREBY DO WAIVE, WHERE PERMITTED BY LAW, TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY ANY OF THE PARTIES HERETO AGAINST THE OTHER IN ANY MATTERS WHATSOEVER ARISING OUT OF, OR IN ANY WAY CONNECTED WITH, THIS AGREEMENT.

4. **NON-WAIVER PROVISIONS.** The failure of Agent or Owner to insist in any one or more instances upon the strict performance of any of the covenants, terms, provisions or conditions of this Agreement or to exercise any election herein contained shall not be construed as a waiver or a relinquishment for the future of such covenant, term, provision, condition or election, but the same shall continue and remain and be in full force and effect. No waiver by Agent or Owner of any covenant, term, provision or condition of this Agreement shall be deemed to have been made unless expressed in writing and signed by Agent or Owner, as the case may be.

5. **LABOR HARMONY.** Contractor agrees that it will not at any time prior to or during the term of this Agreement, either directly or indirectly, use any subcontractors and/or labor and/or materials which would or will create any difficulty with other contractors and/or subcontractors and/or labor engaged by Contractor, Agent, Owner or others in the construction, repair, improvement, maintenance and/or operation of the Property or any part thereof. Contractor agrees to notify Agent and Owner promptly of any events Contractor believes may result in a work stoppage, slowdown, labor dispute, strike or other labor related disruption. Contractor agrees to work in harmony with all contractors and laborers employed by Agent, Owner or others in connection with the Property. In the event of any work-stoppage or other disruption which involves the participation of Contractor's personnel whether as a result of a dispute with Contractor or due to third party actions involving informational or organizational picketing or picketing by any labor organization against any other employer, Contractor agrees to take appropriate and prompt action to provide qualified personnel to perform the Work and to minimize any delay in performing the Work by fully cooperating in obtaining injunctions, presentation of facts, furnishing of witnesses and assisting in every reasonable way to eliminate any work-stoppage or other disruption or the effect of any work-stoppage or other disruption, or to follow such other directions as Agent or Owner shall issue. Should Contractor fail to comply with this provision, Agent or Owner shall have the right, upon written notice to Contractor, to terminate this Agreement without any liability to Contractor.

6. **ASSIGNMENT BY CONTRACTOR.** Contractor shall not assign this Agreement nor any interest therein without the prior written consent of Agent or

Owner, which consent may be withheld at Agent's or Owner's sole and absolute discretion. The transfer of a majority interest of the voting stock or general partnership interests in Contractor shall be deemed an assignment of this Agreement by Contractor. Any attempted assignment of this Agreement or any interest therein without the prior written consent of Agent or Owner shall be null and void.

7. **SUBCONTRACTING.**

(a) A subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site.

(b) Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner the names of the subcontractors or suppliers for each of the principal portions of the Work. The Contractor shall not contract with any subcontractor or supplier to whom the Owner has made reasonable written objection within ten days after receipt of the Contractor's list of subcontractors and suppliers. If the proposed but rejected subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate change order shall be issued before commencement of the substitute subcontractor's Work. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

(c) Contracts between the Contractor and subcontractors shall (1) require each subcontractor, to the extent of the Work to be performed by the subcontractor, to be bound to the Contractor by the terms of this Agreement, and to assume toward the Contractor and the Owner all the obligations and responsibilities, including the responsibility for safety of the subcontractor's Work, which the Contractor, by this Agreement, assumes toward the Owner, and (2) allow the subcontractor the benefit of all rights, remedies and redress against the Contractor that the Contractor, by this Agreement, has against the Owner.

8. **ADDITIONAL DEFINITIONS.** It is understood that wherever the terms "adequate" or "as required" or "as necessary" or "if necessary" are stated in this Agreement (including any Exhibit attached hereto), these terms shall be construed to mean "as determined by Agent or Owner". "Contract Documents" means this Agreement, together with all Exhibits, all drawings, plans and specifications referred to in the Exhibits and/or subsequently agreed to by Owner and Contractor, and all other documents and instruments designated by the parties as Contract Documents.

9. **DISCHARGE OF EMPLOYEES.** Contractor, promptly after demand by Agent or Owner, will discharge or transfer from the Property any employee of Contractor to whom Agent or Owner shall or may object for any reason in their sole discretion, provided, however, that if the effectuating of such discharge or transfer is limited by the contract between Contractor and the employee's union, Contractor agrees to use its best efforts within the limits of such union contract to effectuate such discharge or transfer as promptly as possible.

10. **MECHANIC'S LIENS.** Contractor will promptly pay all Contractor's employees, workers, laborers, subcontractors, suppliers and materialmen, and will deliver such lien waivers if the amount owed is in excess of \$2,500.00 as required by Agent or Owner in a form acceptable to Agent or Owner or as otherwise required by law. Payment of Contractor is conditioned upon delivery of all lien waivers and other documents as required by this Agreement, including without limitation, lien waivers

from any and all Contractor's subcontractors, suppliers and materialmen. Agent or Owner, at their sole discretion and not for the benefit of Contractor's employees, workmen, laborers, subcontractors, suppliers and materialmen, reserve the right to make joint check payments to such entities. Contractor agrees that if any mechanic's lien is filed against the Property for work done, services claimed to have been rendered or materials claimed to have been furnished in connection with or pursuant to any of the provisions of this Agreement, then Contractor shall cause such mechanic's lien to be discharged within ten (10) days after filing, at Contractor's expense, by: i) filing the bond required by law; or ii) providing Agent with a copy of the court order discharging such lien. Contractor will defend, indemnify and hold Agent and Owner harmless against any and all damages, liabilities, costs and expenses (including attorneys' fees) suffered or incurred by Agent or Owner as a result of Contractor's failure to comply with this provision. Upon Contractor's failure to comply herewith, the lien may be bonded or discharged by Agent or Owner at Contractor's sole expense. Contractor's liability under this Section 10 shall survive the expiration or termination of this Agreement, but this shall not be construed to mean that Contractor's liability does not survive as to other provisions of this Agreement.

11. **NON-INTERFERENCE.** Contractor shall perform the Work so as not to unreasonably interfere with Agent's or Owner's operation of the Property or the business operations of any tenant or other occupant of the Property. Under no circumstances shall Contractor interfere with the electrical, HVAC or any other operating or control systems in any building without express written permission of the Owner or Agent. Contractor will comply with all building rules and regulations of the Owner regarding the Property, Property access, etc., attached hereto as Exhibit "E". At all times, Contractor will be deemed responsible for informing the Owner and Agent in writing of any and all scheduled excavation to be done on site. All excavation shall be done by hand unless specifically authorized in writing by the Owner or Agent.

12. **CONTRACTOR RESPONSIBILITY.** Contractor shall be responsible to Agent and Owner for the acts and omissions of Contractor's suppliers, agents, employees and subcontractors. All contracts entered into by Contractor with any subcontractors shall require the subcontractors to be responsible for the acts and omissions of their agents and employees and compliance with the provisions of this Agreement to the extent applicable to the subcontractor's portion of the Work. Personnel supplied by Contractor or any subcontractor will be deemed employees of Contractor or the subcontractor, as the case may be, and will not for any purpose be considered employees or agents of Agent or Owner. Contractor assumes full responsibility for the actions of such personnel while performing Work pursuant to this Agreement, and shall be solely responsible for their supervision, daily direction and control, payment of salary or equivalent (including, withholding of income taxes, stock options, contributions to pension or similar retirement programs, overtime pay, education programs, awards, special recognition events and social security contributions), worker's compensation, disability benefits, social security taxes, unemployment insurance and the like. Contractor, as an independent contractor, is responsible for compliance with all applicable immigration, municipal, state, and

federal laws regarding Contractor's employees. The Contractor will not discriminate against any qualified employee or applicant for employment because of race, color, religion, gender, sexual orientation, age, national origin, disability, veteran status or any other status protected by federal, state or local law. The Contractor agrees to comply with all applicable state and federal statutes, executive Orders and Regulations relating to non-discrimination in employment. The Contractor agrees to comply with where applicable, the Equal Opportunity Clause of Executive order No. 11246, 41 CFR 60-1.5, The Affirmative Action Clause for Disabled Veterans and Veterans of the Vietnam Era in 38 USC 2012, Federal Procurement Regulations 1-4.410-5(a)(11) and 1-12.1102-2, 3, and 41 CFR 1-12.1306-1, 2, and the Utilization of Women-Owned Business Concerns pursuant to the Presidential Executive Order No. 12138. Contractor must also comply with the employment provisions of the Americans with Disabilities Act and any Immigration laws, rules and/or regulations. Contractor agrees to execute a Contractor Certification Affidavit regarding I-9 compliance of all employees working in the performance of the Work under this Agreement, in a form attached hereto as Exhibit "D". Contractor warrants that it is and throughout the term of this Agreement will continue to be in full compliance with all Equal Employment Opportunity (E.E.O.) provisions as required by law, regulation or executive order, specifically including but not limited to, the provisions of executive order 11246 of September 24, 1965 as amended. If applicable, Contractor also agrees to execute and to keep in full force and effect throughout the term of this Agreement a Compliance Undertaking Standard Form 100 (Equal Employment Opportunity Employer Information Report E.E.O.-1). Contractor agrees to indemnify, defend and hold Owner and Agent harmless, and reimburse Owner and Agent for any expenses, attorney's fees or liabilities incurred by Owner or Agent, in connection with Contractor violating any law, rule, or regulation.

13. **MAINTENANCE OF RECORDS.** Contractor shall maintain written records in accordance with generally accepted accounting procedures showing in detail all costs which it incurs and payments which it receives in the performance of this Agreement, including, without limitation, the amount, purpose and recipient of such payment together with supporting documentation. Such records shall include, but shall not be limited to, payroll records, job cards, attendance cards and job summaries and shall be subject to audit and inspection by Agent, Owner and their respective agents and representatives during the term of this Agreement and for seven (7) years after its expiration or earlier termination, unless a longer period is required by law. Should the audit reveal errors in record keeping, Contractor shall immediately correct same and shall promptly inform Agent and Owner in writing of the action taken to correct such errors. Audits conducted by Agent or Owner, or their designees shall be an expense of Agent or Owner, provided, however, that if any such audit reveals that the aggregate expenses with respect to the Work are at least five percent (5%) less than indicated by the books and records maintained by Contractor, then Contractor shall promptly reimburse Agent and/or Owner for the cost of the audit. The right of Agent and/or Owner to audit the books and records maintained by Contractor shall survive the expiration or termination of this Agreement. Contractor agrees that if work and materials to be furnished by Contractor hereunder are for a building in which an office of the United States of

America as a tenant is located, and if this Agreement is for an amount exceeding \$2,500, Contractor shall permit the Controller General of the United States or any of his or her duly authorized representatives to have access to, and the right to examine any directly pertinent books, documents, papers and records pertaining to this Agreement until the expiration of three (3) years after final payment of any monies has been made pursuant to the provisions of this Agreement.

14. COMPLIANCE WITH LAWS AND POLICIES.

(a) Contractor shall at all times comply with all applicable federal, state and local laws, codes, ordinances, rules and legal requirements affecting the Work (including, without limitation, laws concerning the use, handling and disposal of hazardous materials, and laws concerning verifying an individual's legal right to work in the United States), as well as Agent's and Owner's directives, guidelines, procedures, rules, regulations and the like which are furnished to Contractor.

(b) This Agreement shall be construed, and the legal relationships between the parties shall be determined, in accordance with the laws of the state in which the Property is located. No rights or remedies available to either party under this Agreement or by operation of law are waived or modified unless expressly waived or modified by that party in writing.

(c) **Refrigerant Management.** With any service work involving the use, removal, disposition, introduction, recycling or any handling of any refrigerants, including but not limited to, CFC or HCFC refrigerants, Contractor shall comply with all federal, state and local laws, ordinances and regulations. All invoices involving refrigerant equipment must be accompanied by a cumulative, historical equipment refrigerant-use log. Contractor shall be responsible for providing notice to Agent of any equipment leaking at a rate exceeding 15% of its total capacity. Contractor shall indemnify, defend and hold harmless Agent and Owner from any and all claims, damages, clean-up, fines, judgments, penalties, costs, liabilities, or losses, arising during or after the contract term, and arising as a result of any use, storage, generation, or disposal of any refrigerants or as a result of any breach of this Section 14(c).

(d) The Contractor shall pay sales, consumer, use and other similar taxes that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

15. TRADEMARK AND PUBLICITY. Contractor shall have no right to use either Agent's or Owner's trademark or trade name, the Property or any image thereof or to refer to this Agreement or the Work performed hereunder directly or indirectly in connection with any product, promotion, advertisement or publication, or the like, without Agent's or Owner's prior written approval, as appropriate, which approval may be withheld for any reason or for no reason.

16. ETHICAL STANDARDS. Contractor agrees that it will not make or confer, or offer to make or confer, any payment to or benefit upon any third party (including, without limitation, any government agency or instrumentality thereof) with the intent to influence the conduct of such third person regarding this Agreement or the business affairs of any of the parties to this Agreement or of the third party. Contractor shall not give or offer gifts, discounts, hospitality or entertainment ("**Gifts**") to Agent's or Owner's employees or members of their families, which are in excess of the common courtesies associated with normal business practice and/or do not have a justifiable business purpose. Under no circumstances shall Contractor offer or give (i) cash, (ii) gift cards, or (iii) Gifts which might be perceived to impair impartial

business judgment, particularly in connection with an anticipated or pending tender, business transaction or the like. The combined value of all Gifts from Contractor shall not exceed \$1,000 in any one year period. Violation of this provision by anyone employed or retained by Contractor, or by Contractor itself, shall constitute a default under this Agreement by Contractor.

17. **ATTORNEYS' FEES.** In the event of any controversy, claim or litigation between or among Contractor, Owner and Agent arising out of or relating to the Work or this Agreement, the prevailing party shall be entitled to reasonable costs and expenses, including, without limitation, attorneys' fees and expert witness fees, as fixed by a court of competent jurisdiction, from the non-prevailing party.

18. **DEFINITION OF AGENT AND OWNER.** For purposes of this Agreement, any reference to Agent or Owner, except for defining the contracting parties, shall be deemed to include any shareholder, officer, director, principal, partner, beneficiary, subsidiary or Affiliate (hereinafter defined) of any of the foregoing, and their respective heirs, successors and assigns. The term "**Affiliate**" shall mean, with respect to a specified person, firm or corporation, a person, firm or corporation that directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person, firm or corporation specified. For purposes of this definition, "control" when used with respect to any specified person means the power to direct the management and policies of such person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise.

19. **LIMITATION OF OWNER'S LIABILITY.** No general or limited partner in or of Owner, whether direct or indirect, or any direct or indirect partners in such partners or any disclosed or undisclosed officers, shareholders, principals, directors, employees, members, partners, servants or agents of Owner shall be personally liable for the performance of Owner's obligations under this Agreement. The liability of Owner (including any assignee or successor of Owner) shall be limited to Owner's interest in the Property. In the event this Agreement is executed by Agent, Contractor acknowledges and agrees that Agent is executing this Agreement "as agent for Owner" in its capacity as managing agent of the Property for Owner and that Agent shall have no liability or obligation to Contractor under this Agreement.

20. **INDEPENDENT CONTRACTOR.** Agent, as managing agent for, and on behalf of, Owner, or Owner hereby engages Contractor to perform, as an independent contractor, the Work set forth in this Agreement. Nothing contained herein shall be deemed or construed to create any association, partnership, joint venture or relationship of principal and agent or master and servant or employer and employee between the parties hereto or any affiliates or subsidiaries thereof, or to provide either party with the right, power or authority whether expressed or implied, to create any duty or obligation on behalf of the other party.

21. **TERMINATION.**

(a) By Contractor. If the Owner fails to make payment as provided in Exhibit B for a period of 30 days, the Contractor may, upon seven additional days'

written notice to the Owner and opportunity to cure, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, and costs incurred by reason of such termination.

(b) By Owner for Cause. If the Contractor defaults or fails or neglects to carry out the Work in accordance with the Contract Documents or fails to perform a provision of the Contract, the Owner, after seven days' written notice to the Contractor and without prejudice to any other remedy the Owner may have, may make good such deficiencies and may deduct the cost thereof from the payment then or thereafter due the Contractor. In addition, at the Owner's option, the Owner may terminate the Contract and take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor and may finish the Work by whatever method the Owner may deem expedient. The unpaid balance of the Contract Sum shall be applied first to the costs of finishing the Work, including compensation for architectural or other professional services and expenses made necessary thereby. If such costs exceed the unpaid balance, the Contractor shall pay the difference to the Owner. If such costs are less than the unpaid balance, the remainder shall be distributed first to Owner to the extent of Owner's damages suffered in consequence of any act or omission of Contractor, next to the Contractor to the extent of such amounts, if any, as shall be due for Work correctly performed prior to the termination of this Agreement, and then any balance of the Contract Sum shall be paid to Owner.

(c) By Owner for Convenience. The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause. The Contractor shall be entitled to receive payment for Work executed, and substantiated out-of-pocket costs incurred by reason of such termination.

22. **INDEMNIFICATION.** Contractor shall, to the fullest extent permitted by law, indemnify and hold harmless Agent and Owner and their respective subsidiaries, affiliates, shareholders, directors, officers, partners and employees from and against any and all liability, claims and demands on account of damage to any property or injury to persons including death resulting therefrom, losses, damages, expenses (including attorneys' fees and investigation costs), payments, recoveries and judgments in connection therewith, to the extent arising out of or caused in any manner by (i) the acts or omissions of Contractor, its employees, agents or subcontractors, or (ii) the performance or failure to perform any Work under this Agreement, or (iii) the breach of any representation or warranty or covenant or condition set forth herein by Contractor, or Contractor's employees, agents or subcontractors, or (iv) the use of any Owner's or Agent's tools or equipment by Contractor, its employees, agents or subcontractors. Contractor shall, at its own expense, defend any and all actions brought against Agent or Owner based upon any of the foregoing and shall pay all attorneys' fees and all other expenses, and promptly discharge any judgments, settlements or compromises arising therefrom. Contractor's liability under this Section 22 shall survive the expiration or termination of this Agreement, but this shall not be construed to mean that Contractor's liability does not survive as to other provisions of this Agreement.

23. **COMPENSATION.**

(a) In consideration for all of the Work to be rendered by Contractor hereunder, Agent, on behalf of Owner, agrees to pay to Contractor, subject to the provisions of this Agreement, the compensation set forth on the cover page hereof or, if applicable, Exhibit "**B**".

(b) Under no circumstances will Contractor receive compensation in cash.

(d) Agent shall have no obligation to reimburse costs and expenses (if any) incurred by Contractor in connection with any Work provided hereunder, unless such costs and expenses are supported by receipts, etc., and such costs and expenses are permissible pursuant to Applicable Anti-Corruption Laws.

(e) Contractor agrees that Agent is acting only as an agent of Owner, and Contractor will look solely to Owner for any and all obligations or payments due or which may become due to Contractor under this Agreement. If at any time Agent is legally held to be an independent contractor of, rather than an Agent for, Owner, Contractor agrees that it will not be paid until and unless Owner furnishes funds specifically designated for payment of the obligations due or to become due to Contractor.

(f) It is hereby agreed that payment to Contractor shall be conditioned upon approval of work by all inspecting authorities and submission by Contractor to Agent of satisfactory invoice documentation required by Owner ("**Invoice Package**"). A complete Invoice Package shall consist of the following: (i) application for payment in form acceptable to Agent including contractor work tickets fully describing the Work performed (if applicable); (ii) Contractor sworn statements as to contract amount, amount paid to date, amount remaining to be paid and so forth; (iii) an appropriate contractor lien waiver and lien waivers from all Contractors and subcontractors and materialmen (if applicable); (iv) Material Safety Data Sheets ("**MSDS**") for all regulated materials and substances left on site (if applicable); (v) if not previously delivered, a completed W-9 for federal tax purposes; and (vi) copy of Agent's Purchase Order and/or Work Order (if applicable) or a fully executed Agreement and amendments, if any.

(g) If required by Agent, Contractor will utilize Agent's electronic invoicing process ("**EIP**"). Once instructed to use EIP, Contractor shall not submit its invoices in any other format, including a paper invoice. If Contractor submits an invoice in another format, said invoice will be rejected and payment will consequently be delayed. Contractor will ensure that all information contained in any invoice it submits is accurate. If any information is inaccurate, Contractor's invoice may be rejected and payment delayed.

24. **LIMITATION ON AGENT'S OBLIGATIONS.** Notwithstanding anything to the contrary contained herein, Contractor acknowledges and agrees that Agent's obligation to make payment to Contractor of any compensation hereunder shall be conditional upon Owner providing Agent with funds sufficient to pay such compensation to Contractor. In the event Owner shall fail or refuse for any reason

whatsoever to provide Agent with funds sufficient to pay the compensation due to Contractor hereunder, then Agent will not be able to make any payment of such compensation to Contractor.

25. **WARRANTY AND CORRECTION GUARANTEE.**

(a) The Contractor warrants to the Owner that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and all applicable laws, ordinances, codes, statutes, rules and regulations and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation or normal wear and tear under normal usage

(b) Contractor agrees to perform all Work in a good, timely and workerlike manner acceptable to Agent and Owner. Contractor, at Contractor's expense, shall promptly correct Work rejected by the Agent or the Owner or failing to conform to the requirements of the Contract Documents, whether discovered before or after Final Completion and whether or not fabricated, installed or completed. Contractor unconditionally guarantees all materials, equipment and labor provided under this Agreement for one (1) year after date of final payment to Contractor hereunder or the date of final acceptance of the Work, whichever date is later and shall repair or replace within said period, at its sole cost and expense, any labor, materials or equipment provided or furnished under this Agreement that is damaged, defective, non-conforming or not satisfactory. Contractor shall make or commence to make, within three (3) days of its receipt of written notice from Agent or Owner during the guaranty period, any and all repairs or replacements, without cost to and to the satisfaction of Agent or Owner. If Agent or Owner determine that an emergency exists which requires more immediate action than Contractor is able to provide, Agent or Owner may, without sending any notice to Contractor, perform or cause to be performed such repairs or replacements that Contractor is required to make pursuant to this provision, in which event Contractor shall compensate Owner for the cost thereof not later than ten (10) business days after receipt of written demand therefor. Any repairs or replacements that Contractor is required to make pursuant to this provision shall be prosecuted to completion by Contractor even if such repairs or replacements may not be completed until after the expiration of the guaranty period. The obligations of Contractor to make repairs or replacements under this provision shall not be satisfied, unless the Owner so elects, by the payment of money to the Owner. If Agent or Owner determine in their sole and absolute discretion that any labor furnished or materials or equipment installed under this Agreement are inherently defective, thus being incapable of repair, then Contractor shall, upon notification by Agent or Owner of such a determination, provide a replacement for said labor, materials or equipment. In the event that Contractor fails to comply with this provision, the Owner may, in addition to exercising all other legal

and equitable remedies it may have, (1) deduct from any payment due or thereafter to become due to Contractor under this Agreement, the amount of damage, cost or expense caused by said failure by the Contractor, and (2) perform or cause to be performed any needed repairs and replacements, in which event Contractor shall compensate the Owner for the cost thereof. The foregoing Guarantee is in addition and supplementary to any other guarantee which may be provided by Contractor. Warranties and guarantees issued by manufacturers of materials or equipment furnished by Contractor under this Agreement shall not in any way serve to limit the obligations of Contractor under this provision. Notwithstanding the foregoing sentence, any such warranties or guaranties shall inure to the benefit of Agent and Owner, their successors and assigns, and Contractor shall, to the extent possible, assign such warranties and guaranties to Owner.

26. **ACTS BEYOND REASONABLE CONTROL.** No party shall be considered in default of any of its obligations under this Agreement to the extent that performance thereof is delayed or rendered impossible by acts of God, war, civil commotion, governmental action, fire, storm, flood, explosion, strikes, walkouts, or other industrial disturbances, or any other causes of any nature which is beyond its reasonable control.

27. **PATENT/COPYRIGHT.** The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Agent harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents or where the copyright violations are contained in drawings, plans, specifications or other documents prepared by the Owner, Agent or third party professional. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Agent.

28. **DIVISIBILITY.** In the event any provision of this Agreement is held to be illegal or unlawful, then the same shall be struck here from and all other provisions shall remain valid and in full effect.

29. **ASSIGNMENT BY AGENT OR OWNER.** Agent and Owner shall each have the right in their sole and absolute discretion to assign their rights and obligations under this Agreement to any other party. If the Property is at any time sold or otherwise conveyed to a new owner, or if Agent ceases to be the representative of Owner, Contractor agrees that this Agreement shall be deemed automatically assigned to the new owner or the new representative of Owner (as the facts may dictate) and Contractor agrees that it will be paid only from funds furnished by Owner or the new owner for obligations then due or which thereafter become due to Contractor under the Agreement. In addition to the foregoing it is understood and agreed that if this Agreement is assigned to Owner or a purchaser of the Property, then from and after the date of such assignment Agent shall be released and discharged from any and all liability under this Agreement arising after the date of

such assignment, and Owner (in the event of an assignment to it) or the purchaser of the Property (in the event of an assignment to it) shall be responsible for any and all such liability under this Agreement arising after the date of such assignment, and Contractor will not assert any prior default of Agent under this Agreement as a defense to the performance by Contractor of its obligations under this Agreement.

30. **CONTROLLING PROVISIONS.** In the event of any conflict or any inconsistency between the terms of any of the paragraphs of the Construction Contract, Construction Contract Terms, and/or the terms of any Exhibit annexed hereto, the inconsistency shall be resolved by giving precedence in the following order: (i) the Construction Contract, (ii) the Construction Contract Terms, and (iii) the Exhibits annexed hereto.

31. **NO THIRD PARTIES BENEFITED.** Nothing contained in this Agreement, either expressed or implied, is intended or should be construed to confer upon or give any person or entity, other than Agent, Owner or Contractor, or, subject to the terms of this Agreement, their successors and assigns, any rights or remedies under or by reason of this Agreement.

32. **NOTICES.** All notices and correspondence required to be given to Agent or Owner or Contractor hereunder shall be addressed as set forth on the cover page to the attention of the person indicated, if any. Any party may designate a different address for the service of notices by notice given in accordance with this Section 32. Any and all notices required, or which either party herein may desire to give to the other, shall be made in writing and shall be given by certified or registered mail, postage prepaid, return receipt requested, or by recognized overnight courier, such as Federal Express, and shall be deemed to be given on the third business day following the date of posting in a United States Post Office or branch post office or one business day after delivery to the overnight courier. Notwithstanding the foregoing, Agent or Owner may provide a notice of termination via email at Contractor's email address set forth on the cover page, as it may be updated.

33. **INSURANCE.** Contractor shall, throughout the duration of this Agreement, at its cost and expense, carry and from time to time renew, the insurance set forth on Exhibit "C" annexed hereto and made a part hereof. Contractor agrees that the provisions set forth in this Section 33 and in Exhibit "C" shall be imposed upon, assumed and performed by each of its subcontractors, if any. Certificates in customary form, evidencing that premiums for the foregoing insurance have been paid, shall be delivered by Contractor to Agent simultaneously with Contractor's execution of this Agreement and prior to Contractor performing any Work hereunder.

34. **CONFIDENTIALITY OF OWNER'S RECORDS.**

(a) Contractor acknowledges that all information disclosed by Owner or Agent to Contractor for purposes of performing the Work, or which come to the attention of Contractor during the course of performing such Work, constitutes a valuable asset of and is proprietary to Owner and/or Agent. Contractor also acknowledges that Owner, as a party in the business community, may have fiduciary

responsibilities to its tenants or customers to keep their records confidential and proprietary. Contractor shall not disclose said information or knowingly permit its employees, officers or agents to disclose said information, to any non-employee of Contractor or to any employee of Contractor not having a specific need-to-know in performing the Work authorized by Agent and Owner. Additionally, Contractor agrees that all designs, plans, reports, specifications, drawings, inventions, processes and other information or items produced by Contractor for purposes of performing the Work, will be assigned to Owner as the sole and exclusive property of Owner and Owner's assigns, nominees and successors.

(b) Contractor further agrees to instruct its employees, officers and agents not to sell, lease, assign, transfer or reveal to any organization, company or individual any of said information whether oral or written, without the prior written consent of Agent, and agrees to take all reasonable steps necessary to ensure fulfillment of this obligation.

(c) In the event that a subpoena or other legal process is served upon Contractor that in any way concerns information disclosed by Owner or Agent to Contractor, Contractor agrees to notify Agent immediately upon receipt of such subpoena or other legal process and will cooperate with Agent and/or Owner, at Owner's or Agent's expense, in any lawful effort by Owner and/or Agent to contest the legal validity of such subpoena or other legal process. This Section 34 shall survive the termination of this Agreement.

35. **CONTRACTOR REPRESENTATION AND WARRANTIES.**

(a) Contractor is aware of and familiar with the provisions of the U.S. Foreign Corrupt Practices Act, as amended, and its purposes, and any other anti-corruption law applicable in a jurisdiction in which Contractor or any party hereto may have conducted or will conduct business (herein "**Applicable Anti-Corruption Laws**"), and has not, directly or indirectly, violated any Applicable Anti-Corruption Law. Without limitation of the generality of the foregoing, neither Contractor nor any of his/her/its directors, officers, agents, employees or third parties acting on behalf of Contractor:

(i) has made or will make, directly or indirectly, any payment, loan or gift (or any offer, promise or authorization of any such payment, loan or gift), of any money or anything of value to or for the use of any Government Official under circumstances in which any of them knows or has reason to know that all or any portion of such money or thing of value has been or will be offered, given or promised, directly or indirectly, to any Government Official, for the purpose of inducing the Government official to do any act or make any decision in her/her official capacity (including a decision to fail to perform his/her/its official function) or use his/her/its influence with a government or instrumentality thereof in order to affect any act or decision of such government or instrumentality or to assist Agent in obtaining or retaining business;

(ii) has made or will make, directly or indirectly, any payment, loan or gift (or any offer, promise or authorization of any such payment, loan or gift), of money or anything of value to or for the use of any employee, agent, or representative of another company, or to any other person, under circumstances in which any of them knows or has reason to know that all or any portion of such money or thing of value has been or will be offered, given or promised, directly or indirectly, for the purpose of inducing or rewarding the Improper Performance of any public function or business activity; or

(iii) has received or will agree to receive, directly or indirectly, any payment, loan or gift (or any offer or promise of any such payment, loan or gift), of any money or anything of value as an inducement or reward for the Improper Performance of any public function or business activity;

(b) For purposes of this Agreement, a “**Government Official**” is (a) an officer, employee or any person acting in an official capacity for or on behalf of a government, including its departments, agencies, instrumentalities, quasi- or partially-government owned or controlled entities; (b) an officer or employee of an international organization (e.g. World Bank, United Nations); (c) an officer or employee of a political party or any party official, or a candidate for political office; (d) a member of the royal or ruling family of a country; or (e) any individual who is a principal or senior manager of, or who has an immediate family or close personal relationship or business ties with, any of the foregoing individuals or entities.

(c) For purposes of this Agreement, “**Improper Performance**” means the performance or non-performance by a person of an act, or the making of a decision, in breach of an expectation or duty of good faith, impartiality, and/or trust, including for the purpose of securing an improper business advantage for Contractor.

(d) Contractor will, and will cause his/her/its directors, officers, agents, employees or third parties acting on behalf of Contractor to act in full compliance with Agent’s Global Anti-Corruption Policy, to the extent permissible under local law and to the extent Agent’s Global Anti-Corruption Policy applies to Contractor. A copy of Agent’s Global Anti-Corruption Policy shall be furnished to Contractor upon Contractor’s written request therefor.

(e) Neither Contractor nor any of his/her/its directors, officers, agents, employees or third parties acting on behalf of Contractor has a family relationship with any Government Official in the jurisdictions in which it or they will conduct business pursuant to this Agreement, except as disclosed to, and agreed to in writing, by Agent. Contractor will advise Agent promptly to the extent any such family relationship arises during the term of this Agreement, and Contractor and each of his/her/its directors, officers, agents, employees or third parties acting on behalf of Contractor will provide adequate assurances, whether in the form of a certification, a formal recusal by the relevant family member or otherwise, to satisfy Agent that no violation of Applicable Anti-Corruption Laws will arise as a result of such family relationship. Should in any instance Agent determine, reasonably and in good faith, that Contractor or any of his/her/its directors, officers, agents, employees or third parties acting on behalf of Contractor has failed to provide adequate assurances that a particular family relationship will not violate the Applicable Anti-Corruption Laws, Agent reserves the right to terminate this Agreement immediately in accordance with this Section.

(f) Contractor will use all reasonable efforts to assist and cooperate with Agent in relation to any police, judicial or regulatory investigation in relation to any suspected bribery or corruption.

(e) Contractor will, and will cause his/her/its directors, officers, agents, employees or third parties acting on behalf of Contractor to act in full compliance with Agent’s Global Vendor/Supplier Integrity Policy, to the extent permissible under local law and to the extent Agent’s Global Vendor/Supplier Integrity Policy applies to Contractor. A copy of Agent’s Global Vendor/Supplier Integrity Policy shall be furnished to Contractor upon Contractor’s written request therefor.

36. NOTIFICATION/CERTIFICATION REQUIREMENTS. Upon request, Contractor agrees that it will, and at least annually, certify the continuing accuracy of the Representations and Warranties provisions of this Agreement. Contractor further agrees that should it learn of information regarding any possible violation of applicable laws and regulations in connection with Agreement, Contractor will immediately advise Agent of such knowledge or suspicion.

37. **ANTI-MONEY LAUNDERING/ECONOMIC SANCTIONS.** Contractor has not, directly or indirectly, entered into any transaction that violates any applicable anti-money laundering law or policy, and there has been no action by any person, or any internal investigation, relating thereto. Contractor is aware of and familiar with all U.S. sanctions administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury (“**OFAC**”) and applicable international laws and regulations pertaining to the detection and, prevention, and reporting of potential money laundering and terrorist financing activities. Contractor has not conducted business with individuals, entities, organizations or countries that are targets of U.S. sanctions laws and regulations or other applicable international economic sanctions laws and regulations. Contractor has not, directly or indirectly, made funds available to any subsidiary, joint venture partner or other person or entity, for the purpose of financing the activities of any person, or in any country or territory, that, at the time of such funding, is subject to any U.S. sanctions administered by OFAC.

Neither Contractor nor any of its directors, officers, agents, employees or third parties acting on behalf of Contractor:

- i. *is listed on the Specially Designated Nationals (“SDN”) list maintained by OFAC or any other similar list maintained by the United States Department of State, Department of Commerce or any other government authority or pursuant to any Executive Order of the President;*
- ii. *have been determined to be subject to the prohibitions contained in Presidential Executive Order No. 13224;*
- iii. *has been previously indicted for or convicted of any Patriot Act Offense.*

38. **MISCELLANEOUS.**

(a) **Authority.** Each individual signing this Agreement on behalf of a legal entity represents that he or she holds the office and/or position in such legal entity respectively indicated hereinafter for him or her, and has full right and power and has been duly and legally authorized to act on behalf of such legal entity in executing and entering into this Agreement.

(b) **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be an original of this Agreement but all of which, taken together, shall constitute one and the same Agreement. Signatures transmitted by e-mail (via PDF format) shall be acceptable for purposes of execution of this Agreement.

(c) **Federal Contracts.** In the event a tenant in the Property is a federal entity, Contractor shall comply with any employment eligibility verification requirements, attached hereto as Exhibit “F”.

(d) **Cleaning Up.** The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall

remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus material from and about the Project.

(e) **Safety.** The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract. The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to employees on the Work and other persons who may be affected thereby; the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors; and other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

39. **ENTIRE AGREEMENT.** This Agreement and any Exhibits annexed hereto shall constitute the entire understanding between the parties with respect to the subject matter hereof and all prior representations or agreements, whether written or oral, are merged herein. This Agreement shall not be varied by an oral agreement or representation or by anything other than an instrument in writing of a subsequent date hereto, executed by both parties by their duly authorized representatives.

EXHIBIT “A”

Description of the Work

Project (Name, location and detailed description): [\[Click here to enter the project Name, Location, and a Detailed Description of the Work\]](#)

Commencement Date: [\[Click here to select a date\]](#)

Substantial Completion Date: [Choose one option...]

Daily Liquidated Damages Rate: \$[Rate] per day

Description of the Work:
[\[Click here to enter a description of the work\]](#)

Drawings, Plans and Specifications:

(Either list the drawings, plans and specifications here or refer to an exhibit attached to this Agreement.)

[illegible]

EXHIBIT "B"

Contract Sum and Payment Terms

Contract Sum: \$[[Click here to enter Contract Sum](#)], subject to additions and deletions as provided in the Contract Documents

Retainage, if any, shall be withheld as follows:

[[Click here to enter details pertaining to any retainage. Otherwise, enter NONE.](#)]

Payment Terms: The Contract Sum payable to Contractor hereunder shall be payable as follows: [[Choose one option...](#)]

I. PROGRESS PAYMENTS

a. Based upon the Invoice Package submitted to the Agent by the Contractor accompanied by all such documents and assurances (such as sworn statements, lien waivers and undertakings) as may be required by Owner, in order to fully protect Owner against all claims in the nature of mechanics' liens for work covered by the Invoice Package, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents. Contractor shall submit the Invoice Package (including the final Invoice Package) during the course of the Project in no event more frequently than monthly. Unless otherwise provided in the Contract Documents, amounts payable thereunder shall be due thirty (30) days after receipt of such Applications by Agent. Payment shall be based on 90% of the amount requested by Contractor and certified by Architect, with the remaining 10% to be retained until Final Completion. At Owner's discretion, retention with respect to trades whose portion of the Work is 100% completed may be released prior to Final Completion. Progress payments shall also be subject to other withholding to the extent provided for in this Agreement or elsewhere in the Contract Documents. Owner reserves the right to make direct payments to subcontractors in the amounts set forth in the Invoice Package and supporting documentation. Owner reserves the right to require title company or other institutional escrowee lien certification and review (with or without a construction escrow, and with or without title insurance) as a condition precedent to each progress payment and final payment, and Contractor agrees to cooperate with all reasonable requirements of such title company or other escrowee, including providing such financial statements and undertakings as may be required by such title company in order to issue its owner's and lender's title insurance policies without any exceptions relating to mechanic's liens arising out of this Agreement.

b. The period covered by each Invoice Package shall be one calendar month ending on the last day of the month.

c. Provided that an Invoice Package is received by the Agent not later than the last day of a month, the Owner shall make payment of the certified amount to the Contractor not later than the last day of the following month. If an Invoice Package is received by the Agent after the date fixed above, payment shall be made by the Owner not later than the last day of the month following the month in which the Agent receives the Invoice Package.

d. Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate of Six Percent (6%) per annum.

II. FINAL PAYMENT

a. Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

i. the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Section 25 of the Construction Contract Terms, and to satisfy other requirements, if any, which extend beyond final payment;

ii. the Contractor has submitted a final Invoice Package; and

iii. Other conditions precedent to final payment shall be as follows: (i) delivery of final and complete lien waivers from Contractor and all subcontractors in customary form approved by Owner; releases of any filed liens, and any and all other documents and assurances as may be required to protect Owner and lender from claims in the nature of mechanics' liens, all in the specified form acceptable or in form otherwise acceptable to Owner, lender and the construction escrowee; (ii) delivery to Owner of all Contractor's, subcontractors' and manufacturers' manuals, warranties and guaranties; (iii) delivery to Owner of a complete and reproducible set of as-built plans and specifications for the Project (at Owner's request, to be in electronic format); and (iv) issuance by the municipality of a final and unconditional certificate of occupancy for the Project. In addition to the retention provided for elsewhere in the Contract Documents, at such time as Contractor notifies Owner that final payment is due, Owner shall be entitled to inspect the premises and prepare a punchlist of all items which Owner or the Agent believes require further work by the Contractor. Owner reserves the right to withhold an amount equal to one hundred and fifty percent (150%) of the value of such punchlist work from the amount otherwise due in final payment until such work is completed to the reasonable satisfaction of Owner and Agent.

EXHIBIT "C"

Contractor Insurance Requirements

Contractor shall, throughout the duration of this Agreement, at its cost and expense, carry and from time to time renew, the insurance set forth below:

- (a) Commercial General Liability Insurance, on an occurrence basis, in a reasonable amount (but in no event less than \$1,000,000.00 per occurrence and \$2,000,000.00 annual aggregate per location) for Bodily Injury and Property Damage, on a combined single limit basis, and specifically including the following: blanket contractual liability - all oral and written contracts; premises operations liability; a separation of interests provision; products/completed operations with minimum limits of \$1,000,000 per occurrence, including a per project aggregate endorsement, explosion, collapse and underground property damage; personal injury liability; employees as additional insureds; and cross-liability coverage;
- (b) All-Risk Builder's Risk Insurance for the benefit of Owner, Contractor and subcontractors covering physical loss or damage to the Project. Coverage shall include fire, explosion, extended coverage, expediting expense and extra expense, collapse, earthquake, flood, hurricane, volcanic action and comprehensive boiler and machinery (including electrical injury and mechanical breakdown). Such insurance shall cover all work and property comprising the Project commencing with the start of work at the Project site during construction, testing and until substantial completion along with any and all materials, equipment and machinery intended for the Project site during off-site storage and inland transit. Coverage shall be written on a replacement basis for the full completed value of the Project and contain an agreed amount endorsement waiving any coinsurance penalty. There shall be no exclusion for resultant damage caused by faulty workmanship, design or materials. Such policy shall remain in full force and effect until possession and control of the Project is transferred to Owner;
- (c) Workers' Compensation insurance, in accordance with the laws of the state in which the Work is being performed, and Employers' Liability insurance with limits according to such statutory requirements or \$1,000,000 for each accident, whichever is greater;
- (d) Automobile Liability insurance to include coverage for all hired, owned and non-owned vehicles, with a combined single limit of not less than \$1,000,000; and
- (e) Umbrella liability insurance in the amount of \$5,000,000 general aggregate per location or per project, \$5,000,000 product/completed operations aggregate, including a per project aggregate endorsement, or the current limits carried by the Contractor, whichever are greater.

The above commercial general liability, automobile liability insurance and umbrella insurance policies set forth in this Exhibit B shall name as additional insureds the entities listed below. Additionally, Owner and Agent shall also be named as additional insureds or as "Loss Payees," as the case may be, under the Contractor's All-Risk Builder's insurance. All of the insurance required to be carried by the Contractor herein shall be primary and non-contributory, and any such insurance maintained by Agent and/or Owner shall be secondary and non-contributory and excess over any applicable insurance required to be maintained by Contractor hereunder. The above insurance is to be issued by insurance carriers with a minimum A.M. Best's rating of A- and licensed to provide insurance in the jurisdiction in which work is to be performed. In addition, the Contractor shall be required to procure an appropriate clause in, or endorsement on, each of the above-referenced insurance policies whereby the insurer waives subrogation or consents to waiver of the right of recovery against Owner and Agent and having obtained such clause or endorsement of waiver of subrogation or consent to waiver of a right of recovery, the Contractor will agree that it will not make any claim against or seek to recover from Owner or Agent for any loss or damage of the type covered by the insurance required to be carried by the Contractor. All insurance coverage shall apply to all locations where the insured contractor is performing services for the holder of the certificate.

Additional Insureds for General Liability, Umbrella and Auto Liability: The Contractor shall cause the commercial liability, umbrella and automobile liability coverage required by the Contract Documents to include: (1) the Owner, the Owner's Affiliates, the Agent, the Agent's Affiliates, the Architect and the Architect's Consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; (2) the Owner, the Owner's Affiliates, the Agent and the Agent's Affiliates as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations; and (3) such other additional insured as required under the property management agreement between Owner and Agent. The entities specified above to be additional insureds are:

Owner: [Owner Name]

Owner's Affiliates, if any: [Owner's Affiliates, if any. Otherwise, enter NONE.]

Agent: [Select the C&W entity on the PMA...] Inc.

Agent's Affiliates, if any: [Click here to enter Agent's Affiliates, if any. Otherwise, enter NONE.]

Other Additional Insureds, if any: [\[Click here to enter Additional Insureds, if any. Otherwise, enter NONE.\]](#)

Certificates in customary form, evidencing that premiums for the foregoing insurance have been paid, shall be delivered by Contractor to Agent simultaneously with Contractor's execution of this Agreement and prior to Contractor performing any Work hereunder. Within thirty (30) days prior to expiration of such insurance similar updated certificates shall be delivered by Contractor to Agent evidencing the renewal of such insurance, together with evidence of the payment of the premium. All certificates of insurance must contain a definite provision that if the policies of insurance evidenced by such certificates are canceled or changed during the periods of coverage as stated therein, in such a manner as to effect the coverage afforded by such policies, written notice will be mailed to Agent and Owner by certified mail and return receipt requested at least thirty (30) days prior to such cancellation or change.

EXHIBIT "D"

Contractor Certification Affidavit

Work: [Click here to enter project description](#)

Property: [Click here to enter premise address](#)

Contractor: [Click here to enter Contractor's Name](#)

The undersigned, _____ ("**Contractor's Representative**"), has reviewed the Form I-9s for the employee(s) of [Click here to enter Contractor's Name](#) ("**Contractor**") identified as to those who are or will be performing the above referenced work ("**Work**") at the above referenced property ("**Property**") pursuant to that certain Construction Contract dated [Click here to enter a date](#), ("**Agreement**") between Owner, by Agent as agent for Owner, and Contractor. Such review has been conducted pursuant to and in accordance with this Agreement. In connection with such review, the undersigned has reviewed copies of employment eligibility and identity documentation for each such individual to the extent required to be maintained pursuant to the Agreement or otherwise maintained by the Contractor in accordance with its policies and in accordance with applicable Federal, State and local law.

The undersigned hereby certifies that the Contractor has verified the employment eligibility and identity of the individuals who will or are performing work on the Work pursuant to Form I-9 requirements, has correctly completed the relevant sections of the Form I-9s for such individuals (and to the extent that any violations are discovered that are of a nature that, in the undersigned's reasonable judgment, are eligible for cure, such violations have been corrected to the extent possible), has enrolled in E-verify, or similar program, and verified all new hires through E-verify, or similar program, hired after the date of this certification and all employees assigned to the Work (if required by Federal laws pertaining to federal contracts and subcontracts) and is in compliance with all applicable Federal, State and local Immigration Laws (as defined in the Agreement) with respect to such individuals.

This Certification may be delivered to and relied upon by Owner and/or Agent.

Certified by the undersigned as true, correct and complete this _____ day of _____, 20____.

By: _____

Name: _____

Title: _____

STATE OF _____)

COUNTY OF _____)ss.
_____)

On this ____ day of _____, 20____, before me appeared _____ to me personally known, who, being by me duly sworn, acknowledged the signing of this document to be of his/her free act as an agent of the Contractor and that he/she executed the same for the purposes therein stated.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

Notary Public in and for said
County and State

My commission expires:

Type or Print Name

EXHIBIT “E”

Building Rules and Regulations

[Attach Building Rules and Regulations]

[ATTACH ONLY IF REQUIRED BY A FEDERAL CONTRACT]

EXHIBIT "F"

Contract Clauses Required Under Certain Federal Contracts

Employment Eligibility Verification (Jan 2009)

(a) Definitions. As used in this clause-

Commercially available off-the-shelf (COTS) item--

(1) Means any item of supply that is--

(i) A commercial item (as defined in paragraph (1) of the definition at 2.101);

(ii) Sold in substantial quantities in the commercial marketplace; and

(iii) Offered to the Government, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in section 3 of the Shipping Act of 1984 (46 U.S.C. App. 1702), such as agricultural products and petroleum products. Per 46 CFR 525.1(c)(2), "bulk cargo" means cargo that is loaded and carried in bulk onboard ship without mark or count, in a loose unpackaged form, having homogenous characteristics. Bulk cargo loaded into intermodal equipment, except LASH or Seabee barges, is subject to mark and count and, therefore, ceases to be bulk cargo.

Employee assigned to the contract means an employee who was hired after November 6, 1986, who is directly performing work, in the United States, under a contract that is required to include the clause prescribed at 22.1803.

An employee is not considered to be directly performing work under a contract if the employee--

(i) Normally performs support work, such as indirect or overhead functions; and

(ii) Does not perform any substantial duties applicable to the contract.

Subcontract means any contract, as defined in 2.101, entered into by a subcontractor to furnish supplies or services for performance of a prime contract or a subcontract. It includes but is not limited to purchase orders, and changes and modifications to purchase orders.

subcontractor means any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime Contractor or another subcontractor.

United States, as defined in 8 U.S.C. 1101(a)(38), means the 50 States, the District of Columbia, Puerto Rico, Guam, and the U.S. Virgin Islands.

(b) Enrollment and verification requirements.

(1) If the Contractor is not enrolled as a Federal Contractor in E-Verify at time of contract award, the Contractor shall--

(i) Enroll. Enroll as a Federal Contractor in the E-Verify program within 30 calendar days of contract award;

(ii) Verify all new employees. Within 90 calendar days of enrollment in the E-Verify program, begin to use E-Verify to initiate verification of employment eligibility of all new hires of the Contractor, who are

working in the United States, whether or not assigned to the contract, within 3 business days after the date of hire (but see paragraph (b)(3) of this section); and

(iii) Verify employees assigned to the contract. For each employee assigned to the contract, initiate verification within 90 calendar days after date of enrollment or within 30 calendar days of the employee's assignment to the contract, whichever date is later (but see paragraph (b)(4) of this section).

(2) If the Contractor is enrolled as a Federal Contractor in E-Verify at time of contract award, the Contractor shall use E-Verify to initiate verification of employment eligibility of--

(i) All new employees. (A) Enrolled 90 calendar days or more. The Contractor shall initiate verification of all new hires of the Contractor, who are working in the United States, whether or not assigned to the contract, within 3 business days after the date of hire (but see paragraph (b)(3) of this section); or (B) Enrolled less than 90 calendar days. Within 90 calendar days after enrollment as a Federal Contractor in E-Verify, the Contractor shall initiate verification of all new hires of the Contractor, who are working in the United States, whether or not assigned to the contract, within 3 business days after the date of hire (but see paragraph (b)(3) of this section); or

(ii) Employees assigned to the contract. For each employee assigned to the contract, the Contractor shall initiate verification within 90 calendar days after date of contract award or within 30 days after assignment to the contract, whichever date is later (but see paragraph (b)(4) of this section).

(3) If the Contractor is an institution of higher education (as defined at 20 U.S.C. 1001(a)); a State or local government or the government of a Federally recognized Indian tribe; or a surety performing under a takeover agreement entered into with a Federal agency pursuant to a performance bond, the Contractor may choose to verify only employees assigned to the contract, whether existing employees or new hires. The Contractor shall follow the applicable verification requirements at (b)(1) or (b)(2), respectively, except that any requirement for verification of new employees applies only to new employees assigned to the contract.

(4) Option to verify employment eligibility of all employees. The Contractor may elect to verify all existing employees hired after November 6, 1986, rather than just those employees assigned to the contract. The Contractor shall initiate verification for each existing employee working in the United States who was hired after November 6, 1986, within 180 calendar days of—

(i) Enrollment in the E-Verify program; or

(ii) Notification to E-Verify Operations of the Contractor's decision to exercise this option, using the contact information provided in the E-Verify program Memorandum of Understanding (MOU).

(5) The Contractor shall comply, for the period of performance of this contract, with the requirements of the E-Verify program MOU.

(i) The Department of Homeland Security (DHS) or the Social Security Administration (SSA) may terminate the Contractor's MOU and deny access to the E-Verify system in accordance with the terms of the MOU. In such case, the Contractor will be referred to a suspension or debarment official.

(ii) During the period between termination of the MOU and a decision by the suspension or debarment official whether to suspend or debar, the Contractor is excused from its obligations under paragraph (b) of this clause. If the suspension or debarment official determines not to suspend or debar the Contractor, then the Contractor must reenroll in E-Verify.

(c) Web site. Information on registration for and use of the E-Verify program can be obtained via the Internet at the Department of Homeland Security Web site: <http://www.dhs.gov/E-Verify>.

(d) Individuals previously verified. The Contractor is not required by this clause to perform additional employment verification using E-Verify for any employee--

(1) Whose employment eligibility was previously verified by the Contractor through the E-Verify program;

(2) Who has been granted and holds an active U.S. Government security clearance for access to confidential, secret, or top secret information in accordance with the National Industrial Security Program Operating Manual; or

(3) Who has undergone a completed background investigation and been issued credentials pursuant to Homeland Security Presidential Directive (HSPD)-12, Policy for a Common Identification Standard for Federal Employees and Contractors.

(e) Subcontracts. The Contractor shall include the requirements of this clause, including this paragraph (e) (appropriately modified for identification of the parties), in each subcontract that--

(1) Is for--

(i) Commercial or noncommercial services (except for commercial services that are part of the purchase of a COTS item (or an item that would be a COTS item, but for minor modifications), performed by the COTS provider, and are normally provided for that COTS item); or

(ii) Construction;

(2) Has a value of more than \$3,000; and

(3) Includes work performed in the United States.