ICIP AND EMPIRE ZONE CONTRACT CLAUSES

Contractor understands that Con Edison is applying for tax incentives under New York City’s Industrial and Commercial Incentive Program (ICIP) and that compliance with the ICIP requirements as pertains to this construction project is a material requirement of this contract.

Contractor further understands that commencement of any on site related work without the requisite building permits will jeopardize Con Edison’s eligibility for ICIP benefits. Accordingly, Contractor shall not commence or allow its subcontractors to commence any construction work at the project site, including, but not limited to demolition, excavation, placement of construction equipment, and grading without receiving a written “Notice To Proceed” from Con Edison. Any on-site construction work commenced by Contractor or any of its Subcontractors prior to receipt of the Notice To Proceed shall be deemed unauthorized and outside the scope of this contract and Contractor shall reimburse Con Edison for the value of any ICIP property tax exemption which is disallowed as a direct result of construction work being performed prior to the issuance of a required work permit.

Contractor shall comply and shall require its subcontractors to comply with all equal employment opportunity and trainee programs under the New York City ICIP, as set forth in Appendix A, annexed hereto, the terms of which are incorporated by reference into this contract.

EMPIRE ZONE SALES TAX REFUND CLAUSES

The sales tax incentive available in an Empire Zone (EZ) is a credit or refund of the New York State portion of the sales or use tax paid on tangible personal property that is incorporated into a qualifying commercial or industrial structure being constructed, expanded, or rehabilitated within an Empire Zone. The person who is eligible to claim a refund or credit for sales tax paid is the person who, under the Tax Law, has the liability for payment of the sales tax due on the purchase of the tangible personal property. Thus, in the event that it is confirmed that the capital project which is the subject of this contract is located within an Empire Zone, the Contractor agrees to file a sales tax refund claim and remit all refunded sales taxes to Con Edison and to require its subcontractors to do the same.
APPENDIX A

New York City Industrial and Commercial Incentive Program (“ICIP”)

1. **ICIP Compliance Generally:** To assist Con Edison in obtaining tax benefits under the New York City Industrial and Commercial Incentive Program (“ICIP”), set forth at Sections 489-aaaa, et seq. of the New York Real Property Tax Law, Contractor agrees to comply with the requirements of Chapter 14 of Title 19 of the Rules of the City of New York (the “Rules”) in general and section 14-71 of the Rules (“Equal Employment Opportunity and Trainee Programs”) in particular, under the direction of Con Edison or Con Edison’s representative. This shall include complying with the ICIP equal employment opportunity and trainee requirements set forth herein.

2. The Contractor understands that this contract shall not be awarded until at least 15 business days after the date that the Contractor has delivered a completed Employment Report to the City of New York Department of Small Business Services, Division of Labor Services (“DLS”). Furthermore, this contract shall not be awarded if, within 15 business days after the date of receipt of the Contractor’s Employment Report, the DLS gives written notice that the Employment Report is incomplete or that the DLS’s analysis of the Contractor’s workforce for the project indicates underutilization along with employment policies and apparent practices which diminish equal employment opportunity or fail to project enough trainees.

3. The Contractor represents that it has submitted an Employment Report with the DLS and that it has attended a pre-award conference at the DLS. The Contractor further represents that it has secured a written Certificate of Approval from the DLS which provides that the Contractor has meet the equal employment opportunity
requirements of the City of New York (A certified copy of the DLS Certificate of Approval is attached hereto).

4. The Contractor shall provide to Con Edison each month during the performance of the Work a written report in a form acceptable to Con Edison setting forth in specificity the status of Contractor’s and its subcontractors’ compliance with the labor requirements of the ICIP, together with copies of any reports, letters or other documents given or received by Contractor in connection with the ICIP. After the Contractor has completed its construction work, the DLS will make a final review and evaluation of the records submitted by the Contractor and subcontractors to determine compliance with the requirements of Rule 14-71. The DLS will then provide a written determination as to whether Con Edison may make a final payment to the Contractor. Thus, Con Edison shall withhold a total of 5% (5 per cent) of the contract price pending the presentation to Con Edison of a written determination by the DLS of compliance by Contractor and its subcontractors with the requirements of Rule 14-71.

5. **ICIP Equal Employment Opportunity Requirement.** Contractor agrees that during its performance of the Work, Contractor and its Subcontractors:

   (i) will not discriminate against any employee or applicant for employment on the basis of race, color, creed, national origin, sex, age, disability, marital status, sexual orientation or citizenship status with respect to all employment decisions, including, but not limited to, recruitment, hiring, upgrading, demotion, downgrading, transfer, training, rates of pay or other forms of compensation, layoff, termination, and all other terms and conditions of employment in connection with any work on the project;
(ii) will not discriminate in the selection of contractors and subcontractors on the basis of any owner’s, partner’s, associate’s or shareholder’s race, color, creed, national origin, sex, age, disability, marital status, sexual orientation or citizenship status in connection with any work on the project;

(iii) will state in all solicitations or advertisements for employees placed by it or on its behalf in connection with any work on the project, that all qualified applicants will receive consideration for employment without regard to race, color, creed, national origin, sex, age, disability, marital status, sexual orientation or citizenship status, or that they are equal opportunity employers;

(iv) will send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or memorandum of understanding, written notification of their equal employment opportunity commitments in connection with any work on the project;

(v) will not award contracts or commence work until the submission of a completed employment report to the DLS and until the DLS approves or fails to respond within fifteen (15) Business Days of receipt of a completed employment report.

(vi) will permit the DLS access to the Project Site and to all books, records and will file certified payroll records, including computer tapes, as required by the DLS.

(vii) will not engage in moving employees from one job site to another in order to create the appearance of compliance with the regulations or other applicable law, regulation or executive order designed to ensure equal employment opportunity;

(viii) will submit to the jurisdiction of the DLS for the purpose of determining compliance with these representations and will cooperate with the DLS in attempting to
cure any instances of noncompliance with the equal employment opportunity
requirements of Executive Order No. 50 which the DLS may find in connection with any
work on the project;

(ix) will terminate, suspend, cause to be terminated or suspended, or not award
any contracts or subcontract entered into in connection with the project described in the
application with any contractor or subcontractor found by the DLS or the New York City
Department of Finance (“Department”) to be in violation of any provision of these
representations;

(x) will include or cause to be included in all contracts for $1,000,000 or
more or subcontracts for $750,000 or more, entered into in connection with the project,
the following provisions: In consideration for and as a condition of this contract, the
contractor or subcontractor agrees that during its performance it: (this paragraph shall be
followed by subparagraphs 5(i) – 5(xiii) herein in their entirety; see subparagraphs (2)(i)
through xiii of Section 14-71(c) of the Rules). Further, in consideration for and as a
condition of this contract, the contractor or subcontractor agrees that during its
performance it: (this paragraph shall be followed by subparagraphs 6(i) through 6 (viii)
herein in their entirety; see subparagraphs (1)(i) through (1)(v), and paragraphs (2) and
(3) of Section 14-71(d) of the Rules)

(xi) will complete any hearings commenced by the Director of the DLS and
comply with any direction of the Department, whether benefits have been granted or not;
and

(xii) will comply with any direction of the Department made pursuant to
14-71(r) of the regulations, including a direction:
(a) to terminate, suspend, cause to be terminated or suspended, or not award any contract for an amount in excess of $750,000 between the applicant and a contractor or between contractors and subcontractors upon a finding that the contractor has failed to comply with the terms of this application or has failed to conciliate with the DLS;

(b) to pay to the Department, applicant or contractor, an amount equal to 3% of the highest estimate of construction costs or actual construction costs of the noncomplying contractor or subcontractor, upon a finding that the contractor or subcontractor has failed to comply or to make a good faith effort to comply with the requirements of this section or with any direction of the Department or the DLS provided that such payment shall be credited against any payment directed under the immediately following subparagraph (Rule 14-71(c)(2)(xii)(C));

(c) to pay to the Department, Con Edison or contractor, an amount equal to 5% of the highest estimate of construction costs or actual construction costs of the noncomplying contractor or subcontractor upon a finding that the contractor or subcontractor has willfully disregarded and/or willfully failed to comply with the requirements of this section or with any direction of the Department or the Office;

(d) to pay to the Department an amount equal to 5% of the highest estimate of construction costs as set forth in this application, or 5% of actual construction costs, if known, upon a finding that the applicant has failed to comply or to make a good faith effort to comply with the requirements of this section or with any direct of the Department or the Office;

(e) not to file for a period of five years any application, and to forego benefits under the instant application, upon a finding that the applicant has willfully disregarded
and/or willfully failed to comply with the requirements of this section or with any
direction of the Department of the Office; and

(f) to implement an employment program of corrective actions imposed by the
Director of the DLS;

(xiii) understands, and will cause their contractors and subcontractors to
understand, that in the event of their noncompliance with the nondiscrimination clauses
of this application or contract or with Executive Order No. 50 or the rules, regulations or
orders promulgated thereunder, such noncompliance shall constitute a material breach of
the contractor or application and noncompliance with such rule, regulation or order and
with Executive Order No. 50.

6. **ICIP Trainee Programs:** Further, in consideration for and as a condition of
the contract, the contractor agrees that during its performance it:

(i) will employ trainees for training level jobs and participate in on-the-job
training programs which have been approved by the DLS, in the event that the
construction work which it undertakes in connection with this project should employ four
or more journey-level employees in a particular trade for at least four consecutive weeks,
as such terms are defined by the prevailing practice in the industry. The contractor shall
be considered to employ four journey-level employees in a particular trade when it
employs any number of journey-level employees in a that trade whose aggregate work
hours equal the number of hours that four full-time journey-level employees would have
worked in a work week, as such terms are defined by the prevailing practice in the
industry for the particular trade;
(ii) will make a good faith effort to achieve a ratio of at least one trainee to four journey-level employees for each trade on the project. “Good faith efforts” shall mean--

(a) Documented efforts to secure trainees from training programs approved by the DLS;

(b) Documented efforts through the New York State Department of Employment, Training Assistance Plan Centers and community and civil rights groups to identify candidates for training positions and to sponsor these persons for entrance into approved training programs; and

(c) written notification to the DLS by certified mail in the event of an inability to secure trainees pursuant to the two immediately two preceding subparagraphs (Rule 14-71 (d)(1)(ii)(A) and (B)) and requesting the DLS’s assistance in securing trainees. Neither the provisions of any collective bargaining agreement nor the refusal by a union with whom the contractor has a collective bargaining agreement to recognize the validity of the training program shall excuse the contractor’s obligation to provide training pursuant to these regulations;

iii. will attempt to provide continuous employment for trainees after completion of the construction being undertaken in order to enable them to complete their course of training;

iv. will refer, recommend and sponsor, if union affiliated, any of its trainees for union membership who can perform the duties of a qualified journey-level employee or who have satisfactorily completed the training program; and assure that such former trainees will receive journey-level wage and fringe benefits, whether or not union
membership is granted after such referral, recommendation or sponsorship and that their employment shall be continued if possible;

v. will supply the DLS with such additional information and reports as it may require; permit the DLS access to the project site and to its books, records and accounts and otherwise cooperate with and submit to the jurisdiction of the DLS for the purpose of ensuring compliance with these provisions and curing any instances of noncompliance with these provisions which the DLS may find;

vi. will require or cause all covered prime contractors and subcontractors to include in all contracts of $1,000,000 or more or subcontracts of $750,000 or more on the project, the representations and agreements contained in Rules 14-71 (d)(1)(i) through (v), and Rules 14-71 (d) (2) and (3) (These provisions are provided for herein in their entirety as subparagraphs 6(i) through 6(vii);

vii. will require or cause all subcontractors under contracts of less than $750,000 to prepare and file a “less that $750,000 subcontractor” certificate on the appropriate form of the DLS. Will also require any subcontractor who, due to change orders, reaches $750,000 to submit an employment report to DLS. If a subcontractor does not submit an employment report the applicant will be found in noncompliance and the Department of Finance will be notified to impose sanctions;

viii. will pay to New York City, in the event of its own or its contractor’s failure to provide training, where applicable, pursuant to the regulations, to the required number of trainees for the required number of weeks, an amount equal to the difference between the wages and fringe benefits paid to the trainees and the wages and fringe benefits which would have been paid to first term trainees under the prevailing wage schedule in effect.
at the time the trainees would have been employed had the number and duration of the positions been as required, unless the contractor or applicants or their successors, where applicable, can demonstrate through the submission of written documentation as described in 14-71(d)(1)(ii) of the Rules within thirty (30) days of the DLS’s notification of a training deficit that it made a good faith effort to provide training and was unsuccessful;