



Certified:

B-9-21

Filed with the Clerk of the
Nassau County
Legislature April 2, 2021
10:46am

NIFS ID:H35132-01G

Department: Public Works

Capital: X

SERVICE: GOSR FiveTowns:Drain Lawrence Pipe Imp-H35132-01G-B9-21

Contract ID #:H35132-01G

NIFS Entry Date:

Term: from to

New
Time Extension:
Addl. Funds:
Blanket Resolution:
RES#

1) Mandated Program:	N
2) Comptroller Approval Form Attached:	Y
3) CSEA Agmt. § 32 Compliance Attached:	Y
4) Material Adverse Information Identified? (if yes, attach memo):	Y
5) Insurance Required	Y

Vendor Info:	
Name: Triumph Construction Corp.	Vendor ID#: [REDACTED]
Address: 1354 Seneca Ave Bronx NY 110474	Contact Person [REDACTED] [REDACTED]
	Phone: [REDACTED]

Department:
Contact Name: Joseph Cuomo
Address: Nassau County DPW 1194 Prospect Ave. Westbury, NY 11580
Phone: 516-571-9489

Routing Slip

Department	NIFS Entry: X	22-MAR-21 -- KARNOLD
Department	NIFS Approval: X	22-MAR-21 -- KARNOLD
DPW	Capital Fund Approved: X	22-MAR-21 -- KARNOLD
OMB	NIFA Approval: X	22-MAR-21 -- CNOLAN
OMB	NIFS Approval: X	22-MAR-21 -- NGUMIENIAK
County Atty.	Insurance Verification: X	23-MAR-21 -- DGREGWARE
County Atty.	Approval to Form: X	23-MAR-21 -- DGREGWARE
CPO	Approval: X	29-MAR-21 -- KOHAGEN

DCEC	Approval: X	29-MAR-21 -- JCHIARA
Dep. CE	Approval: X	30-MAR-21 -- BSCHNEIDER
Leg. Affairs	Approval/Review: X	30-MAR-21 -- JSCHANTZ
Legislature	Approval:	
Comptroller	Deputy:	
NIFA	NIFA Approval:	

Contract Summary

Purpose: This contract is for construction services to install check valves & increase the diameter of pipes along Meadow Ln, Marbridge Rd. Causeway Rd. North Rd. and Barrett Rd. in Lawrence. The project will include all work needed to remediate flooding at the intersection of Meadow Lane and Marbridge Road, as well as on Margaret Avenue in the vicinity of Kenridge Road.
Method of Procurement: Requested for sealed bids on 10/28/20. Five bids received, Triumph was the lowest responsible bidder
Procurement History: Bid was advertised in Newsday, NYSCR, Nassau County eProcure. Bid was published on GOSR website on December 2, 2020. NCDPW issued a bid due on January 5, 2021 for the GOSR Lawrence Pipe Improvements. 5 bids were submitted, Triumph Construction Corporation was the lowest responsible bidder.
Description of General Provisions: Work to be done includes the installation check valves and increase the diameter of pipes along Meadow Ln, Marbridge Rd. Causeway Rd. North Rd. and Barrett Rd.
Impact on Funding / Price Analysis: Maximum is \$9,181,765.00. GOSR funded portion is \$6,383,529.00 the remainder will be funded by County capital project 35132. The MWBE utilization rate is 14%.
Change in Contract from Prior Procurement: N/A
Recommendation: (approve as submitted) Approve as Submitted

Advisement Information

BUDGET CODES		FUNDING SOURCE	AMOUNT	LINE	INDEX/OBJECT CODE	AMOUNT
Fund:	CAP					
Control:	35	Revenue		01	PWCAPCAP/35132/00004	\$ 9,181,765.00
Resp:	132	Contract:				\$ 0.00
Object:	00004	County	\$ 0.00			\$ 0.00
Transaction:		Federal	\$ 0.00			\$ 0.00
Project #:	35132	State	\$ 0.00			\$ 0.00
Detail:	000	Capital	\$ 9,181,765.00			\$ 0.00
		Other	\$ 0.00			\$ 0.00
		TOTAL	\$ 9,181,765.00		TOTAL	\$ 9,181,765.00

RENEWAL	
% Increase	
% Decrease	

RULES RESOLUTION NO. -2021

A RESOLUTION AUTHORIZING THE COUNTY EXECUTIVE TO AWARD AND EXECUTE A CONTRACT BETWEEN THE COUNTY OF NASSAU ACTING ON BEHALF OF THE NASSAU COUNTY DEPARTMENT OF PUBLIC WORKS AND TRIUMPH CONSTRUCTION CORP.

WHEREAS, in accordance with all Federal, State and Local Law, the County of Nassau on behalf of the NASSAU COUNTY DEPARTMENT OF PUBLIC WORKS [“Department”] has received competitive bids for contract H35132-01G, for GOSR FIVE TOWNS DRAINAGE IMPROVEMENTS: LAWRENCE PIPE IMPROVEMENTS – NASSAU COUNTY, NY [“Contract”], as more particularly described in the contract documents, a copy of which are on file with the Clerk of the Legislature; and

WHEREAS, the firm of TRIUMPH CONSTRUCTION CORP.

[“Vendor”] has submitted the lowest responsible bid for the work described in the contract in accordance with all Federal, State and Local Law as determined by the Department, and

WHEREAS, the funding for this contract is from capital funds approved by the Nassau County Legislature and included in the current four year capital plan, and

WHEREAS, the Commissioner of the Department is representing that the total contract is estimated to be \$ 9,181,765 , now therefore be it

RESOLVED, that the Rules Committee of the Nassau County Legislature,
based on the representations of the Department and the recommendation of the
Commissioner of the Department, authorizes the County Executive to award and execute
the said contract with the vendor.



Contract Approval Request Form (As of January 1, 2015)

1. **Vendor:** Triumph Construction Corp.

2. **Dollar amount requiring NIFA approval:** \$9181765

Amount to be encumbered: \$9181765

This is a New

If new contract - \$ amount should be full amount of contract

If advisement ?NIFA only needs to review if it is increasing funds above the amount previously approved by NIFA

If amendment - \$ amount should be full amount of amendment only

3. **Contract Term: One year from NTP**

Has work or services on this contract commenced? N ____

If yes, please explain:

4. **Funding Source:**

General Fund (GEN)

X Capital Improvement Fund (CAP)

Other

Grant Fund (GRT)

Federal % 0

State % 70

County % 30

Is the cash available for the full amount of the contract?

N

If not, will it require a future borrowing?

Y

Has the County Legislature approved the borrowing?

N

Has NIFA approved the borrowing for this contract?

N

5. **Provide a brief description (4 to 5 sentences) of the item for which this approval is requested:**

This contract is for construction services to install check valves & increase the diameter of pipes along Meadow Ln, Marbridge Rd. Causeway Rd. North Rd. and Barrett Rd. New Inlet structures. The base bid will include all work needed to remediate flooding at the intersection of Meadow Lane and Marbridge Road, as well as on Margaret Avenue in the vicinity of Kenridge Road.

6. **Has the item requested herein followed all proper procedures and thereby approved by the:**

Nassau County Attorney as to form Y

Nassau County Committee and/or Legislature

Date of approval(s) and citation to the resolution where approval for this item was provided:

7. **Identify all contracts (with dollar amounts) with this or an affiliated party within the prior 12 months:**

Contract ID	Date	Amount

AUTHORIZATION

To the best of my knowledge, I hereby certify that the information contained in this Contract Approval Request Form and any additional information submitted in connection with this request is true and accurate and that all expenditures that will be made in reliance on this authorization are in conformance with the Nassau County Approved Budget and not in conflict with the Nassau County Multi-Year Financial Plan. I understand that NIFA will rely upon this information in its official deliberations.

CNOLAN

22-MAR-21

Authenticated User

Date

COMPTROLLER'S OFFICE

To the best of my knowledge, I hereby certify that the information listed is true and accurate and is in conformance with the Nassau County Approved Budget and not in conflict with the Nassau County Multi-Year Financial Plan.

Regarding funding, please check the correct response:

☐ I certify that the funds are available to be encumbered pending NIFA approval of this contract.

If this is a capital project:

I certify that the bonding for this contract has been approved by NIFA.

Budget is available and funds have been encumbered but the project requires NIFA bonding authorization

Authenticated User

Date

NIFA

Amount being approved by NIFA:

Payment is not guaranteed for any work commenced prior to this approval.

Authenticated User

Date

NOTE: All contract submissions MUST include the County's own routing slip, current NIFS printouts for all relevant accounts and relevant Nassau County Legislature communication documents and relevant supplemental information pertaining to the item requested herein.

NIFA Contract Approval Request Form MUST be filled out in its entirety before being submitted to NIFA for review.

NIFA reserves the right to request additional information as needed.

FORM OF BID BOND

IMPORTANT The bidder shall instruct the Surety Company to **USE THIS FORM PROVIDED** as the use of **ANY OTHER FORM** may cause rejection of the bid.

KNOW ALL MEN BY THESE PRESENTS,

that we, the undersigned Triumph Construction Corp.

as Principal; and Liberty Mutual Insurance Company as surety, who is Licensed to do business in the State of New York, are hereby firmly bound unto the County of Nassau in the penal sum of

Ten Percent of the Amount Bid dollars (\$ 10%) for the payment of which, well and truly to be made, we hereby jointly and severally bind ourselves, our heirs, executors, administrators, successors and assigns.

Signed, this 15th day of December, 2020

The conditions of the above obligation is such that whereas the Principal has submitted to the County of Nassau a certain Bid attached hereto and hereby made a part hereof, to enter into a contract in writing for the work under Contract No. H35132-01G for the

GOSR Five Towns Drainage Improvements: Lawrence Pipe Improvements, Nassau County

NOW, THEREFORE, the conditions of this obligation are such that if the Principal shall not withdraw said proposal except by mutual consent of the County of Nassau within a period of forty-five (45) days after the opening of bids and in the event of acceptance of the Principal's proposal, if the Principal shall,

- a. when notified by the County, execute all necessary counterparts of the contract as set forth in the contract documents in accordance with the proposal as accepted; and
- b. furnish bonds and other security as specified in the contract documents for the faithful performance and proper fulfillment of such contract, which bonds or other security shall be satisfactory in all respects to the County; and
- c. in all respects, comply with the provisions set forth in the invitation to bid; or if the County of Nassau shall reject the aforesaid proposal for a reason other than the Principal's failure to satisfy the County that he has the necessary skill, experience and liquid assets required for the contract as stated in the documents aforesaid, then this obligation shall be null and void; otherwise to remain in full force and effect.

Provided, however, that this bond is subject to the following additional conditions and limitations.

a. In the event that the Principal fails to submit a financial statement when required by the County or in the event that an examination of the Principal indicates to the County that the Principal does not meet the financial requirements required by the County, the undersigned will, upon demand, pay to the County of Nassau, as liquidated damages for the Principal's failure to meet such requirements, a sum equal to the amount that would have been required by a certified check if the same were delivered in accordance with the provisions of the contract documents and specifications herein stated.

b. In case the Principal shall default in the performance of any provision the undersigned will upon demand pay to the County of Nassau the full amount of the damages sustained by the County of Nassau by reason of such default, except however, it is expressly understood and agreed that the liability of the surety for any and all claims hereunder shall in no event exceed the amount of this obligation as herein stated.

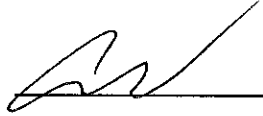
The Surety, for value received, hereby stipulates and agrees that the obligation of said Surety and its bond shall be in no way impaired or affected by any extension of time within which the County of Nassau may accept such Bid; and said Surety does hereby waive notice of any such extension.

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

Triumph Construction Corp.

Contractor

by



(L.S.)

(Corporate seal of
Contractor
Title if a corporation)

by

(L.S.)

Title

by

(L.S.)

Title

Liberty Mutual Insurance Company

Surety

by

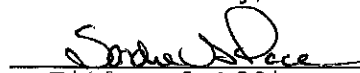


(L.S.)

Title of Officer

Marc J. Michalewsky, Attorney-in-Fact

Attest:



(L.S.)

Title of Officer

Sandra A. Pace, Witness as to Surety

(Corporate seal
of Surety)

(Acknowledgment by Contractor if a corporation)

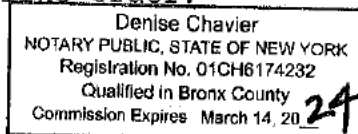
STATE OF NEW YORK)

ss.:

COUNTY OF BRONX)

On this 15th day of December, 2020, before me personally came CARLO LUZZI to me known, who, being [REDACTED] for himself, that he resides in [REDACTED] that he is [REDACTED] Corp.

the corporation described in, and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.



Denise Chavier
Notary Public

(Acknowledgment by Contractor if a partnership)

STATE OF _____)

ss.:

COUNTY OF _____)

On this _____ day of _____, 20____, before me personally came _____ to me known and known to me to be a member of the firm described in and which executed the foregoing bond or obligation, and he acknowledged to me that he subscribed the name of said firm thereto on behalf of said firm for the purpose therein mentioned.

Notary Public

(Acknowledgment by Contractor if an individual.)

STATE OF _____)

ss.:

COUNTY OF _____)

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

Notary Public

(Acknowledgment by Surety Company)


STATE OF New Jersey)

SS.:

COUNTY OF Union)

On this 15th day of December, 2020, before me personally came **Marc J. Michalewsky** to me Known, who being by me duly sworn, did depose and say that he resides in [REDACTED]

that he is the Attorney-in-Fact of the **Liberty Mutual Insurance Company**, the corporation described in and which executed the within instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by the order of the Board of Directors of said corporation, and that he signed his name thereto by like order; and that the liabilities of said company do not exceed its assets as ascertained in the manner provided by the laws of the State of New York, and the said **Susan A. Lojo** further said that he is acquainted with **Marc J. Michalewsky** and knows him to be the Attorney-in-Fact of said company; that the signature of the said Attorney-in-Fact subscribed to the within instrument is in the genuine handwriting of the said **Marc J. Michalewsky** and was subscribed thereto by like order of the Board of Directors, and in the presence of him, the said


Notary Public
Susan A. Lojo
NOTARY PUBLIC
State of New Jersey
My Commission Expires
November 7, 2022



This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated.

Liberty Mutual Insurance Company
The Ohio Casualty Insurance Company
West American Insurance Company

Certificate No: **8203825-969516**

POWER OF ATTORNEY

KNOWN ALL PERSONS BY THESE PRESENTS: That The Ohio Casualty Insurance Company is a corporation duly organized under the laws of the State of New Hampshire, that Liberty Mutual Insurance Company is a corporation duly organized under the laws of the State of Massachusetts, and West American Insurance Company is a corporation duly organized under the laws of the State of Indiana (herein collectively called the "Companies"), pursuant to and by authority herein set forth, does hereby name, constitute and appoint, Marc J. Michalewsky; Sandra A. Pace; Cheryl R. Coleman; Mary J. D'Amato; Rachael Hurley; Thomas M. True

all of the city of Westfield state of NJ each individually if there be more than one named, its true and lawful attorney-in-fact to make, execute, seal, acknowledge and deliver, for and on its behalf as surety and as its act and deed, any and all undertakings, bonds, recognizances and other surety obligations, in pursuance of these presents and shall be as binding upon the Companies as if they have been duly signed by the president and attested by the secretary of the Companies in their own proper persons.

IN WITNESS WHEREOF, this Power of Attorney has been subscribed by an authorized officer or official of the Companies and the corporate seals of the Companies have been affixed thereto this 2nd day of June, 2020.



Liberty Mutual Insurance Company
The Ohio Casualty Insurance Company
West American Insurance Company

By: David M. Carey
David M. Carey, Assistant Secretary

State of PENNSYLVANIA ss
County of MONTGOMERY

On this 2nd day of June, 2020 before me personally appeared David M. Carey, who acknowledged himself to be the Assistant Secretary of Liberty Mutual Insurance Company, The Ohio Casualty Company, and West American Insurance Company, and that he, as such, being authorized so to do, execute the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my notarial seal at King of Prussia, Pennsylvania, on the day and year first above written.



COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Teresa Pastella, Notary Public
Upper Merion Twp., Montgomery County
My Commission Expires March 28, 2021
Member, Pennsylvania Association of Notaries

By: Teresa Pastella
Teresa Pastella, Notary Public

This Power of Attorney is made and executed pursuant to and by authority of the following By-laws and Authorizations of The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company which resolutions are now in full force and effect reading as follows:

ARTICLE IV - OFFICERS: Section 12. Power of Attorney.

Any officer or other official of the Corporation authorized for that purpose in writing by the Chairman or the President, and subject to such limitation as the Chairman or the President may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Corporation to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Corporation by their signature and execution of any such instruments and to attach thereto the seal of the Corporation. When so executed, such instruments shall be as binding as if signed by the President and attested to by the Secretary. Any power or authority granted to any representative or attorney-in-fact under the provisions of this article may be revoked at any time by the Board, the Chairman, the President or by the officer or officers granting such power or authority.

ARTICLE XIII - Execution of Contracts: Section 5. Surety Bonds and Undertakings.

Any officer of the Company authorized for that purpose in writing by the chairman or the president, and subject to such limitations as the chairman or the president may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Company by their signature and execution of any such instruments and to attach thereto the seal of the Company. When so executed such instruments shall be as binding as if signed by the president and attested by the secretary.

Certificate of Designation - The President of the Company, acting pursuant to the Bylaws of the Company, authorizes David M. Carey, Assistant Secretary to appoint such attorneys-in-fact as may be necessary to act on behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations.

Authorization - By unanimous consent of the Company's Board of Directors, the Company consents that facsimile or mechanically reproduced signature of any assistant secretary of the Company, wherever appearing upon a certified copy of any power of attorney issued by the Company in connection with surety bonds, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

I, Renee C. Llewellyn, the undersigned, Assistant Secretary, The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company do hereby certify that the original power of attorney of which the foregoing is a full, true and correct copy of the Power of Attorney executed by said Companies, is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 15th day of December, 2020.



By: Renee C. Llewellyn
Renee C. Llewellyn, Assistant Secretary

Not valid for mortgage, note, loan, letter of credit, currency rate, interest rate or residual value guarantees.

To confirm the validity of this Power of Attorney call 1-610-832-8240 between 9:00 am and 4:30 pm EST on any business day.



LIBERTY MUTUAL INSURANCE COMPANY
FINANCIAL STATEMENT — DECEMBER 31, 2019

Assets		Liabilities	
Cash and Bank Deposits	\$778,754,989	Unearned Premiums	\$8,007,146,482
*Bonds — U.S Government	2,780,808,610	Reserve for Claims and Claims Expense	21,532,853,787
*Other Bonds	12,645,608,792	Funds Held Under Reinsurance Treaties	507,868,920
*Stocks	16,385,435,431	Reserve for Dividends to Policyholders	1,143,826
Real Estate	235,608,378	Additional Statutory Reserve	125,722,000
Agents' Balances or Uncollected Premiums	6,217,983,641	Reserve for Commissions, Taxes and	
Accrued Interest and Rents	102,273,390	Other Liabilities	4,117,460,075
Other Admitted Assets	11,957,106,292	Total	\$34,292,195,090
Total Admitted Assets	<u>\$51,103,579,52</u>	Special Surplus Funds	\$32,768,443
3		Capital Stock	10,000,075
		Paid in Surplus	10,044,978,933
		Unassigned Surplus	6,723,636,983
		Surplus to Policyholders	16,811,384,434
		Total Liabilities and Surplus	<u>\$51,103,579,524</u>



* Bonds are stated at amortized or investment value; Stocks at Association Market Values.
The foregoing financial information is taken from Liberty Mutual Insurance Company's financial statement filed with the state of Massachusetts Department of Insurance.

I, TIM MIKOLAJEWSKI, Assistant Secretary of Liberty Mutual Insurance Company, do hereby certify that the foregoing is a true, and correct statement of the Assets and Liabilities of said Corporation, as of December 31, 2019, to the best of my knowledge and belief.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Corporation at Seattle, Washington, this 27th day of March, 2020.

TAMikolajewski

Assistant Secretary

State of New York

DEPARTMENT OF FINANCIAL SERVICES

WHEREAS IT APPEARS THAT

Liberty Mutual Insurance Company

Home Office Address

Boston, Massachusetts

Organized under the Laws of

Massachusetts

has complied with the necessary requirements of or pursuant to law, it is hereby

licensed to do within this State the business of

accident and health, fire, miscellaneous property, water damage, burglary and theft, glass, boiler and machinery, elevator, animal, collision, personal injury liability, property damage liability, workers' compensation and employers' liability, fidelity and surety, credit, motor vehicle and aircraft physical damage, marine and inland marine, marine protection and indemnity and motor vehicle lessee/debtor gap insurance, as specified in paragraph(s) 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 19, 20, 21 and 26(B) of Section 1113(a) of the New York Insurance Law and also such workers' compensation insurance as may be incident to coverages contemplated under paragraphs 20 and 21 of Section 1113(a), including insurances described in the Longshoremen's and Harbor Workers' Compensation Act (Public Law No. 803, 69 Cong. as amended; 33 USC Section 901 et seq. as amended), and as authorized by Section 4102(c), insurance of every kind or description outside of the United States and reinsurance of every kind or description to the extent permitted by certified copy of its charter document on file in this Department until July 1, 2021.



**In Witness Whereof, I have hereunto set
my hand and affixed the official seal of this
Department at the City of Albany, New York, this
1st day of July, 2020**

Linda A. Lacewell
Superintendent

By

Ellen R Buxbaum
Special Deputy Superintendent

**CERTIFICATE OF SOLVENCY UNDER SECTION 1111 OF THE NEW
YORK INSURANCE LAW**

**STATE OF NEW YORK
DEPARTMENT OF FINANCIAL SERVICES**

It is hereby certified that

**Liberty Mutual Insurance Company
Of Boston Massachusetts**

a corporation organized under the laws of the State of Massachusetts and duly authorized to transact the business of insurance in this State, is qualified to become surety or guarantor on all bonds, undertakings, recognizances, guaranties and other obligations required or permitted by law; and that the said corporation is possessed of a capital and surplus including gross paid-in and contributed surplus and unassigned funds (surplus) aggregating the sum of \$16,365,330,449 (Capital \$10,000,000) as is shown by its sworn financial statement for the last quarter ending December 31, 2018 on file in this Department, prior to audit.

The said corporation cannot lawfully expose itself to loss on any one risk or hazard to an amount exceeding 10% of its surplus to policyholders, unless it shall be protected in excess of that amount in the manner provided in Section 4118 of the Insurance Law of this State.



In Witness Whereof, I have
unto set my hand and affixed
official seal of this Department
in the City of Albany, this

19th day of March 2019.

Maria T. Vullo
Superintendent

By 

**Ellen R Buxbaum
Special Deputy Superintendent**

TO BE ATTACHED TO AND FORM A PART OF BOND NO. N/A

STATE OF NEW JERSEY

COUNTY OF UNION

The undersigned, Marc J. Michalewsky, duly sworn, deposes and says: That he is the Attorney-in-Fact of Liberty Mutual Insurance Company surety on the attached bond, and that a Certificate of Solvency of the Surety, as provided for in Section 327 and Section 1111 of the Insurance Law of the State of New York that was issued by the Superintendent of Insurance of the State of New York that is part of this bond, has not been revoked and is in full force and effect.

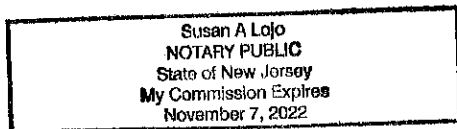
Subscribed to and sworn before me this 15th day of December 2020.

Liberty Mutual Insurance Company
Surety

By: _____

Marc J. Michalewsky, Attorney-in-Fact

Susan A. Lojo



COUNTY OF NASSAU
DEPARTMENT OF PUBLIC WORKS
WESTBURY, NEW YORK



**GOSR FIVE TOWNS DRAINAGE
IMPROVEMENTS: LAWRENCE PIPE
IMPROVEMENTS**

CONTRACT NO. H35132-01G

Laura Curran
County Executive

Kenneth G. Arnold, P.E.
Commissioner

PROPOSAL

GENERAL CONSTRUCTION

**COUNTY OF NASSAU
STATE OF NEW YORK**

PROPOSAL

FOR

GOSR FIVE TOWNS DRAINAGE IMPROVEMENTS: LAWRENCE PIPE IMPROVEMENTS

CONTRACT NO.: H35132-01G

TO THE COUNTY OF NASSAU:

Pursuant to and in compliance with your Notice to Bidders and the Instructions to Bidders relating thereto, the undersigned hereby proposes to furnish all plant, labor, materials, supplies, equipment and other facilities necessary or proper for or incidental to the above Contract, as required by and in strict accordance with the Plans and Specifications for the amount named in the Proposal hereinafter described.

In making this Proposal the Bidder hereby declares that all provisions of the Addenda which have been issued by the County of Nassau have been complied with in preparing his Bids.

Name of Bidder: **Triumph Construction Corp.**
(Individual, Firm or Corporation, as case may be)

Bidder's Address: **1354 Seneca Avenue, Bronx NY 10474**

Telephone: **718-861-6060** Date: **12/15/2020**

Fax Tel.: **718-861-6660** E-MAIL: **dcuzzi@triumphconstructionny.com**

NOTE: IF BIDDER IS A FIRM, FILL IN THE FOLLOWING BLANKS:

Name of Partners

Residence of Partners

_____	_____
_____	_____

NOTE: IF BIDDER IS A CORPORATION, FILL IN THE FOLLOWING BLANKS:

Organized under the laws of the State of: New York

Name of President: Carlo Cuzzi

President's Domicile: _____

Name of Vice President: same

Vice President's Domicile: _____

Corporate Officer: Dominick Cuzzi Title: COO

Corporate Officer's Domicile: _____

Corporate Officer: _____ Title: _____

Corporate Officer's Domicile: _____

Department of Public Works Nassau County, N.Y.

Bid Sheet for Contract: Lawrence Drainage Improvements - H35132-01G

Item No	Engineers Estimate	Item Description	Unit Price Written in words	Unit Bid Price Dollars and Cents	Amount Bid Price Dollars and Cents
1	1.00 LS	Clearing and Grubbing	For: Two hundred thousand	\$ 200,000.00	\$ 200,000.00
1M	1.00 LS	Mobilization	For: One million two hundred fifty thousand	\$ 1,250,000.00	\$ 1,250,000.00
2	860.00 CY	Unclassified Excavation	For: One hundred and thirty	\$ 130.00	\$ 111,800.00
3	23,000.00 CY	Trench, Culvert and Bridge Excavation	For: Fifty	\$ 50.00	\$ 1,150,000.00
4A	1,050.00 SY	Cement Concrete Breaking (Pavement)	For: Twenty	\$ 20.00	\$ 21,000.00
4B	105.00 CY	Cement Concrete Breaking (Structures)	For: One hundred and fifty	\$ 150.00	\$ 17,750.00
5C	3,000.00 CY	Selected Fill	For: Fifteen	\$ 15.00	\$ 45,000.00
7	3,130.00 SY	Preparing Fine Grade	For: Three	\$ 3.00	\$ 9,390.00
9	140.00 CY	Topsoil	For: Ninety	\$ 90.00	\$ 12,600.00
10A-1	26,100.00 SF	Excavation Protection System	For: Three	\$ 300	\$ 78,300.00
12-A-4-12	50.00 LF	12" Diameter Reinforced Concrete Pipe, Class IV	For: One hundred	\$ 100.00	\$ 5,000.00
12-A-4-15	100.00 LF	15" Diameter Reinforced Concrete Pipe, Class IV	For: One hundred and ten	\$ 110.00	\$ 11,000.00
12-A-4-18	160.00 LF	18" Diameter Reinforced Concrete Pipe, Class IV	For: One hundred and twenty	\$ 120.00	\$ 19,200.00
12-A-4-24	80.00 LF	24" Diameter Reinforced Concrete Pipe, Class IV	For: One hundred and thirty	\$ 130.00	\$ 10,400.00
12-A-4-36	55.00 LF	36" Diameter Reinforced Concrete Pipe, Class IV	For: Two hundred	\$ 200.00	\$ 11,000.00

Department of Public Works Nassau County, N.Y.

Bid Sheet for Contract: Lawrence Drainage Improvements - H35132-01G

Item No	Engineers Estimate	Item Description	Unit Price Written in words	Unit Bid Price Dollars and Cents	Amount Bid Price Dollars and Cents
12-A-4-48	15.00 LF	48" Diameter Reinforced Concrete Pipe, Class IV	For: Three hundred	\$ 300.00	\$ 4,500.00
12-A-4-60	4,360.00 LF	60" Diameter Reinforced Concrete Pipe, Class IV	For: Five hundred	\$ 300.00	\$ 2,180,000.00
12DIP-10	45.00 LF	Ductile Iron Culvert Pipe-10 Inch Diameter	For: One hundred and eighty	\$ 180.00	\$ 8,100.00
12DIP-16	220.00 LF	Ductile Iron Culvert Pipe 16 Inch Diameter	For: One hundred and ninety	\$ 190.00	\$ 41,800.00
12DIP-8	50.00 LF	Ductile Iron Culvert Pipe-8 Inch Diameter	For: One hundred and seventy	\$ 170.00	\$ 8,500.00
12H	180.00 LF	Cleaning Existing Drainage System	For: Twenty five	\$ 25.00	\$ 4,500.00
12S40-6	50.00 LF	Schedule 40 PVC Drain Pipe - 6" Diameter	For: Fifty	\$ 50.00	\$ 2,500.00
12S40-8	980.00 LF	Schedule 40 PVC Sanitary Sewer Pipe - 8" Diameter	For: Fifty five	\$ 55.00	\$ 53,900.00
13A	60.00 CY	Catch Basins	For: Nine hundred	\$ 900.00	\$ 54,000.00
13B	220.00 CY	Manholes	For: One thousand five hundred and ^{eighteen} eighteen	\$ 1,518.00	\$ 333,960.00
13BP-10	12.00 VLF	10' Diameter Precast Concrete Drain Manhole	For: Eight hundred and thirty	\$ 830.00	\$ 9,960.00
13BP-4	120.00 LF	Precast Manholes 4'-0 Diameter	For: Two hundred and forty	\$ 240.00	\$ 28,800.00
13BP-6	15.00 LF	Precast Manholes 6'-0 Diameter	For: Seven hundred	\$ 700.00	\$ 10,500.00
14	20.00 EACH	Connections to Existing Drainage Facilities	For: Two thousand seven hundred	\$ 2,700.00	\$ 54,000.00
15	3.00 EACH	Altering Catch Basins	For: Two thousand nine hundred	\$ 2,900.00	\$ 8,700.00
16SS-2	1.00 EACH	Change Elevation of Sanitary Sewer	For: Ten thousand	\$ 10,000.00	\$ 10,000.00

Department of Public Works Nassau County, N.Y.

Bid Sheet for Contract: Lawrence Drainage Improvements - H35132-01G

Item No	Engineers Estimate	Item Description	Unit Price Written in words	Unit Bid Price Dollars and Cents	Amount Bid Price Dollars and Cents
		Manholes (Major Adjustment)			
17A	20.00 CY	CLASS A CONCRETE FOR STRUCTURES	For: One thousand two hundred	\$ 1,200.00	\$ 24,000.00
19	400.00 CY	Screened Gravel, Loose Measure	For: Seventy five	\$ 75.00	\$ 30,000.00
22C-2	170.00 TON	Base Course Asphalt Concrete, Type Dense Base	For: One hundred and fifty eight	\$ 158.00	\$ 26,860.00
26	35.00 LF	Concrete Curb	For: Sixty	\$ 60.00	\$ 2,100.00
26CG	1,700.00 LF	Combination Concrete Curb And Gutter	For: Eighty two	\$ 82.00	\$ 139,400.00
27	6,790.00 SF	Cement Concrete Sidewalk	For: Six dollars and fifty cents	\$ 6.50	\$ 44,135.00
27DW	70.00 SF	Detectable Warning Surface	For: Thirty five	\$ 35.00	\$ 2,450.00
28	1,000.00 SF	Cement Concrete Driveways and Driveway Aprons	For: Nine	\$ 9.00	\$ 9,000.00
29	350.00 SF	Driveway Restoration	For: Ten	\$ 10.00	\$ 3,500.00
34	45,330.00 LB	Miscellaneous Metals	For: One dollar fifty cents	\$ 1.50	\$ 67,995.00
36DRAN	1,010.00 TON	Rut Avoidance Asphalt Concrete Type 1A (Top RA New Construction)	For: Two hundred	\$ 200.00	\$ 202,000.00
36DRAR	80.00 TON	Rut Avoidance Asphalt Concrete Type 1A (Top RA Resurfacing)	For: Two hundred and sixteen	\$ 216.00	\$ 17,280.00
36T	370.00 TON	Temporary Pavement	For: One hundred and eighty	\$ 180.00	\$ 66,600.00
40R	215.00 SF	Reset Existing Stone Block Pavement	For: Fifty six	\$ 56.00	\$ 12,040.00
58PRC	1,530.00 LF	Saw-cutting Existing Roadway Pavement and	For: Five	\$ 5.00	\$ 7,650.00

Department of Public Works Nassau County, N.Y.

Bid Sheet for Contract: Lawrence Drainage Improvements - H35132-01G

Item No	Engineers Estimate	Item Description	Unit Price Written in words	Unit Bid Price Dollars and Cents	Amount Bid Price Dollars and Cents
		Concrete			
61S	300.00 LF	Relocate Water Mains, Complete	For: One hundred and ninety five ^{cks}	\$ 195.00	\$ 58,500.00
63	150.00 LF	Alter Sanitary Sewer House Service Connections	For: One hundred and thirty	\$ 130.00	\$ 19,500.00
66A	5.00 CY	Reconstruct Existing Masonry Steps	For: One thousand nine hundred and fifty	\$ 1950.00	\$ 9,750.00
96	70.00 CY	Dry Rip-Rap	For: One hundred and seventy	\$ 170.00	\$ 11,900.00
98	1.00 EACH	Cofferdams	For: Two hundred fifty thousand	\$ 250,000.00	\$ 250,000.00
102	1.00 LS	Work Zone Traffic Control	For: One hundred twenty five thousand	\$ 125,000.00	\$ 125,000.00
104PA-6	250.00 LF	Polyolefin Coated Chain Link Fencing 6' High	For: Eighty	\$ 80.00	\$ 20,000.00
106P-DG	144.00 SF	Polyolefin Coated Chain Link Double Gate	For: Thirty Five	\$ 35.00	\$ 5,040.00
110	20.00 CF	Masonry Pipe Plugs	For: One hundred and forty	\$ 140.00	\$ 2,800.00
116A	935.00 SY	Profiling and Removal of Asphalt Pavement	For: Twenty eight	\$ 28.00	\$ 26,180.00
121	620.00 CY	Drybound Base Course	For: Seventy three	\$ 73.00	\$ 45,260.00
126C	110.00 LF	Reset Existing Brick Curb	For: Thirty four	\$ 34.00	\$ 3,740.00
136	1.00 LS	Survey Stakeout	For: One hundred and fifty thousand	\$ 150,000.00	\$ 150,000.00
141	11,900.00 LF	Silt Fence	For: Five	\$ 5.00	\$ 59,500.00
141C	35.00 EACH	Silt Protection For Curb Inlet Drainage Structures	For: Two hundred and eighty	\$ 280.00	\$ 9,800.00

REVISED BID SHEET

Department of Public Works Nassau County, N.Y.

Bid Sheet for Contract: Lawrence Drainage Improvements - H35132-01G

Item No	Engineers Estimate	Item Description	Unit Price Written in words	Unit Bid Price Dollars and Cents	Amount Bid Price Dollars and Cents
141SS	1.00 LS	Turbidity Curtain	For: Twenty thousand	\$ 20,000.00	\$ 20,000.00
158A	1,555.00 SF	Geotextile Cloth	For: Two	\$ 2.00	\$ 3,110.00
205SS	50.00 LF	New Bulkheading with Timber Bulkhead	For: Seven thousand	\$ 7,000.00	\$ 350,000.00
361SS-A	5.00 EA	Planting Major Deciduous Trees	For: Nine hundred and ninety	\$ 990.00	\$ 4,950.00
361SS-B	45.00 EA	Planting Minor Deciduous Trees	For: Seven hundred and eighty	\$ 780.00	\$ 35,100.00
361SS-C	400.00 EA	Planting Herbaceous Wetland Plants	For: Ninety two	\$ 92.00	\$ 36,800.00
365	9,000.00 SF	Sodding	For: Three	\$ 3.00	\$ 27,000.00
367SS	3.50 ACRE	Hydro-Seeding (Golf Course)	For: Twelve thousand five hundred	\$ 12,500.00	\$ 43,750.00
372A	6.00 EACH	Tree Removal - A - (<6" Caliper)	For: One hundred and ten	\$ 110.00	\$ 660.00
372B	34.00 EACH	TREE REMOVAL 6" - < 12" CAL	For: Two hundred and ninety	\$ 290.00	\$ 9,860.00
372C	3.00 EACH	Tree Removal - C - (12" - <24" Caliper)	For: Five hundred and eighty	\$ 580.00	\$ 1,740.00
372D	2.00 EACH	Tree Removal - D - (24" - <36" Caliper)	For: One thousand two hundred and fifty	\$ 1,250.00	\$ 2,500.00
373A	6.00 EACH	STUMP REMOVAL < 6" CAL	For: Two hundred	\$ 200.00	\$ 1,200.00
373B	34.00 EACH	Stump Removal - B - (6" - <12" Diameter)	For: Three hundred	\$ 300.00	\$ 10,200.00
373C	3.00 EACH	Stump Removal - C - (12" - <24" Diameter)	For: Four hundred and ninety five	\$ 495.00	\$ 1,485.00
373D	2.00 EACH	Stump Removal - D - (24" - <36" Diameter)	For: Five hundred and twenty five	\$ 525.00	\$ 1,050.00

Department of Public Works Nassau County, N.Y.

Bid Sheet for Contract: Lawrence Drainage Improvements - H35132-01G

Item No	Engineers Estimate	Item Description	Unit Price Written in words	Unit Bid Price Dollars and Cents	Amount Bid Price Dollars and Cents
377	20.00 EA	Temporary Wooden Tree Guards	For: Five hundred	\$ 500.00	\$ 10,000.00
442W	440.00 LF	Epoxy ReflectORIZED Pavement Markings (White)	For: Three	\$ 3.00	\$ 1,320.00
442W-1	355.00 LF	Epoxy ReflectORIZED Pavement Markings (White) For Hand Work Applications	For: Five	\$ 5.00	\$ 1,775.00
442Y	150.00 LF	Epoxy ReflectORIZED Pavement Markings (Yellow)	For: Three	\$ 3.00	\$ 450.00
512-TF-CM-60	3.00 EA	60" Diameter Pipe Check Valve	For: Sixty thousand	\$ 60,000.00	\$ 180,000.00
601SS	100.00 CY	Dredging	For: One hundred and fifty	\$ 150.00	\$ 15,000.00
630.6400 80315	365.00 LF	3'x6' Box Culvert	For: Six hundred and ninety	\$ 690.00	\$ 251,850.00
630.6400 80415	355.00 LF	4'x8' Box Culvert	For: One thousand one hundred and fifty	\$ 1,115.00	\$ 395,825.00
697.03	1.00 DC	Field Change Pavement (FCP)	For: Three hundred ten thousand	\$ 310,000.00	\$ 310,000.00
1002	2.00 LS	10' Diameter Downstream Defender	For: One hundred and twenty five thousand	\$ 125,000.00	\$ 250,000.00

Total Bid in Numbers \$ 9,181,765.00

Total Amount in Words Nine million One hundred eighty one thousand seven hundred and sixty five



NASSAU COUNTY DEPARTMENT OF PUBLIC WORKS

WICKS EXEMPT LIST OF SUBCONTRACTORS

NOTE: This form is required for "Single-Contract" projects exempt from the Wicks law. Failure to submit this form correctly may render the bidder non responsive.

CONTRACT NO. H35132-01G

Contractor's Name and Address Triumph Construction Corp. 1354 Seneca Avenue Bronx, NY 10474	Project Description (Project Title, Facility Name and Address): GOSR FIVE TOWNS DRAINAGE IMPROVEMENTS: LAWRENCE PIPE IMPROVEMENTS	Bid Date: 12/15/2020	Total Contract Amt:
------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------	-------------------------	---------------------

Federal ID No.: 13-4050635

Indicate ANY work to be self-performed by the contractor in the following categories (check all that apply):

- ☐ Plumbing and Gas Fitting
☐ Steam Heating, Hot Water Heating, Ventilating and AC Apparatus
☐ Electric Wiring and Standard Illuminating Fixtures

If ALL contract work is to be self-performed, i.e. no subcontractors will be used, please check this box ☐ skip to bottom of form, and sign it as required.

Check (✓) only one.

Subcontractor's Name, Address and Federal ID No.	Check (✓) only one.			General Description of Work	Subcontractor's Contract Amt.
	Plumbing and Gas Fitting	Steam Heating, Hot Water Heating, Ventilating and AC Apparatus	Electric Wiring and Standard Illuminating Fixtures		
TBD	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	TRUCKING, LANDSCAPING, SAWCUTTING,	
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	SURVEYING, ENGINEERING, PILES	
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		

Federal ID No.

This form must be filled out completely and legibly, signed by a company authorized representative and included in a separate, sealed envelope within the bid envelope. Use and additional page if needed.

Failure to complete this form accurately and in its entirety, may result in a non responsive bid determination.

Company Authorized Signature:

Title: PRESIDENT

Date: 12/15/2020

VENDOR PORTAL ACKNOWLEDGMENT

Vendor Name: TRIUMPH CONSTRUCTION CORP.

Contract Title: GOSR FIVE TOWNS DRAINAGE IMPROVEMENTS: LAWRENCE PIPE IMPROVEMENTS

Contract Number: H35132-01G

Vendors doing business with Nassau County, including those responding to this solicitation, must register with the County's Vendor Portal in order to submit the mandatory vendor disclosure forms required for an award pursuant to this solicitation. Vendors may register at www.nassaucountyny.gov by clicking the "Vendor Portal Registration" button at the bottom of the webpage. Failure to do so may result in a delay of contract award.

The undersigned hereby acknowledges that he/she has registered and has submitted the required disclosures on the Nassau County Vendor Portal.

Signature

12/15/2020
Date

Carlo Cuzzi

Print Name

If you attempted to register via the Portal but were unable to do so, please explain here:

n/a

MacBride Fair Employment Principles

NONDISCRIMINATION IN EMPLOYMENT IN NORTHERN IRELAND:

MACBRIDE FAIR EMPLOYMENT PRINCIPLES

In accordance with Chapter 807 of the Laws of 1992 the bidder, by submission of this bid, certifies that it or any individual or legal entity in which the bidder holds a 10% or greater ownership interest, or any individual or legal entity that holds a 10% or greater ownership interest in the bidder, either: (answer yes or no to one or both of the following, as applicable),


(1) have business operations in Northern Ireland,

Yes ___ No x

if yes:

(2) shall take lawful steps in good faith to conduct any business operations they have in Northern Ireland in accordance with the MacBride Fair Employment Principles relating to nondiscrimination in employment and freedom of workplace opportunity regarding such operations in Northern Ireland, and shall permit independent monitoring of their compliance with such Principles.

Yes ___ No ___



(Contractor's Signature)

Triumph Construction Corp.

(Name of Business)

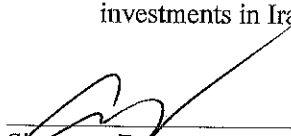
IRAN DIVESTMENT ACT – CERTIFICATION

Pursuant to New York State Finance Law §165-a, Iran Divestment Act of 2012, the Office of General Services is required to post on its web site <http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf> a list of persons who have been determined to engage in investment activities in Iran ("the List"), as defined in that Act. Under Public Authorities Law § 2879-c, Iranian Energy Sector Divestment, the Authority, may not enter into or award a Contract unless it obtains a certification from a Bidder, who shall check the box and make the certification in Subparagraph a, below, that they are not on the List. If that certification cannot be made, the Authority may consider entering into a Contract, on a case by case basis if the Bidder checks the box and makes the certification in Subparagraph b, below, that their Iran investment is ceasing.

For purposes of this provision, a person engages in investment activities in Iran if: (A) the person provides goods or services of twenty million dollars or more in the energy sector of Iran, including a person that provides oil or liquefied natural gas tankers, or products used to construct or maintain pipelines used to transport oil or liquefied natural gas, for the energy sector of Iran; or (B) the person is a financial institution that extends twenty million dollars or more in credit to another person, for forty-five days or more, if that person will use the credit to provide goods or services in the energy sector in Iran.

The Certification is as follows:

- X **a. Certification that the Bidder is not on the List:** Each person, where person means natural person, corporation, company, limited liability company, business association, partnership society, trust, or any other nongovernmental entity, organization, or group, and each person signing on behalf of any other party, certifies, and in the case of a joint bid or proposal or partnership each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each person is not on the list created pursuant to paragraph (b) of subdivision 3 of section 165-a of the State Finance Law, or,
- b. Certification that the Bidder's investment in Iran is ceasing:** The person cannot make the certification in Subparagraph a, above, but asks the Authority to consider them for award of the Contract by certifying, under penalty of perjury, that the person's investment activities in Iran were made before April 12, 2012; the person's investment activities in Iran have not been expanded or renewed after April 12, 2012; and the person has adopted, publicized and is implementing a formal plan to cease its investment activities in Iran and to refrain from engaging in any new investments in Iran.



Signature/Date

CARLO CUZZI, PRESIDENT
Print Name and Position

CONTRACTOR CERTIFICATION STATEMENT REGARDING
STORM WATER POLLUTION AT THE WORK SITE

I certify under penalty of the law that I understand and agree to comply with the terms and conditions of the pollution prevention plan for the construction site identified in such plans as a condition of authorization to discharge storm water. I also understand the operator (Nassau County) must comply with the terms and conditions of the New York State Pollution Discharge Elimination System ("SPDES") general permit for storm water discharges from construction activities and that it is unlawful for any person to cause or contribute to a violation of water quality standards. Finally, I understand my contractual obligations in the matter as outlined in the contract documents.

CONTRACTOR'S NAME: TRIUMPH CONSTRUCTION CORP.

TELEPHONE NUMBER: 718-861-6060

WORK SITE OR FACILITY NAME: _____

WORK SITE OR FACILITY ADDRESS OR
OTHER IDENTIFYING DESCRIPTION: Lawrence, NY

 12/15/2020
Signature Date

CARLO CUZZI, PRESIDENT Print Name and Title of
Signer

PROPOSAL

GENERAL CONSTRUCTION

PROPOSAL: For all work in accordance with the drawings and specifications:

TRIUMPH CONSTRUCTION CORP.

(Individual, Firm or Corporation, as case may be)

Individual's Social Security Number: _____

Firm or Corporation's Federal ID Number: 13-4050635

Firm or Corporation's Municipal License ID Number: _____

Municipal Licensing Agency: _____

By:  Date: 12/15/2020

(Print): CARLO CUZZI Title: PRESIDENT

WHERE BIDDER IS A CORPORATION, ADD

ATTEST:


Secretary

(CORPORATE)
(SEAL)

PROPOSAL

GENERAL CONSTRUCTION

(Form of Affidavit where Bidder is a Corporation)

STATE OF NEW YORK)

) ss.:

COUNTY OF NASSAU)

Triumph Construction Corp. Being duly sworn, deposes and says: That
he resides at [REDACTED], that he is the President
of the corporation described in and which executed the foregoing instrument; that he
knows the seal of said corporation; that the seal affixed to the said instrument is such corporate seal and was
affixed by order of the Board of Directors of said corporation; that he affixed his name thereto by like order; and
that he has knowledge of the several matters therein stated and they are in all respects true.

Subscribed and sworn to before me

This 15 day of December 20 20

Denise Chavler

Notary Public

Denise Chavler
NOTARY PUBLIC, STATE OF NEW YORK
Registration No. 01CH6174232
Qualified in Bronx County
Commission Expires March 14, 2024

QUALIFICATION STATEMENT

Note: All blanks in the form are to be filled in. Where blanks are not applicable to your firm, so indicate in each instance.

1. How many years has your firm been in the business under your present business name? 21

2. How many years experience in the construction work of a similar type as this contract has your firm had;

a. as a Prime Contractor 21

b. as a Subcontractor _____

3. List below the construction projects your firm has under way as of this date:

Contract Amount	Class of work	Percent Completed	Name and Address of Owner or Contracting Officer
--------------------	------------------	----------------------	-----------------------------------------------------

****SEE ATTACHED SCHEDULE/WIP**

(use additional blank sheets if additional space is necessary)

4. List the projects which your firm as a firm has performed in the past few years which you feel will qualify you for this work:

Contract Amount	Class of work	Percent Completed	Name and Address of Owner or Contracting Officer
--------------------	------------------	----------------------	-----------------------------------------------------

****SEE ATTACHED SCHEDULE/WIP**

(use additional blank sheets if additional space is necessary)

5. Have you:

a. ever failed to complete any work awarded to You? NO
If so; identify the project, the owner, the contract amount, the circumstances and date of all such failures to complete.

b. ever been defaulted on a contract? NO
If so; identify the project, the owner, the contract amount, the circumstances and the date of all default actions

c. ever been declared a non-responsible bidder by any municipality or public agency? NO
If so; identify the project, the owner, the contract amount, the circumstances and the date of all such declarations

d. ever been barred from bidding municipal or public contracts? NO
If so; identify the municipality or public agency, the circumstances, date and term of disbarment for all debarments.

(use additional blank sheets if additional space is necessary)

6. Has any officer, partner or principal of your firm ever been on officer, partner or principal of some other firm:

a. that failed to complete a construction contract? NO
If so, state name of individual and identify the name of firm, the project, the owner, the contract amount, the circumstances and the date of all such failures to complete for all principals of the firm.

b. that has ever been defaulted on a contract? NO
If so; state the name of the individual and identify the name of the firm, the project, the owner, the contract amount, the circumstances and the date of all default actions for all principals of the firm.

c. that has ever been declared a non-responsible bidder by any municipality or public agency? NO
If so; state the name of the individual and identify the name of the firm, the project, the owner, the contract amount, the circumstances and the date of all such declarations for all principals of the firm.

d. that has ever been barred from bidding municipal or public contracts? NO

If so; state the name of the individual and identify the name of the firm, the municipality or public agency, the circumstances, date and term of debarment for all debarments for all principals of the firm.

(use additional blank sheets if additional space is necessary)

7. Has any officer or partner of your firm ever failed to complete a construction contract handled in his name? NO
If so, state name of individual, name of owner and reason therefor:

8. Disclose any and all violations of the Prevailing Wage and Supplemental Payment Requirements of the Labor Law of New York State.

NONE

9. Disclose any and all other Labor Law Violations, including, but not limited to, child labor violations, failure to pay wages, or unemployment insurance tax delinquencies within the past five years.

NONE

10. In what other lines of business are you financially interested?

N/A

11. What is the construction experience of the principal individuals of your firm?

Individual's Name	Present Position or Office	Years of Construction Experience	Magnitude and type of work	In what Capacity
----------------------	----------------------------------	----------------------------------------	----------------------------------	------------------------

****SEE ATTACHED RESUMES**

(use additional blank sheets if additional space is necessary)

12. List below the equipment that you own that is available for the proposed work, giving present location where it may be inspected:

Item	Description, Size Capacity, Year, etc.	Years of Service	Present Location
------	-------------------------------------------	---------------------	---------------------

****SEE ATTACHED EQUIPMENT SCHEDULE**

(use additional blank sheets if additional space is necessary)

NOTE: Should the equipment be moved from the above mentioned location, the submitted hereby agrees upon request of the County to state the new location where same may be found.

13. If any of the above equipment is covered by chattel mortgage, conditional bill of sale, lien, or like encumbrance, state the complete details as to nature and amount of encumbrance, the name and address of the holder, etc.

(use additional blank sheets if additional space is necessary)



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

12/14/2020

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Brown & Brown of New York, Inc. 1133 Westchester Avenue Suite N-136 White Plains NY 10604		CONTACT NAME: PHONE (A/C, No, Ext): (914) 337-1833 FAX (A/C, No): E-MAIL ADDRESS: triumphcertificates@bbinsny.com																					
INSURED Triumph Construction Corp 1354 Seneca Ave Bronx NY 10474		<table><tr><th colspan="2">INSURER(S) AFFORDING COVERAGE</th><th>NAIC #</th></tr><tr><td>INSURER A:</td><td>Accredited Surety and Casualty Company, Inc.</td><td>26379</td></tr><tr><td>INSURER B:</td><td>Liberty Mutual Holding Company, Inc.</td><td>23043</td></tr><tr><td>INSURER C:</td><td>James River Insurance Company</td><td>12203</td></tr><tr><td>INSURER D:</td><td>Endurance American Specialty Insurance Company</td><td>41718</td></tr><tr><td>INSURER E:</td><td>Navigators Insurance Company</td><td>42307</td></tr><tr><td>INSURER F:</td><td>RSUI Indemnity Company</td><td>22314</td></tr></table>	INSURER(S) AFFORDING COVERAGE		NAIC #	INSURER A:	Accredited Surety and Casualty Company, Inc.	26379	INSURER B:	Liberty Mutual Holding Company, Inc.	23043	INSURER C:	James River Insurance Company	12203	INSURER D:	Endurance American Specialty Insurance Company	41718	INSURER E:	Navigators Insurance Company	42307	INSURER F:	RSUI Indemnity Company	22314
INSURER(S) AFFORDING COVERAGE		NAIC #																					
INSURER A:	Accredited Surety and Casualty Company, Inc.	26379																					
INSURER B:	Liberty Mutual Holding Company, Inc.	23043																					
INSURER C:	James River Insurance Company	12203																					
INSURER D:	Endurance American Specialty Insurance Company	41718																					
INSURER E:	Navigators Insurance Company	42307																					
INSURER F:	RSUI Indemnity Company	22314																					

COVERAGES**CERTIFICATE NUMBER:****REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> Contractual Liability <input checked="" type="checkbox"/> X, C, U Included GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC <input checked="" type="checkbox"/> OTHER: Deductible: \$100,000	Y	Y	1-TPM-NY-17-01264115	08/01/2020	08/01/2021	EACH OCCURRENCE \$ 2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 2,000,000 GENERAL AGGREGATE \$ 4,000,000 PRODUCTS - COMP/OP AGG \$ 4,000,000
	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY	Y	Y	AS2-611-C0B44C-020	08/01/2020	08/01/2021	COMBINED SINGLE LIMIT (Ea accident) \$ 2,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ 0	Y	Y	1-TPM-NY-17-01264116	08/01/2020	08/01/2021	EACH OCCURRENCE \$ 3,000,000 AGGREGATE \$ 3,000,000
	<input checked="" type="checkbox"/> WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N <input type="checkbox"/>	N/A	WA5-61D-C0B44C-010	08/01/2020	08/01/2021	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
A	Excess Liability - 2nd Layer			1-TPM-NY-17-01264117	08/01/2020	08/01/2021	Each Occurrence \$5,000,000 Aggregate \$5,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

SAMPLE CERTIFICATE

CERTIFICATE HOLDER**CANCELLATION**

Triumph Construction Corp

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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AGENCY CUSTOMER ID: 00170275

LOC #: _____



ADDITIONAL REMARKS SCHEDULE

Page ____ of ____

AGENCY Brown & Brown of New York, Inc.		NAMED INSURED Triumph Construction Corp
POLICY NUMBER		
CARRIER	NAIC CODE	EFFECTIVE DATE:

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,

FORM NUMBER: 25 FORM TITLE: Certificate of Liability Insurance: Notes

EVIDENCE ONLY

AGENCY CUSTOMER ID: _____

LOC #: _____



ADDITIONAL REMARKS SCHEDULE

Page ____ of ____

AGENCY Brown & Brown of New York, Inc.		NAMED INSURED Triumph Construction Corp	
POLICY NUMBER		EFFECTIVE DATE:	
CARRIER	NAIC CODE		

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,

FORM NUMBER: 25 **FORM TITLE:** Certificate of Liability Insurance: Notes

Additional Coverages:

Excess Liability 3rd Layer

Insurer C: James River Insurance Company

Policy #: 00105810-0

Policy Term: 08/01/2020 – 08/01/2021

Occurrence/Aggregate Limit: \$2,000,000

Excess Liability 4th Layer

Insurer D: Endurance American Specialty Insurance Company

Policy #: EXN30001879800

Policy Term: 08/01/2020 – 08/01/2021

Occurrence/Aggregate Limit: \$3,000,000

Excess Liability 5th Layer

Insurer E: Navigators Insurance Company

Policy #: 1S20EXC735358IV

Policy Term: 08/01/2020 – 08/01/2021

Occurrence/Aggregate Limit: \$4,000,000

Excess Liability 6th Layer

Insurer F: RSUI Indemnity Company

Policy #: NHA090890

Policy Term: 08/01/2020 – 08/01/2021

Occurrence/Aggregate Limit: \$3,000,000

Contractor's Pollution Liability

Insurer G: St. Paul Surplus Lines Insurance Company

NAIC #: 30481

Policy #: ZCC-16N60247

Policy Term: 07/29/2019 – 07/29/2021

Per Occurrence/Aggregate Limit: \$5,000,000

Deductible, Each Occurrence: \$10,000

Professional Liability

Insurer H: Ironshore Specialty Insurance Company

NAIC #: 25445

Policy #: DCP7BAB125V001

Policy Term: 08/01/2020 – 08/01/2021

Per Occurrence/Aggregate Limit: \$2,000,000

Property/Equipment Floater

Insurer I: The Hanover Insurance Company

NAIC #: 22292

Policy #: RHSH315729

Policy Term: 08/01/2020 – 08/01/2021

Equipment Breakdown - Property Damage Limit: \$5,185,000

14. In what manner have you inspected this proposed work?
Explain in detail.

(use additional blank sheets if additional space is necessary)

15. Explain your plan and lay-out for performing the proposed work.

16. If a contract is awarded or a permit is issued, to your firm, who will have the personal supervision of the work? Attach resume.

17. Insurance carried by your firm:

Type	Company	Limits of Coverage	Term
------	---------	--------------------	------

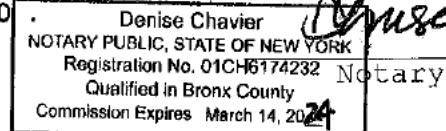
****SEE ATTACHED CERTIFICATE OF INSURANCE- EVIDENCE OF COVERAGE**

NOTE: The bids shall be sworn to by the person signing them, in one of the following forms:

(Form of affidavit where Bidder is a corporation)

STATE OF NEW YORK)
) ss.:
COUNTY OF NASSAU)

Carlo Cuzzi Being duly sworn, deposes and says:
That he resides at [redacted] Street,
in the City of [redacted] that he is the **President** of
Triumph Construction Corp.
the corporation described in and which executed the foregoing
instrument; that he knows the seal of said corporation; that the seal
affixed to the said instrument is such corporate seal and was affixed
by order of the Board of Directors of said corporation; that he signed
his name thereto by like order; and that he has knowledge of the
several matters therein stated and they are in all respects true.
Subscribed and sworn to before me
this 15 day of Dec, 20 20.



(Form of Affidavit where Bidder is a firm)

STATE OF NEW YORK)
) ss.:
COUNTY OF NASSAU)

_____ Being duly sworn, deposes and says:
That he is a member of _____
the firm described in and which executed the foregoing bid; that he
duly subscribed the name of the firm hereunto on behalf of the firm;
and that the several matters therein stated are in all respects true.
Subscribed and sworn to before me
this _____ day of _____, 20 ____.

Notary

(Form of Affidavit where Bidder is an individual)

STATE OF NEW YORK)
) ss.:
COUNTY OF NASSAU)

_____ Being duly sworn, deposes and says:
That he is the person described in and who executed the foregoing bid
and that the several matters therein stated are in all respects true.
Subscribed and sworn to before me
this _____ day of _____, 20 ____.

Notary

Triumph Construction Corp.
1354 Seneca Ave.
Bronx, NY 10474

List of Current General Contractor Projects

Contract Name	Triumph Job Number	Agency	Contract Amount	Status (% Complete)	Owner Reference & Contact
CONISPH3A (Coney Island)- Sanitary Sewer	3069	NYCEDC	\$ 49,679,581.33	10%	Tim Welss 917-373-9521
Reconstruction of 9th Ave / Gansevoort Area <u>HWMP2020</u>	1003	NYCDDC	\$ 17,170,162.50	85%	Iyad Marzouq, EIC 212-313-3526
GCJA03-3A (Green Infrastructure- Bioswales)	3072	NYCDDC	\$ 10,944,453.00	80%	Jean Claremont (917)709-6446
GNCB14-1A (Green Infrastructure- Bioswales)	3060	NYCDDC	\$ 4,249,713.00	60%	Lafayette Cisco (646)235-8862
GNCB14-1A (Green Infrastructure- Bioswales)	3060	NYCDDC	\$ 4,249,713.00	5%	Lafayette Cisco (646)235-8862
SECBKR01 (Collapsed catch basins)	3059	NYCDDC/D EP	\$ 3,935,331.50	10%	Danny Lefkowitz 718-595-7657
Bronx sewer & water main HEDA003	3061	NYCDDC	\$ 16,951,742.60	55%	Franco Mesiti 917-939-6794
BED809 (Water main)	3075	NYCDDC	\$ 25,430,427.44	0%	
BED798 (Trunk main, water, sewer)	3049	NYCDDC	\$ 37,548,087.57	40%	Bob Yueh 718-250-5047
Green Infrastructure (GCJA03-2A)	19-0001	NYCDDC	\$ 7,983,614.53	30%	Bill Sifounis (646) 957-0302
Green Infrastructure (GT110-1A)	19-0002	NYCDDC	\$ 10,677,684.16	0%	
Green Infrastructure Westchester Creek (LIRO)	19-0009	LIRO/NYCE DC	\$ 12,072,033.80	1%	Jonathan Grubman (516)382-2837
Green Infrastructure Bronx River (Hunter Roberts)	19-0004	Hunter Roberts/NY CEDC	\$ 24,500,000.00	1%	Nicholas Gibson (646)276-5292
Replacement of underground water & fire distributions	19-0006	NYCHA	\$ 4,100,000.00	0%	
Wayfinding Elements	19-0008	NYCDOT / PentiGroup	\$ 974,785.00	50%	Chris Lucas 646-300-7143
Westchester Creek Green Infra	19-0009	LIRO/NYCE DC	\$ 12,072,033.80	20%	Jon Grubman 347-829-3351
Bedford Park Blvd @ GC	19-0010				
HWPEFS4A- Rec of Parsons Blvd	19-0011	NYCDDC	\$ 3,523,631.22		
ADA Requirements D264063	20-0001	NYS DOT	\$ 874,049.90	0%	Erica Wong, PE 917-717-0130

2401 3rd Ave - Site Utilities	20-0002				
Ward Houses	20-0003	Aecom/NYC EDC	\$ 4,039,970.00	0%	
Kingsborough houses	20-0004	Aecom/NYC EDC	\$ 1,200,000.00	0%	
HWD10105A - Atlantic Ave	20-0005	NYCDDC	\$ 25,884,023.66	0%	
BB05-01-A Bioswales	20-0006	NYCDDC	\$ 18,275,922.11	0%	
SECBROX03 - Catch basins	20-0007	NYCDDC	\$ 3,762,980.00	0%	

Triumph Construction Corp.
1354 Seneca Ave.
Bronx, NY 10474



Project Experience

Key Personnel					Contract Info							
Domenick Agostino	George Matthews, PE	Robert Charles	Carlos J. Marinho	Michael Cuzzi	Contract Name	Contract #	Contract Description	Owner / Owners Representative	Project Start	Year Completed	Contract Amount	Owner Reference & Contact
					Reconstruction of Pershing Sq. HWPL2004M	HWPL2004M	Trunk main, water, sewer, concrete, granite curb, asphalt, landscaping, beautification	NYCDDC	2014	2020	\$ 10,371,035.27	Shahram Jaromi 718-391-3231
					Safe Routes to Schools - Phase 4C2 (HWCSCH4C2)	HWCSCH4C2	Bump outs, curbs, sidewalks, asphalt, road base, electrical, landscaping	NYCDDC	2017	2020	\$ 11,766,937.28	Mauro DeVincenzi 347-203-2100
					HWK300-01, North Flatbush Ave Atlantic Yard Area, BK NY	HWK300-01	Water main, curb and sidewalk, traffic signal work, sidewalk reconstruction	NYCDDC	2016	2020	\$ 4,894,760.88	Zong Jiang (718) 752-0430
					Coney Island- 59640002	59640002	6"-24" water main, including up to 48" sewer, Chambers, and access manholes	NYCEDC	2017	2019	\$ 51,684,397.36	Ahmad Alhalawani, RE (732) 447-4327
					Astor Place Reconstruction HWMP116	HWMP116	Water main, sewer, Traffic lighting, street lighting, manholes	NYCDDC	2013	2019	\$ 15,754,866.59	Krupesh Patel EIC (347) 986-7916
					GCIAM-01 Green Infrastructure in JAM-003 & JAM-006 Phase 1	GCIAM-01	Construction of right-of-way green infrastructure in the cso tributary aread Jam-003 and Jam-006	NYCDDC	2016	2019	\$ 9,267,820.00	Norbu Tsering 718-391-2555
					Reconstruction of 9th Ave / Gansevoort Area	HWMP2020	Reconstruction of 9th Ave. / Gansevoort Area - Gansevoort Street from 9th Ave. to Hudson St. - W. 13th St from 9th Ave to Hudson St. - Hudson Street from W. 13th St to W. 14th St. including Street Streetscape, Watermain, Lighting, Traffic Signal and Private Utility Relocation	NYCDDC	2015	2021	\$ 17,170,162.50	Shahram Jaromi 718-391-3231
					Green Infrastructure- Bioswales - Various Locations NYC	GCIAM-3A	Intaliation of Bioswales in NYC, including, excavation, sidewalk, steel faced curb, watermain work and associated utility relocation	NYCDDC	2018	2021	\$ 10,944,453.00	Jean Claremont (917)709-6446
					Green Infrastructure- Bioswales - Various Locations NYC	GNCB14-1A	Instailtion of Bioswales in NYC, including, excavation, sidewalk, steel faced curb, watermain work and associated utility relocation	NYCDDC	2018	2021	\$ 4,249,713.00	Lafayette Cicco (646)235-8862
					HWP15KCL- Complex pedestrian ramps	HWP15KCL-	Concrete sidewalk, curb, catch basins, chutes, manholes, utilities	NYCDDC	2017	2019	\$ 6,475,482.52	Bryan McGrath 516-241-7998
					HWMM008- E. 86th Street Safety and Streetscape Improvements	HWMM008-	Reconstruction of E 86th ST.	NYCDDC	2016	2019	\$ 10,556,199.64	Shahram Jaromi 718-391-3231
					Pier 35 (Hunter Roberts)		Installation of 36" water main	NYCEDC (Hunter Roberts)	2014	2019	\$875,000 + \$26,000 C/O	Mishel Mako 917-946-4420
					EL Sol (86th St & 4th Ave	A-37117	Installation of 8" Water main and 36" & 24" sewer	MTA (El Sol)	2019	2019	\$733,210 + \$417,596.86 C/O	Al Bonura 917-282-2771
					Olympic (1 Vanderbilt)		Installation of new services to building	SL Greene	2019	2019	\$980,000 + \$513,812.55	Al Rocco 718-528-4001
					GE-359 (Emergency Water Main)	GE-359	Reconstruction of broken water mains on an Emergency basis (Task Orders)	NYCDEP	2018	2019	\$ 17,688,304.88	Michael Sullivan 718-595-5439

						Emergency Sidewalk Repairs Project	HWSMER11	Removal and replacement of trees, stumps, sidewalk, etc due to Hurricane Sandy damage	NYCDOC	2013	2014	\$	1,326,879.16	Mina Marcos 516-852-8595
						Low pressure water main	895147	Watermain, Sewer, Lighting, Signal, Concrete Sidewalk, Asphalt Paving, Landscaping and Pavers.	Brooklyn Navy Yard Development Corp.	2010	2012	\$	12,937,036.73	Carmine Stabile 845-642-0491
						Construction of Catch Basins, Various Locations, Bronx, NY	SECBX1	Installation of Catch Basins and Chute Connections, Various Locations, Bronx, NY	NYC Dept. of Design and Construction	2010	2012	\$	1,931,893.50	Lambert Monah 917-939-6966
	X				X	Flatbush Nostrand Junction Streetscape Improvements	27580002	Curb, sidewalk, catch basins, chutes, manholes, roadbase, asphalt, landscaping	NYC Economic Development Corp.	2010	2012	\$	2,795,721.30	Bulent Celik 312-3855
						Reconstruction of Building 292 Parking Lot	835147	Storm Water Detention System; Sewer, Watermain, Concrete Sidewalk, Asphalt Pavement	Brooklyn Navy Yard Development Corp.	2011	2012	\$	2,376,909.81	Carmine Stabile 845-642-0491
						High pressure water Main	835147	Watermain, Sewer, Concrete Sidewalk and Asphalt Milling and Paving	Brooklyn Navy Yard Development Corp.	2011	2011	\$	1,258,028.70	Carmine Stabile 845-642-0491
						Streetscape improvements for the Bedford-Stuyvesant section of Brooklyn	21490008	Curb, sidewalk, catch basins, granite, retaining wall, special pavers, chutes, manholes, roadbase, asphalt, landscaping	NYC Economic Development Corp.	2009	2011	\$	5,247,788.63	Maryann Catalano 312-3600
						Construction of Catch Basins, Various Locations, Manhattan, NY	SECBHLN2	Installation of Catch Basins and Chute Connections, Various Locations, Manhattan, NY	NYC Dept. of Design and Construction	2009	2010	\$	1,692,668.50	Pierre Rameau Jr 347-203-1360

Hudson Street Streetscape: **PROJECT SUPERINTENDENT**

MICHAEL CUZZI

Supervisor

Triumph Construction Corp.

At Triumph Construction, Michael Cuzzi has overseen several completed NYC EDC projects, including Linden Place Project: Phase 1; Flatbush/Nostrand Junction Streetscape Project #27580002; and Bedford Stuyvesant Streetscape Improvements Project #21490008. DDC completed projects overseen by Cuzzi include Sandy Emergency Project #HWSEMER11; Reconstruction of Astor Place/Cooper Square Project #HWMP116; Reconstruction of 9th Avenue/Gansevoort Project #HWMP2020.

For both public and private sector projects, Cuzzi plans, organizes and controls all aspects of the assignment, completing quality inspections and supervising sub-contractors and staff, including Con Edison and other utilities in the metropolitan area.

At Triumph Construction, Cuzzi's skills, abilities, and leadership qualities enable him to:

- Define a project's purpose and scope;
- Calculate resources required;
- Establish standards and protocols;
- Schedule and coordinate staff and sub-contractors;
- Resolve design problems;
- Plan and complete coordination of construction projects;
- Ensure work is done correctly and projects stay on schedule.

Projects on which Cuzzi has played a supervisory role typically involve pedestrian improvements, including sidewalk redesign; plaza's and road construction; replacement and installation of new trees and tree pits; pedestrian ramps and catch basins throughout the city and the five boroughs; sewer and water main work; and granite and steel-faced curb and seating, pavers, and asphalt restoration.

Additionally, Cuzzi ensures that the construction site is safe during work activities and enforces safe work practices in compliance to NYC Specs and OSHA regulations.

Hudson Street Streetscape: **UTILITY COORDINATOR**

FRANK BARBARO

Director of Utility Operations

Triumph Construction Corp.

Frank Barbaro has been in the utility construction field since 1995, working for Empire City Subway/Verizon (ECS) before deciding to put his years of utility experience to work at Triumph Construction Corp.

Barbaro brings a valuable perspective and understanding to deliberating utility issues, especially when managing utility interferences and delays. At Triumph Construction, he:

- Resolves utility field issues directly with utility representatives;
- Negotiates Section U, Lump Sum, and Field Agreements for upcoming and ongoing city projects;
- Oversees and monitors utility invoicing and payment procedures;
- Oversees and monitors utility field operations.

During his tenure at Empire City Subway/Verizon, Barbaro served as Manager/Municipal Operations, managing multiple projects simultaneously, reducing utility interference on assigned municipal projects, and negotiating and lowering costs of Verizon utility interference on municipal projects. He also maintained good relations with city representatives, contractors, and all other utility representatives while conducting monthly safety lessons, monthly site observations, absent tracking, code of conduct meetings, and attendance tracking.

Barbaro is knowledgeable with reading utility and city drawings as well as all work covered under Section U Contracts and joint bidding, applicable CET, GCA items and prices. His 23 years of experience in utility interference and negotiations will serve as a major benefit to the Hudson Street Streetscape project.

Hudson Street Streetscape: **PROGRAM MANAGER**

CARLO CUZZI

Founder and President

Triumph Construction Corp.

As president of one of the largest privately-held utility contractors in the New York metropolitan area, Carlo Cuzzi has managed numerous public and private sector projects that have benefited from his knowledge of construction installation. In fact, his commitment to quality can be seen in every borough of New York City and in every aspect of Triumph Construction Corp, which he founded in 1999.

For nearly two decades, Cuzzi and Triumph Construction have stamped their mark on the infrastructure of New York City, both underground and at street level. Cuzzi's depth of experience and his leadership have served as a strong foundation for the operational facets of Triumph Construction — a multimillion dollar corporation that employs approximately 300 people.

Under Cuzzi's direction, Triumph Construction's scope of accomplishment has grown from gas and electric service work to large-scale private-sector construction jobs and major capital improvement projects, including streetscapes. Cuzzi continuously builds on past experience to make Triumph Construction a preferred contractor to numerous city agencies, including:

- New York City Economic Development Corp.;
- New York City Department of Design & Construction;
- New York City Department of Transportation;
- Metropolitan Transportation Authority;
- Metro North Railroad;
- NYC Schools Construction Authority.

With the City of New York, with the city's largest utilities, and with numerous private construction organizations, Triumph Construction enjoys a reputation for unparalleled client service, consistent on-time performance, and devotion to its neighbors and the city at large. They are hallmarks Triumph Construction established from the very start through Cuzzi's hands-on example.

Relevant Projects:

- 835147 – Replacement of Low Pressure Water Main
- 832843 - Reconstruction of Market Street and Paulding Street
- HWMP116 - Reconstruction of Astor Place /Cooper Square
- 14420002 - Queens Plaza Bicycle & Pedestrian Improvement

Hudson Street Streetscape: **OPERATING LIASON** and **CONSTRUCTION MANAGER**

DANIEL CODY

Project Manager

Triumph Construction Corp.

At Triumph Construction, Daniel Cody serves as project manager responsible for federal, state and city infrastructure projects. Since 2010 alone, he has worked with Triumph Construction to successfully complete over 20 utility/streetscape based contracts. Ultimately, these projects have focused on private utility work, sewer, water main, electrical work, curb, sidewalk, paving, architectural concrete, planters, permeable pavers and permeable asphalt.

Cody's most recently completed project was the 185th Street Streetscape at Yeshiva University which, after nine months of delays from the private utility company, was completed in approximately three months by Triumph. Yeshiva University and the NYC DDC were able to schedule and proceed with the ribbon cutting ceremony prior to the start of the 2018 school year. Cody looks forward to bringing that same expertise and enthusiasm to the design team for the Hudson Street Streetscape and to the NYC EDC in the completion of the project.

Current responsibilities at Triumph Construction include:

- Coordinating and scheduling work with the owner, owner's representatives, private utility companies and subcontractors;
- Generating schedules, reviewing the schedules with owner and owner's reps to make sure expectations are being met and updating the schedule to assure that critical milestones are met;
- Negotiating and Buyouts for vendors and subcontractors;
- Material and shop drawings submittals;
- Managing project budgets;
- Identifying design issues and well as possible interference that may affect the schedule;
- Working with the QC Manager and project staff to ensure that quality control plans are being implemented;
- Interfacing with the safety team to identify issues and rectify as needed with the project staff;
- Submit invoices, RFI's and change orders as required.

In the past Cody has served as a Bid Administrator and Estimator — skills that will serve him well throughout the design and budgeting phases of this project.

Relevant Projects:

- 835147 – Replacement of Low Pressure Water Main
- 832843 - Reconstruction of Market Street and Paulding Street

Robert Charles



Executive Summary

Experienced Underground Construction Manager with strong leadership and relationship-building skills. Technically skilled superintendent with over 25 years hands-on experience and technical training.

Core Qualifications

- Inventory control
- Budget development
- Change management
- Employee scheduling
- Sub-contractor coordination
- Policy/program development
- Consistently meet goals
- Staff training/development
- Extremely organized

Professional Experience

06/2003 - Current

Triumph Construction Bronx, NY

Supereintendent

Performed management of business operations by maintaining records and files, preparing cost and inventory reports, and ordering supplies. Reviewed project drawings to perform installation activities according to specifications. Achieved revenue objective by implementing cost-cutting measures. Communicated operational issues and changes to Engineers on regular basis.

01/2002 - 06/2003

All County Communications Bronx, Ny

Vice President

Co-owner of Telecommunications contracting firm, specializing in OSP Construction. Liaised with vendors to order and maintain inventory of supplies. Assisted in all areas of administrative work including data entry, organization, research and development. Maintained and prioritized daily tasks and projects including: call logs, appointments, travel, expense reports and general errands. Successfully established effective systems for record retention by creating database for daily correspondence tracking. Developed new customer relations through telephone contact and sales activity.

03/2000 - 11/2002

Sordoni Skanska Queens , NY

Construction Manager

Successfully led key projects which resulted in construction of over 50 miles of underground plant for RCN of Queens. Worked directly with MDU management to achieve over 125,000 MDU units constructed annually. Coordinated efforts of over 15 sub contractors simultaneously. Liaison with NYCDOT and DoITT to prepare and institute the MOU between the City of New York and The Telecommunications Industry.

01/1998 - 03/2000

National Network Technologies Northern , NJ

OSP Manager

Constructed over 600 miles of OSP for Level 3 Communications, in the cities of Newark, Weehawken, Jersey City, Kearny and Hoboken. Created, oversaw and completed the design build team for Directional Bores of the Hackensack and Passaic rivers in New Jersey. Oversaw the design build process for a directional bore of the

Hudson River to connect New Jersey with New York with FOC. Coordinated efforts of over 15 sub contractors simultaneously.

Education

- 2012 **Queens Plaza Bicycle And Pedestrian Improvements**, Queens , NY, 14400002 39.5 Million
- NYCEDC
- Major Improvements to Long Island City area of Queens. Renovation and rerouting of major traffic hub with new roadway improvements, the addition of over a mile of bike way and a seven acre man made wetlands and public space.
- 2010 **Jackson Avenue Streetscape**, Queens , NY, 23600002 10.5 Million
- NYCEDC
- Major reconstruction of main thoroughfare of Long Island City in Queens, NY. Infrastructure upgrades, including water, sewer, and creation of public spaces. Overall greening of former industrial area to meet the needs of a changing community. Emphasis on increased landscaping of a new viable residential area.
- 2008 **Avenue J Streetscape**, Brooklyn, NY, 4.5 Million
- NYCEDC
- Infrastructure upgrades to major shopping hub in tight knit community. Included new electrical and traffic lighting upgrades, sidewalk reconstruction and landscaping.
- 2007 **Downtown Flushing Pedestrian Improvements and Historic Trail**, Queens , NY, 82600004 4.5 Million
- NYCEDC
- Construction of Historic trail throughout the Flushing Queens area. Work included but not limited to water main installation, roadway reconstruction, landscaping, street lighting and traffic lighting upgrades. Major upgrade to Municipal parking lots with granite walls and coping with ornamental iron work and fencing.
- 2004 **Manhattan Sidewalk Reconstruction Projects**, Manhattan, NY, 3 million
- NYCDDC
- Reconstruction of sidewalks at various locations in the borough of Manhattan. Project consisted of NYCDPR, Board of Education, NYCGCA and NYCHA properties, along with properties privately owned.

Affiliations

Construction Management Association of America Metro NY/NJ Chapter



DOMENICK AGOSTINO

General Superintendent

Triumph Construction Corp.

Domenick Agostino offers extensive and diverse commercial construction experience and expertise in excavation, bridge reconstruction, utility relocations, and general heavy construction projects ranging from 13MM to \$192MM in scope.

From inception to timely completion, Mr. Agostino is in charge of strategic planning, budget containment, cost controls, initiating change orders, and conducting final closeout — all the while ensuring quality results and safety.

At Triumph Construction, he also maintains oversight for all field operations on large-scale, multimillion dollar construction projects where his responsibilities include:

- Hiring, training, mentoring and directing senior superintendents, project superintendents, foremen and field personnel;
- Monitoring job costs, budgets, forecasts and production levels;
- Implementing construction plans, including scheduling and logistics;
- Coordinating with subcontractors and scheduling all manpower, materials, and equipment;
- Maintaining union relationships.

Mr. Agostino has overseen municipal projects for sewage systems in Brooklyn, Queens, Bronx and Manhattan, as well as sidewalk rebuilds. During his career at Judlau Contracting, he served as general superintendent on such major projects as:

- NYCT Myrtle/Wycoff Station Complex Rehab;
- NYCT White Plains Road Rehab;
- NYCT Franklin Avenue Shuttle Rehab;
- MTA Bridges and Tunnels replacing both the upper and lower levels of the Henry Hudson Bridge;
- NYCT Contract A-25909 — a \$73MM project to rehabilitate the Columbus Circle 59th Street Station;
- NYCT Contract A-35828 — a 26MM project to rehabilitate the 42nd Street Station in Manhattan;
- NYCDEP Contract NC-27G — a \$13MM project to build a new wastewater treatment plant.

Domenick Agostino stands ready to put his years of General Superintendent experience to work for NYC EDC at Hudson Street Streetscape.

Building, Concrete, Excavating & Common Laborers Union **Local No. 731, of Greater New York**

JOSEPH D'AMAYO, Business Manager
 DOMINIC J. VALDIYER, Secretary-Treasurer

*Affiliated with the Laborers' International Union
 of North America, AFL-CIO*

Office: 8441 36th Avenue, Astoria, NY 11108
 Telephone No.: (718) 788-0720
 Fax No.: (718) 788-8887



Effective Date: July 1, 2016

**TO: ALL EMPLOYERS WITHIN THE JURISDICTION
 OF EXCAVATORS UNION LOCAL 731**

**RE: COLLECTIVE BARGAINING AGREEMENT
 July 1, 2016 through April 30, 2022**

Please take notice that Excavators Union Local 731 ("Local 731") and the General Contractors Association of New York, Inc. have agreed upon the following schedule of wages and fringe benefits for the period of July 1, 2016 through April 30, 2022. Although our Collective Bargaining Agreement covers the period of July 1, 2016 through April 30, 2022, the allocation of increases for years commencing July 1, 2016 and thereafter will be determined in advance, by Local 731. The total package increase will be 19.5%. The breakdown will be 3.23% for years 1 through 6.

WAGES:

LABORERS

PER 40 HOUR WEEK

7/1/16 to 6/30/17 Increase of \$.50 hr. to \$41.00	\$1,640.00
7/1/17 to 6/30/18 Increase of \$.TBD hr. to \$ TBD	\$ TBD
7/1/18 to 6/30/19 Increase of \$. TBD hr. to \$ TBD	\$ TBD
7/1/19 to 6/30/20 Increase of \$. TBD hr. to \$ TBD	\$ TBD
7/1/20 to 6/30/21 Increase of \$. TBD hr. to \$ TBD	\$ TBD
7/1/21 to 4/30/22 Increase of \$. TBD hr. to \$ TBD	\$ TBD

LABOR FOREMAN (hired on a weekly basis)

7/1/16 to 6/30/17 Increase of \$.50 hr. to \$43.30	\$1,740.00
7/1/17 to 6/30/18 Increase of \$. TBD hr. to \$ TBD	\$ TBD
7/1/18 to 6/30/19 Increase of \$. TBD hr. to \$ TBD	\$ TBD
7/1/19 to 6/30/20 Increase of \$. TBD hr. to \$ TBD	\$ TBD
7/1/20 to 6/30/21 Increase of \$. TBD hr. to \$ TBD	\$ TBD
7/1/21 to 4/30/22 Increase of \$. TBD hr. to \$ TBD	\$ TBD

UTILITY LABORERS

7/1/16 to 6/30/17 Increase of \$.50 hr. to \$40.85	\$1,634.00
7/1/17 to 6/30/18 Increase of \$. TBD hr. to \$ TBD	\$ TBD
7/1/18 to 6/30/19 Increase of \$. TBD hr. to \$ TBD	\$ TBD
7/1/19 to 6/30/20 Increase of \$. TBD hr. to \$ TBD	\$ TBD
7/1/20 to 6/30/21 Increase of \$. TBD hr. to \$ TBD	\$ TBD
7/1/21 to 4/30/22 Increase of \$. TBD hr. to \$ TBD	\$ TBD

Building, Concrete, Excavating & Common Laborers Union
Local No. 731, of Greater New York

JOSEPH DIAMATO, Business Manager
DOMINIO J. VALONER, Secretary-Treasurer
*100-1116

Affiliated with the Laborers' International Union
of North America, AFL-CIO

Office: 3411 85th Avenue, Astoria, NY 11106
Telephone Number: (718) 706-0720
Fax Number: (718) 706-0357



July 1, 2016

Dear Sir or Madam:

Enclosed please find two copies of the new Collective Bargaining Agreement for the period of July 1, 2016 through April 30, 2022. Please immediately fill out the contractor's information on page 78 and have an authorized signatory sign and return one copy of the Agreement.

In accordance with Article VIII, Sections 5(a) and 5(b) of the Collective Bargaining Agreement, we have enclosed Supplemental dues and P.A.C. authorization forms. Should you need additional Supplemental dues or P.A.C. authorization forms, you can either make photostats or call this office or additional copies will be sent to you.

We suggest that you carefully examine the terms of Sections 8 (a) and 8 (b) of Article VIII of your new Collective Bargaining Agreement which are the bonding requirements and procedures. If you have not already done so, please take immediate steps in order to comply with these provisions. We have enclosed a copy of our surety bond form for your convenience.

Thank you for your cooperation and prompt attention to this matter. Should you have any questions regarding the above, please feel free to contact the undersigned.

Very truly yours,

Joseph D'Amato
Joseph D'Amato
Business Manager

Enc.

LIUNA
LOCAL 731 Training Fund

8411 86th Avenue
Astoria, NY 11106

Tel: 718-752-9880 • Fax: 718-752-0880

APPRENTICESHIP PROGRAM

To Whom It May Concern:

Apprentice Rates are as follows: Effective July 1, 2016

1-1000 hrs.	= 50% of a Journeyman's rate	\$20.50 hr.
1000-2000	= 60% of a Journeyman's rate	\$24.60 hr.
2000-3000	= 75% of a Journeyman's rate	\$30.75 hr.
3000-4000	= 90% of a Journeyman's rate	\$36.90 hr.
4000+	= Full Journeyman's rate	\$41.00 hr.

Benefits are paid the same as a Journeyman.

Rates are in effect until June 30, 2017.

MASTER EQUIPMENT LIST

MACHINE #	Description OR TYPE	YEAR	MAKE	MODEL	VIN OR SERIAL #	PLATE #
BACKHOES		YEAR	MAKE	MODEL	VIN OR SERIAL #	PLATE #
BH-06	BACKHOE	2015	CAT	450F	FJHJR00491	21209SM
BH-19	BACKHOE Hammer	2010	CAT	450F	EEEBL00463	10554-SM
BH-21	BACKHOE Hammer (4.S.)	2010	CAT	450F	ETEBL00465	10553-SM
BH-22	BACKHOE (4.S.)	2013	CAT	450F 24"	FCHJR00170	12093-SM
BH-23	BACKHOE	2013	CAT	450F	FKHJR00215	16352-SM
BH-24	BACKHOE	2013	CAT	450F	FJHR00216	16355SM
BH-25	BACKHOE	2014	CAT	450F	FAHJR00253	23500SM
BH-27	BACKHOE	2014	CAT	450F 18"	FKHJR00294	16358-SM
BH-28	BACKHOE	2015	CAT	450F	FVHJR00364	16360-SM
BH-29	BACKHOE (J.S.)	2015	CAT	450F	FCHJR00380	16362-SM
BH-30	BACKHOE	2014	CAT	430IT 18"	FKRGS00634	16363-SM
BH-31	BACKHOE (4.S.)	2015	CAT	450F 24"	FEHJR00399	16366SM
BH-33	BACKHOE	2015	CAT	450F 18"	FEHJR00418	16370-SM
BH-36	BACKHOE (J.S.)	2015	JD	410L	1T0410LXCFF289282	21206SM
BH-37	BACKHOE (J.S.)	2015	JD	410L	1T0410LXPFF289374	21205SM
BH-38	BACKHOE	2016	CAT	450F	FCHJR00492	21207SM
BH-39	BACKHOE	2016	CAT	450F	FKHJR00487	21210SM
BH-40	BACKHOE	2016	CAT	450F	FEHJR00502	21211SM
BH-41	BACKHOE	2016	JD	710K 18"	1T0710KXTFE290687	21212SM
BH-42	BACKHOE	2016	CAT	450F	FAHJR00480	21208SM
BH-43	BACKHOE	2016	CAT	450F	FLHJR00531	21220SM
BH-44	BACKHOE (4.S.)	2016	CAT	450F	FHHJR00532	21218SM
BH-45	BACKHOE	2016	CAT	450F	FCHJR00520	22778SM
BH-46	BACKHOE	2016	CAT	450F	FAHJR00544	22777SM
BH-47	BACKHOE (J.S.)	2017	JD	710L	LXJGF302982	22784SM
BH-48	BACKHOE	2017	JD	410L	LXVGF303233	22785SM
BH-49	BACKHOE (J.S.)	2017	JD	710L 24"	1T0710LXHFF309200	22544SM
BH-50	BACKHOE	2017	JD	710L	1T0710LXCHF306770	22543SM
BH-51	BACKHOE	2017	CAT	450F	FEHJR00659	23502SM
BH-52	BACKHOE	2017	CAT	450F	FLHJR00660	23503SM
BH-53	BACKHOE	2017	CAT	450F	FLHJR00674	23510SM
BH-54	BACKHOE	2017	CAT	450F 18"	FCHJR00680	17390SM
BH-55	BACKHOE	2017	CAT	450F	FTHJR00681	23511SM
BH-56	BACKHOE	2018	JD	710L	1T0710LXLHF321619	23521SM
BH-57	BACKHOE	2018	JD	710L 18"	1T0710LXVHF323013	23524SM
BH-58	BACKHOE	2019	JD	710L	1T0710LXVKF353345	25971SM
EXCAVATORS		YEAR	MAKE	MODEL	VIN OR SERIAL #	PLATE #
EX-1	EXCAVATOR	2010	CAT	321D	EMPG00161	N/A
EX-2	EXCAVATOR	2008	CAT	305CCR	CCHWJ02257	N/A
EX-4	EXCAVATOR	2018	CAT	335	KNE10350	N/A
EXL-5	EXCAVATOR	2018	Komatsu	490	PC490LC11A41965	N/A
EXL-6	EXCAVATOR	2019	CAT	335	5GJ20451	N/A
EX-7	EXCAVATOR	2016	CAT	335F	KNE00488	N/A
EX-8	EXCAVATOR	2019	Komatsu	PC138	54824	N/A
RT-1	EXCAVATOR	2007	CAT	322	H2E00433	41018SC
RT-2	EXCAVATOR	2012	CAT	315D	DTW5M05553	10563SM
RT-3	EXCAVATOR	2016	CAT	316	FVF6N00258	17387SM
PAYLOADERS		YEAR	MAKE	MODEL	VIN OR SERIAL #	PLATE #
PL-4	PAYLOADER	2008	CAT	CAT 966H	0966HKA6D02024	45480-SC
PL-5	PAYLOADER	2005	CAT	CAT 966G	0966GCANZ01261	16353-SM
PL-7	PAYLOADER	2004	Komatsu	WA180-3M	A81419	
PL-8	PAYLOADER	2015	Komatsu	WA380-7	A64447	17391SM
PL-9	PAYLOADER	2013	Komatsu	WA320-7	KMTWA121J01080347	23523SM
PL-10	PAYLOADER	2016	Komatsu	WA320-7	80819	17398-SM

PL-11	PAYLOADER	2018	Komatsu	WA320-7	KMTWA135AHNA38368	25961-SM
PL-12	PAYLOADER	2018	Komatsu	WA380-8	KMTWA130CJNA74741	17388-SM
BOX TRUCKS		YEAR	MAKE	MODEL	VIN OR SERIAL #	PLATE #
BT-2	BOX TRUCK	2005	Freightliner	MT45	4UZAANBW05CU89114	46595-JZ
BT-3	BOX TRUCK COMPRESSOR	2004	Freightliner	MT45	4UZAANB04CM54863	67127-KA
BT-9	BOX TRUCK COMPRESSOR	2005	Freightliner INGERSOLL	MT45 185	4UZAANBW35CU92895	12364-MG
BT-10	BOX TRUCK	2004	Freightliner	MT45	4UZAARBW44CM85122	12303-MG
BT-11	BOX TRUCK	2004	Freightliner	MT45	4UZAANBW74CN14752	12329-MG
BT-12	BOX TRUCK COMPRESSOR	2005	Freightliner	MT45	4UZZAABNW35CV07668	12362-MG
BT-13	BOX TRUCK	2006	Mitsubishi	FE140	JL6BBG1SX6K001835	12188MJ
BT-16	BOX TRUCK	2005	Freightliner	MT45	4UZAAPBWX5CU42894	67126-KA
BT-20	BOX TRUCK	2005	Work Horse	P42	5B4HP42V553410108	96099-MA
BT-23	BOX TRUCK	1999	Freightliner	MT45	4UZA4FF40XCA36879	77268KA
BT-28	BOX TRUCK	2004	Freightliner	MT45	4UZAANBW34CN39194	77267-KA
BT-29	BOX TRUCK	2006	Freightliner	MT45	4UZAAPBW36CV95702	95498MD
BT-30	BOX TRUCK	2006	Freightliner	MT45	4UZAAPBW66CV95693	85911MD
BT-31	BOX TRUCK	2007	Freightliner	MT45	4UZAANBW27CY08242	85952-MD
BT-35	BOX TRUCK NO COMPRESSOR	2004	Freightliner	MT45	4UZAANBW04CN08209	12330-MG
BT-36	BOX TRUCK	2004	Freightliner	MT45	4UZAANBW14CM71350	12328-MG
BT-37	BOX TRUCK NO COMPRESSOR	2006	Freightliner KAESER	MT45 M57	4UZAANBW76CN72329	12363-MG
BT-38	BOX TRUCK NO COMPRESSOR	2001	Freightliner	MT45	4UZAARBW61CH63694	56154-MG
BT-39	BOX TRUCK COMPRESSOR	2008 2015	Freightliner KAESER	MT45 M57	4UZAANDU28CZ85547	56190-MG
BT-41	BOX TRUCK	2006	Freightliner KAESER	MT45 M57	3UZAAPBW46CV95112	28561-MH
BT-42	BOX TRUCK	2005	Freightliner	MT45	4UZAAPBW15CV67024	28683-MH
BT-43	BOX TRUCK	2007	Freightliner KAESER	MT45 M58	4UZAANBW87CY95726	83435MH
BT-44	BOX TRUCK	2007	Freightliner	MT45	4UZAANBW67CY95725	83434MH
BT-45	BOX TRUCK	2006	Freightliner KAESER	MT45 M57	4UZAAPBW6CV95115	83427MH
BT-46	BOX TRUCK COMPRESSOR	2006 2015	Freightliner KAESER	MT45 M58	4UZAAPBW26CV95089 WKA0S0000F5496765 / 1013	83475MH
BT-47	BOX TRUCK COMPRESSOR	2006	Freightliner KAESER	MT45 M57	4UZAAPBW86CV95811	83557MH
BT-48	BOX TRUCK COMPRESSOR	2006	Freightliner	MT45	4UZAAPBW6CV95826	83556MH
BT-49	BOX TRUCK COMPRESSOR	2006	Freightliner	MT45 M58	4UZAAPBW26CV95657	12065MJ
BT-50	BOX TRUCK	2006	Freightliner	MT45	4UZAAPBW76CV95878	12154MJ

BT-51	BOX TRUCK NO COMPRESSOR	2006	Freightliner	MT45	4UZAANBW36CV95199	12153MJ
BT-52	BOX TRUCK	2006	Freightliner	MT45	4UZAAPBW76CV95654	17805MK
BT-53	BOX TRUCK COMPRESSOR	2006	Freightliner KAESER	MT45 M58	4UZAAPBW56CV95703	33097MK
BT-54	BOX TRUCK COMPRESSOR	2006	Freightliner	MT45	4UZAAPBW56CV95118	33066MK
BT-55	BOX TRUCK COMPRESSOR	2006	Freightliner	MT45	4UZAAPBW46CV95742	65954MK
BT-56	BOX TRUCK COMPRESSOR	2018	Hino	195	JHHSMD2H8JK007496	42778ML
BT-57	BOX TRUCK COMPRESSOR	2018	Hino	195	JHHSMD2H0JK007492	42779ML
BT-58	BOX TRUCK COMPRESSOR	2018	Hino	195	JHHWDM2H4JK006721	42780ML
BT-59	BOX TRUCK COMPRESSOR	2018	Hino	195 CPS185KDU8T4	JHHSMD2H3KK009173	22165MM
BT-60	BOX TRUCK COMPRESSOR	2018	Hino	195	JHHSMD2H6KK009183	22166MM
BT-61	BOX TRUCK COMPRESSOR	2019 2016	Hino KAESER	195 M58	JHHSMD2H2KK009875 1056	48979MM
BT-62	BOX TRUCK COMPRESSOR	2019	Hino CP	195 CPS185KDUFT4	JHHSMD2H3KK010646	48990-MM
BT-63	BOX TRUCK COMPRESSOR	2019	Hino	195	JHHWDM2HXKK009396	12000-MN
BT-64	BOX TRUCK COMPRESSOR	2020	Hino	195	JHHSMD2H2LK011210	13258-MN
BT-65	BOX TRUCK COMPRESSOR	2020	Hino	195	JHHSMD2H4LK011211	13262-MN
FLATBED		YEAR	MAKE	MODEL	VIN OR SERIAL #	PLATE #
FB-4	FLATBED	2008	FORD	F450	1FDXW46R18EA87198	74064MK
FB-5	FLATBED	2008	GMC	W5500	J8DE5W16687900612	30735ML
FB-6	FLATBED	2007	Mitsubishi	FE145	JL6BBG1S47K010872	12033-KA
FB-7	FLATBED	2007	Mitsubishi	FE145	JL6BBG1S77K004452	12292-MG
FB-8	FLATBED	2014	Isuzu	NPR	JALC4W160E7000648	37024-MM
FB-9	FLATBED	2014	Isuzu	NPR	JALC4W16XE7000611	68275-MM
FB-10	FLATBED	2007	Mitsubishi	FE145	JL6BBG1S87K010910	26774-MN
FB-11	FLATBED	2013	Isuzu	NPR		26841-MN
FB-12	FLATBED	2005	Mitsubishi	FE140	JL6BBG1S55K010389	80110-MN
ZIMM TRUCKS		YEAR	MAKE	MODEL	VIN OR SERIAL #	PLATE #
ZT-2	ZIMM TRUCKS	2007	STERLING	L9500	2FZMAZCV07AW60034	49666-MC
	ZIMM TRUCKS		ZIMM MIXER		ZM4-4095-1629-06	
	ZIMM TRUCKS		ZIMM BOILER			
ZT-3	ZIMM TRUCKS	2017	KENWORTH	T880	1NKZXPTX8HJ159129	26871-MJ
	ZIMM TRUCKS		ZIMM MIXER		ZM3-4095-2032-016	
	ZIMM TRUCKS		ZIMM BOILER	M-415	1604006	
ZT-4	ZIMM TRUCKS	2019	KENWORTH		1NKZX4TX3LJ407956	35684MN
	ZIMM TRUCKS		ZIMM MIXER		ZM4-4095-2203-19	
	ZIMM TRUCKS		ZIMM BOILER	M-415	1804008	
BOOM TRUCKS		YEAR	MAKE	MODEL	VIN OR SERIAL #	PLATE #
BMT-1	BOOM TRUCK	2011	VOLVO	VHD	4V5KC9DG2BN294518	28931-MM
BMT-2	BOOM TRUCK BOOM	2014	KENWORTH	T800	1NKDXPTX1EJ418954	38793-MD
		2008	PALFINGER	PK23002	S415-SH-A 100093454	
BMT-4	BOOM TRUCK	2014	KENWORTH	T37	2NKHLJ9X6EM421052	60054-MN
DUMP TRUCKS		YEAR	MAKE	MODEL	VIN OR SERIAL #	PLATE #
DT-2	DUMP TRUCK	1991	INTERNATIONAL	4700	1HTSSCNDM4MH353085	56219MG

DT-3	DUMP TRUCK	2010	VOLVO	VHD	4V5KC9EG6AN287729	56220MG
DT-4	DUMP TRUCK	2009	VOLVO	VHD	4V5KC9EGX9N269939	12187MJ
TRACTOR TRUCKS		YEAR	MAKE	MODEL	VIN OR SERIAL #	PLATE #
T-1	TRACTOR TRAILER	2015	KENWORTH	W900B	1XKWDPOX5FJ441926 BF52609	20425TC
T-2	TRACTOR TRAILER	2016	KENWORTH	W900B	1XKWDPOX0GJ115467 BG77973	23134TC
T-3	TRACTOR TRAILER	2019	KENWORTH	W900B	1XKWD40X3KJ247727 BR36901	29576TC
T-4	TRACTOR TRAILER 120,000 GVW	2020	KENWORTH	W900B	1XK1D40X6LJ398847	26545TC
		2019	SUMMIT		1S8SD304XK0013189	BU24793
SKID STEER		YEAR	MAKE	MODEL	VIN OR SERIAL #	PLATE #
SS-2	SKID STEER	2018	CAT	272D2 XHP	0MD200769	N / A
WELDING & SERVICE TRUCKS		YEAR	MAKE	MODEL	VIN OR SERIAL #	PLATE #
SVT-1	SERVICE TRUCK	2019	GMC	3500	1GD42TCG9KF144115	71606-MM
WT-2	WELDING TRUCK	2008	CHEVY	3500HD	1GCHK34K28E186780	83563MH
SVT-2	SERVICE VAN	GMC	3500	2006	1GTHG39U161177472	28921-MM
SVT-3	SERVICE VAN	FORD	E350	2008	1FTSE34L58DA21799	11034-MA
SVT-4	Express Van	2014	CHEVY	Express	1GB0G2CA4E1186871	67987MM
CARGO VANS		YEAR	MAKE	MODEL	VIN OR SERIAL #	PLATE #
V-2	CARGO VAN	2006	FORD	E350	1FTNE24W06HB16939	24926-KA
V-9	CARGO VAN	2006	FORD	E250	1FTNE24L76DA44909	56236-KA
V-10	CARGO VAN	2005	FORD	E350	1FTNE24W05HA02695	42261-JS
V-20	CARGO VAN (SAW)	2008	GMC	3500	AGDGG31C181909905	46840MJ
SAW-3		2013	HUSQVARNA	FS6600D T3 36"	1325162001	
V-21	CARGO VAN (UHAUL)	2008	GMC	3500	1GDGG31C181910570	89314MJ
V-22	CARGO VAN (SAW)	2004	GMC	3500	1GDGG31V241913733	89316MJ
SAW-22	SAW					
V-23	CARGO VAN (SAW)	2008	GMC	3500	1GDGG31C481910336	89315MJ
SAW-4	SAW	2012	HUSQVARNA	T3 36"		
V-24	CARGO VAN (SAW)	2008	GMC	3500	1GDGG31C081913833	27943MK
SAW-2	SAW	2015	HUSQVARNA	FS7000D T4 42"	1350481001	
V-25	CARGO VAN (UHAUL)	2008	GMC	3500	1GDGG31C481914578	30734ML
V-26	Express Van	2014	CHEVY	Express	1GB0G2CA4E1186871	67987MM
ROLLERS		YEAR	MAKE	MODEL	VIN OR SERIAL #	PLATE #
WBR-1	WALK BEHIND ROLLER		MULTIQUIP	MRH-800GS	Z-8484	
WBR-4	WALK BEHIND ROLLER				1249	2003883
WBR-5	WALK BEHIND VIBROPLATE 1 TON	2019	WACKER NEUSON	DPU6555	5100009637	
WBR-6	WALK BEHIND ROLLER					
WBR-8	WALK BEHIND ROLLER				D-1274	2279004
WBR-9	WALK BEHIND ROLLER					
WBR-10	WALK BEHIND ROLLER				C1242	

WBR-11	WALK BEHIND ROLLER					
						2003711
ROR-3	RIDE ON ROLLER		HAMM	HD Roller 12VV		
ROR-4	RIDE ON ROLLER	2015	Chicago Pneumatic	AR90G	10000350LFC005203	
ROR-5	RIDE ON ROLLER		HAMM	HD Roller 12VV		
MASSEUSE & ARROW BOARDS		YEAR	MAKE	MODEL	VIN OR SERIAL #	PLATE #
AWB-4	ARROW BOARDS					
AWB-12	ARROW BOARDS					
MGB-12						
SEABOXES		YEAR	MAKE	MODEL	VIN OR SERIAL #	PLATE #
SBX-1						
SBX-2						
SBX-3						
LIGHT TOWERS		YEAR	MAKE	MODEL	VIN OR SERIAL #	PLATE #
LT-1	LIGHT TOWER		MAGNUM	MLT3060	1212351	
LT-2	LIGHT TOWER		MAGNUM	MLT3060		
LT-3	LIGHT TOWER		MAGNUM	MLT3060	1109392	
LT-4	LIGHT TOWER		MAGNUM	MLT3060	1109393	
LT-8	LIGHT TOWER		MAGNUM	MLT3060M	1101049	
	LIGHT TOWER		MAGNUM	MLT3060		
TRAILERS		YEAR	MAKE	MODEL	VIN OR SERIAL #	PLATE #
TRL-1			FD-221	T3000		BA-32818
TRL-2	TRAILERS 1.2 TON ROLLER	2009	CROSS	TRAILERS 2 TON	431FS072091000644	AV27956
TRL-3	TRAILERS	2014	SU /TR	TRAILERS	5JW1U1826E1092991	BG39572
TRL-4						BE79893
TRL-5						BG39558
TRL-6	TRAILERS 5 TON ROLLER	2019	CAM	TRAILERS 5 TON	5JWCFF1227KP502251	BU10036
TRL-7	TRAILERS	2019	EAGER BEAVER	TRAILERS 44 TON	112H8V368KL083238	BT45551
TRL-8	TRAILERS 5 TON ROLLER	2018	CAM	TRAILERS 5 TON	5JPBU1724JP052837	BP33420
TRL-9	TRAILERS 5 TON ROLLER	2019	CAM	TRAILERS 5 TON	5JWCFF1224KP502255	BU10066
TRL-10	TRAILERS 5 TON	2016	CAM	TRAILERS 5 TON	5JPBU1720FP038456	BL69298
TRL-11						
SCREENERS		YEAR	MAKE	MODEL	VIN OR SERIAL #	PLATE #
SCR-1						
SCR-2						
SCR-3				SCM-75		
TAGALONG COMPRESSOR WELDING &		YEAR	MAKE	MODEL	VIN OR SERIAL #	PLATE #
TAC-1	COMPRESSOR	2010	KAESER	M57	KAON1301A3810485	
TAG-1	GENERATOR	2019	WACKER NEUSON	GENERATOR G130	24424318	
TAW-1	WELDING					

Attachment "D"
Certification Pursuant to Section 103-g
Of the New York State
General Municipal Law

- A. By submission of this bid/proposal, each bidder/proposer and each person signing on behalf of any bidder/proposer certifies, and in the case of a joint bid, each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each bidder is not on the list created pursuant to paragraph (b) of subdivision 3 of Section 165-a of the New York State Finance Law.
- B. A Bid/Proposal shall not be considered for award, nor shall any award be made where the condition set forth in Paragraph A above has not been complied with; provided, however, that in any case the bidder/proposer cannot make the foregoing certification set forth in Paragraph A above, the bidder/proposer shall so state and shall furnish with the bid a signed statement which sets forth in detail the reasons therefor. Where Paragraph A above cannot be complied with, the Purchasing Unit to the political subdivision, public department, agency or official thereof to which the bid/proposal is made, or his designee, may award a bid/proposal, on a case by case business under the following circumstances:
1. The investment activities in Iran were made before April 12, 2012, the investment activities in Iran have not been expanded or renewed after April 12, 2012, and the Bidder/Proposer has adopted, publicized and is implementing a formal plan to cease the investment activities in Iran and to refrain from engaging in any new investments in Iran; or
 2. The political subdivision makes a determination that the goods or services are necessary for the political subdivision to perform its functions and that, absent such an exemption, the political subdivision would be unable to obtain the goods or services for which the contract is offered. Such determination shall be made in writing and shall be a public document.



Signature

President

Title

Triumph Construction Corp.

Company

12/15/2020

Date

SUBMITTED - ON FILE**NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE
FOR-PROFIT CONSTRUCTION (CCA-2)**

You have selected the For-Profit Construction questionnaire, commonly known as the "CCA-2," which may be printed and completed in this format or, **for your convenience, may be completed online using the New York State VendRep System.**

COMPLETION & CERTIFICATION

The person(s) completing the questionnaire must be knowledgeable about the vendor's business and operations. An owner or official must certify the questionnaire and the signature must be notarized.

NEW YORK STATE VENDOR IDENTIFICATION NUMBER (VENDOR ID)

The Vendor ID is a ten-digit identifier issued by New York State when the vendor is registered on the Statewide Vendor File. This number must now be included on the questionnaire. If the business entity has not obtained a Vendor ID, contact the IT Service Desk at ITServiceDesk@osc.state.ny.us or call 866-370-4672.

DEFINITIONS

All underlined terms are defined in the "New York State Vendor Responsibility Definitions List," found at <http://www.osc.state.ny.us/vendrep/documents/questionnaire/definitions.pdf>. These terms may not have their ordinary, common or traditional meanings. Each vendor is strongly encouraged to read the respective definitions for any and all underlined terms. By submitting this questionnaire, the vendor agrees to be bound by the terms as defined in the "New York State Vendor Responsibility Definitions List" existing at the time of certification.

RESPONSES

Every question must be answered. Each response must provide all relevant information which can be obtained within the limits of the law. However, information regarding a determination or finding made in error which was subsequently corrected or overturned, and/or was withdrawn by the issuing government entity, is not required. Individuals and Sole Proprietors may use a Social Security Number but are encouraged to obtain and use a federal Employer Identification Number (EIN).

M/WBE UTILIZATION PLAN

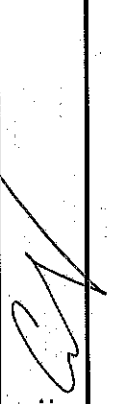
INSTRUCTIONS: This form is submitted at the time of bid or RFP submittal, as outlined in procurement submission instructions. This Utilization Plan must contain a detailed description of the supplies and/or services to be provided by each certified Minority and Women-owned Business Enterprise (M/WBE) under the contract. Attach additional sheets if necessary.

Subrecipient Name:		Project Name:	FIVE TOWNS DRAINAGE IMPROVEMENTS: LAWRENCE PIPE IMPROVEMENTS
Offeror's Name:	TRIUMPH CONSTRUCTION CORP.	Federal ID Number:	13-4050635
Address:	1354 SENECA AVENUE	Contract Number (if applicable):	H35132-01G
City State & Zip Code:	BRONX, NEW YORK 10474	Phone:	718-861-6060
Location of Work:			

MWBE Target Goal			Proposed MWBE Participation		
Category	Percentage	Amount	Category	Percentage	Amount
MBE:	%	\$	MBE:	8 %	\$
WBE:	%	\$	WBE:	3 %	\$
Totals:	%	\$	Totals:	%	\$

1. Certified M/WBE Subcontractors/Suppliers Information:				Classification NYS-ESD Certified (Choose One Only)		Federal ID No. :	Detailed Description of Work:	Dollar Value of Subcontractors/S upplies/Services	Intended performance dates on each component of the contract
		MBE	WBE						
A	Name:	TBD					TRUCKING	\$330,000.00	
	Address:								
	Email:								
	Phone:								
B	Name:	TBD					SURVEYING	\$135,000.00	
	Address:								
	Email:								
	Phone:								
C	Name:	TBD					SAWCUTTING	\$ 7,000.00	
	Address:								
	Email:								
	Phone:								
D	Name:	TBD					LANDSCAPING	\$180,000.00	
	Address:								
	Email:								
	Phone:								

1. Certified M/WBE Subcontractors/Suppliers Information:				Classification NYS-ESD Certified (Choose One Only)		Federal ID No. :	Detailed Description of Work:	Dollar Value of Subcontractors/S upplies/Services	Intended performance dates on each component of the contract
				MBE	WBE				
A	Name:	TBD					ENGINEERING	\$ 30,000.00	
	Address:								
	Email:								
	Phone:								
B	Name:	TBD					PILE	\$239,000.00	
	Address:								
	Email:								
	Phone:								
C	Name:	TBD					VALVES- SUPPLIER	\$126,000.00	
	Address:								
	Email:								
	Phone:								
D	Name:								
	Address:								
	Email:								
	Phone:								

Contractor Use:	
Name of Preparer:	Cyrus Kazerani
Name of Approver:	
Authorized Signature:	
Date:	12/15/2020
Email:	ckazerani@triumphconstructionny.com
Phone:	718-861-6060

Laura Curran
COUNTY EXECUTIVE



Kenneth G. Arnold, P.E.
COMMISSIONER

COUNTY OF NASSAU
DEPARTMENT OF PUBLIC WORKS
1194 PROSPECT AVENUE
WESTBURY, NEW YORK 11590 - 2723

November 19, 2020

RE: LAWRENCE PIPE DRAINAGE IMPROVEMENTS PROJECT- NCDPW No.
H35132-01G

ADDENDUM No. 1

To all prospective Proposers:

1. Revision of Plans and Bid Sheet:

The following is a description of the Updated Lawrence Pipe Project, the revised plans describe the project. The various alternate phases of the project have been removed. Attached to this addendum is the revised bid sheet and revised plan set.

Project Description

The Base Project is intended to eliminate flooding at the intersection of Meadow Lane and Marbridge Road, in Lawrence, N.Y., as well as in the vicinity of the intersections of Margaret Avenue and Kendridge Road; along with North Street and Harrison Street. New Storm Drainage facilities consisting of new concrete box culverts will be installed under existing local roads, extending from the intersection of Meadow Lane and Marbridge Road and running westerly along Marbridge Road to Margaret Avenue and south on Margaret Avenue, across Kenridge Road into the Lawrence Golf Course. From there the new storm drainage will consist of dual sixty (60") inch diameter reinforced concrete pipes that will extend from Kenridge Road and continue south through the golf course parallel with Harrison Street as well as North Street east to and eventually crossing Causeway. Connection of existing storm drainage serving the golf course and surrounding areas will be included in the scope of work. From Causeway, the new culverts will discharge into Bannister Pond and Bannister Bay. A small portion of the bottom of Bannister Pond will require dredging and disposal of spoils.

It is anticipated that dewatering systems will be required throughout the project where high groundwater is anticipated. Similarly, within public roadways, Excavation Protection Systems (EPS) will be required for any trenches over five (5') feet in depth. EPS will be required during installation of drainage through the golf course while the option of open cutting the trench along with steel trench boxes or shields will be considered, but only if trench side slopes are appropriately sloped and stepped as approved by the Engineer. Catch basins will be replaced and new manholes provided as needed and shown on the plans. All structures are constructed of Reinforced Concrete.

This phase of the work will include construction of three (3) new sixty (60") inch diameter reinforced concrete pipe outfalls, incidental bulkheading, as well as two new sixty (60") inch diameter reinforced concrete pipes that will supplement flow through an existing berm/dike that separates Bannister Pond from Bannister Bay. Within the outfalls, the project will call for the installation of three (3) new sixty (60") inch check valves to prevent rising tide waters from entering the new and existing drains and flooding further upland. Additionally, two (2) new advanced hydrodynamic vortex separators will be installed within the new piping systems being installed within the golf course to facilitate stormwater management and reduce pollutants washing out into Bannister Bay.

Restoration work within this phase of the project will include new concrete curb and gutter, concrete sidewalk and asphalt road reconstruction. Typical road sections will consist of either full depth asphaltic concrete pavement or a combination of drybound base course with asphalt concrete intermediate and top courses. Sanitary sewers will be replaced and relocated where impacted by the new drainage system. Golf course restoration will include regrading, reseeding and restoration of cart paths and irrigation where appropriate. Lastly, new landscaping will be installed within Bannister Pond to restore the area's wetland habitat.

2. **Specifications:** The word "Specifications" shall mean all of the directions, conditions, requirements and standards of performance applying to the work as hereinafter detailed and designated as such and as contained in the books prepared by the Department of Public Works of Nassau County entitled "2009 Standard Specifications and Detail Sheets for Civil Engineering and Site Development Construction" & "Traffic Signal Specifications & Standard Drawings" & "Sewer specification and standard drawings".

3. **Project Labor Agreement:** – The bid has been revised to remove the Project Labor Agreement requirements in its entirety. The Project Labor Agreement language to be deleted from this bid document can be found in the Notice to Bidders, Instructions to Bidders and Prevailing Wage sections.

4. **Question and Answers:**

Q. The plans show a base bid and alternates. Will the bid / Proposal documents reflect the alternates shown?

A. See Section 1 of this Addendum.

Q. How will a Contractor be able to be sure that his General Conditions / Fixed Costs are covered within the unit price bid for the items if the quantities are reduced?

A. Section 1 of this Addendum addresses the revised bid sheet.

Q. What is the basis for selecting and awarding the project?

A. Under Notice to Bidders, Section M, the "Contract will be awarded, if at all, to the lowest responsive responsible bidder, as determined by the County Executive and by terms and conditions of the Contracts".

Q. On the plans for Drainage, the width of trench is shown as six (6') feet wide. With dewatering equipment, the trench will need to be wider. Will that width be adjusted?

A. I couldn't find anything that referred to six (6') feet. However, the plans indicate the max. pay limit as the outside diameter of the pipe plus four (4') feet. Any excavation (and dewatering) needed beyond that will have to be included in the unit price bid for this work. Someone from the County noted that the width would be adjusted in the field during construction.

Q. As per pdf page #31 on contract book, the minority goals are set 15% MBE, 15%WBE and 10 % DBE, However, as per pdf page # 7, it clearly states that Minority goals are set at 15% WBE, %15MBE. So, there is a contradictory information on between pdf#7 and #31. Please clarify what are the minority goals set on this project? Is it 15%MBE ,15%WBE 10 %DBE or 15% MBE, 15% WBE?

A. Please be advised the EEO Female Participation goal is set at 6.9%, the WBE Participation goal is set at 15%, MBE Participation goal is set at 15% and the Section 3 Participation goal is set as 5% new hires/10% subcontracting as required by HUD. Further information in section "Other Required Forms."

Q. Please confirm if this is a "Buy America" project?

A. Yes, this is a Buy America project.

Q. The M/WBE goals are 15% and 15% but in addition to this, there is a 10% DBE goal. If we are planning to use both a MBE and DBE certified company, do we need to choose either one of their qualifications towards the goals or can we count both?

A. You will need to choose one of their qualifications towards the goals.

Q. Please provide the specifications for;
item 96: Dry Riprap

item 121: Dry bound Base Course

A. Both items are standard NCDPW specifications

END ADDENDUM #1

Laura Curran
COUNTY EXECUTIVE



Kenneth G. Arnold, P.E.
COMMISSIONER

COUNTY OF NASSAU
DEPARTMENT OF PUBLIC WORKS
1194 PROSPECT AVENUE
WESTBURY, NEW YORK 11590 - 2723

November 20, 2020

**RE: LAWRENCE PIPE DRAINAGE IMPROVEMENTS PROJECT - NCDPW No.
H35132-01G**

ADDENDUM No. 2

To all prospective Proposers:

The minimum tip diameter for all 25' CCA Treated Class B Timber Plies shall be 8" minimum – paid for under Item 205SS, which is detailed and provided in the Special Specifications section of Project Construction Contract Documents.

Please replace the revised bid sheet page 65 of 468 (one page only) containing item number 205SS, as attached. The description for the project proposal for item 205SS should be addended to remove the existing description, which states "New Bulkheading with Vinyl Sheeting" and replace it with "New Bulkheading with Timber Bulkhead". It is mandatory to acknowledge the addendum and to replace the bid sheet as instructed. Any hand correction of bid sheets will disqualify the bid.

END ADDENDUM #2

Laura Curran
COUNTY EXECUTIVE



Kenneth G. Arnold, P.E.
COMMISSIONER

COUNTY OF NASSAU
DEPARTMENT OF PUBLIC WORKS
1194 PROSPECT AVENUE
WESTBURY, NEW YORK 11590 - 2723

November 25, 2020

RE: LAWRENCE PIPE DRAINAGE IMPROVEMENTS PROJECT
Contract No: H35132-01G

ADDENDUM No. 3

To all prospective Proposers:

This addendum shall be part of the Contract Documents as provided in the Instructions to Bidders for the above-referenced project. The additions to and modifications of the Contract Documents, as described in this and the attached documents, shall be included in, and become part of, any Contract which may be executed for construction of this project. Bidders are instructed to take the following into account in rendering a Bid for this Work:

1. SUPPLEMENTAL NOTICE TO BIDDERS

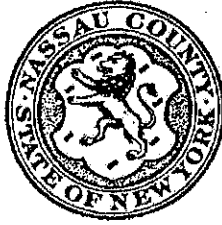
The Bid Due Date has been extended to Tuesday, December 15th, 2020 at 10:30 AM at the location indicated in the attached Supplemental Notice to Bidders.

2. AGREEMENT SECTION

Updated Davis Bacon Wages: The attached pages will replace the Davis Bacon wages listed on pages 225-236 in the Agreement Section.

END ADDENDUM #3

Laura Curran
COUNTY EXECUTIVE



Kenneth G. Arnold, P.E.
COMMISSIONER

COUNTY OF NASSAU
DEPARTMENT OF PUBLIC WORKS
1194 PROSPECT AVENUE
WESTBURY, NEW YORK 11590 - 2723

December 3, 2020

RE: LAWRENCE PIPE DRAINAGE IMPROVEMENTS PROJECT
Contract No: H35132-01G

ADDENDUM No. 4

To all prospective Proposers:

This addendum shall be part of the Contract Documents. The additions to and modifications of the Contract Documents, shall be included in, and become part of, any Contract which may be executed for construction of this project. Bidders are instructed to take the following into account in rendering a Bid for this Work:

1. GOLF COURSE CONSTRUCTION COORDINATION AND CLOSURE

During the construction of the Lawrence Pipe Drainage Improvements Project a portion of the work required to be done will need to be done on the Lawrence Golf Course. Once the construction schedule is developed coordination with the County and Village will be required for the temporary closures of the course. The golf course and driving range shall be available for uninterrupted play to the greatest extent possible.

END ADDENDUM #4

Jack Schnirman
Comptroller



OFFICE OF THE COMPTROLLER
240 Old Country Road
Mineola, New York 11501

COMPTROLLER APPROVAL FORM FOR PERSONAL, PROFESSIONAL OR HUMAN SERVICES CONTRACTS

Attach this form along with all personal, professional or human services contracts, contract renewals, extensions and amendments.

CONTRACTOR NAME: Triumph Construction

CONTRACTOR ADDRESS: 1354 Seneca Ave, Bronx, NY 10474

FEDERAL TAX ID #: 134050635

Instructions: Please check the appropriate box ("☑") after one of the following roman numerals, and provide all the requested information.

I. ☑ The contract was awarded to the lowest, responsible bidder after advertisement for sealed bids. The contract was awarded after a request for sealed bids was published in Newsday [newspaper] on October 28, 2020 [date]. The sealed bids were publicly opened on December 15, 2020 [date]. 5 [#] of sealed bids were received and opened.

II. ☐ The contractor was selected pursuant to a Request for Proposals.

The Contract was entered into after a written request for proposals was issued on _____ [date]. Potential proposers were made aware of the availability of the RFP by advertisement in _____ [newspaper], posting on industry websites, via email to interested parties and by publication on the County procurement website. Proposals were due on _____ [date]. _____ [state #] proposals were received and evaluated. The evaluation committee consisted of: _____

_____ (list # of persons on committee and their respective departments). The proposals were scored and ranked. As a result of the scoring and ranking, the highest-ranking proposer was selected.

III. ☐ This is a renewal, extension or amendment of an existing contract.

The contract was originally executed by Nassau County on _____[date]. This is a renewal or extension pursuant to the contract, or an amendment within the scope of the contract or RFP (copies of the relevant pages are attached). The original contract was entered into after _____

_____[describe procurement method, i.e., RFP, three proposals evaluated, etc.] Attach a copy of the most recent evaluation of the contractor's performance for any contract to be renewed or extended. If the contractor has not received a satisfactory evaluation, the department must explain why the contractor should nevertheless be permitted to continue to contract with the county.

IV. ☒ Pursuant to Executive Order No. 1 of 1993, as amended, at least three proposals were solicited and received. The attached memorandum from the department head describes the proposals received, along with the cost of each proposal.

- ☒ **A.** The contract has been awarded to the proposer offering the lowest cost proposal; **OR:**
- ☐ **B.** The attached memorandum contains a detailed explanation as to the reason(s) why the contract was awarded to other than the lowest-cost proposer. The attachment includes a specific delineation of the unique skills and experience, the specific reasons why a proposal is deemed superior, and/or why the proposer has been judged to be able to perform more quickly than other proposers.

V. ☐ Pursuant to Executive Order No. 1 of 1993 as amended, the attached memorandum from the department head explains why the department did not obtain at least three proposals.

- ☐ **A.** There are only one or two providers of the services sought or less than three providers submitted proposals. The memorandum describes how the contractor was determined to be the sole source provider of the personal service needed or explains why only two proposals could be obtained. If two proposals were obtained, the memorandum explains that the contract was awarded to the lowest cost proposer, or why the selected proposer offered the higher quality proposal, the proposer's unique and special experience, skill, or expertise, or its availability to perform in the most immediate and timely manner.
- ☐ **B.** The memorandum explains that the contractor's selection was dictated by the terms of a federal or New York State grant, by legislation or by a court order. (Copies of the relevant documents are attached).
- ☐ **C.** Pursuant to General Municipal Law Section 104, the department is purchasing the services required through a New York State Office of General Services contract no. _____, and the attached memorandum explains how the purchase is within the scope of the terms of that contract.

- ☐ **D.** Pursuant to General Municipal Law Section 119-o, the department is purchasing the services required through an inter-municipal agreement.

VI. ☐ This is a human services contract with a not-for-profit agency for which a competitive process has not been initiated. Attached is a memorandum that explains the reasons for entering into this contract without conducting a competitive process, and details when the department intends to initiate a competitive process for the future award of these services. For any such contract, where the vendor has previously provided services to the county, attach a copy of the most recent evaluation of the vendor's performance. If the contractor has not received a satisfactory evaluation, the department must explain why the contractor should nevertheless be permitted to contract with the county.

In certain limited circumstances, conducting a competitive process and/or completing performance evaluations may not be possible because of the nature of the human services program, or because of a compelling need to continue services through the same provider. In those circumstances, attach an explanation of why a competitive process and/or performance evaluation is inapplicable.

VII. ☐ This is a public works contract for the provision of architectural, engineering or surveying services. The attached memorandum provides details of the department's compliance with Board of Supervisors' Resolution No. 928 of 1993, including its receipt and evaluation of annual Statements of Qualifications & Performance Data, and its negotiations with the most highly qualified firms.

Instructions with respect to Sections VIII, IX and X: All Departments must check the box for VIII. Then, check the box for either IX or X, as applicable.

VIII. ☒ Participation of Minority Group Members and Women in Nassau County Contracts. The selected contractor has agreed that it has an obligation to utilize best efforts to hire MWBE sub-contractors. Proof of the contractual utilization of best efforts as outlined in Exhibit "EE" may be requested at any time, from time to time, by the Comptroller's Office prior to the approval of claim vouchers.

IX. ☒ Department MWBE responsibilities. To ensure compliance with MWBE requirements as outlined in Exhibit "EE", Department will require vendor to submit list of sub-contractor requirements prior to submission of the first claim voucher, for services under this contract being submitted to the Comptroller.

X. ☐ Vendor will not require any sub-contractors.

In addition, if this is a contract with an individual or with an entity that has only one or two employees: ☐ a review of the criteria set forth by the Internal Revenue Service, *Revenue Ruling No. 87-41*, 1987-1 C.B. 296, attached as Appendix A to the Comptroller's Memorandum, dated February 13, 2004, concerning independent contractors and employees indicates that the contractor would not be considered an employee for federal tax purposes.



Department Head Signature

3/9/21

Date

NOTE: Any information requested above, or in the exhibit below, may be included in the county's "staff summary" form in lieu of a separate memorandum.

COUNTY OF NASSAU
DEPARTMENT OF PUBLIC WORKS
Inter-Departmental Memo

TO: Contract File

FROM: Jane Houdek, Designated DPO

DATE: March 26, 2021

SUBJECT: Contract No. H35132-01G
GOSR Five Towns Drainage Improvements: Lawrence Pipes Project
Triumph Construction Corporation

Triumph Construction Corporation is the presumptive awardee for the above-referenced contract to be awarded pursuant to the County's Procurement Policies and New York General Municipal Law §103. To assist County Departments in conducting responsibility reviews the County's Procurement Compliance Policy requires vendors to provide information via disclosure forms found on the County's Vendor Portal. The Department also conducts online searches to locate additional information.

The following information regarding Triumph Construction Corporation was available for the County's responsibility review:

Issue Description	Contracting Entity Resolution
OSHA Violations – April 2018	<p>On October 10, 2018, OSHA issued Triumph 2 citations, via Inspection No. 1308500, stemming from an incident, at a Triumph work site, which occurred in April of 2018. Specifically, <i>Citation 1 Item 1 Serious</i> alleged that adequate protection was not provided to employees to protect from cave ins from loose rock or soil that could pose a hazard. <i>Citation 2 Item 1 Repeat</i> alleged that Triumph employees were working in a trench that was "about 5 feet deep" and were not protected from cave ins by an adequate protective system. Triumph contested the allegations.</p> <p>OSHA agreed to a Confidential Stipulated Settlement. Triumph was originally cited with 2 citations: one "Repeat" and one "Serious". As part of the settlement, Triumph agreed to 4 citations (due to the payment terms of the settlement). Citations 1-3 were reclassified from "Serious" to "Other-Than-Serious" and Citation 4 was reclassified from "Repeat" to "Serious". Additionally, Triumph agreed to pay a reduced penalty of \$53,040.00 from the original penalty of \$76,828.00.</p> <p>See attached documents and proof of penalty payment.</p>
2015 - OSHA Inspection No. 992120.015	<p>The alleged violation actually occurred in 2015. Inspection # 992120.015 was comprised of two citations. After an administrative trial, the alleged serious violation was dismissed by the administrative law judge and the repeat violation was sustained. As explained by the vendor, the violations were immediately abated, and measures were put in place to assure against any future violations. After a legal</p>



Contract File
March 26, 2021

SUBJECT: Contract No. H35132-01G
GOSR Five Towns Drainage Improvements: Lawrence Pipes Project
Triumph Construction Corporation

	<p>challenge to the violation was unsuccessful, Triumph paid the \$25,000 fine in 2019.</p> <p>See attached documents and proof of payment.</p>
PSC Violation-2018	<p>On January 4, 2019, Triumph was issued a Notice of Probable Violation, pursuant to 16 NYCRR Part 753. Triumph explained that it was not aware of the events that led to this violation until notified by Con Edison, some months after the damage occurred. Specifically, on August 2, 2018, Triumph's owner, Carlo Cuzzi, was advised about an incident of unreported gas damage involving former Triumph personnel ("Crew"). The alleged incident occurred at or near Saxon Avenue, between Sedgwick Avenue & Van Cortland South, in the Bronx. Prior to August 2nd, Triumph stated it was completely unaware of the damage and its cover up. Upon learning of the incident from Con Edison, Triumph's owner immediately launched both internal and external investigations into the matter. Con Edison also performed their own investigation.</p> <p>Vendor explained that, as a result of the extensive investigations performed by both entities, it was determined that the Crew, as directed by their foreman, independently decided to cover up the damage. Triumph's investigation performed by Mr. Cuzzi, Bonnie Porzio, Esq., (General Counsel), John McCann (Triumph's Supervisor for Con Edison work), and New York Private Detective Services ("NYPDS" - an independent third-party investigator), determined that the actual damage was caused by the brother of foreman. The foreman took complete responsibility for the cover-up and stated that he was fearful that his brother would be fired as a result of the damage and his actions were to protect his brother. The entire Crew was terminated immediately.</p> <p>As a result of both Triumph's and Con Ed's investigation, the PSC agreed to settle the proposed violation for a reduced fine. The fine was reduced from \$50,000.00 to \$34,998.00, which was paid over 6 months to the Department of Public Service.</p> <p>See attached proof of penalty payment.</p>
NLRB - 2016	<p>In 2016, an ex-employee of Triumph brought a claim to the NLRB, alleging that he was not being paid prevailing wage. He was originally employed by Triumph Utilities, Corp., - a Triumph related entity. He also argued that Triumph Utilities Corp., Rosedale Co. and Cuzjack Construction Corp. were joint and/or single employers with Triumph Construction for the purposes of the NLRB. Specifically, he alleged that he was not being paid prevailing wage for "flagging" on the job site. However, he was not, in fact, a flagger. He was hired as a "crossing guard". The two job classifications have very different job descriptions and responsibilities. Additionally, only flaggers have a prevailing wage rate. Crossing guards do not have a union classification.</p>

Contract File
March 26, 2021

SUBJECT: Contract No. H35132-01G
GOSR Five Towns Drainage Improvements: Lawrence Pipes Project
Triumph Construction Corporation

	The NLRB dismissed the case. Notice of dismissal is attached.
NYC Administrative violations	Vendor has been issued violations by NYC Agencies. Vendors that perform the in-street construction in NYC are often cited by NYC Agencies. The number and nature of violations issued to this vendor are not uncommon. Additionally, the vendor has been n NYC contractor for many years and continues to be awarded multiple NYC contracts. See attached.
NYC School Construction Authority complaint	There was an allegation that Triumph failed to provide plumbers to do plumbing work. The vendor supplied evidence, to the satisfaction of SCA that Olympic Plumbing had been utilized on the job.

Triumph Construction Corporation has successfully performed municipal contract work with various NYC Agencies for over twenty (20) years. See attached Reference Check and March 26th Letter from Vendor to Department. Adverse information on Triumph has been disclosed and the actions taken to address that adverse information. The Nassau County Department of Public Works (NCDPW) does not find this adverse information to be of a nature that would equate to a finding that Triumph Construction Corporation is not a responsible vendor.



Jane M. Houdek
Attorney for Public Works

JMH:jd

Att.

c: Kenneth G. Arnold, Commissioner
Sean E. Sallie, Deputy Commissioner
Joseph Cuomo, Planner II, Project Manager
CariAnn Palmese, Program Manager



United States of America
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION
1120 20th Street, N.W., Ninth Floor
Washington, DC 20036-3419

Phone: (202) 606-5405

Fax: (202) 606-5409

Notice of Order and Report

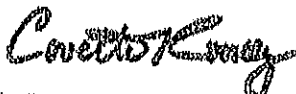
In Reference To:

Secretary of Labor v. TRIUMPH CONSTRUCTION, CORP.
OSHRC Docket No. 18-1833

1. Please take notice that the accompanying order approving the settlement agreement pursuant to 29 C.F.R. §2200.100, the settlement agreement itself, and all other papers comprising the record shall be sent promptly to the Review Commission's Executive Secretary, and shall constitute the report of this Administrative Law Judge for the purpose of 29 U.S.C. Section 661(j).
2. Any request for relief from clerical mistakes or errors arising from oversight or inadvertence must be in the form of a written motion (See 29 C.F.R. §2200.40). The motion should be directed to the Review Commission as follows:

Executive Secretary
Occupational Safety and Health
Review Commission
1120 20th Street, N.W. - 9th Floor
Washington, D.C. 20036-3419

3. The Executive Secretary shall make an appropriate referral of any request for relief.
4. The order shall become final thirty (30) days from the date of its docketing by the Executive Secretary, unless review thereof is directed by a Commission Member within that time. 29 U.S.C. Section 661(j).


COVETTE ROONEY
Chief Judge, OSHRC

Dated: June 4, 2019
Washington, D.C.

UNITED STATES OF AMERICA
OCCUPATIONAL SAFETY & HEALTH REVIEW COMMISSION

R. Alexander Acosta, Secretary of Labor,
United States Department of Labor,

Complainant,

vs.

Triumph Construction, Corp

Respondent.

: OSHRC Insp

: 1308500

: 18-1833

ORDER APPROVING SETTLEMENT

Respondent in Inspection No. 1308500 by a letter dated November 2, 2018 contested the citation issued to it by Complainant on October 10, 2018. In that letter, Respondent also contested the penalties proposed by Complainant for the citation.

An executed Settlement Agreement has been received from the parties; and this Agreement addresses all matters at issue between the parties in this proceeding. The Agreement having been read and considered it is

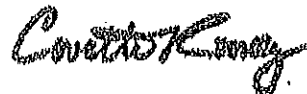
ORDERED: (1) That the terms of the Settlement Agreement are approved and incorporated as part of this Order; and

2) That this Order, pursuant to Section 12(j) of the Act, 29 U.S.C. § 661(j), will become the final order of the Commission at the expiration of 30 days from the date of docketing by the

Executive Secretary, unless within that time a member of the Commission directs that it be reviewed.

Dated this 4TH day of JUNE, 2019.

SO ORDERED:



Judge, Occupational Safety
& Health Review Commission

cc: Honorable Covette Rooney/OSHRC-WASHINGTON, D.C.
Honorable Covette Rooney
Occupational Safety and Health
Review Commission
One Lafayette Centre
1120 20th Street, N.W.
Suite 990
Washington, D.C. 20036-3419

CERTIFICATE OF SERVICE

This is to certify that a copy of the Order was mailed to the parties listed below by first class mail on June 4, 2019.

18-1833

Jeffrey Rogoff, Regional Solicitor
U.S. Department of Labor
Office of the Solicitor
201 Varick Street, Room 983
New York, New York 10014
Attention: Daniel Hennefeld, Esq.

Bonnie Porzio, Esq.
TRIUMPH CONSTRUCTION CORP.
1354 Seneca Avenue
Bronx, New York 10474

Danell Gordon
Legal Assistant

Post Office Address:
Judge
OSHRC
One Lafayette Center
1120 20th Str., N.W. - 9th Floor
Washington, D.C. 20036-3419
(202) 606-5405 FAX (202) 606-5409



OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION
1120 20th Street, N.W., Ninth Floor
Washington, DC 20036-3457

Office of Chief Judge

Phone: 202-606-5405

NOTICE OF APPLICATION OF REVISED OSHRC RULES TO THIS CASE

Pursuant to 84 Fed. Reg. 14554 (April 10, 2019), the Review Commission's revised rules will take effect on **June 10, 2019**. They apply to all cases docketed on or after that date.

They also apply to proceedings in cases pending on that date, except to the extent that their application would be infeasible or would work an injustice, in which event the present rules apply.

It is advised that you familiarize yourself with the revised Rules. The revised Rules may be accessed by visiting:

<https://www.govinfo.gov/content/pkg/FR-2019-04-10/pdf/2019-06581.pdf>

UNITED STATES OF AMERICA
OCCUPATIONAL SAFETY & HEALTH REVIEW COMMISSION

R. Alexander Acosta Secretary of Labor,
United States Department of Labor,

Complainant,

: OSHRC Insp

vs,

: 1308500

Triumph Construction, Corp.

Respondent.

:

:

:

STIPULATED SETTLEMENT

Kate O'Scannlain
Solicitor of Labor

JEFFREY S. ROGOFF
Regional Solicitor

Daniel Hennefeld
Counsel for Occupational
Safety and Health Administration

R. Alexander Acosta
Secretary of Labor

POST OFFICE ADDRESS
Jeffrey S. Rogoff
Regional Solicitor
U.S. Department of Labor
201 Varick Street, Room 983
New York, New York 10014
Tel. 646-264-3650

UNITED STATES OF AMERICA

OCCUPATIONAL SAFETY & HEALTH REVIEW COMMISSION

R. Alexander Acosta, Secretary of Labor, :
United States Department of Labor, :
Complainant, : OSHRC Insp
vs. : 1308500
Triumph Construction, Corp. :
Respondent. :

STIPULATED SETTLEMENT

Based upon the following recital, the Complainant and the Respondent herein agree to the following as a conclusion of this matter;

1) The Complainant, R. Alexander Acosta, Secretary of Labor United States Department of Labor, hereby amends the citations as follows:

1. Citation 1 Item 1 is classified as Other-Than-Serious and

amended to CFR 1926.652(a)(1): ~~Each employee on an excavation was not protected from cave-in by an adequate protective system designed in accordance with paragraph (b) and (c) of this section~~

a. ~~Employees were working in a trench that was at least 5 feet deep and were not protected from cave-ins by an adequate protective system.~~ ~~Employees were working in a trench that was at least 5 feet deep and were not protected from cave-ins by an adequate protective system.~~

2. Citation 1 Item 2 is classified as Other-Than-Serious and

amended to CFR 1926.652(a)(1): ~~Each employee on an excavation was not protected from cave-in by an adequate~~

~~production of information concerning the activities of the organization (b) on (c) of this section.~~

~~a. Employees were working in a trench that is at least 5 feet deep and was not protected from cave-in by an adequate protective system. Penalties assessed: Employee 5, \$13,260 and \$13,260.~~

3. Citation 1 Item 3 is classified as Other-Than-Serious and amended to CFR 1926.652(a)(1): ~~Each employee in an excavation was not protected from cave-in by an adequate protective system designed in accordance with paragraph (b) of this section.~~

~~a. Employees were working in a trench that is at least 5 feet deep and was not protected from cave-in by an adequate protective system. Penalties assessed: Employee 6, \$13,260 and \$13,260.~~

4. Citation 2 Item 1 is reclassified from "Repeat" to "Serious" violation with amended penalty of \$13,260 and the description of the violation is amended to read as follows:

~~a. Employees were working in a trench that is at least 5 feet deep and was not protected from cave-in by an adequate protective system. Penalties assessed: Employee 7, \$13,260 and \$13,260.~~

The notification of proposed penalty from \$76,828 to reflect an amended proposed penalty of \$53,040 be apportioned as set forth below:

<u>CITATION NO.</u>	<u>ITEM</u>	<u>PROPOSED PENALTY</u>	<u>AMENDED PROPOSED PENALTY</u>	
01	AMEND 1	\$12,805	\$13,260	Other-than-Serious
01	2	----	\$13,260	Other-than-Serious
01	3	----	\$13,260	Other-than-Serious
02	1	\$64,023	\$13,260	Amended to Serious

Total		\$76,828	\$53,040	

2) Based upon the above, the Respondent Triumph Construction, Corp. herein withdraws its notice of contest and answer as to the citation and proposed penalty as modified.

3) Respondent further affirmatively states that it will do the following:

- a. Respondent will conduct and document job hazards analysis (JHAs) or Pre Task Plans (PTPs) for the utility work done in trenches, excavation and/or in vaults in the 5 boroughs in New York City. The documented JHA or PTP will include but not be limited to the complete trench and excavation protective system, access/egress to any trench, excavation and/or vault, all sampling or monitoring done

prior to entrance trench, excavation or vault if necessary and personal protective equipment needed to access the trench, excavation and/or vault. The Respondent will maintain the specific JHAs or PTPs at the specific sites for the next 12 months beginning May 1, 2019 at all jobs located in 5 boroughs of New York City. The documented JHAs or PTPs will be made available within 3 business days upon request to OSHA.

- b. Respondent will conduct and document Specific Site Orientation Training, respective to hazards addressed by Paragraph 3(a), prior to any employees working in the trench, excavation and/or vault. The Respondent will maintain the documented training agenda and sign in sheets for the next 12 months beginning May 1, 2019 at all jobs located in 5 boroughs of New York City. The documented training information will be made available within 3 business days upon request to OSHA.
- c. Respondent will have a designated competent person trained on the requirements of working in trenches, excavations and/or vaults and will inspect and ensure the JHA or PTP implemented in Paragraph 3(a) are complete and being used by the trained employees. The competent person will document his inspections of the trench, excavation and/or vaults for the next 12 months beginning May 1, 2019

at all jobs located in 5 boroughs of New York City. The documented inspections and correction of hazards will be made available within 3 business days upon request to OSHA.

4) The specific abatement measures set forth in paragraphs 3(a), 3(b) and 3(c) of this Stipulated Settlement shall be considered required abatement of the citations issued in this matter, and Respondent's failure to perform any measures required in those paragraphs may be cited as failure to abate under Section 10(b) of the Occupational Safety and Health Act of 1970, 29 U.S.C. §659(b), to the same extent as if these abatement measures had been set forth from the outset in the citations issued in this matter.

5) Respondent certifies that on _____, this stipulation will be posted where affected employees may see it.

6) Respondent will pay the amended proposed penalty of \$53,040.00 in (6) monthly installments. The first payment of \$8,840 is due on 05/15/2019 and the last monthly payment of \$8,840 is due on 10/15/2019. Payments can be made by forwarding Checks made payable to Occupational Safety and Health-Labor, 201 Varick Street, Room 908, New York, NY 10014 or by using www.pay.gov.

7) By entering into agreements, the Respondent does not admit that it violated the cited standards for any litigation or purpose other than a subsequent proceeding under the Occupational Safety and Health Act.

8) Each party hereby agrees to bear its own fees and other expenses incurred by such party in connection with any stage of this proceeding.

9) The Respondent consents to the electronic filing and service of this stipulated settlement with the Review Commission.

DATED:

New York, New York

Kate O'Scannlain
Solicitor of Labor

Jeffrey S. Rogoff
Regional Solicitor

BY:

Daniel Hennefeld
Counsel for Occupational Safety
And Health Administration

R. Alexander Acosta
Secretary of Labor

Triumph Construction, Corp


Respondent

BY: _____
TITLE and SIGNATURE

Date:07/16/2019 Account:1501459093 Amount:\$8,840.00 Serial:52018 Sequence:1060305390 TR:26013576 TranCode:0
DbCr:D Pattern:1 RIC:0

100-44361-1

CASH ONLY IF ALL CheckLock™ SECURITY FEATURES LISTED ON BACK INDICATE NO TAMPERING OR COPYING



1354 SENECA AVENUE
BRONX, NY 10474
(718) 861-6060

Signature Bank
BROOKLYN, NY 11219
1-1357-260

52699

6-07-2019

215000 Inspection # ~~172124~~ 1308500

PAY TO THE ORDER OF OSHA \$ 8,840.00

Pay: *****Eight thousand eight hundred forty dollars and no cents

DOLLARS

MEMO: Occupational Safety & Health
201 Varick Street
Room 908
New York, NY 10014

052699 :026013576: 1501459093*

Date: 07/16/2019 Account: 1501459093 Amount: \$8,840.00 Serial: 52699 Sequence: 1060305400 TR: 26013576 TranCode: 0
DbCr: D Pattern: 1 RIC: 0

VOID INSTRUCTIONS

1. Do not use this check if the security features listed on the back are missing or damaged.

2. Do not use this check if the check is torn, stained, or otherwise damaged.

3. Do not use this check if the check is dated after the expiration date.

4. Do not use this check if the check is not cashed within the specified time frame.

5. Do not use this check if the check is not cashed at the specified location.

6. Do not use this check if the check is not cashed at the specified time.

7. Do not use this check if the check is not cashed at the specified place.

8. Do not use this check if the check is not cashed at the specified time and place.

9. Do not use this check if the check is not cashed at the specified time, place, and location.

10. Do not use this check if the check is not cashed at the specified time, place, location, and time.

REPLICATING, FORGING OR ALTERING THIS CHECK IS EXTREMELY DIFFICULT DUE TO ENCLOSED CHECK SECURITY FEATURES

SECURITY FEATURES:

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- Microprint
- Color Shift
- Security Thread
- Security Paper
- Security Ink
- Security Features
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- Security Elements
- Security Details
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- Security Attributes
- Security Properties
- Security Qualities
- Security Traits
- Security Features
- Security Design
- Security Elements
- Security Details
- Security Characteristics
- Security Attributes
- Security Properties
- Security Qualities
- Security Traits

DO NOT CASH IF:

- Check is torn, stained, or otherwise damaged.
- Check is dated after the expiration date.
- Check is not cashed within the specified time frame.
- Check is not cashed at the specified location.
- Check is not cashed at the specified time.
- Check is not cashed at the specified place.
- Check is not cashed at the specified time and place.
- Check is not cashed at the specified time, place, and location.
- Check is not cashed at the specified time, place, location, and time.

20190715
Fed Res Bank Cleveland
041036017

FOR DEPOSIT ONLY
DO NOT WRITE ON THIS CHECK
OR ANY OTHER CHECKS
OR DEPOSITS
OR ANY OTHER FINANCIAL INSTRUMENTS
OR ANY OTHER DOCUMENTS
OR ANY OTHER RECORDS
OR ANY OTHER INFORMATION
OR ANY OTHER DATA
OR ANY OTHER CONTENTS
OR ANY OTHER MATERIALS
OR ANY OTHER OBJECTS
OR ANY OTHER THINGS
OR ANY OTHER ITEMS
OR ANY OTHER GOODS
OR ANY OTHER SERVICES
OR ANY OTHER INTERESTS
OR ANY OTHER RIGHTS
OR ANY OTHER CLAIMS
OR ANY OTHER DEMANDS
OR ANY OTHER OBLIGATIONS
OR ANY OTHER LIABILITIES
OR ANY OTHER RESPONSIBILITIES
OR ANY OTHER ACCOUNTABILITIES
OR ANY OTHER OBLIGATIONS
OR ANY OTHER LIABILITIES
OR ANY OTHER RESPONSIBILITIES
OR ANY OTHER ACCOUNTABILITIES

CASH ONLY IF ALL CHECKLOCK™ SECURITY FEATURES LISTED ON BACK INDICATE NO TAMPERING OR COPYING

TRIUMPH CONSTRUCTION 1354 SENECA AVENUE
BRONX, NY 10474 (718) 861-6060

215000
Inspection #
1308540

Signature Bank
BROOKLYN, NY 11210
1-1357-260

53177

7-02-2019

PAY TO THE ORDER OF OSHA \$8,840.00

Pay: *****Eight thousand eight hundred forty dollars and no cents DOLLARS

MEMO: Occupational Safety & Health
201 Varick Street
Room 908
New York, NY 10014

053177 026013576 1501459093

Endorse Here

Date:07/16/2019 Account:1501459093 Amount:\$8,840.00 Serial:53177 Sequence:1060305410 TR:26013576 TranCode:0
DbCr:D Pattern:1 RIC:0

ENDORSE HERE

DEPARTMENT OF LABOR - OSHA
U.S. DEPARTMENT OF LABOR
400 CONSTITUTION AVENUE, NW
WASHINGTON, DC 20503

20190715
Fed Res Bank Cleveland
5041036017

AS THE CASHING OFFICER OF THE
SIGNED FRONT OF THIS CHECK, I
CERTIFY THAT THE CHECK IS
THE PROPERTY OF THE
CASHING OFFICER OF THE
SIGNED FRONT OF THIS CHECK
AND IS NOT TO BE CASHED
OR DEPOSITED IN ANY
OTHER MANNER.

RECEIVED FOR DEPOSIT TO THE CREDIT OF THE
CASHING OFFICER OF THE
SIGNED FRONT OF THIS CHECK
ON JULY 16, 2019.

CASH ONLY IF ALL CHECKS FOR SECURITY FEATURES LISTED ON BACK INDICATE NO TAMPERING OR COPYING

TRIUMPH CONSTRUCTION 1354 SENECA AVENUE 215000
BRONX, NY 10474
(718) 851-6060

Signature Bank
BROOKLYN, NY 11219
1-1357260

53810

8-01-2019

PAY TO THE ORDER OF OSHA \$8,840.00

Pay: Eight thousand eight hundred forty dollars and no cents

DOLLARS

MEMO Occupational Safety & Health
201 Varick Street
Room 908
New York, NY 10014

215000 Inspector 1308500

053810 026013576 1501459093

6

Date:08/15/2019 Account:1501459093 Amount:\$8,840.00 Serial:53810 Sequence:1091719490 TR:26013576 TranCode:0
DbCr:D Pattern:1 RIC:0

ENDORSE HERE

19012002

U.S. DEPARTMENT OF LABOR - OSHA

20190811

Fed Res Bank Cleveland

041036017

OSHA

201 SENECA AVE. 2ND FLOOR

BRONX, NY 10474

1-1357260

1308500

Inspector

215000

053810

026013576

1501459093

885 F.3d 95

United States Court of Appeals, Second Circuit.

TRIUMPH CONSTRUCTION
CORPORATION, Petitioner-Appellant,

v.

SECRETARY OF LABOR,
Respondent-Appellee.

Docket No. 16-4128-ag

|
August Term 2017

|
Argued: February 5, 2018

|
Decided: February 14, 2018

|
Published Opinion Issued: March 14, 2018

Synopsis

Background: Construction company petitioned for review of a final order of the Occupational Safety and Health Review Commission, which affirmed a citation issued by the Occupational Safety and Health Administration (OSHA) for a repeat violation of an excavation standard and assessed a penalty of \$25,000.

Holdings: The Court of Appeals held that:

[1] ALJ did not impermissibly shift burden of proof to construction company, and

[2] Occupational Safety and Health Review Commission acted within its discretion in relying determining that construction company was subject to enhanced civil penalty as repeat offender.

Petition denied.

West Headnotes (8)

[1] **Labor and Employment** ⇌ Judicial review

Court of Appeals sets aside an order by the Occupational Safety and Health Review Commission if it is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law. 5 U.S.C.A. § 706(2)(A).

[2] **Labor and Employment** ⇌ Judicial review

Court of Appeals upholds factual findings by the Occupational Safety and Health Review Commission if they are supported by substantial evidence on the record considered as a whole. Occupational Safety and Health Act of 1970 § 11, 29 U.S.C.A. § 660(a).

[3] **Labor and Employment** ⇌ Judicial review

Court of Appeals reviews legal conclusions of the Occupational Safety and Health Review Commission de novo, deferring as appropriate to the Secretary of Labor's reasonable interpretation of the Occupational Health and Safety Act. Occupational Safety and Health Act of 1970 § 11, 29 U.S.C.A. § 660(a).

[4] **Labor and Employment** ⇌ Presumptions and burden of proof

Although the Secretary of Labor bears the burden of proving an OSHA violation by a preponderance of the evidence, the party claiming the benefit of an exception must demonstrate its applicability. Occupational Safety and Health Act of 1970 § 11, 29 U.S.C.A. § 660(a).

[5] **Labor and Employment** ⇌ Trenches, ditches, etc

Occupational Safety and Health Act standard requiring adequate protective system against cave-ins applies to any excavation, unless the employer shows that the excavation meets an exception. 29 C.F.R. § 1926.652(a)(1).

[6] **Labor and Employment** ⇌ Presumptions and burden of proof

ALJ did not impermissibly shift burden of proof to construction company by drawing adverse inference from company's failure to produce site foreman as witness at hearing as to whether company violated Occupational Safety and Health Act standard requiring adequate protective system against cave-ins; company had burden to prove that site where worker was injured was within exception for excavations less than five feet deep, it was in this context that ALJ considered company's failure to present foreman's testimony as factor to evaluate credibility of one of company's testifying witnesses, and depth of excavation was not issue that turned on which party bore burden of proof but rather was determined by great weight of evidence. 29 C.F.R. § 1926.652(a)(1)(ii).

[7] **Labor and Employment** ⇌ Particular Violations

Occupational Safety and Health Review Commission acted within its discretion in relying on previous violations more than three years old to determine that construction company was subject to enhanced civil penalty as repeat offender for violation of excavation standard at site where worker was injured in cave-in; contrary to company's contention, neither OSHA Field Operations Manual nor Commission's precedent required three-year look back period for determining repeat violation, as Manual explicitly noted there were no statutory time limits and described three-year look back policy that would "generally" be followed, and Commission's precedents established that time between violations did not bear on whether violation was repeated. Occupational Safety and Health Act of 1970 § 17, 29 U.S.C.A. § 666(a); 29 C.F.R. § 1926.652(a)(1).

[8] **Labor and Employment** ⇌ Regulations

Occupational Safety and Health Administration (OSHA) Field Operations Manual is only a

guide for OSHA personnel to promote efficiency and uniformity, is not binding on OSHA or the Occupational Safety and Health Review Commission, and does not create any substantive rights for employers.

*96 Petition for Review from the Occupational Safety and Health Review Commission

Attorneys and Law Firms

Jason R. Finkelstein (Brian L. Gardner, on the brief), Cole Schotz, P.C., New York, New York, for Petitioner-Appellant.

A. Scott Hecker (Nicholas C. Geale, Acting Solicitor of Labor; Ann S. Rosenthal, Associate Solicitor of Labor; Heather R. Phillips, Counsel for Appellate Litigation, on the brief), United States Department of Labor, Washington, D.C., for Respondent-Appellee.

Before: Walker, Lynch, and Chin, Circuit Judges.

Opinion

Per Curiam:

*97 In this case, petitioner Triumph Construction Corporation ("Triumph") petitions for review of a September 7, 2016, decision and order of the administrative law judge (the "ALJ"), which subsequently became a final order of the Occupational Safety and Health Review Commission (the "Commission"), affirming a citation issued to Triumph by the Occupational Safety and Health Administration ("OSHA") for a repeat violation of an excavation standard and assessing a penalty of \$25,000. *Secretary of Labor v. Triumph Constr. Corp.*, 26 BNA OSHC 1331, 26 O.S.H. Cas. (BNA) 1331 (No. 15-0634, 2016), 2016 WL 6472834. Triumph contends that the Commission improperly shifted the burden of proof to Triumph and improperly classified the violation as a repeat violation. For the reasons set forth below, we disagree and deny Triumph's petition for review.¹

BACKGROUND

On August 22, 2014, an employee of Triumph, the general contractor for a public construction project to replace certain water mains, was injured in a cave-in at an excavation site in

lower Manhattan. An OSHA officer inspected the excavation site that afternoon. On February 13, 2015, OSHA issued Triumph a citation for a repeat violation of 29 C.F.R. § 1926.652(a)(1), which provides in relevant part:

Each employee in an excavation shall be protected from cave-ins by an adequate protective system designed in accordance with ... this section except when:

- (i) Excavations are made entirely in stable rock; or
- (ii) Excavations are less than 5 feet (1.52m) in depth and examination of the ground by a competent person provides no indication of a potential cave-in.

The citation was classified as a repeat violation based on two previous citations issued to Triumph for violating the same excavation standard: the first in 2009 and the second in 2011.

Triumph contested the February 13, 2015, citation, and a formal evidentiary hearing was conducted before an ALJ (Coleman, *A.L.J.*) on January 5, 6, and 21, 2016. In a September 7, 2016, decision and order, the ALJ affirmed the citation for a repeat violation, concluding that a preponderance of the evidence established that Triumph violated the excavation standard and that the violation was a repeat one.² Because the Commission did not grant discretionary review, the decision and order became a final order of the Commission on *98 October 20, 2016. Triumph petitions for review.

DISCUSSION

[1] [2] [3] We set aside an order by the Commission if it is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law.” 5 U.S.C. § 706(2)(A); *see Solis v. Loretto-Oswego Residential Health Care Facility*, 692 F.3d 65, 73 (2d Cir. 2012). We uphold factual findings if they are “supported by substantial evidence on the record considered as a whole.” 29 U.S.C. § 660(a); *see Solis*, 692 F.3d at 73. We review legal conclusions *de novo*, deferring as appropriate to the Secretary’s reasonable interpretation of the Occupational Health and Safety Act (the “Act”). *Solis*, 692 F.3d at 73.

I. Burden of Proof

First, Triumph contends that the Commission improperly shifted the burden of proof to Triumph by drawing an adverse inference from Triumph’s failure to produce a

particular witness—site foreman Augustin Formoso—during the hearing.

A. Applicable Law

[4] [5] Although the Secretary bears the burden of proving an OSHA violation by a preponderance of the evidence, *see New York State Elec. & Gas Corp. v. Sec’y of Labor*, 88 F.3d 98, 105, 107 (2d Cir. 1996), the “party claiming the benefit of ... an exception must demonstrate its applicability,” *New York Univ. Med. Ctr. v. N.L.R.B.*, 156 F.3d 405, 413 (2d Cir. 1998). The excavation standard at 29 C.F.R. § 1926.652(a) (1) “applies to *any* excavation, unless the employer shows that the excavation meets one of two exceptions.” *Secretary of Labor v. Bardav, Inc.*, 24 BNA OSHC 2105, 24 O.S.H. Cas. (BNA) 2105 (No. 10-1055, 2014), 2014 WL 5025977, at *4 (emphasis original). One of the two exceptions is relevant here: the exception for excavations less than five feet deep. 29 C.F.R. § 1926.652(a)(1)(ii).

B. Application

[6] We conclude that the ALJ did not impermissibly shift the burden of proof. First, the ALJ properly placed the burden of proof on Triumph to demonstrate that its site fell within the exception for excavations less than five feet deep under 29 C.F.R. § 1926.652(a)(1)(ii). It was in the context of Triumph’s argument that “the area in the excavation where [the injured worker] was working was shallower than five feet,” Sp. App. 26, that the ALJ considered Triumph’s failure to present Formoso’s testimony. The ALJ relied on the missing testimony as one of several factors to evaluate the credibility of one of Triumph’s testifying witnesses.³ Second, the depth of the excavation was not an issue that turned on which party bore the burden of proof. The great weight of evidence established that the excavation was more than five feet deep, including (1) empirical measurements taken by OSHA recording depths of 64, 68, and 70 inches at the site, (2) the testimony of the injured worker, and (3) the testimony of the city’s inspector.

II. Look Back Period

Next, Triumph notes that the Commission has a policy of using a three-year look back period to determine a repeat violation, and argues that here the Commission failed to provide a reasoned explanation *99 for relying on previous violations more than three years old.

A. Applicable Law

The Act authorizes an enhanced civil penalty against any employer who “repeatedly violates ... any standard” promulgated pursuant to the Act. 29 U.S.C. § 666(a).⁴ Neither the Act nor OSHA’s implementing regulations prescribe any temporal limits for determining whether a violation is repeated. In arguing that the Commission arbitrarily departed from its own policy, Triumph contends that the OSHA Field Operations Manual (the “Manual”), dated April 22, 2011, was in effect at the time of the February 13, 2015, citation and dictates a three-year look back period for assessing repeat violations—not the five-year period relied on by the Commission.⁵ The relevant language in the Manual provides as follows:

Although there are no statutory limitations on the length of time that a prior citation was issued as a basis for a repeated violation, the following policy shall generally be followed.

A citation will be issued as a repeated violation if ... [t]he citation is issued within 3 years of the final order date of the previous citation or within 3 years of the final abatement date, whichever is later.

Joint App. 653.

B. Application

[7] [8] We conclude that the Commission did not abuse its discretion by relying on previous violations more than three years old, because neither the Manual nor the Commission’s precedent limits OSHA to a three-year look back period. The Manual explicitly notes that “there are no statutory limitations on the length of time that a prior citation was issued as a basis

for a repeated violation” and describes a policy that “shall generally be followed.” Joint App. 653 (emphasis added). The Manual is “only a guide for OSHA personnel to promote efficiency and uniformity, [is] not binding on OSHA or the Commission, and [does] not create any substantive rights for employers.” *Secretary of Labor v. Hackensack Steel Corp.*, 20 BNA OSHC 1387, 20 O.S.H. Cas. (BNA) 1387 (No. 97-0755, 2003), 2003 WL 22232017, at *7. Moreover, the Commission’s precedents establish that “the time between violations does not bear on whether a violation is repeated.” *Secretary of Labor v. Hubbard Constr. Co.*, 24 BNA OSHC 1689, 24 O.S.H. Cas. (BNA) 1689 (No. 11-3022, 2013), 2013 WL 1942202, at *11 (citation and internal quotation marks omitted); accord *Secretary of Labor v. J.C. Stucco & Stone, Inc.*, 26 BNA OSHC 1382, 26 O.S.H. Cas. (BNA) 1382 (Nos. 14-1558 and 15-0342, 2016), 2016 WL 7363932, at *19 & n.53 (upholding a repeat violation based on a previous violation more than three years old, and noting that the three-year limit for repeated violations in the Manual “is not binding on the Commission”); *100 *Secretary of Labor v. Active Oil Serv., Inc.*, 21 BNA OSHC 1184, 21 O.S.H. Cas. (BNA) 1184 (No. 00-0553, 2005), 2005 WL 3934873, at *6. Finally, this was Triumph’s third violation in six years.

CONCLUSION

Triumph’s petition for review is **DENIED**.

All Citations

885 F.3d 95, 26 O.S.H. Cas. (BNA) 2263, 2018 O.S.H.D. (CCH) P 33,654

Footnotes

- 1 We grant the Secretary of Labor’s motion for publication of our February 14, 2018 summary order in this case. *Triumph Constr. Corp. v. Sec’y of Labor*, No. 16-4128-ag, 2018 WL 871462 (2d Cir. Feb. 14, 2018).
- 2 The decision and order also vacated a second citation issued to Triumph by OSHA for a serious violation of 29 C.F.R. § 1926.651(j)(1). The second citation is not at issue in this appeal.
- 3 The ALJ properly placed the burden of proof on the Secretary to establish that Triumph violated 29 C.F.R. § 1926.652(a) (1) by demonstrating “by a preponderance of the evidence that: (1) the cited standard applies; (2) the terms of the standard were violated; (3) the employer knew, or with the exercise of reasonable diligence could have known, of the violative condition; and (4) one or more employees had access to the cited condition.” Sp. App. 15; see *New York State Elec. & Gas Corp.*, 88 F.3d at 105.
- 4 29 U.S.C. § 666(a) provides as follows:
Any employer who willfully or repeatedly violates the requirements of section 654 of this title, any standard, rule, or order promulgated pursuant to section 655 of this title, or regulations prescribed pursuant to this chapter may be assessed a civil penalty of not more than \$70,000 for each violation, but not less than \$5,000 for each willful violation.

- 5 The Commission increased its look back period from three years to five years, but the parties dispute whether the change took place in October 2010 or in October 2015—in other words, before or after Triumph's February 13, 2015, citation. We need not resolve that dispute, however, because we uphold the Commission's decision even assuming, as Triumph argues, that the three-year period applies.

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United States of America
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION
1120 20th Street, N.W., Ninth Floor
Washington, D.C. 20036-3457

SECRETARY OF LABOR,

Complainant,

v.

TRIUMPH CONSTRUCTION CORP.,

Respondent.

OSHRC Docket No. 15-0634

APPEARANCES:

For the Complainant:

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For the Respondent:

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BEFORE: William S. Coleman
Administrative Law Judge

DECISION AND ORDER

At approximately 2:30 p.m. on August 22, 2014, in lower Manhattan, an employee of the Respondent Triumph Construction Corp. (Triumph) was injured in the cave-in of an excavation.

The excavation was for a construction project for the replacement of a municipal water main for which Triumph was the general contractor. (T. 11, 92; Stip. ¶ 4).

The Occupational Safety and Health Administration (OSHA) conducted an inspection of the worksite that same afternoon, and on February 13, 2015, issued a Citation and Notification of Penalty (Citation) to Triumph alleging one repeat and one serious violation of OSHA's excavations standard at Subpart P, 29 CFR § 1926.650, et seq.

The Citation proposed a penalty of \$22,500 for an alleged repeat violation of 29 C.F.R. § 1926.652(a)(1), which requires an employer to protect each employee in an excavation from cave-ins by an adequate protective system designed in accordance with §§ 1926.652(b) or (c). (Item 1 of citation 2).

The Citation proposed a penalty of \$4500 for an alleged serious violation of 29 C.F.R. § 1926.651(j)(1), which requires an employer to protect employees from loose rock or soil that could pose a hazard by falling or rolling from an excavation face. (Item 1 of citation 1).

Triumph timely contested the Citation and the undersigned conducted an evidentiary hearing on January 5, 6, and 21, 2016. Post-hearing briefing was completed on June 3, 2016.

The primary issues for decision are:

- Does a preponderance of the evidence establish that a cave-in protective system was not required because the excavation met the exception set forth in § 1926.652(a)(1)(ii) [an excavation shallower than five feet where a competent person determines there is no indication of a potential cave-in]? (Alleged violation of § 1926.652(a)(1)).
- Did Triumph repeatedly violate § 1926.652(a)(1)?
- Does a preponderance of the evidence show (1) circumstances likely to give rise to the hazard of "loose rock or soil ... falling or rolling" from the face of the excavation, or (2) that Triumph knew or should have known there was a significant risk of such a hazard? (Alleged violation of § 1926.651(j)(1)).

For the reasons described below, the repeated citation alleging a violation of § 1926.652(a)(1) is affirmed, and a penalty of \$25,000 is assessed. The serious citation alleging a violation of § 1926.651(j)(1) is not proven and is vacated.

FINDINGS OF FACT

The following facts were established by at least a preponderance of the evidence:

1. Triumph is a New York corporation that at all relevant times was engaged in utilities construction and related activities. Triumph has about 230 employees and is engaged in a business that affects interstate commerce. (Complaint, ¶¶ II & III; Answer, ¶¶ II & III; Stip. ¶¶ 1 & 3; T. 284).

The Construction Project

2. In August 2014, Triumph was the general contractor for a four-year public construction project to replace certain water mains in lower Manhattan. (T. 92). The project, known as MED 617, began in March 2012 and was expected to conclude in April 2016. (T. 89-90, 437). The New York City Department of Design and Construction (DDC) oversaw the project for the city. (T. 11, 89; Stip. Fact ¶¶ 4-5).

3. Part of the MED 617 project involved replacing the water main under West 10th Street from west to east, beginning at the West Side Highway and ending at Fifth Avenue. (Ex. C-3, pp. 1-2). On August 22, 2014, work had progressed to the 300-foot long segment of West 10th Street between Greenwich Avenue and Avenue of Americas (Sixth Avenue).¹ (Stip. ¶ 4).

¹ No evidence of the length of this segment of West 10th Street was presented at the hearing. Rather, this finding is based on judicial notice of a Google map and satellite image of lower Manhattan, the accuracy of which cannot reasonably be questioned for purposes of this case. See *Pahls v. Thomas*, 718 F.3d 1210, 1216 n.1 (10th Cir. 2013) (taking *sua sponte* judicial notice of a Google map and satellite image as a “‘source[] whose accuracy cannot reasonably be questioned’ for purposes of this case” under Fed. R. Evid. 201(b)(2)); accord *U.S. v. Burroughs*, 810 F.3d 833, 835 n.1 (D.C. Cir. 2016) (taking judicial notice of the same on motion of party).

4. Triumph's site supervisor was Mr. Sal Ansaldi, who had eight years of experience with Triumph in that capacity. (T. 436-37).

5. Triumph's foreman at the site was Mr. Augustine Formoso. Formoso reported to Ansaldi. (T. 235, 438-39).

6. DDC's full-time site inspector at the worksite on August 22, 2014, was Mr. Mohammed Ayoub. Ayoub was responsible for monitoring Triumph's work from the beginning to the end of each workday. (T. 132, 135, 187).

7. On August 22, 2014, Triumph was excavating within the roadway of West 10th Street to remove the existing 20-inch diameter cast iron water main pipe and replacing it with a new 20-inch diameter ductile pipe. (T. 11, 437-38; Stip. Fact ¶ 4). The existing water main was buried between 68 to 74 inches below street grade, so the uppermost part of the buried pipe was at least 48 inches below street grade. (T. 103-04)

8. The new water main pipe was required to be buried to the same depth of the old pipe – so the bottommost part of the newly installed pipe had to be at least 68 inches below street grade (with the uppermost part having to be at least 48 inches below street grade). (T. 103). The minimum depth of the excavation to accommodate installation of the new pipe was therefore 68 inches. (T. 103).

9. At some places, the old 20-inch pipe was buried deeper than 68 inches, and in those locations the excavation could be as much as 74 inches deep. (T. 54, 102-04).

10. On each day of the project, water service to customers in the vicinity of the water main replacement would be shut off midmorning. (T. 129-30, 139, 455). Before work concluded each day, the endpoints of the new and old water main pipes had to be connected so that all water service was restored. (T. 139, 142).

11. Excavation of the street would begin by removal of the surface pavement of asphalt and concrete with a jackhammer. (T. 525). The thickness of the pavement varied, but was as much as 12 to 18 inches thick in places. (T. 343).

12. A backhoe would excavate the next one or two feet of soil, avoiding contact with crossing utilities. (T. 166-67, 218-19, 500-01). Electrical and gas utility mains and service lines typically crossed the excavation at a depth of two to three feet below the street's surface. (T. 502). DDC required that all excavating done within one foot of existing utility lines be by hand (T. 223), so in those areas a worker would enter the excavation and clear the area around an existing utility line with a hand tool. (T. 166-67, 218-19, 501).

13. After the existing utility lines were exposed by hand, a backhoe would excavate around the exposed utilities down to the existing 20-inch cast iron water main pipe. (T. 219). An employee would stand on the old water main pipe to disconnect the customer water service lines and bend them away to prevent damage when the old pipe was removed. (T. 525). The old water main pipe segment was then removed from the excavation using the backhoe's bucket. (T. 441-43).

14. A new 20-inch pipe, in lengths of roughly 18 to 20 feet, would then be installed in the place of the old pipe. (T. 141-42, 441-43, 523). To prepare the excavation for installation of the new pipe, the floor of the excavation was smoothed, either by the backhoe's bucket, or by an employee with a shovel. (T. 204-06). The backhoe would then place the section of new pipe in the excavation and push it into the preceding section of new pipe. (T. 442-43). One end of each section of new ductile pipe had a wider bell-shaped end with gaskets on the interior surface. In installing a section of new pipe, machinery would push the end of the pipe section being installed into the bell-shaped end of the most recently installed section of new pipe. The gaskets on the

inside surface of the bell-shaped end of the pipe would cause the two sections to interlock and seal. (T. 441-43).

The Excavation at 2:30 p.m., August 22, 2014

15. The faces of the excavation were generally vertical. The CO estimated the full length of the excavation to be 80 feet and its width to be four feet, but the CO did not testify to having taken any precise measurements of either the length or width. (Ex. C-3, p. 1). Considering the scale of the 20-inch diameter and approximately 20-foot long segments of new pipe, the photographs of the excavation generally corroborate the CO's estimates of overall length and width. (Exs. C-7, C-8, C-13, C-14).

16. No part of the excavation had a protective system designed in accordance with 29 C.F.R. § 1926.652(b) or (c) to protect employees working in the excavation from cave-ins. (T. 484, 490-99, 541).

17. As of the time of the cave-in, approximately 40 feet of old water main pipe had been removed from the excavation, and one approximately 20-foot long section of new water pipe had been installed in the approximately 40-foot gap that existed between the open ends of the new and old water main pipes. (T. 54-55, 56, 142, 220-21; Exs. C-7, C-13, C-14).

18. For purposes of describing the excavation, it can be neatly divided into three distinct segments –west, center, and east. The condition of those segments immediately prior to cave-in was as follows:

a. *West Segment.* The west segment is defined at its west end by the start point of the excavation and at its east end by the open bell-shaped end of the most recently installed section of new water main pipe. (Ex. C-13). Newly installed 20-inch pipe was present in the entirety of the west segment. Some backfill had been put in the excavation in the western part of the west

segment. In the remaining part of the west segment, the new 20-inch pipe was completely exposed except for one spot on the north side of the pipe where some backfill had been dumped. (Ex. C-13). From the scale of the photographs, the length of this part of the west segment with almost no backfill appears to be about 15 to 20 feet. The depth of the excavation where there was no backfill was at least 68 inches. (T. 53, 102, 533, 538-39; Exs. C-13 & C-14).

b. Center Segment. The cave-in occurred on part of the north face of the center segment. The center segment is defined at its west end by the bell-shaped open end of the last installed section of new pipe, and at its east end by a 6-inch gas main that crossed the excavation. (T. 218; Ex. C-7). All of the old water main pipe had been removed from the center segment. (T. 54-55). The center segment was excavated to its full depth of at least 68 inches and was being prepared for the installation of the next 20-foot section of new pipe. (T. 54-55, 60-61, 82, 216; Ex. C-7, C-8). About one foot east of the open end of the newly installed section of new pipe, a 2-inch gas service line crossed the center segment at a depth of about 30-36 inches below street grade. (T. 448, 345; Exs. C-7, C-8, C-10, C-11). The excavation was 70 inches deep at the point where the 2-inch gas service line crossed it. (T. 266, 270; Exs. C-7, C-9, C-10). Approximately two to three feet east of 2-inch gas service line, a larger concrete-encased electrical duct bank crossed the excavation. (Exs. C-10, C-13, C-7). The excavation was 70 inches deep at the point where the electrical duct bank crosses it. (T. 266, 270, 458; Exs. C-7, C-9, C-10). The photograph at Exhibit C-7 accurately depicts the center segment, with the three crossing utility lines and the absence of any water main pipe, old or new. (The two areas of alleged employee exposure at issue are in the center segment – one near the electrical duct bank and 2-inch gas service line, and the other at the location of the cave-in. The portion of the north face that caved in is between the electrical duct bank and the 6-inch gas main.)

c. *East Segment.* The east segment is defined at its west end by the 6-inch crossing gas main and at its east end by the fully exposed open end of the existing cast iron water main pipe. (Exs. C-7, C-8). All of the old water main pipe to the west of the exposed open end of the old pipe had been removed from the east segment. (T. 54-55). The photograph at Exhibit C-8 accurately depicts the crossing 6-inch gas main and the absence of any water main pipe (except for the open end of the existing pipe) in the east segment. A backhoe excavator was operating in the east segment at the time of the cave-in. (T. 78, 457). A ladder into the excavation is in place on the south face of the east segment. (T. 160, 237-38; Exs. C-1, p. 3, C-3, p. 4). The depth throughout the east segment of the excavation was at least 68 inches.

The Cave-in

19. The foreman (Formoso) instructed LL to enter the excavation to investigate something that the backhoe had contacted near the crossing gas main (which demarcates the center and east segments). (T. 56-57).

20. LL entered the excavation and determined the backhoe had contacted some debris and not anything vital. (T. 56). He continued to use a shovel to move some soil to prepare the excavation floor for the next section of new pipe. (T. 57-58, 70-71, 73, 79; Ex. C-8). The backhoe continued to operate in the east segment, with LL positioned in the center segment about three to five feet west of the crossing gas main. (T. 57, 74, 78, 80). LL believed the excavation was about six feet (72 inches) deep at this point because he is five feet five inches (65 inches) tall and he estimated that the street level was about seven inches over his head. (T. 60, 71, 76-77). While positioned at this location, soil and large sections of pavement from the north edge and face of the excavation caved in on LL, trapping him. (T. 58-59, 74, 158, 236; Stip. ¶¶ 11, 13). Moments before the cave-in, the foreman had cautioned LL to be careful. (T. 58, 73).

21. Three coworkers, including the foreman, immediately entered the excavation to remove the soil and pavement from LL. (T. 59; Ex. C-1, pp. 3-5). One slab of pavement that had caved in was so heavy that the rescuers had to wrap a chain around it so that a backhoe could move it off LL. (T. 59; Ex. C-1, pp. 2-3).

22. LL was extricated from the excavation and taken to the hospital by ambulance. (T. 12, 235; Ex. C-1, p. 1; Stip. ¶ 15). LL was injured in the cave-in and he ultimately required surgery on his arm, back, and abdomen. (T. 49).

The OSHA Inspection

23. OSHA Compliance Safety and Health Officer (CO) Zhao Hong Huang arrived about one hour after the cave-in to investigate, after LL had been taken to the hospital. (T. 234-35; Stip. ¶ 16). When he arrived, the excavation was in the substantially same condition as it had been just before the cave-in, except for the soil and pavement that had collapsed from the north edge and face into the excavation. (T. 262, 313). There was no shoring, sheeting, or other cave-in protection system in the excavation at the time of the cave-in. (T. 238, 493, 541, 547; Exs. C-8, C-13).

24. The CO initially spoke with the foreman about the accident. (T. 235-36). Then Triumph's site superintendent, Ansaldi, arrived, and the CO interviewed him. (T. 236). The CO asked Ansaldi why LL was in the excavation at the time of the cave-in. Ansaldi responded that LL had been instructed to enter the excavation to prepare the floor in the center segment in the vicinity of the crossing 2-inch gas service line and electrical duct bank for the installation of the next section of new pipe; Ansaldi explained that a worker had to clear that area with a hand tool because using a backhoe could damage the crossing utilities. (T. 236-38; 258-59; Ex. C-1, pp. 1-2). Ansaldi told the CO that at the time of the cave-in, LL had moved eastward in the center

segment to wait for the excavator to stop operating in the east segment, so that he could exit the excavation using a ladder that was leaning against the south face of the east segment. (*Id.*).

25. The CO took four measurements based on where Ansaldi had said LL had worked in the excavation. (T. 328-29, 345). Ansaldi and Formoso assisted the CO in taking the measurements by actually handling the tape measure while the CO took photographs of the tape measure extended into the excavation. (T. 238, 329-30, 343; Stip. ¶ 18).

26. The CO recorded two reliable measurements of the excavation depth in the vicinity of LL's location at the time of the cave-in: one measurement was 64 inches (four inches more than five feet) and the other was 53 inches (seven inches less than five feet). (T. 265-67, 300-02, 335-36; Exs. C-7, C-10, C-11).

a. The 64-inch measurement was taken about two to three feet west of the 6-inch gas main. (T. 300-02; Ex. C-7). The 64-inch measurement measured to the floor of the excavation, with the tape measure extending in between two slabs of pavement that had fallen into the excavation. (T. 265, 267, 301-02, 335-36; Exs. C-7, C-8, C-11).

b. The 53-inch measurement was taken about a foot west of the 64-inch measurement. (T. 268-69, 300-02; Exs. C-7, C-8). The 53-inch measurement was to the top of a slab of pavement that had collapsed into the excavation during the cave-in. (T. 336). There is no evidence of the thickness of this slab or the thickness of the soil and/or debris that had collapsed into the excavation underneath it. It is more probable than not that the total thickness of this slab of pavement and the soil/debris from the cave-in underneath it exceeded seven inches, and thus that the depth of the excavation at that location before the cave-in was greater than 60 inches (five feet).

27. The CO took two 70-inch measurements in the center segment, west of the spot of the cave-in. One 70-inch measurement was about one foot east of the open end of the most recently installed new pipe, where the 2-inch gas service line crossed the excavation. (T. 270; Ex. C-10). The other 70-inch measurement was about two to three feet further east, on the east side of the electrical duct bank that crossed the excavation. (See Exs. C-7, C-9, C-10, C-13, C-7; CO testimony at T. 266, 343, 345; Exs. C-7, C-10, C-13). The CO did not measure the lateral distance between this easternmost 70-inch measurement and the location of the cave-in, but the scale of the photographs indicates that distance to have been in the range of five to eight feet. (Exs. C-1, p. 4; C-7; C-8; C-9).

28. The CO took a soil sample from the excavation at the area of the cave-in with Ansal di's assistance. (T. 243-44). OSHA's Salt Lake Technical Center analyzed the soil sample and accurately determined it was Type C, with 95% sand and gravel. (T. 372).

Triumph's Investigation

29. After the accident, Triumph and DDC ascertained that the part of the excavation that had caved-in was the site of a vertical "cold joint" that existed between the soil and some wood sheeting that had been left buried decades earlier for a sewer line than ran parallel to and approximately 10 feet away from the water main. (T. 175-76, 178, 462-63, 526, 528; Ex. R-1L; Resp. Br. 37-39). The soil did not bond with wood sheeting, which weakened the stability of the face of the excavation where the cave-in occurred. (T. 465, 466-468).

30. Prior to the cave-in, Triumph was unaware of the presence of the cold joint. Triumph had not previously encountered a cold joint in the course of the MED 617 project. (T. 545). Current practice requires that wood sheeting be removed from an excavation before it is

backfilled and closed. (T. 178, 185, 188-89). There was no visible indication before the cave-in of the presence of the cold joint. (T. 184, 186-89, 223, 298, 463).

31. The circumstances existing immediately before the cave-in do not reflect circumstances that were likely to give rise to loose rock or soil that could pose a hazard by falling or rolling from the face of the excavation.

Predicate Violations Supporting "Repeat" Classification

32. OSHA previously cited Triumph on January 21, 2009, for having violated § 1926.652(a)(1) on 11/26/2008 in a utility excavation. (Ex. C-20). Triumph timely contested the citation and the matter was docketed by the Occupational Safety and Health Review Commission (Commission) and assigned docket number 09-0301. Triumph then entered into a written Stipulated Settlement wherein it accepted the citation as a serious violation of § 1926.652(a)(1). (Ex. C-21). A Commission judge then approved the Stipulated Settlement by order dated April 22, 2009. The judge's order became a final order of the Commission on May 27, 2009, because no commissioner directed review of the order on or before that date. (Exs. C-20, C-21, C-22).

33. About 18 months later, on November 4, 2011, OSHA again cited Triumph for having violated § 1926.652(a)(1) on 7/26/2011 in a utility excavation, classifying it as a repeat violation, with the violation involved in the 2009 Stipulated Settlement serving as the predicate violation to support that classification. (Ex. C-18). Triumph timely contested the citation by letter dated November 10, 2011, that it caused to be filed with the OSHA Area Office that had issued the citation. (Ex. J-2). Eight days later, on November 18, 2011, Triumph resolved the alleged repeated citation by executing an "Informal Settlement Agreement." In the Informal Settlement Agreement, Triumph accepted the alleged violation of § 1926.652(a)(1) as an "other

than serious" violation, and expressly "waived its rights to contest the above citation(s) and penalties, as amended" by the agreement. (Ex. C-19). The Informal Settlement Agreement also contained the following provision: "By entering into this agreement, [Triumph] does not admit that it violated the cited standards for any litigation or purpose other than a subsequent proceeding under the Occupational Safety and Health Act." (Ex. C-19, ¶4).

34. The parties entered into the Informal Settlement Agreement before the expiration of the fifteen-working-day contest period established by section 10(a) of the Act, 29 U.S.C. § 659(a). (T. 395). Because the citation was fully resolved by the agreement before the contest period expired, the OSHA Area Office determined not to forward Triumph's timely notice of contest to the Commission under the procedures prescribed in 29 C.F.R. § 1903.17(a) and Commission Rule 33, codified at 29 C.F.R. § 2200.33.² (T. 395-96). (Ex. C-19).

35. The OSHA Area Director who issued the repeat citation on February 13, 2015 determined that the violation established by the Informal Settlement Agreement had occurred within five years of a prior violation of the same standard. She believed that reliance on that prior violation to support a repeated classification was consistent with OSHA policy that repeat citations generally be supported by a prior violation having been established in the preceding five years. (T. 391-92, 400-01). She believed that the five-year policy on which she relied had been in effect since around August 2010, when the general policy was changed from a three-year period. (T. 400-01).

² Section 1903.17(a) provides that upon the receipt of a cited employer's notice of contest, the OSHA "Area Director shall immediately transmit such notice to the Review Commission in accordance with the rules of procedure prescribed by the Commission."

Commission Rule 33, codified at 29 C.F.R. § 2200.33, requires the Secretary to notify the Commission of the receipt of an employer's notice of contest within 15 working days after the Secretary has received the notice of contest.

36. The OSHA Field Operations Manual (FOM) in effect from April 22, 2011 to September 30, 2015 (Directive No. CPL 02-00-150) reflected a three-year, not a five-year, period for a prior violation to support a classification of repeated. (Exs. R-2 & R-3). It provided as follows:

Although there are no statutory limitations on the length of time that a prior citation was issued as a basis for a repeated violation, the following policy shall generally be followed.

A citation will be issued as a repeated violation if:

a. The citation is issued within 3 years of the final order date of the previous citation or within 3 years of the final abatement date, whichever is later

(Ex. R-2, p. 4-34 of OSHA FOM, CPL 02-00-150).

DISCUSSION

The parties have stipulated to the Commission's jurisdiction and to the coverage of the Act, and the record supports those stipulations. 29 U.S.C. §§ 652(3) and (5) and 654(a). (Joint Prehearing Statement, ¶¶ IV.1 thru 4 & V.1 thru 3; Complaint, ¶¶ II, & III; Answer, ¶¶ II & III).

To establish a violation of an OSHA standard, the Secretary must show by a preponderance of the evidence that: (1) the cited standard applies; (2) the terms of the standard were violated; (3) the employer knew, or with the exercise of reasonable diligence could have known, of the violative condition; and (4) one or more employees had access to the cited condition. *Astra Pharm. Prods.*, 9 BNA OSHC 2126, 2129 (No. 78-6247, 1981), *aff'd in relevant part*, 681 F.2d 69 (1st Cir. 1982).

Protection from Cave-ins – Alleged Violation of § 1926.652(a)(1)

The Secretary alleged that Triumph violated 29 C.F.R. § 1926.652(a)(1), which provides:

(a) *Protection of employees in excavations.* (1) Each employee in an excavation shall be protected from cave-ins by an adequate

protective system designed in accordance with paragraph (b) or (c) of this section except when:

- (i) Excavations are made entirely in stable rock; or
- (ii) Excavations are less than 5 feet (1.52m) in depth and examination of the ground by a competent person provides no indication of a potential cave-in.

The Secretary alleged Triumph violated this standard on August 22, 2014, at the “Jobsite trench, east end” on West 10th Street, when “[a]n employee was working in a section of the excavation that is about 5 feet 10 in deep [70 inches] and was not protected from cave-ins by an adequate protective system.” (Citation 2, item 1). The citation characterized the violation as a “second repeat” violation, alleging that two final orders of the Commission for violations of the same standard had been entered against Triumph – one in 2009 and the other in 2011.³

Applicability of Cited Standard

Section 1926.652(a)(1) requires that employees in an excavation be protected from cave-ins by an adequate protective system. The standard applies “to all open excavations made in the earth’s surface.” 29 C.F.R. § 1926.650(a). The term “excavation” is defined as follows: “*Excavation* means any man-made cut, cavity, trench, or depression in an earth surface, formed by earth removal.” 29 C.F.R. § 1926.650(b). The cited standard “applies to *any* excavation” and “does not depend on the existence of a hazard.” *Barday, Inc.*, 24 BNA OSHC 2105, 2107 (No. 10-1055, 2014) (emphasis in original). The worksite was an excavation as defined by the standard, so the standard applies.

³ The Secretary’s amended complaint similarly alleged both the 2009 and 2011 prior orders.

Violation of the Standard

There was no protective system designed in accordance with § 1926.652(b) or (c) in the excavation to protect employees from cave-in hazards as the cited standard requires. Triumph asserts, however, that the excavation meets the exception contained in § 1926.652(a)(1)(ii) because the area where LL was working was shallower than five feet and a competent person had determined there was no indication of potential cave-in. (Resp't Br. 13). Triumph has the burden to establish that the excavation meets this exception. *A.E.Y. Enters.*, 21 BNA OSHC 1658, 1659 (No. 06-0224, 2006).

Triumph asserts that the excavation was shallower than five feet in the areas where LL (or any other employee) was positioned. As discussed below, the preponderance of the evidence establishes that the excavation was five feet or more in depth at two locations in the center segment where LL was working (one being the location of the cave-in, and the other being near the electrical duct bank) so that the exception of § 1926.652(a)(1)(ii) is not proven.

Excavation Depth at Location of Cave-in

Both endpoints of the center segment were at least 68 inches deep -- at the western endpoint at the terminus of the newly installed 20-inch pipe, and at the eastern endpoint where the 6-inch gas main crossed the excavation. Those depths were established by virtue of those being the depths at the corresponding adjacent endpoints of the west and east segments.⁴

⁴ In the west segment, the open end of the last section of new water pipe that had been installed was completely exposed, which establishes that the excavation was at least 68 inches deep at that location. (Exs. C-7, C-13).

In the east segment, the open end of the next section of old water pipe that was to be replaced was also completely exposed, so the depth of the excavation at that point was at least 68 inches. (Exs. C-7, C-8). Other photographs show that the depth of the east segment of the excavation (to the east of the crossing gas main) was generally at or below the lowest point of the open end of the old water main, so the depth of the entire east segment was deeper than five feet (60 inches). (See Exs. C-1, p. 5; C-12; R-1-A).

The remainder of the center segment was also at least five feet deep. LL testified that at the time of the cave-in, the old pipe had been removed and he was shoveling around the 6-inch gas main to prepare the excavation floor for the next 20-foot section of new water pipe to be installed, which had to be on a grade of at least 68 inches deep. (T. 54-55). LL believed the excavation was about six feet deep where the cave-in occurred because it was about seven inches over his head and his height is 65 inches. (T. 60, 71, 76-77). LL's testimony was reliable and credible – it is consistent with abundant corroborating evidence that at the time of the cave-in the old pipe had been removed in the center segment, and that the depth at the spot of the cave-in exceeded five feet, as it was at both endpoints of the center segment.

First, the CO's measurements of 70 inches at the electrical duct bank and 64 inches near the east end of the center segment are uncontroverted empirical evidence that the excavation was deeper than five feet at these locations. (Exs. C-9, C-10). Other than the depth measurements taken by the CO, there was no evidence of any other measurements of the depth of any part of the excavation.⁵ The CO's measurement of 64 inches at the cave-in area, establishes the excavation was deeper than five feet at the location of the cave-in, wholly independent of LL's testimony. (T. 302). Second, the general process for replacement of the water main – replacement of one 20-foot segment of old water main with one 20-foot segment of new water main, one at a time (T. 141-142) – is corroborative of LL's testimony that the old pipe had been removed from the center section as he was preparing the center segment for installation of the next section of new pipe. Third, the photographic exhibits C-7 and C-8 show no visible pipe

⁵ A photograph taken by Ayoub in the immediate aftermath of the cave-in, before the CO arrived, shows a yellow tape measure extended into the excavation at the location of the cave-in as if someone was measuring the depth, but the photo does not show who is holding the tape measure. (Ex. C-1, p. 5; T. 149, 164).

between the opening of the new pipe in the west segment and the opening of the old pipe in east segment.

Triumph points to the testimony of Ansaldi as establishing that the excavation was less than five feet deep at the location of the cave-in. (Resp. Br. 6, 13, 15). Ansaldi testified that at the time of the cave-in LL was standing on the floor of the excavation on a section of old water pipe that remained buried. (T. 451-53). This testimony is not corroborated by any reliable evidence and is controverted by the CO's objective measurements, LL's testimony, and Ayoub's testimony.

The CO's measurements, by themselves, decisively contradict Ansaldi's testimony and corroborate LL's testimony. If the old pipe had actually been in place in the center segment at the time of the cave-in as Ansaldi testified, it would have been impossible for the CO to have measured a depth of 64 inches in between slabs of pavement that had collapsed onto the floor of the excavation in the cave-in. The 64-inch measurement taken at the location of the cave-in shows the old pipe had been removed and the depth was greater than five feet at the time of the cave-in.

Moreover, if before the cave-in the depth of the excavation at LL's location had been no deeper than 48 inches, then the measurements in that area after the cave-in likely would have been shallower than 48 inches and certainly would not have been deeper than 48 inches. However, the CO's shallowest measurement in the area of the cave-in was at 53 inches to the top of a slab of pavement that had collapsed into the excavation. This is five inches deeper than the 48-inch depth that Ansaldi testified had existed before the cave-in.

Ansaldi's largely unfathomable explanation for why a section of the old pipe would have remained unexcavated in the center section, in between the exposed open ends of the new pipe in

the west segment and the old pipe in the east segment, was unconvincing.⁶ In contrast, the photographic evidence and depth measurements in the area of the cave-in are corroborative of LL's testimony and controvert Ansal di's testimony. (Exs. C-7, C-8).

Triumph also points to the testimony of the DDC inspector, Ayoub, as being corroborative of Ansal di's testimony that at the time of the cave-in LL was standing on top of a section of unexcavated old water pipe. Ayoub's description of the excavation at the location of the cave-in is uncertain at best, and is not reliable. Ayoub provided testimony pursuant to subpoena requested by the Secretary. (T. 136). He initially testified that at the time of the cave-in, LL was standing on the top of a section of new 20-inch water pipe that was exposed in the excavation with no fill on either side of it. (T. 159-60, 193, 215-16, 220). Referring to the soil and debris from the cave-in on the floor of the excavation (as depicted in Exhibit C-7), Ayoub testified that "[a]ll the dirt you see there came from the cave in." (T. 213-16). Ayoub thereby

⁶ Ansal di's testimony about why there was a section of old pipe left unexcavated in the center section is as follows:

Q: Can you tell us why ... there's an old piece of water main in there ... and then there's a space before the new water main at the bottom of the picture [in Exhibit C-7]. Do you see that?

A: Why [the opening to the old water main in the east segment] is exposed? I got. Okay. When we first do the water main shutdown, the old valves that hold the water back are old, from the 1800s. They don't hold the water 100 percent anymore. So in the beginning of the job, we have to open the pipe. We hit with the machine, it's an old cast iron pipe, we make a hold and that's where the pumps go. So that's done prior to us removing the old water main at the beginning of the section that's being replaced so that we could work in a dry trench. So that portion of pipe [that had been connected to the resulting open end of the old pipe shown in Exhibit C-7] was removed prior -- as soon as the water main was shut down on 9:00 in the morning....

Q: [But why] would you leave a section of old pipe in the middle?

A: Because you can't work your way from where you're going to stop to where you began. You have to continuous run the pipe in a continuous stage. So you have to stop the water, stop the problem of where the water's going to come into the trench to make mud, of course, which is no good for the water main; can't let it go inside the new pipe. And then you continue going from where you left off. (T. 459-61).

confirmed his recollection that LL was standing on top of a 20-inch pipe that was exposed in the excavation with no backfill on either side of it.

Upon further questioning about his original testimony, however, Ayoub equivocated and ultimately stated that he was unsure whether LL was standing on an old or a new water pipe at the time of the cave-in, and stated further that the area where LL was standing “could have been to grade.” (T. 221-224; Ex. C-7).

In any event, even if Ayoub’s original testimony were accepted at face value (that at the time of the cave-in LL was standing on top of a 20-inch pipe that was fully exposed on the floor of a 68-inch deep excavation), that testimony would establish that LL was in an unprotected excavation that was more than five feet deep. *See Ford Dev. Corp.*, 15 BNA OSHC 2003, 2011 (No. 90-1505, 1992), *aff’d*, 16 F.3d 1219 (6th Cir. 1994) (rejecting argument that employees standing on pipe in excavation deeper than five feet established the exception of § 1926.652(a)(1)(ii), observing that “the standard speaks of the depth of the trench, not of the position of the employees in the trench”). Thus, rather than corroborate Ansaldi’s testimony that at the time of the cave-in LL was standing on top of a section of *unexcavated* old water main, Ayoub’s original testimony actually contradicts Ansaldi’s testimony.⁷ (T. 61, 76).

⁷ Besides Ayoub’s uncertain testimony about the condition of the center segment at the moment of the cave-in, the overall reliability of Ayoub’s testimony about the condition of the excavation and the safety measures in place at the time of the cave-in is generally questionable. For example, Ayoub testified that “this is a very shallow trench” (T. 214), and he mistakenly believed that the depth of the excavation near the exposed opening of the new water pipe was no more than three or four feet, so that workers did not have to stand on the pipe in that area to be safe but rather “could stand wherever they want.” (T. 206-07 & 214). In actuality, the depth of the excavation at that location at the time of the cave-in was 70 inches. (Ex. C-7 & C-10).

Another example is that even though Ayoub testified that it was his job to monitor everything on the job including “safety” (T. 189) and that “we follow OSHA” (T. 198), Ayoub testified that he “felt it was safe” for a worker to stand on top of a 20-inch pipe in a 68-inch excavation with no fill around the pipe. (T. 215-216). *Cf. Ford Dev. Corp.* And one more

Ansaldi's testimony that the part of the center section where the cave-in occurred was less than five feet deep is not supported by the evidence and is not credited.⁸

The great weight of the evidence establishes that the area of the cave-in, which is where LL was positioned at the time of the cave-in, was deeper than five feet. Triumph has failed to establish that the excavation meets the exception of § 1926.652(a)(1)(ii) at that part of the excavation.⁹

Excavation Depth near the Crossing Electrical Duct Bank

Triumph also failed to establish that the depth in the vicinity of the crossing electrical duct bank and 2-inch gas service line in the western end of the center segment was shallower

example is that Ayoub mistakenly believed that there was some protective sheeting in place in parts of the excavation, which he called "skeleton sheeting" (T. 146-47), when in actuality this so-called "sheeting" was pieces of lumber that Triumph put in place to secure exposed utility lines, not to provide cave-in protection to employees. (T. 259, 490-95, 541, 547).

⁸ Ansaldi's testimony about disputed material facts is due little, if any, weight. In addition to the discredited testimony that LL was standing on an unexcavated section of old pipe at the time of the cave-in, Ansaldi made a number of statements that strained credulity or were just palpably wrong. For example, when asked to estimate to what degree the material that had collapsed into the excavation had raised the excavation's floor, he testified: "By a couple of inches. If that." (T. 482). The photographs and other testimony make it clear that the debris from the cave-in added considerably more than "a couple of inches" elevation to the excavation's floor, and it is highly unlikely that only a "couple of inches" of soil and debris would have trapped LL as it did, and required the use of heavy equipment and the help of three other workers to free him. Another example is that during the CO's inspection, Ansaldi told the CO the excavation was less than five feet deep because it was not necessary to excavate deeper than five feet to install the water main. (T. 351-52). This was clearly a misstatement, in that the project required four feet of cover over the 20-inch pipe, resulting in a minimum depth eight inches deeper than five feet.

⁹ The Secretary has not argued that even if Triumph had established that the excavation depth at the location of the cave-in was shallower than five feet, that Triumph still would have failed to prove that the excavation met the "depth" exception of § 1926.652(a)(1)(ii), because of LL's close proximity to the depths of 68 inches or more both east and west of his position at the time of the cave-in. Thus, this decision neither addresses nor adjudicates that issue.

than five feet when LL was working in that area before the cave-in. Rather, a preponderance of the evidence established that LL was working in that vicinity when it was 70 inches deep.

The CO testified that during his inspection Ansaldi told him that LL had been clearing dirt from under the crossing utilities near the 2-inch gas service line because machines could not operate in that area without risking damage to them, and that at the time of the cave-in LL had moved eastward to wait for the excavator to stop working so he could exit the excavation using a ladder in the east segment.¹⁰ (T. 236-38, 258-59, Ex. C-1,).

The CO's testimony of what Ansaldi said was a reliable and objective account of what Ansaldi actually said. The CO took contemporary notes of what Ansaldi told him during the inspection, which are corroborative of his hearing testimony of what Ansaldi said, indicating that

¹⁰ The CO testified at T. 236-38:

Q: What did you discuss with Mr. Ansaldi?

A: ...[H]e told me that [LL] was standing in the trench waiting to exit the trench at the east end of the trench, close to the Avenue of the Americas because there was a ladder there and an excavator onsite was being operated ... and it was excavating in the section of the trench between [LL] and the ladder. And [LL] had to wait until the excavator finished work so that he could proceed through that section of the trench and get up the ladder to get out.

Q: What was your understanding about what [LL] was doing in the trench?

A: Then I follow up and ask Mr. Ansaldi about what was [LL's] assigned task to the trench. Then he explained to me that [LL] was instructed to go into the trench, where the new water main was installed, where it was disconnected to hand dig in the grade in the trench, where the water main is connected because there are other utility crossing that section of the trench, ... and point to me there's a gas line and there's electric conduits and they cannot -- normally they would use machinery to flatten the grade, but in this case they cannot because the machine can accidentally damage those cross utilities. Therefore, they had to send [LL] down there to do that work.

And after [LL] finished doing what he was doing, he was walking towards the ladder to exit the trench and he was waiting in the area where the accident happened because ... an excavator was being operated between [LL] and the ladder.

See also CO testimony at T. 258-59.

the CO's testimony of what he understood Ansaldi to have said to him almost a year earlier was not faulty.¹¹ (Ex. C-3). The CO's testimony accurately recounted the objective meaning of the words that Ansaldi said to him.

Ansaldi's statement to the CO during the inspection was admissible pursuant to Fed. Rule Evid. 801(d)(2)(D) as a statement "made by the party's agent or employee on a matter within the scope of that relationship and while it existed." The evaluation of the reliability of an employee's statement that is admissible under Rule 801(d)(2)(D) was addressed in *Regina Constr. Co.*, 15 BNA OSHC 1044, 1048 (No. 87-1309, 1991):

Although admissions under Rule 801(d)(2)(D)¹² are not inherently reliable, there are several factors that make them likely to be trustworthy, including: (1) the declarant does not have time to realize his own self-interest or feel pressure from the employer against whom the statement is made; (2) the statement involves a matter of the declarant's work about which it can be assumed the declarant is well-informed and not likely to speak carelessly; (3) the employer against whom the statement is made is expected to have access to evidence which explains or rebuts the matter asserted.

¹¹ While the CO's notes were offered and received in evidence over objection as a "business record" under Fed. R. Evid. 803(6) (T. 246-47), in view of Ansaldi's subsequent controverting testimony that the CO had misunderstood him, the CO's notes of what Ansaldi said might also have been admitted under Fed. R. Evid. Rule 801(d)(1)(B)(ii) to rebut any implied contention that the CO had misremembered what Ansaldi had said to him. Rule 801(d)(1)(B)(ii) allows a statement to be admitted if the declarant testifies and is subject to cross-examination and the statement "is consistent with the declarant's testimony and is offered ... to rehabilitate the declarant's credibility as a witness when attacked" on any ground other than recent fabrication, improper influence, or motive. 2014 Advisory Committee note to Fed. R. Evid. 801.

¹² In 2011, Fed. R. Evid. 801(d)(2) was amended so that it no longer termed an out of court statement of a party opponent as an "Admission by party-opponent," but instead now terms it "An Opposing Party's Statement." The advisory committee recommended this change on the rationale that "[t]he term 'admissions' is confusing because not all statements covered by the exclusion are admissions in the colloquial sense – a statement can be within the exclusion even if it 'admitted' nothing and was not against a party's interest when made." 2011 Advisory Committee note on technical changes to Fed. R. Evid. 801(d)(2).

All three enumerated factors described above in *Regina Construction Company* weigh heavily in support of the conclusion that Ansaldi's statement to the CO is likely to be more trustworthy than his conflicting exculpatory testimony at the hearing.

Ansaldi testified that the CO had asked him where LL had been working "throughout the day," and that he had responded by informing the CO where LL had been working earlier that day, when that area of the excavation had not been fully dug and was shallower than five feet.¹³ (T. 476-77). This testimony is not credited. The CO plainly asked Ansaldi what LL was doing in the excavation at the time of the cave-in. Ansaldi could not reasonably have comprehended that the CO to be asking about LL's activities that were not directly connected to the accident. Ansaldi's statement to the CO on the day of the cave-in is more reliable than Ansaldi's conflicting testimony that he had said (or meant to say) something different to the CO.

There are other factors that render what Ansaldi said on the day of the cave-in about what LL was doing more reliable than his differing testimony on that subject. First, Ansaldi's description of what LL had been doing before the accident is corroborative of LL's testimony that before the cave-in LL had been working in the vicinity of the 2-inch gas line and had done some excavation by hand there. (T. 62-68; Ex. C-13). LL estimated that the depth of the

¹³ Ansaldi testified at T. 475-76:

Q: Okay. If you turn to C-7, did you ever indicate to the OSHA inspector that [LL] was working in the front of that new open pipe ... depicted in C-7?

A: He misunderstood me, because he asked me where was [LL] working throughout the day. Now, I had informed him that we were excavating to find the gas service, like I told you before; we find the gas services before the machine excavates. And I told him that [LL] also was digging around the electrical duct bank that we also pointed out. He was throughout the trench but not at the full depth of what the trench was excavated.

Q: So he ... would have been digging where that [2-inch gas service line] is to uncover the gas main service, but not digging below it?

A: Correct.

excavation in this area was “around my height” (65 inches) and “around five feet” (60 inches) (T. 68). Both of these estimates controvert Ansaldi’s indication that the excavation’s depth at LL’s work location was no more than 48 inches, and corroborate Ansaldi’s statement to the CO that LL had been working in this area before repositioning to where the cave-in occurred.

Second, Triumph did not present the testimony of the foreman, Formoso. Formoso had instructed LL to enter the excavation and Formoso was speaking directly to LL just before the cave-in. Certainly Formoso was in as good, if not far better, position than Ansaldi to observe the condition of the excavation before the cave-in, and to observe what LL was doing immediately before and at the time of the cave-in.¹⁴ The record is silent as to why Triumph did not present Formoso to testify in support of its position that the area in the excavation where LL was working was shallower than five feet. *See Capeway Roofing Sys., Inc.*, 20 BNA OSHC 1331, 1342-43 (No. 00-1968, 2003) (“when one party has it peculiarly within its power to produce

¹⁴ It is notable that LL’s testimony about what he was doing at the moment of the cave-in (shoveling in the vicinity of the crossing gas main [T. 56-59]), differed from what Ansaldi testified he was doing (cutting water service lines off the old water main pipe [T. 461-62]), as well as what Ansaldi said on the day of the cave-in (waiting near the crossing gas main for the backhoe to stop operating so that he could exit the excavation [T. 236-37]). LL’s testimony about what he was doing at the time of the cave-in is credited over either version of what Ansaldi said LL was doing at that time.

Although Ansaldi testified that he observed the accident, there is reason to doubt whether his attention had been directed at what LL was doing at the time of the cave-in. The foreman Formoso, not Ansaldi, had instructed LL to enter the trench. Ansaldi had responsibility for the overall project and he testified, “I have a hundred things going on on that block during every part of the day.” (T. 438). The DDC site inspector, Ayoub, was near the excavation when the cave-in occurred, and he took photographs of LL and others in the excavation in the aftermath of the cave-in. (T. 141; Ex. C-1; Stip. ¶ 14). Ansaldi is not depicted in any of the Ayoub’s photographs that were offered and received in evidence. Ayoub did not recall Ansaldi being present when the cave-in occurred, and he noted that because Ansaldi was the superintendent over a project with multiple locations, Ansaldi could have been at another location at the time. (T. 140-41).

witnesses whose testimony would elucidate the situation and fails to do so, it gives rise to the presumption that the testimony would be unfavorable to that party”).

Triumph asserts the absence of visible footprints in photographs of the excavation floor in the area where the two 70-inch measurements was taken proves that no one was working in that vicinity when the excavation was at that depth. (Resp. Br. 19). The fact that the photographs seem not to depict footprints in this area is hardly conclusive on whether employees had worked in this area when it was 70 inches deep. The direct evidence from both LL and Ansaldi’s statement to the CO that LL had worked in that area is far weightier than the photographs, which are not conclusive as to the presence or absence of indentations caused by footfalls. It is notable that there are no obvious footprints in the photographs in Exhibit C-1 that show three workers in the excavation rescuing LL. Further, the activity of freeing LL from the excavation could have obliterated any visible footprints in the area where it was 70 inches deep.

Triumph has failed to establish that the excavation met the exception of § 1926.652(a)(1)(ii) to providing an adequate protective system designed in accordance with § 1926.652(b) or (c) at either the location of the cave-in or the area in the vicinity of the electrical duct bank.¹⁵ A preponderance of the evidence establishes that the excavation was at least five feet deep in these two areas when LL was positioned there.

Triumph was required to protect employees from cave-ins in those areas by providing an adequate protective system designed in accordance with § 1926.652(b) or (c). At no time on August 22, 2014, prior to the cave-in was there such protective system in any part of the excavation. Triumph violated § 1926.652(a)(1) in the manner alleged.

¹⁵ Because Triumph failed to prove the excavation was less than five feet where LL was positioned in the excavation, it is unnecessary to address the second prong of the exception in § 1926.652(a)(1)(ii) that a competent person determine the excavation does not present a cave-in hazard.

Employer Knowledge

The Secretary must prove the employer either knew, or with the exercise of reasonable diligence could have known, of the violative condition. *Revoli Constr. Co.*, 19 BNA OSHC 1682, 1684 (No. 00-0315, 2001). The employer's knowledge is directed to the physical condition that constitutes a violation. *Phoenix Roofing, Inc.*, 17 BNA OSHC 1076, 1079-1080 (No. 90-2148, 1995) (citations omitted). It is not necessary to show that the employer knew or understood the condition was hazardous. *Id.* Knowledge may be imputed to the employer "through its supervisory employee." *Am. Eng'g & Dev. Corp.*, 23 BNA OSHC 2093, 2095 (No. 10-0359, 2012) quoting *Access Equip. Sys.*, 21 BNA OSHC 1400, 1401 (No. 03-1351, 2006).

Triumph had actual knowledge of the violative condition through its foreman, Formoso, and its site superintendent, Ansaldi. To install the new 20-inch water main pipe with four feet of cover above it, the excavation had to be at least 68 inches (5 feet 8 inches) in depth. The depth of the excavation for this project, generally, was between 68 inches and 74 inches. (T. 102). The foreman, Formoso, instructed LL to enter the excavation in an area where he knew the old pipe had been removed and that the depth in that area was greater than five feet. (T. 54-58). Ansaldi knew the depth of the excavation near the 2-inch gas service line, where LL was working before moving in the excavation to the area where the cave-in occurred, was more than five feet. Formoso and Ansaldi knew no protective system was in place to protect LL from cave-ins in any part of the excavation. (T. 493, 541, 547; Stip. ¶12).

A preponderance of the evidence establishes that Triumph had actual knowledge that its employee was in the excavation that was more than five feet deep and was not protected from cave-ins by an adequate protective system designed in accordance with § 1926.652(b) or (c).

Employee Exposure

The Secretary must prove employee exposure to the violative condition.¹⁶ This can be determined through actual exposure or it may be determined through evidence that “employees either while in the course of their assigned working duties, their personal comfort activities while on the job, or their normal means of ingress-egress to their assigned workplaces, will be, are, or have been in a zone of danger.” *Stark Excavating, Inc.*, 24 BNA OSHC 2215, 2218 (No. 09-00042014) (consolidated) quoting *Gilles & Cotting, Inc.*, 3 BNA OSHC 2002, 2003 (No. 504, 1976). The zone of danger is the “area surrounding the violative condition that presents the danger to employees which the standard is intended to prevent.” *Id.* quoting *RGM Constr. Co.*, 17 BNA OSHC 1229, 1234 (No. 91-2107, 1995).

The excavation did not have a protective system designed in accordance with paragraphs (b) or (c) of § 1926.652 to protect employees from cave-ins. Employees were exposed to an unprotected excavation more than five feet deep at any area in which they worked, were expected to work, or used to access a work location, throughout the excavation except for the western end of the west segment where backfill covered the new pipe. *See R. Williams Const. Co. v. OSHRC*, 464 F.3d 1060, 1064 (9th Cir. 2006) (finding violation is “established so long as employees have access to a dangerous area”) (emphasis in original) (citations omitted); *P. Gioioso & Sons, Inc. v. OSHRC*, 115 F.3d 100, 109 (1st Cir. 1997) citing *Ford Dev. Corp.*, 15

¹⁶ To prove that the terms of § 1926.652(a)(1) were violated (the second element of the Secretary’s burden), the Secretary was required to prove that an employee was in an unprotected excavation. Thus, the “employee exposure” element of the Secretary’s burden of proof (the third element) for an alleged violation of § 1926.652(a)(1) is seemingly subsumed in the second element of the Secretary’s burden. However, the context of the earlier discussion regarding LL’s location in the excavation related to whether Triumph had established the exception set forth in § 1926.652(a)(1)(ii) relating to excavations shallower than five feet. Accordingly, the employee exposure element of the Secretary’s burden of proof is addressed separately here.

BNA OSHC at 2011 (section 1926.652(a)(1) is “implicated . . . without regard to an individual worker’s precise position” in an excavation).

As discussed previously, the evidence established two areas in the center segment of the unprotected excavation where LL had been working prior to and at the time of the cave-in.¹⁷ A

¹⁷ The Citation alleged the location of the violation was the “Jobsite trench, east end” on West 10th Street, but the CO drafted the Citation item intending to describe the violation as having occurred in the area where he had measured the depth at 70 inches at two locations -- one near the 2-inch gas service line that crossed the excavation just east of that opening, and the other near the electrical duct bank that crossed the excavation two or three feet to the east of the 2-inch gas line. (T. 66, 238-39, 158, 279, 328-29). The CO drafted the description of the violation in this manner because Ansaldi had told him that LL had been working in that vicinity before the cave-in. (*Id.*; T. 258-59). The CO did not draft the Citation with a view to describing the violation having occurred at the spot of the cave-in. (*Id.*) However, it is apparent that up to and through the early stages of the hearing, Triumph had interpreted the Citation to allege the violation having occurred at the spot of the cave-in, which was five to eight feet east of the electrical duct bank. (*See* statement of Triumph’s attorney at T. 66-68). This is a reasonable interpretation of the Citation, considering the proximity of the 70-inch measurements to the spot of the cave-in, and considering that the Citation identified the location of the violation to be the “east end” of the excavation, and was not so expressly specific as the CO intended to be.

The Secretary did not move to amend the pleadings to expressly specify that the theory of the violation was the spot of the cave-in, and such a motion was probably not necessary because the Citation as drafted fairly encompassed that area of the excavation. However, to the extent that a violation in this part of the excavation was not encompassed by the Citation as drafted, post-hearing *sua sponte* amendment of pleadings to include such an unpleaded issue would be proper because the parties tried that issue and they consented to do so. *McWilliams Forge Co., Inc.*, 11 BNA OSHC 2128, 2130 (No. 80-5868, 1984); *Brand Energy Solutions, LLC*, 25 BNA OSHC 1386, 1390, n. 6 (No. 09-1048, 2015) (declining to amend citation *sua sponte* on discretionary review of judge’s decision). “Consent may . . . be implied by the parties’ words and conduct, even if neither party openly voices his consent.” *McWilliams Forge Co., Inc.*, 11 BNA OSHC at 2129. The post hearing briefs are replete with argument regarding the depth of the trench where LL was struck with dirt and debris that caved in. (*E.g.*, Sec’y Br. 4-5, 10-12; Resp’t Br. 15-17). The parties tried the theory of the violation having occurred in the area of the cave-in, and they impliedly consented to do so. Accordingly, *sua sponte* post-hearing amendment of the pleadings would be proper to expressly specify this theory of the violation.

The Secretary also argues that the evidence showed that unidentified employees were exposed in the west segment of the excavation while connecting the customer water service lines to the newly installed pipe. In its reply brief, Triumph correctly observes that “this was not the focus or the allegations of the Secretary’s case against Triumph.” (Resp’t Reply Br. 8). Indeed,

preponderance of the evidence establishes that LL was exposed to a cave-in hazard presented by an excavation that did not have a protective system designed in accordance with § 1926.652(b) or (c) in both areas.

Repeat Classification for § 1926.652(a)(1) Violation

The Citation alleged the violation of § 1926.652(a)(1) was a “2nd Repeat” violation based on two previous OSHA citations issued to Triumph for violations of § 1926.652(a)(1) -- one that occurred in November 2008 and the other that occurred in July 2011.¹⁸ The 2008 violation was resolved by a stipulated settlement agreement that resulted in a final order of the Commission of May 27, 2009.¹⁹ (Exs. C-20, C-21, C-22). The 2011 citation was resolved by an Informal Settlement Agreement dated November 18, 2011.²⁰ (Ex. C-19).

the citation alleged the violation had occurred in the east end of the excavation, not the west end where those service line connections would have been made. While there may be evidence to support such a theory of the violation, the record does not establish that Triumph expressly or impliedly consented to litigate this unpleaded issue. Accordingly, *sua sponte* amendment of the pleadings to include this unpleaded issue would not be proper, *McWilliams Forge Co., Inc.*, and that issue is not adjudicated here.

Also, the record is far from crystalline as to how LL accessed the excavation. Photographs taken by Ayoub, the DDC inspector, show a ladder at the east segment of the excavation, where the depth was more than five feet. (Ex. C-1). Ansaldi indicated that LL could not exit the excavation until the backhoe had finished its work, because the ladder was on the opposite side of the 6-inch gas main from where LL was at the time of the cave-in. (T. 237). If this ladder was LL’s means of ingress and egress, then he would have been exposed to a cave-in hazard in an unprotected excavation in the east segment of the excavation as well as in the center segment. However, the parties did not litigate this theory of employee exposure, so that theory is not adjudicated.

¹⁸ The Secretary’s amended complaint similarly alleged both the 2008 and 2011 violations.

¹⁹ The complaint and the Citation alleged a final order date of 5/02/2009, which is incorrect. The final order date was May 27, 2009. (Ex. C-22).

²⁰ The Citation alleged a final order date of 12/18/2011, which is incorrect. The Informal Settlement Agreement is dated 11/18/2011. (Ex. C-19).

The authority for classifying a violation as repeated is in section 17(a) of the OSH Act.²¹ The OSH Act does not define what constitutes a repeated violation, but longstanding Commission precedent does. In *Potlatch Corp.*, 7 BNA OSHC 1061, 1063 (No. 16183, 1979), the Commission declared that a violation may be deemed repeated “if, at the time of the alleged repeated violation, there was a Commission final order against the same employer for a substantially similar violation.” The Secretary can prove substantial similarity by showing the employer failed to comply with the same standard as in the prior citation. *GEM Indus., Inc.*, 17 BNA OSHC 1861, 1866 (No. 93-1122, 1996).

The Secretary has established the violation of § 1926.652(a)(1) proven here is for the same standard as the two previous citations, and thus that the violation here is substantially similar to those prior violations. Triumph does not argue otherwise, but does argue that the repeated classification cannot stand because (1) *Potlatch* requires a “Commission final order” and none exists in connection with the 2011 violation, and (2) for a prior violation to have supported the repeated classification here, the prior violation may not predate the Citation by more than the three-year period described in the OSHA Field Operations Manual (FOM) that was in effect from 4/22/2011 through 9/30/2015.

²¹ Section 17(a) provides: “Any employer who willfully or repeatedly violates the requirements of section 5 of this Act, any standard, rule, or order promulgated pursuant to section 6 of this Act, or regulations prescribed pursuant to this Act, may be assessed a civil penalty of not more than \$70,000 for each violation.” 29 U.S.C. § 666(a).

Informal Settlement Agreement as a
"Commission Final Order" under *Potlatch*

Triumph contends the 2011 violation established by the Informal Settlement Agreement cannot serve as a predicate violation for a repeat classification because it is not a "Commission final order" under the *Potlatch* decision. This argument is rejected.

On November 4, 2011, OSHA issued a citation to Triumph for a violation § 1926.652(a)(1) involving employees installing storm drains in a 9-foot deep excavation. (Ex. C-18). By a letter from its attorney dated November 10, 2011, Triumph submitted a notice of intention to contest the citation to the OSHA area office that issued the Citation within the 15-working-day-period set forth in section 10(a) of the Act.²² (Ex. J-2). Commission Rule 33, 29 C.F.R. § 2200.33(a), required that the Secretary notify the Commission that the Secretary had received the timely filed notice of contest within 15 working days after the Secretary received it.²³

Assuming that the Secretary received the notice of contest on November 10, 2011 (the date of the letter contesting the citation), the last day for the Secretary to timely notify the Commission of the notice of contest would have been December 2, 2011. However, on November 18, 2011, which was before the expiration of the contest period and before the

²² Section 10(a) of the OSH Act, 29 U.S.C. § 659(a), allows a cited employer 15 working days within which to contest a citation, and provides further that if a citation is not contested within that time, then by operation of law it "shall be deemed a final order of the Commission." Such a resulting final order of the Commission results without any affirmative act or involvement of the Commission.

²³ Commission Rule 33, 29 C.F.R. § 2200.33, provides in relevant part as follows:

Within 15 working days after receipt of ... [n]otification that the employer intends to contest a citation or proposed penalty under section 10(a) of the Act, ... the Secretary shall notify the Commission of the receipt in writing and shall promptly furnish to the Executive Secretary of the Commission the original of any documents or records filed by the contesting party and copies of all other documents or records relevant to the contest.

expiration of the time in which the Secretary was required to notify the Commission of Triumph's notice of contest, OSHA and Triumph executed the Informal Settlement Agreement. In that agreement, Triumph expressly "waived its rights to contest the above citation(s) and penalties, as amended." (Ex. C-19).

The OSHA Area Director did not thereafter notify the Commission of the notice of contest under Commission Rule 33 because the parties had fully resolved the matter before the expiration of the 15-working-day contest period. (T. 395-96).

Triumph does not challenge the legality of the Informal Settlement Agreement, but argues that it did not result in a Commission final order, and thus the violation of § 1926.652(a)(1) established by that agreement cannot serve as a predicate violation for a repeat classification for the violation proven here. The foundation of Triumph's argument is the Commission's declaration in *Pottlatch* that a predicate violation be established by a "Commission final order."²⁴

Triumph argues that because it timely contested the 2011 citation, it was necessary for the Commission to take some "affirmative step" in order for that contested citation to become a "Commission final order" within the meaning of *Pottlatch*. Without such an affirmative step, Triumph argues, a "Commission final order" establishing the predicate violation simply does not exist. (Resp't Brief 30-31).

²⁴ Triumph recognizes that a citation that becomes a final order by operation of law pursuant to section 10(a) of the Act (because the employer has not contested it within the fifteen-working-day contest period) may serve as a predicate violation for a repeat classification. (Resp't Brief p. 30). See *Dun-Par Engineered Form Co.*, 8 BNA OSHC 1044 (No. 16062, 1980). Triumph also recognizes that a violation that becomes a final order of the Commission by virtue of being affirmatively approved by the Commission after the employer has timely contested the citation may also serve as the predicate for a repeat classification. See *Stone Container Corp.*, 14 BNA OSHC 1757 (No. 88-310, 1990). (Resp't Brief 30-31).

In the 2011 Informal Settlement Agreement, Triumph expressly waived its right to contest the citations and penalties as amended by the agreement. (Ex. C-19). This waiver of its right to contest that citation had a dual effect: (1) it nullified the timely filed notice of contest, and (2) it made the agreed amended citation a “Commission final order” within the meaning of *Potlatch*. Just as an uncontested citation becomes a final order by operation of law without any affirmative act by the Commission, an informal settlement agreement entered into before the expiration of the statutory contest period similarly becomes a final order without any affirmative act by the Commission. To conclude otherwise would immunize employers from the specter of a repeat citation predicated upon a prior violation that was established by an informal settlement agreement entered into before the expiration of the statutory contest period. In view of the likely thousands of informal settlement agreements that employers and OSHA enter into every year,²⁵ that result would be seriously disruptive to the orderly and efficient resolution of disputes between cited employers and the Secretary, and one that the Commission certainly could not have intended to engender by declaring in *Potlatch* that a predicate violation be established by a “Commission final order.”

For these reasons, the Informal Settlement Agreement dated November 18, 2011, established a prior violation of § 1926.652(a)(1) that was tantamount to a “Commission final order” within the meaning of the Commission’s declaration in *Potlatch*.

²⁵ In a statement to a subcommittee of the U.S. Senate, an OSHA official recently reported that in “FY 2015, 65% of inspections with a citation resulted in informal or expedited settlements between the employer and OSHA” before the expiration of the 15-working-day contest period. Testimony of Deputy Assistant Secretary Jordan Barab dated 02/11/2016 to the U.S. Senate Committee on Homeland Security and Governmental Affairs, Subcommittee on Regulatory Affairs and Federal Management. (Accessed at following URL on 8/29/2016: <https://www.hsgac.senate.gov/subcommittees/rafm>).

Even if Triumph is correct in its argument that the violation established by the 2011 Informal Settlement Agreement cannot support a repeated classification for the violation proven here, the final order dated May 27, 2009 for an earlier violation can. The Citation alleged this 2009 final order as supporting the repeat classification, as did the Secretary's complaint dated June 5, 2015. As discussed immediately below, the May 27, 2009 Commission final order finding Triumph to have violated § 1926.652(a)(1) may serve as the predicate violation for the repeat classification in this case, even though that final order predates the repeat Citation here by more than five years.

"Look-back" Period for Predicate Violations

The OSHA Area Director testified that she approved classifying the violation of § 1926.652(a)(1) as a repeat violation in conformance with a then existing OSHA guideline that a repeat violation may be supported by a prior violation of the same standard in the previous five years. (T. 391-92, 400-01). The Area Director recalled that this so-called "look-back" period had been changed from three years to five years in August 2010. (T. 400-01). She testified further that the OSHA Field Operation Manual (FOM) embodied an OSHA policy identifying certain "gray area" situations in which OSHA Area Directors have the discretion to issue repeat citations based on prior violations that were established beyond the general look-back period. (T. 391).

The 2011 Informal Settlement Agreement was executed more than three years, but less than five years, before the issuance of the repeat citation here (on 2/13/2015). The Area Director did not regard the repeat citation here to have been issued outside of a five-year look-back period, and thus her decision to issue the repeat citation did not require her to exercise her discretionary authority to issue a repeat citation based on a prior violation outside that period.

Triumph asserts the Secretary may only use the most recent three years of citation history as the basis for a repeat citation, based on the policy set forth in the FOM that was effective from 4/22/2011 to 9/30/2015 (2011 FOM). Triumph's argument is based upon the language in the 2011 FOM (Ex. R-2) that is quoted *supra* in ¶ 36 of the Findings of Fact. The 2011 FOM containing this provision was in effect on the date Triumph executed the 2011 Informal Settlement Agreement (11/18/2011), as well as on the date of the violation (8/22/2014) and the date the citation was issued (2/13/2015).²⁶ (Resp. Br. 32-35).

²⁶ The 2011 FOM (Ex. R-2) was updated effective October 1, 2015 when it was supplanted by an updated FOM (2015 FOM). (Ex. R-3, OSHA FOM, CPL 02-00-159). The 2015 FOM reflected a change in the so-called "look back" period from three years to five years, but otherwise reflected no other changes to the policy in the 2011 FOM quoted *supra* in ¶ 36 of the Findings of Fact. (Ex. R-3). Triumph contends that the 2011 FOM and 2015 FOM establish that the look-back period was not effectively changed from three years to five years until October 1, 2015.

However, other information that the Secretary raised for the first time in his post-hearing brief indicates that OSHA actually changed the "look-back" period from three years to five years well before October 1, 2015. That information is a memorandum dated March 27, 2012 from the OSHA Administrator titled "Annual Review and Scheduled Modification to OSHA's Interim Administrative Penalty Policy." (This memorandum was accessed on 8/23/2016 at the following URL: https://www.osha.gov/dep/enforcement/admin_penalty_mar2012.html). (See Sec'y Br. 29; Resp't Opposition to Motion to Take Judicial Notice, dated 6/3/2016).

The Administrator's memorandum dated 3/27/2012, states that the date of the "Interim Administrative Penalty Policy" that the memorandum's title referenced was 9/27/2010. The 3/27/12 memorandum stated that it did not change any aspect of the Interim Administrative Penalty Policy dated 9/27/10 with respect to the time period for repeat violations. (See the "Annual Review" section of the memorandum, which states that except for a change in the "size reduction" criteria of penalty calculation, "[n]o other changes will be made to the September 27, 2010, administrative penalty policy.") Rather, by using the past tense to describe the change in the policy, the 3/27/12 memorandum indicated that the three-year period had been changed to five years by the Interim Administrative Penalty Policy dated 9/27/10: "The time period to consider for repeated violations *has increased* from three years to five years." (Emphasis supplied.)

A change from a three-year period to a five-year period in September 2010 would be largely consistent with the Area Director's recollection that the change occurred around August 2010. (T. 401). It is also consistent with a memorandum from the OSHA Administrator dated April 22, 2010, which was received in evidence at the hearing, that the "time period for repeat

Triumph argues that applying a look-back period greater than three years is arbitrary and capricious because there is no reasoned explanation for departing from the three-year policy described in the 2011 FOM. (Resp't Br. 32-33, 35; Resp't Reply Br. 22-28).

This argument is rejected on multiple grounds. The three-year period in the 2011 FOM did not constrain the Secretary from classifying a violation as repeated based on a prior violation that was established more than three years earlier.

First, a long line of Commission precedent has consistently held that OSHA's FOM (1) does not create any substantive rights for employers, (2) is not binding on the Commission or OSHA, and (3) is "only a guide for OSHA personnel to promote efficiency and uniformity." *Hackensack Steel Corp.*, 20 BNA OSHC 1387, 1392 (No. 97-0755, 2003) (citations omitted); *accord Andrew Catapano Enters.*, 17 BNA OSHC 1776, 1780 (No. 90-0050, 1996) (consolidated); *Caterpillar, Inc.*, 15 BNA OSHC 2153, 2173 n. 24 (No. 87-922, 1993); *H.B. Zachary Co.*, 7 BNA OSHC 2202, 2204-05 (No. 76-1393, 1980); *FMC Corp.*, 5 BNA OSHC

violations *will ... be increased* from three to five years." (Ex. J-1) (emphasis supplied). It is further consistent with documentary evidence that was presented in a different matter before the Commission, which reflected that OSHA had changed the policy from three years to five years in September 2010, to be effective on 10/1/2010. *Hubbard Constr. Co.*, 24 BNA OSHC 1689, 1698 (No. 11-3022, 2013) (ALJ).

Nevertheless, even if OSHA changed the time period from three years to five years as of 10/1/2010, the record contains no explanation why the 2011 FOM, which was effective for over four years from 4/22/2011 to 9/30/2015, did not reflect that change.

Accordingly, even accepting that the Interim Penalty Policy dated 9/27/2010 changed the time period from three to five years effective 10/1/2010, the evidence of record conclusively establishes that at all relevant times the 2011 FOM contained a three-year policy, and that the 2011 FOM was in effect from 4/22/2011 until it was supplanted by the 2015 FOM on 10/1/2015. Thus, an employer that was aware only of the 2011 FOM and not any policy changes within OSHA at variance with the 2011 FOM could reasonably conclude that OSHA's general internal policy included the general three-year look-back period described therein. Accordingly, it is through the lens of the three-year period described in the 2011 FOM, not the five-year period that the Area Director described as having been implemented in the year 2010, that Triumph's arguments will be addressed.

1707, 1710 (No. 13151, 1977). The 2011 FOM contains the following prominent “Disclaimer” in boldface type immediately before its table of contents that articulates the same view of the FOM’s import. The relevant part of the Disclaimer provides as follows (Ex. R-2):

This manual is intended to provide instruction regarding some of the internal operations of the Occupational Safety and Health Administration (OSHA), and is solely for the benefit of the Government. No duties, rights, or benefits, substantive or procedural, are created or implied by this manual. The contents of this manual are not enforceable by any person or entity against the Department of Labor or the United States.

Second, the part of the 2011 FOM that describes the three-year period simply does not limit the look-back period to three years. Instead, it confirms that “there are no statutory limitations on” the look-back period, and rather than making the three-year period mandatory, states instead that the three-year period “shall generally be followed.” Moreover, consistent with the Area Director’s testimony, the 2011 FOM contains guidance on circumstances when OSHA may consider deviating from that three-year policy, including “cases of multiple prior repeated citations,” as here.

Third, Commission precedent does not limit the length of the look-back period for a repeated citation. The “time between violations does not bear on whether a violation is repeated.” *Hackensack Steel Corp.*, 20 BNA OSHC at 1392, quoting *Jersey Steel Erectors*, 16 BNA OSHC 1162, 1168 (No. 90-1307, 1993) *aff’d without published opinion*, 19 F.3d 643 (3d Cir. 1994); *see also Potlatch Corp.*, 7 BNA OSHC at 1064 (finding the length of time between the past and current violations is not relevant to establishing the repeat violation).

Triumph cites to several cases, including *I.N.S. v. Yang*, 519 U.S. 26, 32 (1996), in arguing that OSHA departed from its own policies and procedures. (Resp’t Reply Br. 23). Triumph points to *dicta* in *Yang* that

[t]hough the agency's discretion is unfettered at the outset, if it announces and follows — by rule or by settled course of adjudication — a general policy by which its exercise of discretion will be governed, an irrational departure from that policy (as opposed to an avowed alteration of it) could constitute action that must be overturned as ‘arbitrary, capricious, [or] an abuse of discretion’ within the meaning of the Administrative Procedure Act, 5 U.S.C. § 706(2)(A).

Yang, 519 U.S. at 32. Even assuming that the 2011 FOM can reasonably be regarded as OSHA “announcing” “by rule or by settled course of adjudication” a general three-year policy (which it does not), the instant case does not involve a departure, irrational or otherwise, from the general policy stated in the 2011 FOM. This is because the general policy set forth in the FOM is that OSHA need not unvaryingly apply a three-year period. Rather, the policy stated in the 2011 FOM contemplates that repeat citations may be issued based on prior violations that have occurred beyond a three-year period. Where, as here, OSHA actually does so, the repeat classification cannot amount to a departure from that policy, much less an “irrational” one.

Triumph also asserts that it relied upon the three-year period in the 2011 FOM when it entered into the 2011 Informal Settlement Agreement on 11/18/2011. (Resp. Br. 33). First, the record is devoid of any evidence that Triumph actually relied on the policy stated in the 2011 FOM, so Triumph’s argument lacks any underlying factual support. Even if there were evidence of actual reliance, such reliance would have been unreasonable, because the policy as expressed in the 2011 FOM observes that there are “no statutory limitations on the length of time that a prior citation was issued as a basis for a repeated violation,” and notes only that the three-year policy “shall generally be followed” and thus indicated that it may not be followed in every case. Such reliance would similarly be unreasonable because of the prominent Disclaimer in the 2011 FOM quoted above. In any event, as also noted above, as a matter of law the FOM creates no substantive rights. *Hackensack Steel Corp.*, 20 BNA OSHC at 1392. Further, “[the employer] is presumed to have knowledge of the Act, which has provided for repeated citations since its

effective date,” with no limitation on the age of a predicate violation. *Stone Container Corp.*, 14 BNA OSHC 1757, 1762 (No. 88-310, 1990).

Triumph’s arguments that it relied on the three-year time period in the 2011 FOM in deciding to enter into the Informal Settlement Agreement on November 18, 2011, and that it reasonably believed that any time after November 18, 2014, it could again violate § 1926.652(a)(1) with no risk of being cited for a repeated violation is rejected. (Resp’t Br. 33).

The Secretary proved the characterization of the violation as repeated.

**Protection of Employees From Loose Rock or Soil --
Alleged Violation of § 1926.651(j)(1)**

Triumph was cited for a serious violation of 29 C.F.R. § 1926.651(j)(1), which provides:

(j) Protection of employees from loose rock or soil. (1) Adequate protection shall be provided to protect employees from loose rock or soil that could pose a hazard by falling or rolling from an excavation face. Such protection shall consist of scaling to remove loose material; installation of protective barricades at intervals as necessary on the face to stop and contain falling material; or other means that provide equivalent protection.

The Citation alleged that Triumph had violated this standard on August 22, 2014 at the “Jobsite trench, east end” on West 10th Street in the following manner: “Adequate protection was not provided to protect the employee from loose rock or soil from falling into the excavation. Loose soil rolled from an excavation face and a concrete slab, which was being supported by the soil, fell and struck the employee.” (Citation 1, item 1).

Applicability of Standard

Section 1926.651(j)(1) requires an employer to protect employees from loose rock or soil on an excavation’s face that could pose a hazard by falling into the excavation. As discussed *supra*, the excavation here meets the standard’s definition of “excavation.” The Secretary has

shown that Triumph employees were working in the excavation on August 22, 2014. The standard applies.

Significant Risk of Harm from the Hazard of Loose Rock or Soil

Section 1926.651(j)(1) does not presume that the hazard it addresses exists in every excavation. Rather, the standard requires an employer to provide “adequate protection ... to protect employees from loose rock or soil *that could pose a hazard.*” (Emphasis supplied.) Consequently, because the standard does not presume the existence of the hazard that the standard addresses, in order to prove that the standard was violated “the Secretary must show more than the mere possibility of injury; he must show that the potential hazard presents a significant risk of harm.” *Pratt & Whitney Aircraft v. Donovan*, 715 F.2d 57, 64 (2d Cir. 1983) (*Pratt & Whitney II*), citing *Pratt & Whitney Aircraft v. Secretary of Labor*, 649 F.2d 96 (1981) (*Pratt & Whitney I*); *Anoplate Corp.*, 12 BNA OSHC 1678, 1681 (No. 80-4109, 1986) (adopting the reasoning of *Pratt & Whitney I & II* and applying it in Commission proceedings). “A risk cannot be deemed significant absent some showing by the Secretary of the circumstances likely to give rise to the alleged hazard.” *Pratt & Whitney II*, 715 F.2d at 66-67. “Whether there exists a significant risk depends on the seriousness of the potential harm and the likelihood of that harm being realized.” *Id.* at 64. The “likelihood of injury and the corresponding measure of harm resulting therefrom” are issues of fact. *Id.*

The hazard that § 1926.651(j)(1) addresses is described in the 1989 preamble to the Excavations standard:

[Section 1926.651(j)(1)] addresses a hazard similar to cave-ins, although it is not of the same magnitude. Loose rock or soil can fall or roll from an excavation face and, if in sufficient volume, endanger an employee even when an adequate cave-in protective system is in place. For example, when a shield is used in conjunction with sloping, the possibility exists for material to loosen and slide down and over the top of the shield, thus endangering employees.

Occupational Safety and Health Standards -- Excavations, 54 Fed. Reg. 45894, 45924 (Oct. 31, 1989). This language in the preamble shows that § 1926.651(j)(1) presupposes that the excavation to which it is to be applied complies with the cave-in protection requirement of § 1926.652(a)(1). The hazard that § 1926.651(j)(1) addresses of “loose rock or soil” that “can fall or roll from an excavation face ... in sufficient volume [to] endanger an employee even when an adequate cave-in protective system is in place” is a different hazard from a cave-in hazard addressed by § 1926.652(a).²⁷

The Secretary argues that the occurrence of the cave-in proves the existence of the hazard of “loose soil falling or rolling from the excavation’s face in sufficient volume to endanger an employee,” citing to *A.E. Burgess Leather Co., Inc.*, 5 BNA OSHC 1096 (No. 12501, 1977) *aff’d*, 576 F.2d 948 (1st Cir. 1978). (Sec’y Br. 26). In *A.E. Burgess*, the Commission observed that the “occurrence or absence of injuries caused by a machine is probative evidence of whether the machine presents a hazard” (and thus whether machine guarding to protect employees was required by the machine guarding standard at § 1910.212(a)(1)). *Id.* at 1097. Even so, the occurrence of a workplace accident alone does not establish that a standard was violated. *See Williams Enters. Inc.*, 13 BNA OSHC 1249, 1252-53 (No. 83-355, 1987) (noting that the Commission has “many times held” that “the cause of the accident is not necessarily relevant to whether a standard was violated”); *cf. Ford Dev. Corp.*, 15 BNA OSHC at 2010 (noting that “normally, the fact that an accident occurred, let alone the details, is irrelevant” to Commission

²⁷ The term cave-in is defined in § 1926.650(b) as follows:

Cave-in means the separation of a mass of soil or rock material from the side of an excavation, or the loss of soil from under a trench shield or support system, and its sudden movement into the excavation, either by falling or sliding, in sufficient quantity so that it could entrap, bury, or otherwise injure and immobilize a person.

proceedings, but that “the very fact of the collapse [of an excavation wall] seems to demonstrate an instability at the scene of the accident”).

While the occurrence of the cave-in may constitute evidence of the existence of the hazard of loose rock or soil on the face of the excavation that could endanger an employee, the Secretary otherwise presented no evidence of “circumstances likely to give rise to the alleged hazard.” *Pratt & Whitney II*, 715 F.2d at 67. There was no evidence characterizing the appearance of the face of the excavation in the location of the cave-in prior to the cave-in, or describing that the face of the excavation contained loose rock or soil. *See generally, Freeze Tech. Int’l, Inc.*, No. 99-308, 2000 WL 896324, at *5, (O.S.H.R.C.A.L.J. June 23, 2000)(consolidated) (vacating citation for § 1926.651(j)(1) upon concluding that no evidence showed that the face of excavation posed a hazard); *Black Constr. Corp.*, No. 99-0512, 2000 WL 687783, at *3, (O.S.H.R.C.A.L.J. May 26, 2000) (finding Secretary did not meet burden to prove existence of “loose rock or soil that could pose a hazard” as required by § 1926.651(j)(1)).

Moreover, the Secretary presented no evidence that the hazard of loose rock or soil existed on the face of any part of the excavation that had *not* caved-in. Such evidence, if any existed, would have been apparent upon an examination of the portions of the excavation that remained intact. In the absence of any such evidence, the only reasonable conclusion is that there was no loose rock or soil anywhere on the excavation faces that posed the kind of hazard against which § 1926.651(j)(1) protects.

Lastly, when the hazard of loose rock or soil on the face of an excavation does exist, § 1926.652(j)(1) describes the protection that must be provided: “scaling to remove loose material; installation of protective barricades at intervals as necessary on the face to stop and contain falling material; or other means that provide equivalent protection.” Other than the

occurrence of the cave-in, the Secretary presented no evidence that these forms of abatement were necessary to protect employees from loose rock or soil rolling or falling from the face of the excavation (which is a distinct hazard from a cave-in hazard).

Employer Knowledge

Even if the occurrence of the cave-in alone proved the existence of the kind of hazard against which § 1926.651(j)(1) protects employees (so that Triumph violated the standard by failing to employ any of the means of abatement prescribed by the standard), the Secretary failed to prove that Triumph knew or with the exercise of reasonable diligence could have known of the violative condition. *Revoli*, 19 BNA OSHC at 1684.

The employer's knowledge is directed to the physical condition that constitutes a violation. *Phoenix*, 17 BNA OSHC at 1079-1080. It is not necessary to show that the employer knew or understood the condition was actually hazardous. *Id.*

Triumph asserts the condition that caused the cave-in was the unknown "cold joint" behind the face of the excavation that was created by the presence of wood sheeting that had been improperly left buried sometime in the distant past as part of the excavation from a nearby parallel sewer line. (Resp't Br. 29-30).

The Secretary argues that Triumph had constructive knowledge of the hazard of loose rock or soil on the face of the excavation by virtue of recognizing that the excavation was in the least stable type of soil (Type C) and that this previously disturbed soil was "further weakened by the excavator that was in operation at the time of the cave-in." (Sec'y Br. 25 & 27).

The Secretary's argument is rejected. As noted above, there is no evidence that any loose rock or soil was apparent on the face of the excavation. Moreover, there was no evidence that loose rock or soil is necessarily present on the face of an excavation in Type C soil. Also, there

was no direct evidence that vibrations from the excavator affected the stability of any loose rock or soil on the face of the excavation.

The CO acknowledged in his testimony that he had no reason to believe that Triumph knew or should have known of the presence of the cold joint behind the excavation's face at the location of the cave-in. (T. 297-98). The weight of the evidence supports the CO's belief. Triumph had been on the project for about 18 months and had not encountered any similar problems or incidents. (T. 184-85, 462-63, 528-29). No evidence was presented that would support a finding that Triumph, in the exercise of reasonable diligence, should have known that a cold joint caused by the ancient wood sheeting improperly left buried from a prior excavation would create the hazardous condition of loose rock or soil on the face of the excavation.

The citation for violation of § 1926.651(j)(1) is vacated because the Secretary failed to prove (1) that Triumph violated the standard by showing that there was a significant risk of harm from "loose rock or soil ... that could pose a hazard by falling or rolling " from the face of the excavation, and (2) that Triumph knew or could have known of the presence of such a hazard in the exercise of reasonable diligence.

Penalty Assessment for Repeated Violation

The Commission and its judges make *de novo* penalty determinations and have the authority to assess penalties based on the facts of each case and the applicable statutory criteria. *Valdak Corp.*, 17 BNA OSHC 1135, 1138 (No. 93-0239, 1995); *Allied Structural Steel*, 2 BNA OSHC 1457, 1458 (No. 1681, 1975) *aff'd*, 73 F.3d 1466 (8th Cir. 1996). The permissible range of penalties for a repeat violation is from no penalty to \$70,000. 29 U.S.C. § 666(a). The Secretary proposed a penalty of \$22,500 for the repeat violation of § 1926.652(a)(1).

Section 17(j) of the Act requires that in assessing penalties, the Commission give “due consideration” to four criteria: the size of the employer’s business, the gravity of the violation, the employer’s good faith, and its prior history of violations. *Compass Envtl., Inc.*, 23 BNA OSHC 1132, 1137 (No. 06-1036, 2010), *aff’d*, 663 F.3d 1164 (10th Cir. 2011).

Gravity is the primary consideration among these four statutory criteria, and is determined by “such matters as the number of employees exposed, the duration of the exposure, the precautions taken against injury, and the likelihood that any injury would result.” *J.A. Jones Constr. Co.*, 15 BNA OSHC 2200, 2214 (No. 87-2059, 1993). The matter of an employer’s “good faith” should take into account such factors as “aggravated conduct, disregard of the Act, or flouting.” *Potlatch Corp.*, 7 BNA OSHC at 1064. With respect to assessing the penalty for a repeat violation, other factors to be considered are “an employer’s attitude (such as his flouting of the Act), commonality of supervisory control over the violative condition, the geographical proximity of the violations, the time lapse between the violations, and the number of prior violations.” *Id.*

OSHA rated the violation as moderate gravity (high severity and lesser probability), which resulted in a base penalty of \$5000, and then adjusted that amount with a 10% reduction due to Triumph’s size of 230 employees, reaching an adjusted base penalty of \$4500. (T. 286, 284). No reduction for good faith was applied. Because this was a second repeat violation, the OSHA protocol was to apply a multiplier of five to the adjusted base penalty, resulting in a proposed penalty of \$22,500. (T. 286-87).

The evidence supports the Secretary’s conclusion that the violation of the cited standard is of high severity. The Commission observed in 1990 that “[t]rench cave-ins, which are frequently caused by failure to comply with the Secretary’s trenching standards, have been for

many years one of the most severe problems in occupational safety.” *Calang Corp.*, 14 BNA OSHC 1789, 1794 (No. 85-0319, 1990); *see also Mosser Constr.*, 23 BNA OSHC 1044, 1046 (No. 08-0631, 2010) (“excavation work is one of the most hazardous types of work done in the construction industry [and] [t]he primary type of accident of concern in excavation-related work is [the] cave-in”). Here, there was a cave-in accident that resulted in an employee sustaining serious injuries requiring surgery.

A 10% reduction in the base penalty amount because Triumph has 230 employees is not warranted in view of Triumph’s record of violating the same standard three times in the span of less than six years. All three violations occurred in New York City and all involved utility excavations, a staple of Triumph’s business. (Exs. C-18 & C-20; Finding of Fact ¶1, *supra*). The determination to employ a multiplier of five to the base penalty amount is appropriate for the third violation of the same standard over a span of less than six years. Accordingly, the penalty to be assessed for the repeated violation of § 1926.652(a)(1) is \$25,000.

ORDER

The foregoing decision constitutes findings of fact and conclusions of law in accordance with Federal Rule of Civil Procedure 52(a). If any finding is in actuality a conclusion of law or any legal conclusion stated is in actuality a finding of fact, it shall be deemed so, any label to the contrary notwithstanding. Based upon the foregoing findings of fact and conclusions of law, it is ORDERED that:

1. Citation 1 (item 1) alleging a Serious violation of 29 C.F.R. § 1926.651(j)(1), is VACATED.

2. Citation 2 (item 1) alleging a Repeat violation of 29 C.F.R. § 1926.652(a)(1), is AFFIRMED, and a penalty of \$25,000 is assessed.

/s/
William S. Coleman
Administrative Law Judge

Dated: September 19, 2016

Date:05/08/2019 Account:1501459093 Amount:\$25,000.00 Serial:51901 Sequence:989769770 TR:26013576 TranCode:0
DbCr:D Pattern:1 RIC:0

[illegible]



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 02
26 Federal Plz Ste 3614
New York, NY 10278-3699

Agency Website: www.nlrb.gov
Telephone: (212)264-0300
Fax: (212)264-2450

March 31, 2016

Re: Triumph Utilities Corp., Rosedale Co., and
Cuzjack Construction Corp., joint and/or
single employers
Case 02-CA-167942

Laborers Local 731
(Triumph Utilities Corp., Rosedale Co., and
Cuzjack Construction Corp., joint and/or
single employers)
Case 02-CB-167954

Dear [REDACTED]

We have carefully investigated and considered your charges that Triumph Utilities Corp., Rosedale Co., and Cuzjack Construction Corp., joint and/or single employers and LABORERS UNION LOCAL 731 have violated the National Labor Relations Act.

Decision to Dismiss: Based on that investigation, I have decided to dismiss your charges because there is insufficient evidence to establish a violation of the Act.

Your Right to Appeal: You may appeal my decision to the General Counsel of the National Labor Relations Board, through the Office of Appeals. If you appeal, you may use the enclosed Appeal Form, which is also available at www.nlrb.gov. However, you are encouraged to also submit a complete statement of the facts and reasons why you believe my decision was incorrect.

Means of Filing: An appeal may be filed electronically, by mail, by delivery service, or hand-delivered. Filing an appeal electronically is preferred but not required. The appeal MAY NOT be filed by fax or email. To file an appeal electronically, go to the Agency's website at www.nlrb.gov, click on **E-File Documents**, enter the **NLRB Case Number**, and follow the detailed instructions. To file an appeal by mail or delivery service, address the appeal to the **General Counsel at the National Labor Relations Board, Attn: Office of Appeals, 1015 Half Street SE, Washington, DC 20570-0001**. Unless filed electronically, a copy of the appeal should also be sent to me.

Appeal Due Date: The appeal is due on **April 14, 2016**. If the appeal is filed electronically, the transmission of the entire document through the Agency's website must be completed **no later than 11:59 p.m. Eastern Time** on the due date. If filing by mail or by

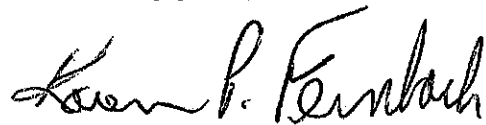
Triumph Utilities Corp., Rosedale Co., and - 2 -
Cuzjack Construction Corp., joint and/or
single employers
Case 02-CA-167942

delivery service an appeal will be found to be timely filed if it is postmarked or given to a delivery service no later than April 13, 2016. **If an appeal is postmarked or given to a delivery service on the due date, it will be rejected as untimely.** If hand delivered, an appeal must be received by the General Counsel in Washington D.C. by 5:00 p.m. Eastern Time on the appeal due date. If an appeal is not submitted in accordance with this paragraph, it will be rejected.

Extension of Time to File Appeal: The General Counsel may allow additional time to file the appeal if the Charging Party provides a good reason for doing so and the request for an extension of time is **received on or before April 14, 2016.** The request may be filed electronically through the ***E-File Documents*** link on our website www.nlr.gov, by fax to (202)273-4283, by mail, or by delivery service. The General Counsel will not consider any request for an extension of time to file an appeal received after April 14, 2016, **even if it is postmarked or given to the delivery service before the due date.** Unless filed electronically, a copy of the extension of time should also be sent to me.

Confidentiality: We will not honor any claim of confidentiality or privilege or any limitations on our use of appeal statements or supporting evidence beyond those prescribed by the Federal Records Act and the Freedom of Information Act (FOIA). Thus, we may disclose an appeal statement to a party upon request during the processing of the appeal. If the appeal is successful, any statement or material submitted with the appeal may be introduced as evidence at a hearing before an administrative law judge. Because the Federal Records Act requires us to keep copies of case handling documents for some years after a case closes, we may be required by the FOIA to disclose those documents absent an applicable exemption such as those that protect confidential sources, commercial/financial information, or personal privacy interests.

Very truly yours,

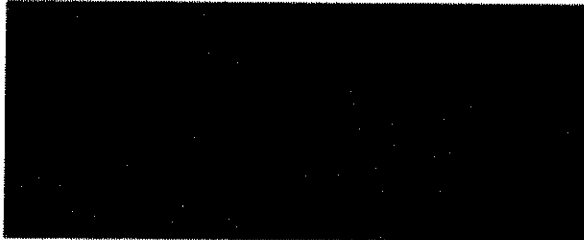


KAREN P. FERNBACH
Regional Director

Enclosure

Triumph Utilities Corp., Rosedale Co., and - 3 -
Cuzjack Construction Corp., joint and/or
single employers
Case 02-CA-167942

cc:





Office of Administrative
Trials and Hearings

Summonses and Notices with ECB Hearings at OATH

Case Details

Summons/Notice Number: 0701193855

Date Issued: 09/26/2017

Issuing Agency: DEPT OF TRANSPORTATION

Respondent Name: TRIUMPH CONSTRUCTION CORP

Balance Due: 0.0

Inspection Location: 124 STREET BTWN 89 AVENUE AND QUEENS NY

Respondent Address: 1354 SENECA AVENUE BRONX NY 10474

[View Image of Summons/Notice](#)

More Details

Status of Summons/Notice: PAID IN FULL

Hearing Result:

Hearing Location: Manhattan [Hearing Locations](#)

Hearing Date: 11/29/2017

Explanation of Charges

[New Search](#)

NYCServ Violation Copy

Internet



0701193855



SUMMONS • FOR CIVIL PENALTIES ONLY

SUMMONS NUMBER: 0701193855

ENFORCEMENT AGENCY : New York City Department of Transportation

DIVISION: 841, H126

AGENCY ADDRESS : 55 Water Street, 9th Floor, New York NY 10041

PHONE NUMBER: 212-889-8888

RESPONDENT: TRIUMPH CONSTRUCTION CORP.

DBA: N/A

MAILING ADDRESS: 1354 SENECA AVENUE BRONX NY, 10474

ID NUMBER: Q012017293C91

CELL PHONE:

TYPE OF ID AND ISSUED BY: NYC DOT

DATE and TIME OF OCCURRENCE: 9/26/2017 12:19 PM

START AND END TIMES OF INSPECTION: N/A

PLACE OF OCCURRENCE: 124 STREET Btwn 89 AVENUE and JAMAICA AVENUE

BOROUGH: Queens

You must respond to this Summons. You can appear at the hearing date and location below or choose another option. For other options on how to respond, see the back of this page.

HEARING DATE: November 29, 2017 AT: 8:30 AM

HEARING LOCATION : Office of Administrative Trials & Hearings

144-06 94th Avenue, Main Floor, Jamaica, NY 11435 Phone: (844) 628-4692

Refer to the Summons number above on all communications.

WARNING: If you do not respond, the City will decide the Summons against you and impose penalties. If you do not pay any imposed civil penalty, the City could deny an application for, or suspend, terminate or revoke any City license, permit or registration that you have. The City may enter a judgment against you in court.

Details of Violation(s)

34 RCNY 2-11(e)(16)(iii) - Failure to comply with all applicable sections of the Highway Rules, the Standard Specifications, Standard Detail Drawings, and all other applicable laws or rules (DOSS)

Mail-In Penalty : \$750

A/T/P/O, I observed construction material (crushed stones) stored in the curb and driving lanes, up to 15' from the curb. Section 2(03)d(14) states: a maximum of one lane measured from the curb, be encumbered with Failure to comply with DOT standard specifications. NOV to be rejected.

Maximum Penalty: \$1,000

~~NYC Charter Sections 1040, 1049 and 1049-c and the Rules of the City of New York authorize the NYC Office of Administrative Trials and Hearings (OATH) to hold~~ hearings. For hearing options, see other side of this Summons.

I, an employee of the agency named above, affirm under penalty of perjury that I personally observed the commission of the violation(s) charged above and/or verified their existence through a review of departmental records. False statements made herein are punishable as a Class A Misdemeanor pursuant to section 210.45 of the Penal Law.

Electronically signed on 9/26/2017 at 12:19 PM by:

Name/ID: SERGE CASIMIR, Tax Reg No. 000126

Rank/Title: NYC DOT Highway and Sewer Inspector

0701193855





Office of Administrative
Trials and Hearings

Summonses and Notices with ECB Hearings at OATH

Case Details

Summons/Notice Number: 0206490424

Date Issued: 12/14/2018

Issuing Agency: SANITATION OTHERS

Respondent Name: TRIUMPH

Balance Due: 0.0

Inspection Location: 910 LONGFELLOW AVENUE BRONX NY 10474

Respondent Address: 910 LONGFELLOW AVENUE BRONX NY 10474

[View Image of Summons/Notice](#)

More Details

Status of Summons/Notice: PAID IN FULL

Hearing Result:

Hearing Location: Bronx [Hearing Locations](#)

Hearing Date: 01/28/2019

Explanation of Charges

[New Search](#)

NYCServ Violation Copy

Internet



0206490424



9299000010010015

SUMMONS • FOR CIVIL PENALTIES ONLY

SUMMONS NUMBER: 0206 490 424

ENFORCEMENT AGENCY: Dept. of Sanitation	
AGENCY CONTACT INFORMATION: 311 DIVISION: BCC	
LAST NAME OR COMPANY NAME (Print)	FIRST NAME
CELL PHONE #: (718) 861-6060	
STREET ADDRESS: 910 Longfellow Ave.	
CITY: Bronx	STATE: NY ZIP: 10469
ID NUMBER:	
TYPE OF ID/ISSUED BY:	
DATE OF OCCURRENCE: 12/14/12 TIME OF OCCURRENCE: 10:45 AM	
PLACE OF OCCURRENCE: 910 Longfellow Ave.	
BOROUGH OF OCCURRENCE: Bronx CB No.: 2	
<input checked="" type="checkbox"/> Alternative Service	

You must respond to the summons. You can appear on the hearing date and the location below or choose another option. For other options on how to respond, see the back of this page.

HEARING DATE: 1/12/13 **AT:** 8:30 AM

OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS.
See reverse side for address
(borough)

Phone: (844) 628-4692

FOR HEARING OPTIONS, SEE THE BACK OF THIS PAGE

REFER TO THE SUMMONS NUMBER ABOVE ON ALL CORRESPONDENCE

WARNING! If you do not respond, you may be found automatically responsible and you may owe larger penalties. If you do not pay any imposed penalties, you may lose your ability to keep or get a City license, permit or registration. The City might also take further legal action against you. See the back for more information.

Details of Violation(s)	
Section/Rule: 24-118 (2)(b)	OATH Code: S O K
Mail-In Penalty: \$ 100	Maximum Penalty: \$ 300
<input type="checkbox"/> Respondent must appear in person	
AT 8:30 AM to district attorney's office, 100 Nassau St., 10th floor, New York, NY 10038	
+ Home	
<input type="checkbox"/> Property Removed	<input type="checkbox"/> 1-2 Family
<input type="checkbox"/> Multiple Dwelling	<input checked="" type="checkbox"/> Commercial
NYC Charter Sections 104B and 1049-a and the Rules of the City of New York authorize the NYC Office of Administrative Trials and Hearings (OATH) to hold hearings.	
I, an employee of the enforcement agency named above, affirm under penalty of perjury that I personally observed the commission of the violation(s) charged above and/or verified their existence through a review of departmental records. False statements made herein are punishable as a Class A Misdemeanor pursuant to section 210.45 of the Penal Law.	
NAME (TITLE) SIGNATURE OF COMPLAINT	REPORT LEVEL (PS 4 covers Complaints, Etc., Unit, etc.)
COMPLAINANT'S NAME (Printed)	TAX ID/IDENTITY NUMBER
AGENCY	AGENCY
NOTICE ALSO SENT TO	FIRST NAME
LAST NAME	
STREET ADDRESS	
CITY	STATE ZIP

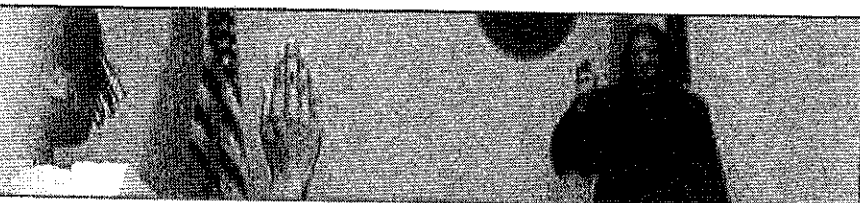
OATH



0206 490 424



Office of Administrative
Trials and Hearings



Summonses and Notices with ECB Hearings at OATH

Case Details

Summons/Notice Number: 0701184303

Date Issued: 10/03/2017

Issuing Agency: DEPT OF TRANSPORTATION

Respondent Name: TRIUMPH CONSTRUCTION CORP

Balance Due: 0.0

Inspection Location: WEST BROADWAY BTWN FRANKLIN STRE NEW YORK NY

Respondent Address: 1354 SENECA AVENUE BRONX NY 10474

[View Image of Summons/Notice](#)

More Details

Status of Summons/Notice: PAID IN FULL

Hearing Result:

Hearing Location: Manhattan [Hearing Locations](#)

Hearing Date: 12/04/2017

Explanation of Charges

[New Search](#)

NYCServ Violation Copy

Internet



0701184303



SUMMONS - FOR CIVIL PENALTIES ONLY

SUMMONS NUMBER: 0701184303

ENFORCEMENT AGENCY : New York City Department of Transportation

DIVISION: 843, H654

AGENCY ADDRESS : 55 Water Street, 9th Floor, New York NY 10041

PHONE NUMBER: 212-838-8938

RESPONDENT: TRIUMPH CONSTRUCTION CORP.

DBA: N/A

MAILING ADDRESS: 1554 SENECA AVENUE BRONX NY, 10474

ID NUMBER: MNP2017276A15

CELL PHONE:

TYPE OF ID AND ISSUED BY: NYC DOT

DATE and TIME OF OCCURRENCE: 10/3/2017 05:40 PM

START AND END TIMES OF INSPECTION: N/A

PLACE OF OCCURRENCE: WEST BROADWAY btwn FRANKLIN STREET and
LEONARD STREET

BOROUGH: Manhattan

You must respond to this Summons. You can appear at the hearing date and location below or choose another option. For other options on how to respond, see the back of this page.

HEARING DATE: December 4, 2017 AT: 8:30 AM

HEARING LOCATION : Office of Administrative Trials & Hearings

66 John Street, 10th Floor, New York, NY 10038 Phone: (844) 628-4692

Refer to the Summons number above on all communications.

WARNING: If you do not respond, the City will decide the Summons against you and impose penalties. If you do not pay any imposed civil penalty, the City could deny an application for, or suspend, terminate or revoke any City license, permit or registration that you have. The City may enter a judgment against you in court.

Details of Violation(s)

A.C. 10-102(f) - Use/opening of street without DOT permit {D01}

Mail-In Penalty : \$1,500

A/T/P/O I observed respondent, TRIUMPH CONSTRUCTION CORP., with a plated condition on street without a valid DOT permit. Permittee was identified through markings on equipment. - If not admitting the charge, you MUST APPEAR IN PERSON.

Maximum Penalty: \$5,000

NYC Charter Sections 1048, 1049 and 1049-a and the Rules of the City of New York authorize the NYC Office of Administrative Trials and Hearings (OATH) to hold hearings.

I, an employee of the agency named above, affirm under penalty of perjury that I personally observed the commission of the violation(s) charged above and/or verified their existence through a review of departmental records. False statements made herein are punishable as a Class A Misdemeanor pursuant to section 210.45 of the Penal Law.

Electronically signed on 10/3/2017 at 05:40 PM by:

Name/ID: JORGE VILLAPANE, Tax Reg No. 000654

Rank/TITLE: NYC DOT Apprentice Highway and Sewer Inspector

0701184303





Office of Administrative
Trials and Hearings

Summonses and Notices with ECB Hearings at OATH

Case Details

Summons/Notice Number: 0202913260

Date Issued: 08/29/2017

Issuing Agency: NYPD TRANSPORT INTELLIGENCE DIVISION

Respondent Name: TRIUMPH CONSTRUCTION CORP

Balance Due: 0.0

Inspection Location: E 86 ST BET LEXINGTON AVE & 3RD NEW YORK NY

Respondent Address: 1354 SENECA AVENUE BRONX NY 10474

[View Image of Summons/Notice](#)

More Details

Status of Summons/Notice: PAID IN FULL

Hearing Result:

Hearing Location: Manhattan [Hearing Locations](#)

Hearing Date: 11/14/2017

Explanation of Charges

[New Search](#)

NYCServ Violation Copy

Internet



0202913260

POLICE DEPARTMENT		SUMMONS TO APPEAR FOR CIVIL PENALTIES ONLY	
SUMMONS NUMBER: 0202 913 260		ENFORCEMENT AGENCY: Police Department	
Respondent Last Name	First	M.I.	
THOMAS CONSTRUCTION Corp			
Phone No	<input type="checkbox"/> Cell <input type="checkbox"/> Home	D.O.B. MM/DD/YY	Sex <input type="checkbox"/> Male <input type="checkbox"/> Female
11P 867-6060			
Mailing Address			
1354 SENeca AVE Bklyn NY 10474			
ID Number	ID Type		
MEL 13-493	DOT		
Race <input type="checkbox"/> White <input type="checkbox"/> Black <input type="checkbox"/> Hisp. White <input type="checkbox"/> Hisp. Black <input type="checkbox"/> Am. Ind./Alaskan Native <input type="checkbox"/> Asian/Pacific Is.			
Date of Occurrence	Time of Occurrence		<input type="checkbox"/> AM <input type="checkbox"/> PM
06/14/07	06:15		AM
Place of Occurrence (<input type="checkbox"/> At <input type="checkbox"/> In Front Of <input type="checkbox"/> Opposite)			Precinct
E 86th Bt Lexington Ave + 3rd Ave			19
Include the summons number above on all communications			
HEARING DATE: 06/14/07 AT: 03:00 PM			
You must respond by the above date. See the BACK OF THIS SUMMONS to learn about your options.			
WARNING: If you do not respond, you may be found automatically responsible and you may owe larger penalties. If you do not pay any imposed penalties, you may lose your ability to keep or get a City license, permit or registration. The City might also take further legal action against you. See the back for more information.			
Hearing Location: Office of Administrative Trials and Hearings (OATH)			
Borough: MANHATTAN	(See back for address)		(844) 828-4892 www.nyc.gov/oath
<input checked="" type="checkbox"/> Admin. Code	<input type="checkbox"/> Parks Rules: 56 RCNY		
<input type="checkbox"/> Rules of City of NY	<input type="checkbox"/> Traffic Rules: 34 RCNY	<input type="checkbox"/> Other	
Section/Rule	OATH Code		
24-102 (i)	030		
Mail Penalty	Max. Penalty	Property Removed <input type="checkbox"/> Yes <input type="checkbox"/> No	
\$1200	\$1800		
Details of Charge(s): AT TIP I did OBSERVE CONTRACTOR Failed to comply with MEL 13-493 WORK 9AM TO 4PM MONDAY THRU FRIDAY. CONTRACTOR ACTUALLY WORKING BEFORE START TIME 9:00 AM.			
I/O Signature: [Signature]			
Rank/Title	Name	Tag No.	
TEALY	MINUS ROBERT	351225	



0202 913 260



Office of Administrative
Trials and Hearings

Summonses and Notices with ECB Hearings at OATH

Case Details

Summons/Notice Number: 0202914214

Date Issued: 09/14/2017

Issuing Agency: NYPD TRANSPORT INTELLIGENCE DIVISION

Respondent Name: TRIUMPH CONSTRUCTION CORP

Balance Due: 0.0

Inspection Location: E 86 ST BT 2 & 3RD AVE NEW YORK NY

Respondent Address: 1354 SENECA AVENUE BRONX NY 10474

[View Image of Summons/Notice](#)

More Details

Status of Summons/Notice: PAID IN FULL

Hearing Result:

Hearing Location: Manhattan [Hearing Locations](#)

Hearing Date: 11/14/2017

Explanation of Charges

[New Search](#)

NYCServ Violation Copy

Internet



0202914214



SUMMONS TO APPEAR FOR CIVIL PENALTIES ONLY

SUMMONS NUMBER: **0202 914 214**
ENFORCEMENT AGENCY: **Police Department**

Respondent Last Name		First	M.I.
Maurice Construction Corp			
Phone No	<input type="checkbox"/> Cell <input type="checkbox"/> Home	D.O.B. MM/DD/YY	Sex <input type="checkbox"/> Male <input type="checkbox"/> Female
718 861 6060			
Mailing Address			
1351 JERUSA AVE BAYR NY 10474			
ID Number	ID Type		
MM/DD/YY 200239	DOB 10/1/11		
Race <input type="checkbox"/> White <input type="checkbox"/> Black <input type="checkbox"/> Hisp. White <input type="checkbox"/> Hisp. Black <input type="checkbox"/> Am. Ind./Alaskan Native <input type="checkbox"/> Asian/Pacific Is.			
Date of Occurrence MM/DD/YY		Time of Occurrence H:MM	
11/14/17		8:30 AM	
Place of Occurrence (At <input type="checkbox"/> In Front Of <input type="checkbox"/> Opposite)			Precinct
E86 St 15 28 3rd Ave			19

Include the summons number above on all communications

HEARING DATE: 11/14/17 AT: 8:30 ☐ AM ☐ PM

You must respond by the above date.
See the **BACK OF THIS SUMMONS** to learn about your options.

WARNING: If you do not respond, you may be found automatically responsible and you may owe larger penalties. If you do not pay any imposed penalties, you may lose your ability to keep or get a City license, permit or registration. The City might also take further legal action against you. See the back for more information.

Hearing Location: Office of Administrative Trials and Hearings (OATH)

Borough: Manhattan (See back for address) (844) 628-4692
www.nyc.gov/oath

<input checked="" type="checkbox"/> Admin. Code	<input type="checkbox"/> Parks Rules: 58 RCNY	OATH Code
<input checked="" type="checkbox"/> Rules of City of NY	<input type="checkbox"/> Traffic Rules: 34 RCNY <input type="checkbox"/> Other	
Section/Rule		
19-102 (4)		
Mail-In Penalties	Max. Penalties	Property Removed <input type="checkbox"/> Yes <input type="checkbox"/> No
\$1200.00	\$2600.00	

Details of Charge(s): ATPD I observed at this location the above named contractors and site in violation of Section 24-209 for not wearing proper safety gear. This men were not wearing proper safety gear while working around 7am - 2pm Mon - Friday

NYC Charter Sections 104b and 104c and the Rules of the City of New York authorize the NYC Office of Administrative Trials and Hearings (OATH) to hold hearings. (1) an employee of the agency named above, affirm under penalty of perjury that: (1) personally observed the commission of the violation charged; (2) viewed the evidence of the violation through a review of Department records; or (3) was informed of the commission of the violation by a reliable witness that is known to the Department. False statements made herein are punishable as a Class A misdemeanor pursuant to Section 205.43 of the Penal Law.

I/O Signature	Command
<u>[Signature]</u>	<u>11/13/17</u>
Back/Title	Tax No.
<u>1304</u>	<u>331086</u>



0202 914 214



Nassau DPW;

OSHA Inspection No. 992120.015

The alleged violation actually occurred in 2015. Inspection # 992120.015 was comprised of two citations. After an administrative trial, the alleged serious violation was dismissed by the administrative law judge and the repeat violation was sustained. Both violations had been immediately abated and measures were put in place to assure against any future violations. An appeal was filed regarding the repeat violation. The appeal of this one remaining violation was largely based on the argument that the administrative law judge found against Triumph, not on the evidence presented, but based upon a stated legal presumption that does not exist and was entirely improperly utilized. Further, the administrative judge applied an incorrect lookback period for repeat violations and had the correct lookback period been applied this matter would not be a repeat violation. The U.S. Court of Appeals, Second Circuit upheld the trial court's decision and Triumph paid \$25,000. This fine was paid in 2019.

SCA inquiry:

An alleged violation of SCA rules which Triumph disputed. A meeting was held with SCA and the alleged violation was handled to everyone's satisfaction. Triumph disputed that it failed to use plumbers for the work at issue and presented evidence that Olympic Plumbing was utilized. After the meeting, the case was closed by SCA.

Reference Check Summary

Solicitation # S8201502D
Date of Form: 03/12/2021
Vendor Name: Triumph Construction
Vendor EIN: 134050635
Prepared by: JoAnne Farrell

Reference Checks:

a. Company: NYCDC
Contact Person: Rafael Rodriquez
Date of Reference: 01/14/2021
Reference Summary: Triumph has worked with the City for many years

We have a long standing relationship. They have continued to meet our expectations on each contract.

b. Company: NYCDDC
Contact Person: Norbu Tsering
Date of Reference: 01/14/2021
Reference Summary: _____

Triumph had provided this department with excellent service on over a dozen projects.

We would recommend them for future work.

c. Company: NYCEDE

Contact Person: Tim Weiss

Date of Reference: 01/14/2021

Reference Summary: _____

Great contractor. Would recommend them.

Prepared by: JoAnne Farrell Date: 03/12/2021

Title: Project Coordinator

Division: NCDPW

Reviewed by: CariAnn Palmese Date: 03/12/2021



March 26, 2021

County of Nassau
Department of Public Works
Westbury, New York

Re: Contract No. H35132-01G

GOSR Five Towns Drainage Improvements: Lawrence Pipe Improvements

Please allow this correspondence to serve as further follow up to Triumph's Business History Form. As requested, please find Triumph's supplemental response to DPW's open issues.

1. OSHA Violation Inspection No. 1308500 (2018):

On October 10, 2018, OSHA issued Triumph 2 citations, via Inspection No. 1308500, stemming from an incident, at a Triumph work site, which occurred in April of 2018. Specifically, *Citation 1* alleged that adequate protection was not provided to employees to protect from loose rock or soil that could pose a hazard. *Citation 2* alleged that Triumph employees were not protected from by an adequate protective system.

Triumph vehemently denied the allegations arguing that:

- (i) The excavation was less than 5 feet. The type of work at issue was watermain replacement work (not hydrant work which would require deeper trench) and that Triumph used 12-inch pipe. The DEP/DDC requires three feet of cover to the top of the pipe from the roadway, as testified to by the Supervisor & the foreman for the job.
- (ii) Since the excavation was less than 5 feet it did not require a protective system.
- (iii) The citations claim that the trench was "about 5 feet". The inspector did not measure the trench which is why he could not definitely state the depth.
- (iv) The competent person on site (the foreman), inspected the soil and determined that it was packed - the rock was not loose or have the potential for cave in. The foreman testified that he had been working on top of the pipe, just prior to the incident. He would not put himself, let alone any of his workers, in jeopardy by working in an unsafe, inadequately protected trench.
- (v) The OSHA Inspector did not arrive until hours after the incident. The condition of the area was not, at all, like what it was pre-incident. As such, the Inspector had no way to know the true condition of soil, or site, as it was pre-incident.
- (vi) The alleged injured employee was working on top of the pipe. Said employee lost his footing & fell backwards. This action is what caused the incident, not inadequate protection.
- (vii) Citations 1 & 2 are for the same thing – giving both was punitive.

Ultimately, OSHA agreed to a confidential Stipulated Settlement. Triumph agreed to pay a reduced penalty of \$53,040.00 from the original penalty of \$76,828.00 & allowed the payments to be paid monthly.

As part of the settlement, Triumph agreed to "enhancements", which included, *inter alia*, conducting & documenting JHAs, PTPs, & Site-Specific Orientation Training regarding trench excavation. Chief Judge, Covette Rooney, approved the settlement which went into effect on June 4, 2019.

2. OSHA Violation OSHA Inspection No. 992120.015 (2015):

The alleged violation occurred in 2015, which is why it was not initially included with our responses. Inspection # 992120.015 was comprised of two citations. After an administrative trial, one of the violations was dismissed by the administrative law judge and the other was sustained. Both violations had been immediately abated and measures were put in place (site specific trainings, JHA's, more in-depth Competent Person Training) to assure against any future violations. An appeal was filed regarding the sustained violation. The U.S. Court of Appeals, Second Circuit upheld the trial court's decision and Triumph paid \$25,000. This fine was paid in 2019.

3. PSC Violation

On January 4, 2019, Triumph was issued a Notice of Probable Violation, pursuant to 16 NYCRR Part 753. While Triumph conceded that an incident did occur that led to the alleged violations, said incident was as the result of a rogue employee and his crew. Triumph's owner and management were completely unaware of the events that led to this violation until notified by Con Edison, some months after the damage occurred. Specifically, on August 2, 2018, Triumph's owner, Carlo Cuzzi, was advised about an incident of unreported gas damage involving former Triumph personnel ("Peraza Crew"). The alleged incident occurred at or near Saxon Avenue, between Sedgwick Avenue & Van Cortland South, in the Bronx. Prior to August 2nd, Triumph was completely unaware of the damage and its cover up. Upon learning of the incident from Con Edison, Triumph's owner immediately launched both internal and external investigations into the matter. Con Edison also performed their own investigation.

As a result of the extensive investigations performed by both entities, it was determined that the Peraza Crew, as directed by their foreman, independently decided to cover up the damage. Triumph's investigation determined that the actual damage was caused by the brother of the foreman, Julio Peraza. Mr. Peraza took complete responsibility for the cover-up and stated that he was fearful that his brother would be fired as a result of the damage and his actions were to protect his brother. The entire Peraza Crew was terminated immediately.

Triumph has not, and does not, condone any actions that would endanger public safety. The Peraza crew compromised the integrity of the company and its reputation. Immediately after the investigation was concluded, in addition to firing the Peraza Crew, Triumph took the following steps:

- Hired a third-party safety consultant to maintain and monitor its safety program;
- Implemented a safety incentive program including a monetary award to each crew based upon their adherence to applicable safety, regulatory & reporting specifications, including Code 753;
- Instituted a Safety Committee comprised of Triumph's owner, its COO, its General Supervisor, the Safety Manager & its General Counsel/HR Manager who meet monthly to review safety & reporting practices, for its workers and the public;
- Implemented new hiring practices to ensure that new employees have undergone Triumph's enhanced safety orientation and that they have received Triumph's Employee Handbook which now includes a process for employees to report concerns, including reporting & safety related issues and/or damages;
- Added an anonymous telephone hotline for employees to report safety concerns, as well as a lockbox for written grievances.
- New York State 811 online training was completed by all field workers and relevant office personnel with refresher training being required every five years.
- Additionally, all incidents are now reported, in real time, through the company's internal online safety platform (HCSS).

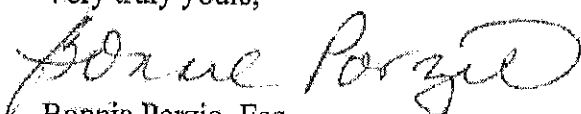
As a result of both Triumph's and Con Ed's investigation, the PSC agreed to settle the proposed violation for a reduced fine. The fine was reduced from \$50,000.00 to \$34,998.00, which was paid over 6 months to Mr. Curtis Funk, the Director of Finance & Budget at the Department of Public Service.

4. DOT/ECB Violations:

The following Notices of Violation (NOVs) are open: NOV 702500655, NOV 702498271, NOV 702497218, NOV 212055948, NOV 702494320. All violations are reviewed and 90% are disputed. The above NOVs have all been disputed, and we are awaiting a court date from the Environment Control Board (ECB). Once a hearing is held and a Decision is rendered, any NOVs found "in violation" will be paid immediately upon notice of the Decision.

NOTE: Importantly, over the last 7 years, Triumph has completed thousands of trenches. Triumph has only received two OSHA violations. Safety violations have never prevented Triumph from being awarded a job from our two main clients, The City of New York and Con Edison. Triumph's Safety MOD is .74, which is incredible given the type of work it performs. Nearly every job that Triumph performs includes trenching. Triumph takes safety very seriously, which is demonstrated by its MOD, its personnel including having a General Counsel in house, a Safety Manager, and staff, in house, and an Owner that oversees all of the jobs.

Very truly yours,



Bonnie Porzio, Esq.
General Counsel Triumph Construction Corp. &
related companies



UTILITY, CONCRETE & SITE WORK

Responses to Question 13:

1. PSC Violation:

January 4, 2019, Triumph was issued a Notice of Probable Violation, pursuant to 16 NYCRR Part 753. As a result of both Triumph's and Con Ed's investigation, the PSC agreed to settle the proposed violation for a reduced fine. The fine was reduced from \$50,000.00 to \$34,998.00, which was paid over 6 months to Mr. Curtis Funk, the Director of Finance & Budget at the Department of Public Service.

Copies of payments/canceled checks attached.

- a. Check No. 54793; 9-24-2019; \$5,833.00
- b. Check No. 55033; 10-2-2019; \$5,833.00
- c. Check No. 55812; 11-7-2019; \$5,833.00
- d. Check No. 56329; 12-9-2019; \$5,833.00
- e. Check No. 56759; 1-02-2020; \$5,833.00
- f. Check No. 57347; 2-05-2020; \$5,833.00

2. OSHA Violation – Inspection No 992120.15 (2015):

The alleged violation occurred in 2015, which is why it was not initially included with our responses. Inspection # 992120.015 was comprised of two citations. After an administrative trial, one of the violations was dismissed by the administrative law judge and the other was sustained. Both violations had been immediately abated and measures were put in place (site specific trainings, JHA's, more in-depth Competent Person Training) to assure against any future violations. An appeal was filed regarding the sustained violation. The U.S. Court of Appeals, Second Circuit upheld the trial court's decision and Triumph paid \$25,000. This fine was paid in 2019. Copy of payment/canceled check attached.

- a. Check No. 51901; 4-25-2019; \$25,000.00

3. OSHA Violation – Inspection No 1308500 (2018):

On October 10, 2018, OSHA issued Triumph 2 citations, via Inspection No. 1308500, stemming from an incident, at a Triumph work site, which occurred in April of 2018. Ultimately, OSHA agreed to a confidential Stipulated Settlement. Triumph agreed to pay a reduced penalty of \$53,040.00 from the original penalty of \$76,828.00 & allowed the payments to be paid monthly. As part of the settlement, Triumph agreed to "enhancements", which included, *inter alia*, conducting & documenting JHAs, PTPs, & Site-Specific Orientation Training regarding trench excavation. Chief Judge, Covette Rooney, approved the settlement which went into effect on June 4, 2019. Copy of payments/canceled checks attached.

- a. Check No. 52018; 5-09-2019; \$8,840.00
- b. Check No. 52699; 6-07-2019; \$8,840.00
- c. Check No. 53177; 7-02-2019; \$8,840.00
- d. Check No. 53810; 8-01-2019; \$8,840.00
- e. Check No. 54377; 9-04-2019; \$8,840.00
- f. Check No. 54976; 10-2-2019; \$8,840.00



Re: Safety Action Items – Triumph Construction's 2018 OSHA Citations

In follow-up to the 2018 OSHA citations, Triumph has implemented a comprehensive and evolving corrective action plan. The following training, administrative and personnel related safety action items have been integrated at Triumph in order to enhance our safety programs.

- **Training:**

- Site Specific Health and Safety Plans, including the accompanying job hazards analysis are updated and reviewed with all crews and competent person(s) at least on an annual basis. Specific focus on Triumph's utility work being performed in trenches, excavations and/or confined spaces. Topics included in this safety emphasis program are protective systems, soil classification, access/egress, atmospheric monitoring, and related personal protective equipment for working in trenches/excavations and/or structures.
- Confined space training is conducted on Triumph's Corporate and Site-Specific Plans for all jobs as these plans are revised or at a minimum on a yearly basis. The training includes both classroom as well as hands on components.
- The role of Triumph's competent person(s) is reviewed with all supervisors and foremen on an annual basis. The importance and elements of this designation are outlined in detail especially in relation to Triumph's trenching and excavation work. All competent person(s) is required to possess at least an OSHA 30-hour certification.
- With the expansion of the new employee orientation training modules, the topics were broadened to ensure on-site safety compliance. Some of the topics include trenching & excavation, personal protective equipment, hazard communications, PCB, lead & asbestos awareness, job site protection, confined space, emergency procedures, fire safety and Corporate Health & Safety Program.
- Job briefing and Human Performance Training is conducted on a continual basis with all employees including management. This training is used to demonstrate the elements of effective job briefings and to promote the human performance initiative which instills behaviors that reduce errors, injuries and operating incidents.
- Mandatory New York State 811 online training has been completed by all field workers and relevant office personnel. Refresher training is required every five years.
- Triumph has been certified under the Gold Shovel Standard. The Gold Shovel Standard Certification is a widely-recognized indication of increased safety awareness and a commitment to continuous damage prevention improvement. Gold Shovel approved Triumph's policies and procedures related to Code 753 and utility damage prevention as well as their training module. Annual recertification is required for continued participation in the program.

- **Administrative:**

- Triumph's pre-job briefing form was reexamined and completely revised with the focus on our trenching and excavation work and the associated tasks. Through these daily meetings the workers are briefed on the tasks they will be performing and the potential hazards and corresponding controls that will be in place.
- Heavy Construction Safety Systems (HCSS) was integrated into Triumph's safety process in 2019, the following reporting mechanisms are available in the field to safety personnel, supervisors and project managers through their iPads:






UTILITY, CONCRETE & SITE WORK

- Safety observations - is a precursor to a near miss or incident which can be either an unsafe act or condition. This "snapshot" can be positive or negative, completed by cell phone (field workers) or iPad and sent directly to management, safety and claim personnel.
 - Near miss - unplanned event that did not result in physical injury or property damage but had the potential to do so. Use of near miss investigations help Triumph determine how and why it happened, as well as how to prevent it from occurring again. Considered a leading indicator of performance, immediate reporting of a near miss allows Triumph to continue to improve their safety programs.
 - Safety audits - job audits with site pictures are completed with the results immediately provided to management and safety manager for review and feedback.
- Safety Personnel:
 - Triumph continues to enhance the performance of their safety programs by the investment in on-site personnel to provide in depth safety oversight. Our safety team is comprised of the following individuals:
 - Field safety coordinators who monitor Triumph's job sites on a daily basis and report their audit findings, safety observations and near misses through the HCSS platform.
 - Full time safety manager who also performs field safety oversight as well as other administrative and training functions.
 - Each project supervisor is actively engaged in on-site safety compliance by carefully monitoring the ongoing work and documenting their findings through HCSS.

Through the above on-going safety related efforts, we have been able to reduce injuries and accidents which is evidenced by our current EMR of 74. Another tangible benefit has been a lower Workers' Compensation cost.


#1- PSC- Violation - (2019) 6 Payments Total Paid \$34,998.00

 1364 SENECA AVENUE BRONX, NY 10474 (718) 861-6060		Signature Bank BROOKLYN, NY 11210 1-1367/260	54793 9-24-2019
PAY TO THE ORDER OF Department of Public Service		\$*****5,833.00	
Pay: *****Five thousand eight hundred thirty-three dollars and no cents			
DOLLARS			
PROTECTED AGAINST FRAUD			
MEMO Department of Public Service Three Empire State Plaza 16th Floor Albany, NY 12223.1350	 		
#054793# #026013576# 1501459093#			

Date:10/21/2019 Account:1501459093 Amount:\$5,833.00 Serial:54793 Sequence:1153125210 TR:26013576 TranCode:0
 DbCr:D Pattern:1 RIC:0

AC909 DEPOSIT TO KEY BANK ACCT #329681090026 GENERAL CHECKING OCT 18 2019 DEPT OF TAXATION & FINANCE DIVISION OF THE TREASURY	Pay to the Order of Department of Taxation & Finance Division of the Treasury Department of Public Service 329681090026 For Deposit Only
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#1 - PSC - Violation - (2019) 6 Payments Total Paid \$34,998.00

		1354 SENECA AVENUE BRONX, NY 10474 (718) 861-8060	Signature Bank BROOKLYN, NY 11210 1-18877280	55033 10-02-2019
PAY TO THE ORDER OF Department of Public Service		\$*****5,833.00		
MEMO Department of Public Service Three Empire State Plaza 16th Floor, Albany, NY 12223-1350		*****Five thousand eight hundred thirty-three dollars and no cents DOLLARS		
⑈055033⑈ ⑆026013576⑆ 1501459093⑈				

Date:11/14/2019 Account:1501459093 Amount:\$5,833.00 Serial:55033 Sequence:1176556750 TR:26013576 TranCode:0
 DbCr:D Pattern:1 RIC:0

AC909 DEPOSIT TO KEY BANK ACCT #329681090026 GENERAL CHECKING NOV 13 2019 DEPT OF TAXATION & FINANCE DIVISION OF THE TREASURY	AC909 DEPOSIT TO KEY BANK ACCT #329681090026 GENERAL CHECKING NOV 13 2019 DEPT OF TAXATION & FINANCE DIVISION OF THE TREASURY	To the Order of Department of Taxation & Finance Division of the Treasury Department of Public Service For Deposit Only
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#1- PSC - Violation - (2019) 6 Payments Total Paid \$34,998.00

CASH ONLY IF ALL EMERALD SECURITY FEATURES LISTED ON BACK INDICATE NO TAMPERING OR COPYING

TRIUMPH CONSTRUCTION 1354 SENECA AVENUE
BRONX, NY 10474
(718) 681-6090

Signature Bank
BROOKLYN, NY 11219
1-857-2200

56759
1-02-2020

PAY TO THE ORDER OF Department of Public Service \$*****5,833.00

ay: *****Five thousand eight hundred thirty-three dollars and no cents

PROTECTED AGAINST FRAUD

Department of Public Service
Three Empire State Plaza
16th Floor
Albany, NY 12223.1350

MEMO


056759 026013576 1501459093

Date:01/27/2020 Account:1501459093 Amount:\$5,833.00 Serial:56759 Sequence:1245144090 TR:26013576 TranCode:0
DbCr:D Pattern:1 RIC:0

Pay to the Order of
Department of Taxation & Finance
Division of the Treasury
Department of Public Service
3208100020
For Deposit Only

New York State Treasury
Tax and Finance
JAN 21 2020
AC3372
General Checking


#1- PSC- Violation - (2019) 6 Payments Total Paid \$34,998.00

 1354 SENECA AVENUE BRONX, NY 10474 (718) 881-8080		56329 Signature Bank BROOKLYN, NY 11219 1-1367-2880	12-09-2019
PAY TO THE ORDER OF Department of Public Service		\$5,833.00	
Pay: *****Five thousand eight hundred thirty-three dollars and no cents			
DOLLARS			
DEPARTMENT OF PUBLIC SERVICE Three Empire State Plaza 16th Floor Albany, NY 12223.1350			
MEMO			
⑈056329⑈ ⑈026013576⑈ 1501459093⑈			

Date:01/27/2020 Account:1501459093 Amount:\$5,833.00 Serial:56329 Sequence:1245144100 TR:26013576 TranCode:0
 DbCr:D Pattern:1 RIC:0

Pay to the Order of Department of Taxation & Finance Division of the Treasury Department of Public Service 329681080026 For Deposit Only	General Checking AC3372 JAN 24 2020 New York State Treasury Tax and Finance
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#1- PSC- Violation - (2019) 6 Payments Total Paid \$34,998.00

 TRIUMPH CONSTRUCTION		1354 SENECA AVENUE BRONX, NY 10474 (718) 861-8060	SIGNATURE BANK BROOKLYN, NY 11210	1-1357 260	57347
PAY TO THE ORDER OF		Department of Public Service		DATE 2-05-2020	
AMOUNT		\$*****5,833.00			
Pay: *****Five thousand eight hundred thirty-three dollars and no cents					
MEMO		Department of Public Service Three Empire State Plaza 16th Floor Albany, NY 12223.1350			
SECURITY FEATURES INCLUDE FOIL HOLOGRAM • HEAT SENSITIVE COI • MICROPRINT • MULTI-COLOR BACKGROUND					
#057347# 1026013576# 1501459093#					

Date:03/03/2020 Account:1501459093 Amount:\$5,833.00 Serial:57347 Sequence:6022266700 TR:26013576 TranCode:0
 DbCr:D Pattern:1 RIC:0

General Checking AC3312 MAR 02 2020 New York State Treasury Tax and Finance		ENDORSE CHECK HERE <input type="checkbox"/> CHECK HERE IF MOBILE DEPOSIT DO NOT SIGN OR WRITE ON THIS LINE FOR FINANCIAL INSTITUTION USE ONLY For Deposit Only
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#1- PSC- Violation - (2019) 6 Payments Total Paid \$34,998.00

CASH ONLY IF ALL CheckLock™ SECURITY FEATURES LISTED ON BACK INDICATE NO TAMPERING OR COPYING

TRIUMPH CONSTRUCTION 1364 SENECA AVENUE
BRONX, NY 10474
(718) 861-8060

Signature Bank
BROOKLYN, NY 11219
1-1357/260

55812

11-07-2019

PAY TO THE ORDER OF Department of Public Service *****5,833.00

Pay: *****Five thousand eight hundred thirty-three dollars and no cents

DOLLARS

PROTECTOR AGAINST FRAUD

Department of Public Service
Three Empire State Plaza
16th Floor
Albany, NY 12223-1350

MEMO

055812 026013576 1501459093

Date:03/03/2020 Account:1501459093 Amount:\$5,833.00 Serial:55812 Sequence:6022266710 TR:26013576 TranCode:0
DbCr:D Pattern:1 RIC:0

General Checking
AC3312
MAR 02 2020
New York State Treasury
Tax and Finance

Department of Public Service
Division of the Treasury
5008 Public Service
329681090026
For Deposit Only

#3 - OSHA Violation - Inspection No 1308500 (2018): 6 payments -
Total Paid: \$53,040.00

CONSTRUCTION		1654 SENECA AVENUE BRONX, NY 10474 (718) 861-6060		215000		Signature Bank BROOKLYN NY 11219 1-13571200		53810	
								8-01-2019	
PAY TO THE ORDER OF		OSHA				\$****\$8,840.00			
Pay: *****		Eight thousand eight hundred forty dollars and no cents						DOLLARS	
				PROTECTED AGAINST FRAUD					
Occupational Safety & Health 201 Varick Street Room 908 New York, NY 10014						Cub City			
215000		Inspector 1308500						6	
053810		*026013576*		*1501459093*					


Date:08/15/2019 Account:1501459093 Amount:\$8,840.00 Serial:53810 Sequence:1091719490 TR:26013576 TranCode:0
DbCr:D Pattern:1 RIC:0

REPORTING AGENTS: BUREAU OF THE DISTRICT ATTORNEY
 OFFICE OF THE DISTRICT ATTORNEY
 DISTRICT OF COLUMBIA
 WASHINGTON, D. C.
 MAY 1964

1. With reference to the above, the following information is being furnished:

[illegible]

#3: OSHA Violation - Inspection No 1308500 (2018): 6 payments -
Total Paid: \$53,040.00

CAUTION: ONLY IF ALL CHECKS LOCK - SECURITY FEATURES LISTED ON BACK INDICATE NO TAMPERING IS COMP. V.	
	1354 SENECA AVENUE BRONX, NY 10474 (718) 861-6080
25000	Signature Bank BROOKLYN, NY 11219 1-3577200
9-04-2019	
PAY TO THE ORDER OF _____ \$*****8,840.00	
Eight thousand eight hundred forty dollars and no cents	
DOLLARS	
Occupational Safety & Health 201 Varick Street Room 908 New York, NY 10014	
MEMO	25000, inspection 1808500
054377 0260135761 1501459093	
3	

Date:09/17/2019 Account:1501459093 Amount:\$8,840.00 Serial:54377 Sequence:1122189630 TR:26013576 TranCode:0
DbCr:D Pattern:1 RIC:0

[illegible]

<https://visionarchive3.fisglobal.com/VArchiveWebClient/Print.aspx?printOption=Tagged>

3/25/2021



COUNTY OF NASSAU

POLITICAL CAMPAIGN CONTRIBUTION DISCLOSURE FORM

1. Has the vendor or any corporate officers of the vendor provided campaign contributions pursuant to the New York State Election Law in (a) the period beginning April 1, 2016 and ending on the date of this disclosure, or (b), beginning April 1, 2018, the period beginning two years prior to the date of this disclosure and ending on the date of this disclosure, to the campaign committees of any of the following Nassau County elected officials or to the campaign committees of any candidates for any of the following Nassau County elected offices: the County Executive, the County Clerk, the Comptroller, the District Attorney, or any County Legislator?

YES ☐ NO ☒ If yes, to what campaign committee?

2. VERIFICATION: This section must be signed by a principal of the consultant, contractor or Vendor authorized as a signatory of the firm for the purpose of executing Contracts.

The undersigned affirms and so swears that he/she has read and understood the foregoing statements and they are, to his/her knowledge, true and accurate.

The undersigned further certifies and affirms that the contribution(s) to the campaign committees identified above were made freely and without duress, threat or any promise of a governmental benefit or in exchange for any benefit or remuneration.

Electronically signed and certified at the date and time indicated by:
Carlo Cuzzi [DCHAVIER@TRIUMPHCONSTRUCTIONNY.COM]

Dated: 01/27/2021 11:00:39 AM

Vendor: Triumph Construction Corp.

Title: President



COUNTY OF NASSAU

LOBBYIST REGISTRATION AND DISCLOSURE FORM

1. Name, address and telephone number of lobbyist(s)/lobbying organization. The term "lobbyist" means any and every person or organization retained, employed or designated by any client to influence - or promote a matter before - Nassau County, its agencies, boards, commissions, department heads, legislators or committees, including but not limited to the Open Space and Parks Advisory Committee and Planning Commission. Such matters include, but are not limited to, requests for proposals, development or improvement of real property subject to County regulation, procurements. The term "lobbyist" does not include any officer, director, trustee, employee, counsel or agent of the County of Nassau, or State of New York, when discharging his or her official duties.

NONE

2. List whether and where the person/organization is registered as a lobbyist (e.g., Nassau County, New York State):

NO

3. Name, address and telephone number of client(s) by whom, or on whose behalf, the lobbyist is retained, employed or designated:

NONE

4. Describe lobbying activity conducted, or to be conducted, in Nassau County, and identify client(s) for each activity listed. See the last page for a complete description of lobbying activities.

NONE

5. The name of persons, organizations or governmental entities before whom the lobbyist expects to lobby:

NOE

6. If such lobbyist is retained or employed pursuant to a written agreement of retainer or employment, you must attach a copy of such document; and if agreement of retainer or employment is oral, attach a written statement of the substance thereof. If the written agreement of retainer or employment does not contain a signed authorization from the client by whom you have been authorized to lobby. separately attach such a written authorization from the client.

7. Has the lobbyist/lobbying organization or any of its corporate officers provided campaign contributions pursuant to the New York State Election Law in (a) the period beginning April 1, 2016 and ending on the date of this disclosure, or (b), beginning April 1, 2018, the period beginning two years prior to the date of this disclosure and ending on the date of this disclosure, to the campaign committees of any of the following Nassau County elected officials or to the campaign committees of any candidates for any of the following Nassau County elected offices: the County Executive, the County Clerk, the Comptroller, the District Attorney, or any County Legislator?

YES ☐ NO ☒ If yes, to what campaign committee? If none, you must so state:

I understand that copies of this form will be sent to the Nassau County Department of Information Technology ("IT") to be posted on the County's website.

I also understand that upon termination of retainer, employment or designation I must give written notice to the County Attorney within thirty (30) days of termination.

VERIFICATION: The undersigned affirms and so swears that he/she has read and understood the foregoing statements and they are, to his/her knowledge, true and accurate.

The undersigned further certifies and affirms that the contribution(s) to the campaign committees listed above were made freely and without duress, threat or any promise of a governmental benefit or in exchange for any benefit or remuneration.

Electronically signed and certified at the date and time indicated by:
Carlo Cuzzi [CCUZZI@TRIUMPHCONSTRUCTIONNY.COM]

Dated: 03/08/2021 08:50:59 AM

Vendor: Triumph Construction Corp.

Title: President

The term lobbying shall mean any attempt to influence: any determination made by the Nassau County Legislature, or any member thereof, with respect to the introduction, passage, defeat, or substance of any local legislation or resolution; any determination by the County Executive to support, oppose, approve or disapprove any local legislation or resolution, whether or not such legislation has been introduced in the County Legislature; any determination by an elected County official or an officer or employee of the County with respect to the procurement of goods, services or construction, including the preparation of contract specifications, including but not limited to the preparation of requests for proposals, or solicitation, award or administration of a contract or with respect to the solicitation, award or administration of a grant, loan, or agreement involving the disbursement of public monies; any determination made by the County Executive, County Legislature, or by the County of Nassau, its agencies, boards, commissions department heads or committees, including but not limited to the Open Space and Parks Advisory Committee, the Planning Commission with respect to the zoning, use, development or improvement of real property subject to County regulation, or any agencies, boards, commissions, department heads or committees with respect to requests for proposals, bidding, procurement or contracting for services for the County; any determination made by an elected county official or an officer or employee of the county with respect to the terms of the acquisition or disposition by the county of any interest in real property, with respect to a license or permit for the use of real property of or by the county, or with respect to a franchise, concession or revocable consent; the proposal, adoption, amendment or rejection by an agency of any rule having the force and effect of law; the decision to hold, timing or outcome of any rate making proceeding before an agency; the agenda or any determination of a board or commission; any determination regarding the calendaring or scope of any legislature oversight hearing; the issuance, repeal, modification or substance of a County Executive Order; or any determination made by an elected county official or an officer or employee of the county to support or oppose any state or federal legislation, rule or regulation, including any determination made to support or oppose that is contingent on any amendment of such legislation, rule or regulation, whether or not such legislation has been formally introduced and whether or not such rule or regulation has been formally proposed.

The term "lobbying" or "lobbying activities" does not include: Persons engaged in drafting legislation, rules, regulations or rates; persons advising clients and rendering opinions on proposed legislation, rules, regulations or rates, where such professional services are not otherwise connected with legislative or executive action on such legislation or administrative action on such rules, regulations or rates; newspapers and other periodicals and radio and television stations and owners and employees thereof, provided that their activities in connection with proposed legislation, rules, regulations or rates are limited to the publication or broadcast of news items, editorials or other comment, or paid advertisements; persons who participate as witnesses, attorneys or other representatives in public rule-making or rate-making proceedings of a County agency, with respect to all participation by such persons which is part of the public record thereof and all preparation by such persons for such participation; persons who attempt to influence a County agency in an adjudicatory proceeding, as defined by § 102 of the New York State Administrative Procedure Act.

PRINCIPAL QUESTIONNAIRE FORM

All questions on these questionnaires must be answered by all officers and any individuals who hold a ten percent (10%) or greater ownership interest in the proposer. Answers typewritten or printed in ink. If you need more space to answer any question, make as many photocopies of the appropriate page(s) as necessary and attach them to the questionnaire.

COMPLETE THIS QUESTIONNAIRE CAREFULLY AND COMPLETELY. FAILURE TO SUBMIT A COMPLETE QUESTIONNAIRE MAY MEAN THAT YOUR BID OR PROPOSAL WILL BE REJECTED AS NON-RESPONSIVE AND IT WILL NOT BE CONSIDERED FOR AWARD

1. Principal Name| Carlo Cuzzi
Date of birth: [REDACTED]
[REDACTED]
Country: US

Business Address: Triumph Construction Corp.
City: Bronx State/Province/Territory: NY Zip/Postal Code: 10474
Country: US
Telephone: 17188616060

Other present address(es):
City: Bronx State/Province/Territory: NY Zip/Postal Code: 10474
Country: US
Telephone: 17188616060

List of other addresses and telephone numbers attached

2. Positions held in submitting business and starting date of each (check all applicable)

President	02/05/1999	Treasurer	
Chairman of Board		Shareholder	
Chief Exec. Officer	02/05/1999	Secretary	
Chief Financial Officer		Partner	
Vice President			
(Other)			

3. Do you have an equity interest in the business submitting the questionnaire?

YES ☒ NO ☐ If Yes, provide details.

100% Stockholders

4. Are there any outstanding loans, guarantees or any other form of security or lease or any other type of contribution made in whole or in part between you and the business submitting the questionnaire?

YES ☐ NO ☒ If Yes, provide details.

5. Within the past 3 years, have you been a principal owner or officer of any business or notfor-profit organization other than the one submitting the questionnaire?

YES ☒ NO ☐ If Yes, provide details.

Attached list of Related Parties

6. Has any governmental entity awarded any contracts to a business or organization listed in Section 5 in the past 3 years while you were a principal owner or officer?

YES ☒ NO ☐ If Yes, provide details.

Triumph Construction has been awarded contracts from the following agencies; NYSDOT, NYCDDC, NYCDEP, NYCEDC

NOTE: An affirmative answer is required below whether the sanction arose automatically, by operation of law, or as a result of any action taken by a government agency. Provide a detailed response to all questions checked "YES". If you need more space, photocopy the appropriate page and attach it to the questionnaire.

7. In the past (5) years, have you and/or any affiliated businesses or not-for-profit organizations listed in Section 5 in which you have been a principal owner or officer:

- a. Been debarred by any government agency from entering into contracts with that agency?

YES ☐ NO ☒ If yes, provide an explanation of the circumstances and corrective action taken.

- b. Been declared in default and/or terminated for cause on any contract, and/or had any contracts cancelled for cause?

YES ☐ NO ☒ If yes, provide an explanation of the circumstances and corrective action taken.

- c. Been denied the award of a contract and/or the opportunity to bid on a contract, including, but not limited to, failure to meet pre-qualification standards?

YES ☐ NO ☒ If yes, provide an explanation of the circumstances and corrective action taken.

- d. Been suspended by any government agency from entering into any contract with it; and/or is any action pending that could formally debar or otherwise affect such business's ability to bid or propose on contract?

YES ☐ NO ☒ If yes, provide an explanation of the circumstances and corrective action taken.

8. Have any of the businesses or organizations listed in response to Question 5 filed a bankruptcy petition and/or been the subject of involuntary bankruptcy proceedings during the past 7 years, and/or for any portion of the last 7 year period, been in a state of bankruptcy as a result of bankruptcy proceedings initiated more than 7 years ago and/or is any such business now the subject of any pending bankruptcy proceedings, whenever

initiated?

YES ☐ NO ☒ If 'Yes', provide details for each such instance. (Provide a detailed response to all questions check "Yes". If you need more space, photocopy the appropriate page and attached it to the questionnaire.)

9.

a. Is there any felony charge pending against you?

YES ☐ NO ☒ If yes, provide an explanation of the circumstances and corrective action taken.

b. Is there any misdemeanor charge pending against you?

YES ☐ NO ☒ If yes, provide an explanation of the circumstances and corrective action taken.

c. Is there any administrative charge pending against you?

YES ☐ NO ☒ If yes, provide an explanation of the circumstances and corrective action taken.

d. In the past 10 years, have you been convicted, after trial or by plea, of any felony, or of any other crime, an element of which relates to truthfulness or the underlying facts of which related to the conduct of business? Y

YES ☐ NO ☒ If yes, provide an explanation of the circumstances and corrective action taken.

e. In the past 5 years, have you been convicted, after trial or by plea, of a misdemeanor?

YES ☐ NO ☒ If yes, provide an explanation of the circumstances and corrective action taken.

f. In the past 5 years, have you been found in violation of any administrative or statutory charges?

YES ☐ NO ☒ If yes, provide an explanation of the circumstances and corrective action taken.

10. In addition to the information provided in response to the previous questions, in the past 5 years, have you

been the subject of a criminal investigation and/or a civil anti-trust investigation by any federal, state or local prosecuting or investigative agency and/or the subject of an investigation where such investigation was related to activities performed at, for, or on behalf of the submitting business entity and/or an affiliated business listed in response to Question 5?

YES ☐ NO ☒ If yes, provide an explanation of the circumstances and corrective action taken.

0 File(s) Uploaded:

11. In addition to the information provided, in the past 5 years has any business or organization listed in response to Question 5, been the subject of a criminal investigation and/or a civil anti-trust investigation and/or any other type of investigation by any government agency, including but not limited to federal, state, and local regulatory agencies while you were a principal owner or officer?

YES ☒ NO ☐ If yes, provide an explanation of the circumstances and corrective action taken.

1 File(s) Uploaded: Responses OSHA, PSC and NLRB Violations.docx

12. In the past 5 years, have you or this business, or any other affiliated business listed in response to Question 5 had any sanction imposed as a result of judicial or administrative proceedings with respect to any professional license held?

YES ☐ NO ☒ If yes, provide an explanation of the circumstances and corrective action taken.

13. For the past 5 tax years, have you failed to file any required tax returns or failed to pay any applicable federal, state or local taxes or other assessed charges, including but not limited to water and sewer charges?

YES ☐ NO ☒ If yes, provide an explanation of the circumstances and corrective action taken.

I, Carlo Cuzzi , hereby acknowledge that a materially false statement willfully or fraudulently made in connection with this form may result in rendering the submitting business entity and/or any affiliated entities non-responsible, and, in addition, may subject me to criminal charges.

I, Carlo Cuzzi , hereby certify that I have read and understand all the items contained in this form; that I supplied full and complete answers to each item therein to the best of my knowledge, information and belief; that I will notify the County in writing of any change in circumstances occurring after the submission of this form; and that all information supplied by me is true to the best of my knowledge, information and belief. I understand that the County will rely on the information supplied in this form as additional inducement to enter into a contract with the submitting business entity.

CERTIFICATION

A MATERIALLY FALSE STATEMENT WILLFULLY OR FRAUDULENTLY MADE IN CONNECTION WITH THIS QUESTIONNAIRE MAY RESULT IN RENDERING THE SUBMITTING BUSINESS ENTITY NOT RESPONSIBLE WITH RESPECT TO THE PRESENT BID OR FUTURE BIDS, AND, IN ADDITION, MAY SUBJECT THE PERSON MAKING THE FALSE STATEMENT TO CRIMINAL CHARGES.

Triumph Construction Corp.

Name of submitting business

Electronically signed and certified at the date and time indicated by:

Carlo Cuzzi [CCUZZI@TRIUMPHCONSTRUCTIONNY.COM]

President

Title

03/18/2021 02:55:51 PM

Date

Related Party

Bari Leasing Corp.

Cuzjack Construction Corp.

Pipeline Construction, LLC

Triumph Utilities Corp.

Pennylane Sloop, LLC

DKMAN Insurance Company

PCJ Management

PCJ Management owns properties:

1755 Taylor Avenue, LLC

2430 Lyvere Street, LLC

2538 Holland Avenue, LLC

PCJ North Avenue, LLC

Brookmont Management, LLC

2365 Boston Post Road

1935 Central Park

Ownership

100% Penny Jackson (spouse)

1% Penny Jackson; PJ 2012 Family Trust 49.5%; CC 2012 Family Trust 49.5%

100% Carlo Cuzzi

100% Carlo Cuzzi

100% Carlo Cuzzi

100% Carlo Cuzzi

1%Carlo Cuzzi; CC IRR Insurance Trust 99%



March 18, 2021

See following responses.

Response to Business History Question 13- Violations disclosed in NYC Passport portal

OSHA

On October 10, 2018, OSHA issued Triumph 2 citations, via Inspection No. 1308500, stemming from an incident, at a Triumph work site, which occurred in April of 2018. Specifically, *Citation 1 Item 1 Serious* alleged that adequate protection was not provided to employees to protect from cave ins from loose rock or soil that could pose a hazard. *Citation 2 Item 1 Repeat* alleged that Triumph employees were working in a trench that was “about 5 feet deep” and were not protected from cave ins by an adequate protective system. Triumph vehemently denied the allegations and settlement negotiations were entered into with OSHA.

Ultimately, OSHA agreed to a Confidential Stipulated Settlement. Please note, as stated, Triumph was originally cited with 2 citations: One “Repeat” and one “Serious”. However, as part of the settlement, Triumph agreed to 4 citations (due to the payment terms of the settlement). Citations 1-3 were reclassified from “Serious” to “Other-Than-Serious” and Citation 4 was reclassified from “Repeat” to “Serious”. Additionally, Triumph agreed to pay a reduced penalty of \$53,040.00 from the original penalty of \$76,828.00.

PSC Violation

On January 4, 2019, Triumph was issued a Notice of Probable Violation, pursuant to 16 NYCRR Part 753. While Triumph conceded that an incident did occur that led to the alleged violation, said incident was as the result of a rogue employee and his crew. Triumph’s owner and management were completely unaware of the events that led to this violation until notified by Con Edison, some months after the damage occurred. Specifically, on August 2, 2018, Triumph’s owner, Carlo Cuzzi, was advised about an incident of unreported gas damage involving former Triumph personnel (“Crew”). The alleged incident occurred at or near Saxon Avenue, between Sedgwick Avenue & Van Cortland South, in the Bronx. Prior to August 2nd, Triumph was completely unaware of the damage and its cover up. Upon learning of the incident from Con Edison, Triumph’s owner immediately launched both internal and external investigations into the matter. Con Edison also performed their own investigation.



As a result of the extensive investigations performed by both entities, it was determined that the Crew, as directed by their foreman, independently decided to cover up the damage. Triumph's investigation performed by Mr. Cuzzi, Bonnie Porzio, Esq., (General Counsel), John McCann (Triumph's Supervisor for Con Edison work), and New York Private Detective Services ("NYPDS" - an independent third-party investigator), determined that the actual damage was caused by the brother of foreman. The foreman took complete responsibility for the cover-up and stated that he was fearful that his brother would be fired as a result of the damage and his actions were to protect his brother. The entire Crew was terminated immediately.

As a result of both Triumph's and Con Ed's investigation, the PSC agreed to settle the proposed violation for a reduced fine. The fine was reduced from \$50,000.00 to \$34,998.00, which was paid over 6 months to the Department of Public Service.

Response to Mr. Cuzzi's Principal Questionnaire- Question 11:

2016 NLRB Decision

In 2016, an ex-employee of Triumph brought a claim to the NLRB, alleging that he was not being paid prevailing wage. He was originally employed by Triumph Utilities, Corp., he was employed one of Triumph's related companies. He also argued that Triumph Utilities Corp., Rosedale Co. and Cuzjack Construction Corp. were joint and/or single employers with Triumph Construction for the purposes of the NLRA. Specifically, he alleged that he was not being paid prevailing wage for "flagging" on the job site. However, he was not, in fact, a flagger. He was hired as a "crossing guard". The two job classifications have very different job descriptions and responsibilities. Additionally, only flaggers have a prevailing wage rate. Crossing guards do not have a union classification.

As you can see from the 2016 decision, the NLRB dismissed the case and no appeal from the Decision was ever taken.

Business History Form

The contract shall be awarded to the responsible proposer who, at the discretion of the County, taking into consideration the reliability of the proposer and the capacity of the proposer to perform the services required by the County, offers the best value to the County and who will best promote the public interest.

In addition to the submission of proposals, each proposer shall complete and submit this questionnaire. The questionnaire shall be filled out by the owner of a sole proprietorship or by an authorized representative of the firm, corporation or partnership submitting the Proposal.

NOTE: All questions require a response, even if response is "none" or "not-applicable." No blanks.

(USE ADDITIONAL SHEETS IF NECESSARY TO FULLY ANSWER THE FOLLOWING QUESTIONS).

Date: 01/27/2021

1) Proposer's Legal Name: Triumph Construction Corp.

2) Address of Place of Business: 1354 Seneca Avenue

City: Bronx State/Province/Territory: NY Zip/Postal Code: 10474

Country: US

3) Mailing Address (if different): 1354 Seneca Avenue

City: Bronx State/Province/Territory: NY Zip/Postal Code: 10474

Country: US

Phone: (718) 861-6060

Does the business own or rent its facilities? Own If other, please provide details:

4) Dun and Bradstreet number: 054837443

5) Federal I.D. Number: 134050635

6) The proposer is a: Corporation (Describe) _____

7) Does this business share office space, staff, or equipment expenses with any other business?

YES ☐ NO ☒ If yes, please provide details:

8) Does this business control one or more other businesses?

YES ☒ NO ☐ If yes, please provide details:

Cuzjack Construction Corp - Real Estate holding company for headquarters
and Bari Leasing Corp- Equipment rental company that holds and manages fleet
Pipeline Construction, LLC.
Triumph Utilities Corp.

- 9) Does this business have one or more affiliates, and/or is it a subsidiary of, or controlled by, any other business?
YES ☒ NO ☐ If yes, please provide details:

Cuzjack Construction Corp - Real Estate holding company for headquarters
and Bari Leasing Corp- Equipment rental company that holds and manages fleet
Pipeline Construction, LLC.
Triumph Utilities Corp.

1 File(s) Uploaded: Related Parties.pdf

- 10) Has the proposer ever had a bond or surety cancelled or forfeited, or a contract with Nassau County or any other government entity terminated?
YES ☐ NO ☒ If yes, state the name of bonding agency, (if a bond), date, amount of bond and reason for such cancellation or forfeiture: or details regarding the termination (if a contract).

- 11) Has the proposer, during the past seven years, been declared bankrupt?
YES ☐ NO ☒ If yes, state date, court jurisdiction, amount of liabilities and amount of assets

- 12) In the past five years, has this business and/or any of its owners and/or officers and/or any affiliated business, been the subject of a criminal investigation and/or a civil anti-trust investigation by any federal, state or local prosecuting or investigative agency? And/or, in the past 5 years, have any owner and/or officer of any affiliated business been the subject of a criminal investigation and/or a civil anti-trust investigation by any federal, state or local prosecuting or investigative agency, where such investigation was related to activities performed at, for, or on behalf of an affiliated business.
YES ☐ NO ☒ If yes, provide details for each such investigation, an explanation of the circumstances and corrective action taken.

- 13) In the past 5 years, has this business and/or any of its owners and/or officers and/or any affiliated business been the subject of an investigation by any government agency, including but not limited to federal, state and local regulatory agencies? And/or, in the past 5 years, has any owner and/or officer of an affiliated business been the subject of an investigation by any government agency, including but not limited to federal, state and local regulatory agencies, for matters pertaining to that individual's position at or relationship to an affiliated business.
YES ☒ NO ☐ If yes, provide details for each such investigation, an explanation of the circumstances and corrective action taken.

Please see attached response

1 File(s) Uploaded: Response to Question 13- Re Violations.pdf

- 14) Has any current or former director, owner or officer or managerial employee of this business had, either before or during such person's employment, or since such employment if the charges pertained to events that allegedly occurred during the time of employment by the submitting business, and allegedly related to the conduct of that business:
a) Any felony charge pending?
YES ☐ NO ☒ If yes, provide details for each such investigation, an explanation of the circumstances and corrective action taken.

b) Any misdemeanor charge pending?

YES ☐ NO ☒ If yes, provide details for each such investigation, an explanation of the circumstances and corrective action taken.

c) In the past 10 years, you been convicted, after trial or by plea, of any felony and/or any other crime, an element of which relates to truthfulness or the underlying facts of which related to the conduct of business? YES ☐ NO ☒ If yes, provide details for each such investigation, an explanation of the circumstances and corrective action taken.

d) In the past 5 years, been convicted, after trial or by plea, of a misdemeanor? YES ☐ NO ☒ If yes, provide details for each such investigation, an explanation of the circumstances and corrective action taken.

e) In the past 5 years, been found in violation of any administrative, statutory, or regulatory provisions? YES ☐ NO ☒ If yes, provide details for each such investigation, an explanation of the circumstances and corrective action taken.

- 15) In the past (5) years, has this business or any of its owners or officers, or any other affiliated business had any sanction imposed as a result of judicial or administrative proceedings with respect to any professional license held? YES ☐ NO ☒ If yes, provide details for each such investigation, an explanation of the circumstances and corrective action taken.

- 16) For the past (5) tax years, has this business failed to file any required tax returns or failed to pay any applicable federal, state or local taxes or other assessed charges, including but not limited to water and sewer charges? YES ☐ NO ☒ If yes, provide details for each such year. Provide a detailed response to all questions checked 'YES'. If you need more space, photocopy the appropriate page and attach it to the questionnaire.

17 Conflict of Interest:

- a) Please disclose any conflicts of interest as outlined below. NOTE: If no conflicts exist, please expressly state "No conflict exists."
(i) Any material financial relationships that your firm or any firm employee has that may create a conflict of interest or the appearance of a conflict of interest in acting on behalf of Nassau County.

NO CONFLICT EXISTS

- (ii) Any family relationship that any employee of your firm has with any County public servant that may create a conflict of interest or the appearance of a conflict of interest in acting on behalf of Nassau County.

NO CONFLICT EXISTS

(iii) Any other matter that your firm believes may create a conflict of interest or the appearance of a conflict of interest in acting on behalf of Nassau County.

NO CONFLICT EXISTS

- b) Please describe any procedures your firm has, or would adopt, to assure the County that a conflict of interest would not exist for your firm in the future.

Triumph Construction will adhere to all NYS and County laws, regulations and procedures and a Conflict of Interest does not exist

- A. Include a resume or detailed description of the Proposer's professional qualifications, demonstrating extensive experience in your profession. Any prior similar experiences, and the results of these experiences, must be identified.

Have you previously uploaded the below information under in the Document Vault?

YES ☐ NO ☒

Is the proposer an individual?

YES ☐ NO ☒ Should the proposer be other than an individual, the Proposal MUST include:

- i) Date of formation;

02/19/1999

- ii) Name, addresses, and position of all persons having a financial interest in the company, including shareholders, members, general or limited partner. If none, explain.

Carlo Cuzzi

No individuals with a financial interest in the company have been attached..

- iii) Name, address and position of all officers and directors of the company. If none, explain.

Carlo Cuzzi, President

No officers and directors from this company have been attached.

- iv) State of incorporation (if applicable);

NY

- v) The number of employees in the firm;

250

- vi) Annual revenue of firm;

150000000

- vii) Summary of relevant accomplishments

Triumph Construction has completed contracts with NYC and NYSDOT, NYCDDC, NYCEDC, NYCDEP and other well known and established Construction Firms

viii) Copies of all state and local licenses and permits.

B. Indicate number of years in business.

21

C. Provide any other information which would be appropriate and helpful in determining the Proposer's capacity and reliability to perform these services.

We have completed numerous contracts with NYC and NYSDOT, NYCEDC, NYCDEP, NYCDDC , and AECOM, Hunter Roberts, LIRO and more

1 File(s) Uploaded: Completed Work updated.xls

D. Provide names and addresses for no fewer than three references for whom the Proposer has provided similar services or who are qualified to evaluate the Proposer's capability to perform this work.

Company	NYCDDC		
Contact Person	Rafael Rodriguez		
Address	30-30 Thompson Avenue		
City	New York	State/Province/Territory	NY
Country	US		
Telephone	(347) 865-4413		
Fax #			
E-Mail Address	r.rodriguez@nycddc.gov		

Company	NYCDDC		
Contact Person	Norbu Tsering		
Address	30-30 Thompson Avenue		
City	New York	State/Province/Territory	NY
Country	US		
Telephone	(718) 391-2555		
Fax #			
E-Mail Address	n.tsering@nycddc.gov		

Company	NYCEDC		
Contact Person	Tim Weiss		
Address	3030 Thompson Avenue		
City	New York	State/Province/Territory	NY
Country	US		
Telephone	(917) 373-9521		
Fax #			
E-Mail Address	unknown		

I, Carlo Cuzzi , hereby acknowledge that a materially false statement willfully or fraudulently made in connection with this form may result in rendering the submitting business entity and/or any affiliated entities non-responsible, and, in addition, may subject me to criminal charges.

I, Carlo Cuzzi , hereby certify that I have read and understand all the items contained in this form; that I supplied full and complete answers to each item therein to the best of my knowledge, information and belief; that I will notify the County in writing of any change in circumstances occurring after the submission of this form; and that all information supplied by me is true to the best of my knowledge, information and belief. I understand that the County will rely on the information supplied in this form as additional inducement to enter into a contract with the submitting business entity.

CERTIFICATION

A MATERIALLY FALSE STATEMENT WILLFULLY OR FRAUDULENTLY MADE IN CONNECTION WITH THIS QUESTIONNAIRE MAY RESULT IN RENDERING THE SUBMITTING BUSINESS ENTITY NOT RESPONSIBLE WITH RESPECT TO THE PRESENT BID OR FUTURE BIDS, AND, IN ADDITION, MAY SUBJECT THE PERSON MAKING THE FALSE STATEMENT TO CRIMINAL CHARGES.

Name of submitting business: Triumph Construction Corp.

Electronically signed and certified at the date and time indicated by:
Carlo Cuzzi [CCUZZI@TRIUMPHCONSTRUCTIONNY.COM]

President
Title

03/26/2021 02:14:33 PM
Date

RELATED PARTIES

COMPANY NAME	Ownership	%
Bari Leasing Corp.	Penny Jackson (spouse)	100%
Cuzjack Construction Corp.	Penny Jackson	1%
	Family Trust	99%
Pipeline Construction, LLC	Carlo Cuzzi	100%
Triumph Utilities Corp.	Carlo Cuzzi	100%



March 26, 2021

County of Nassau
Department of Public Works
Westbury, New York

Re: Contract No. H35132-01G

GOSR Five Towns Drainage Improvements: Lawrence Pipe Improvements

Please allow this correspondence to serve as further follow up to Triumph's Business History Form. As requested, please find Triumph's supplemental response to DPW's open issues.

1. OSHA Violation Inspection No. 1308500 (2018):

On October 10, 2018, OSHA issued Triumph 2 citations, via Inspection No. 1308500, stemming from an incident, at a Triumph work site, which occurred in April of 2018. Specifically, *Citation 1* alleged that adequate protection was not provided to employees to protect from loose rock or soil that could pose a hazard. *Citation 2* alleged that Triumph employees were not protected from by an adequate protective system.

Triumph vehemently denied the allegations arguing that:

- (i) The excavation was less than 5 feet. The type of work at issue was watermain replacement work (not hydrant work which would require deeper trench) and that Triumph used 12-inch pipe. The DEP/DDC requires three feet of cover to the top of the pipe from the roadway, as testified to by the Supervisor & the foreman for the job.
- (ii) Since the excavation was less than 5 feet it did not require a protective system.
- (iii) The citations claim that the trench was "about 5 feet". The inspector did not measure the trench which is why he could not definitely state the depth.
- (iv) The competent person on site (the foreman), inspected the soil and determined that it was packed - the rock was not loose or have the potential for cave in. The foreman testified that he had been working on top of the pipe, just prior to the incident. He would not put himself, let alone any of his workers, in jeopardy by working in an unsafe, inadequately protected trench.
- (v) The OSHA Inspector did not arrive until hours after the incident. The condition of the area was not, at all, like what it was pre-incident. As such, the Inspector had no way to know the true condition of soil, or site, as it was pre-incident.
- (vi) The alleged injured employee was working on top of the pipe. Said employee lost his footing & fell backwards. This action is what caused the incident, not inadequate protection.
- (vii) Citations 1 & 2 are for the same thing – giving both was punitive.



Ultimately, OSHA agreed to a confidential stipulated settlement. Triumph agreed to pay a reduced penalty of \$53,040.00 from the original penalty of \$76,828.00 & allowed the payments to be paid monthly.

As part of the settlement, Triumph agreed to “enhancements”, which included, *inter alia*, conducting & documenting JHAs, PTPs, & Site-Specific Orientation Training regarding trench excavation. Chief Judge, Covette Rooney, approved the settlement which went into effect on June 4, 2019.

2. OSHA Violation OSHA Inspection No. 992120.015 (2015):

The alleged violation occurred in 2015, which is why it was not initially included with our responses. Inspection # 992120.015 was comprised of two citations. After an administrative trial, one of the violations was dismissed by the administrative law judge and the other was sustained. Both violations had been immediately abated and measures were put in place (site specific trainings, JHA's, more in-depth Competent Person Training) to assure against any future violations. An appeal was filed regarding the sustained violation. The U.S. Court of Appeals, Second Circuit upheld the trial court's decision and Triumph paid \$25,000. This fine was paid in 2019.

3. PSC Violation

On January 4, 2019, Triumph was issued a Notice of Probable Violation, pursuant to 16 NYCRR Part 753. While Triumph conceded that an incident did occur that led to the alleged violations, said incident was as the result of a rogue employee and his crew. Triumph's owner and management were completely unaware of the events that led to this violation until notified by Con Edison, some months after the damage occurred. Specifically, on August 2, 2018, Triumph's owner, Carlo Cuzzi, was advised about an incident of unreported gas damage involving former Triumph personnel (“Peraza Crew”). The alleged incident occurred at or near Saxon Avenue, between Sedgwick Avenue & Van Cortland South, in the Bronx. Prior to August 2nd, Triumph was completely unaware of the damage and its cover up. Upon learning of the incident from Con Edison, Triumph's owner immediately launched both internal and external investigations into the matter. Con Edison also performed their own investigation.

As a result of the extensive investigations performed by both entities, it was determined that the Peraza Crew, as directed by their foreman, independently decided to cover up the damage. Triumph's investigation determined that the actual damage was caused by the brother of the foreman, Julio Peraza. Mr. Peraza took complete responsibility for the cover-up and stated that he was fearful that his brother would be fired as a result of the damage and his actions were to protect his brother. The entire Peraza Crew was terminated immediately.

Triumph has not, and does not, condone any actions that would endanger public safety. The Peraza crew compromised the integrity of the company and its reputation. Immediately after the investigation was concluded, in addition to firing the Peraza Crew, Triumph took the following steps:

- Hired a third-party safety consultant to maintain and monitor its safety program;



- Implemented a safety incentive program including a monetary award to each crew based upon their adherence to applicable safety, regulatory & reporting specifications, including Code 753;
- Instituted a Safety Committee comprised of Triumph's owner, its COO, its General Supervisor, the Safety Manager & its General Counsel/HR Manager who meet monthly to review safety & reporting practices, for its workers and the public;
- Implemented new hiring practices to ensure that new employees have undergone Triumph's enhanced safety orientation and that they have received Triumph's Employee Handbook which now includes a process for employees to report concerns, including reporting & safety related issues and/or damages;
- Added an anonymous telephone hotline for employees to report safety concerns, as well as a lockbox for written grievances.
- New York State 811 online training was completed by all field workers and relevant office personnel with refresher training being required every five years.
- Additionally, all incidents are now reported, in real time, through the company's internal online safety platform (HCSS).

As a result of both Triumph's and Con Ed's investigation, the PSC agreed to settle the proposed violation for a reduced fine. The fine was reduced from \$50,000.00 to \$34,998.00, which was paid over 6 months to Mr. Curtis Funk, the Director of Finance & Budget at the Department of Public Service.

4. DOT/ECB Violations:

The following Notices of Violation (NOVs) are open: NOV 702500655, NOV 702498271, NOV 702497218, NOV 212055948, NOV 702494320. All violations are reviewed and 90% are disputed. The above NOVs have all been disputed, and we are awaiting a court date from the Environment Control Board (ECB). Once a hearing is held and a Decision is rendered, any NOVs found "in violation" will be paid immediately upon notice of the Decision.

Very truly yours,

Bonnie Porzio, Esq.

General Counsel Triumph Construction Corp. &
related companies



Responses to Question 13:

1. PSC Violation:

January 4, 2019, Triumph was issued a Notice of Probable Violation, pursuant to 16 NYCRR Part 753. As a result of both Triumph's and Con Ed's investigation, the PSC agreed to settle the proposed violation for a reduced fine. The fine was reduced from \$50,000.00 to \$34,998.00, which was paid over 6 months to Mr. Curtis Funk, the Director of Finance & Budget at the Department of Public Service.

Copies of payments/canceled checks attached.

- a. Check No. 54793; 9-24-2019; \$5,833.00
- b. Check No. 55033; 10-2-2019; \$5,833.00
- c. Check No. 55812; 11-7-2019; \$5,833.00
- d. Check No. 56329; 12-9-2019; \$5,833.00
- e. Check No. 56759; 1-02-2020; \$5,833.00
- f. Check No. 57347; 2-05-2020; \$5,833.00

2. OSHA Violation – Inspection No 992120.15 (2015):

The alleged violation occurred in 2015, which is why it was not initially included with our responses. Inspection # 992120.015 was comprised of two citations. After an administrative trial, one of the violations was dismissed by the administrative law judge and the other was sustained. Both violations had been immediately abated and measures were put in place (site specific trainings, JHA's, more in-depth Competent Person Training) to assure against any future violations. An appeal was filed regarding the sustained violation. The U.S. Court of Appeals, Second Circuit upheld the trial court's decision and Triumph paid \$25,000. This fine was paid in 2019. Copy of payment/canceled check attached.

- a. Check No. 51901; 4-25-2019; \$25,000.00

3. OSHA Violation – Inspection No 1308500 (2018):

On October 10, 2018, OSHA issued Triumph 2 citations, via Inspection No. 1308500, stemming from an incident, at a Triumph work site, which occurred in April of 2018. Ultimately, OSHA agreed to a confidential Stipulated Settlement. Triumph agreed to pay a reduced penalty of \$53,040.00 from the original penalty of \$76,828.00 & allowed the payments to be paid monthly. As part of the settlement, Triumph agreed to "enhancements", which included, *inter alia*, conducting & documenting JHAs, PTPs, & Site-Specific Orientation Training regarding trench excavation. Chief Judge, Covette Rooney, approved the settlement which went into effect on June 4, 2019. Copy of payments/canceled checks attached.

- a. Check No. 52018; 5-09-2019; \$8,840.00
- b. Check No. 52699; 6-07-2019; \$8,840.00
- c. Check No. 53177; 7-02-2019; \$8,840.00
- d. Check No. 53810; 8-01-2019; \$8,840.00
- e. Check No. 54377; 9-04-2019; \$8,840.00
- f. Check No. 54976; 10-2-2019; \$8,840.00



Re: Safety Action Items – Triumph Construction’s 2018 OSHA Citations

In follow-up to the 2018 OSHA citations, Triumph has implemented a comprehensive and evolving corrective action plan. The following training, administrative and personnel related safety action items have been integrated at Triumph in order to enhance our safety programs.

- **Training:**
 - Site Specific Health and Safety Plans, including the accompanying job hazards analysis are updated and reviewed with all crews and competent person(s) at least on an annual basis. Specific focus on Triumph’s utility work being performed in trenches, excavations and/or confined spaces. Topics included in this safety emphasis program are protective systems, soil classification, access/egress, atmospheric monitoring, and related personal protective equipment for working in trenches/excavations and/or structures.
 - Confined space training is conducted on Triumph’s Corporate and Site-Specific Plans for all jobs as these plans are revised or at a minimum on a yearly basis. The training includes both classroom as well as hands on components.
 - The role of Triumph’s competent person(s) is reviewed with all supervisors and foremen on an annual basis. The importance and elements of this designation are outlined in detail especially in relation to Triumph’s trenching and excavation work. All competent person(s) is required to possess at least an OSHA 30-hour certification.
 - With the expansion of the new employee orientation training modules, the topics were broadened to ensure on-site safety compliance. Some of the topics include trenching & excavation, personal protective equipment, hazard communications, PCB, lead & asbestos awareness, job site protection, confined space, emergency procedures, fire safety and Corporate Health & Safety Program.
 - Job briefing and Human Performance Training is conducted on a continual basis with all employees including management. This training is used to demonstrate the elements of effective job briefings and to promote the human performance initiative which instills behaviors that reduce errors, injuries and operating incidents.
 - Mandatory New York State 811 online training has been completed by all field workers and relevant office personnel. Refresher training is required every five years.
 - Triumph has been certified under the Gold Shovel Standard. The Gold Shovel Standard Certification is a widely-recognized indication of increased safety awareness and a commitment to continuous damage prevention improvement. Gold Shovel approved Triumph’s policies and procedures related to Code 753 and utility damage prevention as well as their training module. Annual recertification is required for continued participation in the program.
- **Administrative:**
 - Triumph’s pre-job briefing form was reexamined and completely revised with the focus on our trenching and excavation work and the associated tasks. Through these daily meetings the workers are briefed on the tasks they will be performing and the potential hazards and corresponding controls that will be in place.
 - Heavy Construction Safety Systems (HCSS) was integrated into Triumph’s safety process in 2019, the following reporting mechanisms are available in the field to safety personnel, supervisors and project managers through their iPads:



- Safety observations - is a precursor to a near miss or incident which can be either an unsafe act or condition. This “snapshot” can be positive or negative, completed by cell phone (field workers) or iPad and sent directly to management, safety and claim personnel.
 - Near miss – unplanned event that did not result in physical injury or property damage but had the potential to do so. Use of near miss investigations help Triumph determine how and why it happened, as well as how to prevent it from occurring again. Considered a leading indicator of performance, immediate reporting of a new miss allows Triumph to continue to improve their safety programs.
 - Safety audits – job audits with site pictures are completed with the results immediately provided to management and safety manager for review and feedback.
- Safety Personnel:
 - Triumph continues to enhance the performance of their safety programs by the investment in on-site personnel to provide in depth safety oversight. Our safety team is comprised of the following individuals:
 - Field safety coordinators who monitor Triumph’s job sites on a daily basis and report their audit findings, safety observations and near misses through the HCSS platform.
 - Full time safety manager who also performs field safety oversight as well as other administrative and training functions.
 - Each project supervisor is actively engaged in on-site safety compliance by carefully monitoring the ongoing work and documenting their findings through HCSS.

Through the above on-going safety related efforts, we have been able to reduce injuries and accidents which is evidenced by our current EMR of 74. Another tangible benefit has been a lower Workers’ Compensation cost.

#1- PSC- Violation - (2019) 6 Payments Total Paid \$34,998.00

CASH ONLY IF ALL CheckLock™ SECURITY FEATURES LISTED ON BACK INDICATE NO TAMPERING OR COPYING

TRIUMPH CONSTRUCTION 1354 SENECA AVENUE
BRONX, NY 10474
(718) 861-6060

Signature Bank
BROOKLYN, NY 11219
1-1367/280

54793

9-24-2019

PAY TO THE ORDER OF Department of Public Service \$*****5,833.00

Pay: *****Five thousand eight hundred thirty-three dollars and no cents DOLLARS

PROTECTED AGAINST FRAUD

Department of Public Service
Three Empire State Plaza
16th Floor
Albany, NY 12223.1350

MEMO

⑈054793⑈ ⑆026013576⑆ 1501459093⑈

Date:10/21/2019 Account:1501459093 Amount:\$5,833.00 Serial:54793 Sequence:1153125210 TR:26013576 TranCode:0
DbCr:D Pattern:1 RIC:0

AC909 DEPOSIT TO KEY BANK
ACCT #329681090026
GENERAL CHECKING

OCT 18 2019

DEPT OF TAXATION & FINANCE
DIVISION OF THE TREASURY

Pay to the Order of
Department of Taxation & Finance
Division of the Treasury
5006
Department of Public Service
329681090026
For Deposit Only

#1- PSC- Violation - (2019) 6 Payments Total Paid \$34,998.00

CASH ONLY IF ALL CheckLock™ SECURITY FEATURES LISTED ON BACK INDICATE NO TAMPERING OR COPYING

TRIUMPH CONSTRUCTION 1354 SENECA AVENUE
BRONX, NY 10474
(718) 861-6080

Signature Bank
BROOKLYN, NY 11219
1-13677280

55033

10-02-2019

PAY TO THE ORDER OF Department of Public Service \$*****5,833.00

ay: *****Five thousand eight hundred thirty-three dollars and no cents

DOLLARS

PROTECTED AGAINST FRAUD

Department of Public Service
Three Empire State Plaza
16th Floor,
Albany, NY 12223-1350

MEMO

11055033 1026013576 1501459093

Date:11/14/2019 Account:1501459093 Amount:\$5,833.00 Serial:55033 Sequence:1176556750 TR:26013576 TranCode:0
DbCr:D Pattern:1 RIC:0

AC909 DEPOSIT TO KEY BANK
ACCT #329681090026
GENERAL CHECKING

NOV 13 2019

DEPT OF TAXATION & FINANCE
DIVISION OF THE TREASURY

AC909 DEPOSIT TO KEY BANK
ACCT #329681090026
GENERAL CHECKING

NOV 14 2019

DEPT OF TAXATION & FINANCE
DIVISION OF THE TREASURY

By the Order of
Department of Taxation & Finance
Division of the Treasury
Depository/Depository Service
For Deposit Only

#1- PSC- Violation - (2019) 6 Payments Total Paid \$34,998.00

CASH ONLY IF ALL CheckLock™ SECURITY FEATURES LISTED ON BACK INDICATE NO TAMPERING OR COPYING

TRIUMPH CONSTRUCTION 1354 SENECA AVENUE
BRONX, NY 10474
(718) 861-6060

Signature Bank
BROOKLYN, NY 11219
1-1957/260

56759
1-02-2020

PAY TO THE ORDER OF Department of Public Service \$*****5,833.00

ay: *****Five thousand eight hundred thirty-three dollars and no cents DOLLARS

PROTECTED AGAINST FRAUD

Department of Public Service
Three Empire State Plaza
16th Floor
Albany, NY 12223.1350

MEMO

056759 026013576 1501459093

Intuit® CheckLock® Secure Check

Date:01/27/2020 Account:1501459093 Amount:\$5,833.00 Serial:56759 Sequence:1245144090 TR:26013576 TranCode:0
DbCr:D Pattern:1 RIC:0

Pay to the Order of
Department of Taxation & Finance
Division of the Treasury
Department of Public Service
32968109026
For Deposit Only

New York State Treasury
JAN 24 2020
AC3372
General Checking

#1- PSC- Violation - (2019) 6 Payments Total Paid \$34,998.00

CASH ONLY IF ALL CheckLock™ SECURITY FEATURES LISTED ON BACK INDICATE NO TAMPERING OR COPYING

TRIUMPH CONSTRUCTION 1354 SENECA AVENUE
BRONX, NY 10474
(718) 861-8080

Signature Bank
BROOKLYN, NY 11219
1-1357/280

56329

12-09-2019

Department of Public Service \$5,833.00

PAY TO THE ORDER OF
Pay: *****Five thousand eight hundred thirty-three dollars and no cents DOLLARS

PROTECTED AGAINST FRAUD

Department of Public Service
Three Empire State Plaza
16th Floor
Albany, NY 12223.1350

MEMO


⑈056329⑈ ⑆026013576⑆ 1501459093⑈

Date:01/27/2020 Account:1501459093 Amount:\$5,833.00 Serial:56329 Sequence:1245144100 TR:26013576 TranCode:0
DbCr:D Pattern:1 RIC:0

Pay to the Order of
Department of Taxation & Finance
Division of Tax Services
5906, State Services
329681080026
For Deposit Only

General Checking
AC3372
JAN 24 2020
New York State Treasury
Tax and Finance

#1- PSC- Violation - (2019) 6 Payments Total Paid \$34,998.00

 TRIUMPH CONSTRUCTION		1354 SENECA AVENUE BRONX, NY 10474 (718) 861-8060	SIGNATURE BANK BROOKLYN, NY 11219	1-1357 260	57347
PAY TO THE ORDER OF		Department of Public Service	DATE 2-05-2020		
AMOUNT		\$*****5,833.00			
Pay: *****Five thousand eight hundred thirty-three dollars and no cents					
MEMO	Department of Public Service Three Empire State Plaza 16th Floor Albany, NY 12223.1350				
SECURITY FEATURES INCLUDE FOIL HOLOGRAM • HEAT SENSITIVE ICON • MICROPRINT • MULTI-COLOR BACKGROUND					
⑈057347⑈ ⑆026013576⑆ 1501459093⑈					

Date:03/03/2020 Account:1501459093 Amount:\$5,833.00 Serial:57347 Sequence:6022266700 TR:26013576 TranCode:0
 DbCr:D Pattern:1 RIC:0

General Checking AC3312 MAR 02 2020 New York State Treasury Tax and Finance	ENDORSE CHECK HERE <input type="checkbox"/> CHECK HERE IF MOBILE DEPOSIT
Department of Public Service 329681090026 For Deposit Only	DO NOT SIGN WRITE BELOW LINE FOR PRINCIPAL SIGNATURE ONLY

#1- PSC- Violation - (2019) 6 Payments Total Paid \$34,998.00

CASH ONLY IF ALL CheckLock™ SECURITY FEATURES LISTED ON BACK INDICATE NO TAMPERING OR COPYING

TRIUMPH CONSTRUCTION 1354 SENECA AVENUE
BRONX, NY 10474
(718) 861-6060

Signature Bank
BROOKLYN, NY 11219
1-1357/260

55812

11-07-2019

PAY TO THE ORDER OF Department of Public Service \$*****5,833.00

ay: *****Five thousand eight hundred thirty-three dollars and no cents

DOLLARS

PROTECTED AGAINST FRAUD

Department of Public Service
Three Empire State Plaza
16th Floor
Albany, NY 12223.1350

MEMO

⑈055812⑈ ⑆026013576⑆ 1501459093⑈

Date:03/03/2020 Account:1501459093 Amount:\$5,833.00 Serial:55812 Sequence:6022266710 TR:26013576 TranCode:0
DbCr:D Pattern:1 RIC:0

General Checking
AC3312
MAR 02 2020
New York State Treasury
Tax and Finance

For Deposit Only
Department of Public Service
329681090026

**#2 - OSHA Violation - Inspection No 992120 (2015) Total Penalty Amount: \$25,000.00 ;
Assessed by William S. Coleman Administrative Law Judge**

CASH ONLY IF ALL Check21™ SECURITY FEATURES LISTED ON BACK INDICATE NO TAMPERING OR COPYING

TRUMP CONSTRUCTION 1354 SENECA AVENUE
BRONX, NY 10474
(718) 861-6060

Signature Bank
BROOKLYN, NY 11219
1-1357/260

51901

4-25-2019

PAY TO THE ORDER OF Occupational Safety and Health \$25,000.00

Pay: Twenty-five thousand dollars and no cents

MEMO: Inspection No 992120
201 Varick Street
Room 909
New York, NY 10014

051901 6026013576 1501459093

Date:05/08/2019 Account:1501459093 Amount:\$25,000.00 Serial:51901 Sequence:989769770 TR:26013576 TranCode:0
DbCr:D Pattern:1 RIC:0

ENDORSE HERE

DEPARTMENT OF LABOR - OSHA
62007
1501-5012
PAY TO ANY FEDERAL TREASURY ONLY CA
U.S. DEPARTMENT OF LABOR
DO NOT SIGN THIS CHECK IF IT IS NOT YOURS TO SIGN

1-800-541-0339

Red Res Bank Cleveland
7041036017

**#3 - OSHA Violation - Inspection No 1308500 (2018): 6 payments-
Total Paid: \$53,040.00**

CASH ONLY IF ALL CheckLock™ SECURITY FEATURES LISTED ON BACK INDICATE NO TAMPERING OR COPYING

TRUMP CONSTRUCTION 1354 SENECA AVENUE
BRONX, NY 10474
(718) 861-6060

Signature Bank
BROOKLYN, NY 11219
1-1357/260

52018

5-03-2019

215000 Inspection # ~~997724~~
1308500

PAY TO THE ORDER OF OSHA \$8,840.00

Eight thousand eight hundred forty dollars and no cents

DOLLARS

Occupational Safety & Health
201 Varick Street
Room 908
New York, NY 10014

MEMO

0052018 026013576 1501459093

Date:07/16/2019 Account:1501459093 Amount:\$8,840.00 Serial:52018 Sequence:1060305390 TR:26013576 TranCode:0
DbCr:D Pattern:1 RIC:0

REPLICATING, FORGING OR ALTERING THIS CHECK IS EXTREMELY
DIFFICULT DUE TO CHECKLOCK™ HIGH SECURITY FEATURES.

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• MICR line is missing or faded
• Security features are missing or faded
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• MICR line is missing or faded
• Security features are missing or faded

For more information, visit www.checklock.com

20190715
Fed Res Bank Cleveland
041036017

DEPARTMENT OF TREASURY
FEDERAL RESERVE NOTE
FIVE DOLLARS
FIVE DOLLARS
FEDERAL RESERVE NOTE
FIVE DOLLARS

PAY TO THE ORDER OF OSHA \$ 8,940.00
 Pay: *****Eight thousand eight hundred forty dollars and no cents
DOLLARS
 Occupational Safety & Health
 201 Varick Street
 Room 908
 New York, NY 10014
 MEMO
 052699 026013576 1501459093

[illegible]

#3 - OSHA Violation - Inspection No 1308500 (2018): 6 payments-
Total Paid: \$53,040.00

CASH ONLY IF ALL CheckLook™ SECURITY FEATURES LISTED ON BACK INDICATE NO TAMPERING OR COPYING

215000
Inspection # 1308500

53177
7-02-2019

Signature Bank
BROOKLYN, NY 11210
1-1357-260

1354 SENECA AVENUE
BRONX, NY 10474
(718) 861-6060

OSHA

PAY TO THE ORDER OF **OSHA** \$8,840.00

Pay: *****Eight thousand eight hundred forty dollars and no cents DOLLARS

Occupational Safety & Health
201 Varick Street
Room 908
New York, NY 10014

MEMO

053177 026013576 1501459093

Date:07/16/2019 Account:1501459093 Amount:\$8,840.00 Serial:53177 Sequence:1060305410 TR:26013576 TranCode:0
DbCr:D Pattern:1 RIC:0

ENDORSE HERE

DEPARTMENT OF LABOR - OSHA
1000 PENNSYLVANIA AVENUE, N.W.
WASHINGTON, D.C. 20540
U.S. DEPARTMENT OF LABOR - OSHA
400 CONSTITUTION AVENUE, N.E.
WASHINGTON, D.C. 20002

20190715
Fed Res Bank Cleveland
201036017

As the undersigned Chief of the
Safety Program, I hereby certify
that the above information is true
and correct to the best of my knowledge.

RECEIVED FOR DEPOSIT - FED RESERVE BANK
CITY CREDIT UNION - CLEVELAND
JUL 16 2019

Total Paid: \$53,040.00

Date:08/15/2019 Account:1501459093 Amount:\$8,840.00 Serial:53810 Sequence:1091719490 TR:26013576 TranCode:0
DbCr:D Pattern:1 RIC:0

20190813
Fed Res Bank Cleveland
>041036017<

[illegible]

#31 OSHA Violation - Inspection No 1308500 (2018): 6 payments -
Total Paid: \$53,030.00

CASH ONLY IF ALL CheckLock™ SECURITY FEATURES LISTED ON BACK INDICATE NO TAMPERING OR COPIING

25000

TRIUMPH CONSTRUCTION 1354 SENECA AVENUE
BRONX, NY 10474
(718) 861-6060

Signature Bank
BROOKLYN, NY 11219
1-1357/200

54377

9-04-2019

PAY TO THE ORDER OF OSHA \$8,840.00

Pay: *****Eight thousand eight hundred forty dollars and no cents DOLLARS

MEMO Occupational Safety & Health
201 Varick Street
Room 908
New York, NY 10014

25000 inspection 1308500

⑈054377⑈ ⑆026013576⑆ 1501459093⑆

3/

Date:09/17/2019 Account:1501459093 Amount:\$8,840.00 Serial:54377 Sequence:1122189630 TR:26013576 TranCode:0
DbCr:D Pattern:1 RIC:0

ENDORSE HERE

20190913
Fed Res Bank C Inc and
2041036017

MEMORANDUM FOR THE DIRECTOR OF THE FEDERAL BUREAU OF INVESTIGATION
SUBJECT: OSHA VIOLATION - INSPECTION NO 1308500 (2018): 6 payments - Total Paid: \$53,030.00

TO: DIRECTOR, FBI
FROM: SAC, NEW YORK (100-123456)
DATE: 9/17/2019
RE: OSHA VIOLATION - INSPECTION NO 1308500 (2018): 6 payments - Total Paid: \$53,030.00

1. On 9/17/2019, the New York Office received information from the OSHA New York Office regarding a violation of the Occupational Safety and Health Act (OSHA) at the location of the above-named entity.

2. The OSHA New York Office has advised that the violation is a serious violation of the OSHA Act, and that the entity has been cited for the violation.

3. The New York Office is currently conducting an investigation into the matter, and has requested that the FBI provide assistance in the investigation.

4. The New York Office is currently conducting an investigation into the matter, and has requested that the FBI provide assistance in the investigation.

5. The New York Office is currently conducting an investigation into the matter, and has requested that the FBI provide assistance in the investigation.

6. The New York Office is currently conducting an investigation into the matter, and has requested that the FBI provide assistance in the investigation.


7. The New York Office is currently conducting an investigation into the matter, and has requested that the FBI provide assistance in the investigation.

8. The New York Office is currently conducting an investigation into the matter, and has requested that the FBI provide assistance in the investigation.

9. The New York Office is currently conducting an investigation into the matter, and has requested that the FBI provide assistance in the investigation.

10. The New York Office is currently conducting an investigation into the matter, and has requested that the FBI provide assistance in the investigation.

**#3 - OSHA Violation - Inspection No 1308500 (2018): 6 payments-
Total Paid: \$53,040.00**

		1354 SENECA AVENUE BRONX, NY 10474 (718) 861-6060	21500	Signature Bank BROOKLYN, NY 11219 1-1357-260	54976
PAY TO THE ORDER OF		OSHA	10-02-2019		
\$ *****8,840.00		\$ 8,840.00			
Eight thousand eight hundred forty dollars and no cents					
DOLLARS					
Occupational Safety & Health 201 Varick Street Room 908 New York, NY 10014					
MEMO: 21500 Inspection 1308500 @054976 @026013576 @501459093					

Date:10/24/2019 Account:1501459093 Amount:\$8,840.00 Serial:54976 Sequence:1156890460 TR:26013576 TranCode:0
DbCr:D Pattern:1 RIC:0

DEPARTMENT OF LABOR - OSHA 20191022 Fed Res Bank Cleveland 20191022	20191022 Fed Res Bank Cleveland 20191022
------------------------------------------------------------------------------	------------------------------------------------



March 18, 2021

See following responses.

Response to Business History Question 13- Violations disclosed in NYC Passport portal

OSHA

On October 10, 2018, OSHA issued Triumph 2 citations, via Inspection No. 1308500, stemming from an incident, at a Triumph work site, which occurred in April of 2018. Specifically, *Citation 1 Item 1 Serious* alleged that adequate protection was not provided to employees to protect from cave ins from loose rock or soil that could pose a hazard. *Citation 2 Item 1 Repeat* alleged that Triumph employees were working in a trench that was “about 5 feet deep” and were not protected from cave ins by an adequate protective system. Triumph vehemently denied the allegations and settlement negotiations were entered into with OSHA.

Ultimately, OSHA agreed to a Confidential Stipulated Settlement. Please note, as stated, Triumph was originally cited with 2 citations: One “Repeat” and one “Serious”. However, as part of the settlement, Triumph agreed to 4 citations (due to the payment terms of the settlement). Citations 1-3 were reclassified from “Serious” to “Other-Than-Serious” and Citation 4 was reclassified from “Repeat” to “Serious”. Additionally, Triumph agreed to pay a reduced penalty of \$53,040.00 from the original penalty of \$76,828.00.

PSC Violation

On January 4, 2019, Triumph was issued a Notice of Probable Violation, pursuant to 16 NYCRR Part 753. While Triumph conceded that an incident did occur that led to the alleged violation, said incident was as the result of a rogue employee and his crew. Triumph’s owner and management were completely unaware of the events that led to this violation until notified by Con Edison, some months after the damage occurred. Specifically, on August 2, 2018, Triumph’s owner, Carlo Cuzzi, was advised about an incident of unreported gas damage involving former Triumph personnel (“Crew”). The alleged incident occurred at or near Saxon Avenue, between Sedgwick Avenue & Van Cortland South, in the Bronx. Prior to August 2nd, Triumph was completely unaware of the damage and its cover up. Upon learning of the incident from Con Edison, Triumph’s owner immediately launched both internal and external investigations into the matter. Con Edison also performed their own investigation.



As a result of the extensive investigations performed by both entities, it was determined that the Crew, as directed by their foreman, independently decided to cover up the damage. Triumph's investigation performed by Mr. Cuzzi, Bonnie Porzio, Esq., (General Counsel), John McCann (Triumph's Supervisor for Con Edison work), and New York Private Detective Services ("NYPDS" - an independent third-party investigator), determined that the actual damage was caused by the brother of foreman. The foreman took complete responsibility for the cover-up and stated that he was fearful that his brother would be fired as a result of the damage and his actions were to protect his brother. The entire Crew was terminated immediately.

As a result of both Triumph's and Con Ed's investigation, the PSC agreed to settle the proposed violation for a reduced fine. The fine was reduced from \$50,000.00 to \$34,998.00, which was paid over 6 months to the Department of Public Service.

Response to Mr. Cuzzi's Principal Questionnaire- Question 11:

2016 NLRB Decision

In 2016, an ex-employee of Triumph brought a claim to the NLRB, alleging that he was not being paid prevailing wage. He was originally employed by Triumph Utilities, Corp., he was employed one of Triumph's related companies. He also argued that Triumph Utilities Corp., Rosedale Co. and Cuzjack Construction Corp. were joint and/or single employers with Triumph Construction for the purposes of the NLRA. Specifically, he alleged that he was not being paid prevailing wage for "flagging" on the job site. However, he was not, in fact, a flagger. He was hired as a "crossing guard". The two job classifications have very different job descriptions and responsibilities. Additionally, only flaggers have a prevailing wage rate. Crossing guards do not have a union classification.

As you can see from the 2016 decision, the NLRB dismissed the case and no appeal from the Decision was ever taken.

Triumph Construction Corp. 1354 Seneca Ave. Bronx, NY 10474						
Project Experience						
Contract Name	Contract #	Contract Description	Owner / Owners Representative	Year Completed	Contract Amount	Owner Reference & Contact
Astor Place Reconstruction	HWMP116	Water main, sewer, Traffic lighting, street lighting,	NYCDDC 30-30 Thompson Ave NY NY	2019	\$ 15,754,866.59	Rafael Rodriguez R.E. 347-865-4413
Green Infrastructure in JAM-003 & JAM-006 Phase 1	GCJAM-01	Construction of right-of-way green infrastructure in the cso tributary -Jam-003 and Jam-006	NYCDDC 30-30 Thompson Ave NY NY	2019	\$9,267,820.00	Norbu Tsering 718-391-2555
Hunter Roberts		Pier 35; Installation of 36" Water main	NYCEDC (Hunter Roberts)	2019	\$901,000.00	Mishel Mako 917-946-4420
El Sol Contracting & Construction Corp.	A-37117	Installation of 8" Water main and 36" & 24" sewer at 86th St Station	MTA (El Sol)	2019	\$1,150,806.86	Al Bonura 917-282-2771
Olympic Plumbing and Heating		One Vanderbilt Avenue; Installation of new services to building	SL Greene	2019	\$1,493,812.55	Al Rocco 718-528-4001
Safe Routes to Schools	HWCSCH3B2	Installation of bump outs, catch basins, chutes, and utility work	NYCDDC 30-30 Thompson Ave NY NY	2018	\$ 5,197,263.00	John Delucia 347-844-0896
Realignment and Plaza Enhancement for Myrtle/Cooper Place	HWPLZ008Q	Realignment and Plaza Enhancement for Myrtle/Cooper Plaza betw 69th Pl. and 71st St	NYCDDC 30-30 Thompson Ave NY NY	2017	\$3,399,662.03	Nathalie Pierre-Georges 718-391-2477
Wayfinding Elements	20151403526	Furnish, deliver and install Wayfinding elements throughout New York City	NYCDOT	2017	\$17,934,700.00	Keri Isaac 212-839-6425
185th St - Streetscape Improvements, Manhattan	20161420808	185th St. Streetscape - Architectural Concrete, Seatwalls, Landscaping, Plaza Lighting, Traffic Signal, Curb, Milling and Paving, Traffic Coating, Line Striping, and Site Furniture	NYCDDC 30-30 Thompson Ave NY NY	2017	\$3,654,207.44	John Delucia 347-844-0896
Safe Routes for Transit, Bronx, NY	HWSRT200A	Complex bump out ramps. - Catch basins, curb and sidewalk, & concrete	NYCDDC 30-30 Thompson Ave NY NY	2016	\$ 2,855,503.31	Franco Mesiti 917-939-6794
Bronx & Manhattan Complex Ped Ramps	HWP2010MX	Installation of complex ped ramps; Including catch basins, chute, curb & sidewalk concrete work	NYCDDC 30-30 Thompson Ave NY NY	2016	\$4,195,738.20	Franco Mesiti 917-939-6794
Complex Pedestrian Ramps, Manhattan	HWP2013TA	Complex pedestrian ramps; Pedestrian ramps, sidewalk, curb, catch basin, watermain, street lighting and traffic signal work	NYCDDC 30-30 Thompson Ave NY NY	2016	\$1,262,023.03	Pierre Rameau Jr , EIC 347-203-1360
Installation of 12" and 20" water mains	MED617	Installation of water mains and services in Manhattan	NYCDDC 30-30 Thompson Ave NY NY	2016	\$5,597,067.26	Shahram Jaromi 718-391-3231
Reconstruction of Church Avenue	HWKP2026	Installation of sewer and water main. Reconstruction of roadway and sidewalks	NYCDDC 30-30 Thompson Ave NY NY	2015	\$ 5,818,018.51	Flore Bruneau, Acting EIC 646-739-7122 (Original EIC retired)
Construction of Complex Ped Ramps	HWP2012QC	Installation of pedestrian ramps, catch basins, and manholes	NYCDDC 30-30 Thompson Av NY NY	2015	\$ 4,189,951.60	Joseph Dorce, EIC 917-731-2763
Lexington Ave Bollards	1000023573 GCT	Furnished and Installed Security Bollards, Parge NYCTA Vent Shaft, Water Main - Curb Valve Relocation, Catch Basin removal and installation, Waterproofing, Sidewalk, Expansion Joint and Vent Shaft frame & Grating Installation at 420 Lexington Ave, New York, NY.	Metro- North	2014	\$ 709,500.00	Colm R. Saunders, PE 914-461-0474
Queens Plaza Bicycle and Pedestrian Improvements Project	1442002	Watermain, Sewer, Lighting, Signal Work, Concrete Sidewalk, Asphalt Milling and Paving, Landscaping, Custom Pavers and Irrigation.	NYC Economic Development Corp.	2014	\$ 38,330,225.89	Dan Colangione 212-312-3765
Emergency Sidewalk Repairs Project	HWSEMER11	Removal and replacement of trees, stumps, sidewalk, etc due to Sandy Storm damage	NYCDDC 30-30 Thompson Ave NY NY	2014	\$ 1,326,879.16	Mina Marcos 516-852-8595
Low pressure water main	835147	Watermain, Sewer, Lighting, Signal, Concrete Sidewalk, Asphalt Paving, Landscaping and Pavers.	Brooklyn Navy Yard Development Corp.	2012	\$ 12,937,036.73	Carmine Stabile 845-642-0491
Construction of Catch Basins, Various Locations, Bronx, NY	SECBX1	Installation of Catch Basins and Chute Connections, Various Locations, Bronx, NY	NYCDDC 30-30 Thompson Ave NY NY	2012	\$ 1,931,893.50	Lambert Monah 917-939-6966
Reconstruction of Building 292 Parking Lot	835147	Storm Water Detention System, Sewer, Watermain, Concrete Sidewalk, Asphalt Pavement	Brooklyn Navy Yard Development Corp.	2012	\$ 2,376,909.81	Carmine Stabile 845-642-0491
High Pressure Water Main	835147	Watermain, Sewer, Concrete Sidewalk and Asphalt Milling and Paving	Brooklyn Navy Yard Development Corp.	2011	\$ 1,258,028.70	Carmine Stabile 845-642-0491
Construction of Catch Basins, Various Locations, Manhattan, NY	SECBHLN2	Installation of Catch Basins and Chute Connections, Various Locations, Manhattan, NY	NYCDDC 30-30 Thompson Ave NY NY	2010	\$ 1,692,668.50	Pierre Rameau Jr 347-203-1360

Triumph Construction Corp.

1354 Seneca Ave.

Bronx, NY 10474



WORK IN PROGRESS

Contract Name	Triumph Job No.	Contract No.	Agency	Contract Amount	Status (% Complete)	Owner- Contact
Reconstruction of 9th Ave / Gansevoort Area; Water Main, Streetscape, Utility Relocation, Manhattan	1003	HWMP2020	NYCDDC	\$ 17,170,162.50	85%	Iyad Marzouq, EIC 212-313-3526
Construction of Right of Way Green Infrastructure, Bioswales, Queens	3072	GCJA03-3A	NYCDDC	\$ 10,944,453.00	80%	Jean Claremont (917)709-6446
Construction of Right of Way Green Infrastructure, Bioswales, Queens	3060	GNCB14-1A	NYCDDC	\$ 4,249,713.00	60%	Lafayette Cisco (646)235-8862
Construction of Accelerated Water Main Replac & Sewer Rehab, Manhattan	3053	MEDA002	NYCDDC	\$ 16,206,941.00	65%	John Delucia 347-844-0896
Construction of Accelerated Water Main Replac & Sewer Rehab, Bronx	3061	HEDA003	NYCDDC	\$ 16,951,742.60	55%	Franco Mesiti 917-939-6794
Installation of Footings for Wayfinding Signs in NYC	19-0008	20181426192	NYCDOT/ PentacCityGroup	\$ 974,785.00	50%	Chris Lucas 646-300-7143
Replace of Trunk & Distr Water Mains, Sewer, Streetscape, Brooklyn	3049	BED-798	NYCDDC	\$ 37,548,087.57	40%	Bob Yueh 718-250-5047
Construction of Right of Way Green Infrastructure, Jamaica Bay, Queens	19-0001	GCJA03-2A	NYCDDC	\$ 7,983,614.53	30%	Bill Sifounis (646) 957-0302
Green Infrastructure Westchester Creek Basin, Bronx	19-0009	533200103	LIRO/NYCEDC	\$ 12,072,033.80	20%	Jon Grubman 347-829-3351
Middle Neck Road Water Main Improvements, Great Neck	20-0012	n/a	WAGNN	\$ 5,600,000.00	15%	Brian Fanselli 516-491-7050
Installation of New Catch Basins, Reconstruction of Existing Collapsed Catch Basins, Brooklyn and Staten Island	3059	SECBKR01	NYCDDC/DEP	\$ 3,935,331.50	10%	Danny Lefkowitz 718-595-7657
Construction of Sanitary Sewers and Appurtenances, Coney Island Areas, Brooklyn	Contract	CONISPH3A	NYCEDC	\$ 49,679,581.33	10%	Tim Weiss 917-373-9521
Westchester Creek Green Infrastructure; Construction of Right of Way Bioswales, Bronx	19-0009	53320013	LIRO/NYCEDC	\$ 12,072,033.80	1%	Jonathan Grubman (516) 382-2837
Green Infrastructure; Right of Way, Bioswales, Bronx River, Bronx	19-0004		Hunter Roberts/NYCEDC	\$ 24,500,000.00	1%	Nicholas Gibson (646)276-5292

Contracts not Started

Contract Name	Triumph Job No.	Contract No.	Agency	Contract Amount	Status (% Complete)	Owner- Contact
Reconstruction of Parsons Blvd, Queens	19-0011	HWPEDSF4A	NYCDDC	\$ 3,523,631.22	0%	Has not started
ADA Requirements- Installation Ped Ramps, etc, Bronx	20-0001	D264063	NYSOT	\$ 874,049.90	0%	Erica Wong, PE 917-717-0130

2401 3rd Ave - Site Utilities	20-0002			\$ 2,100,000.00	0%	Has not started
Construction of Right of Way Green Infrastructure, Flushing Creek, Queens	19-0002	GT110-1A	NYCDDC	\$ 10,677,684.16	0%	Has not started
Contract Name	Triumph Job No.	Contract No.	Agency	Contract Amount	Status (% Complete)	Owner- Contact
On-Site Green Infrastructure - 26th Ward Houses NYCHA	20-0003	60589896	Aecom/NYCEDC	\$ 4,039,970.00	0%	Yemi Green 516-800-9016
On-Site Green Infrastructure - Newton Creek, Kingsborough Houses, NYCHA	20-0004	60589896	Aecom/NYCEDC	\$ 1,200,000.00	0%	Yemi Green 516-800-9017
Atlantic Ave Safety Improvements- Phase II	20-0005	HWD10105A	NYCDDC	\$ 25,884,023.66	0%	Has not started
Construction of Various Right of Way Green Infrastructure, Bioswales, Queens	20-0006	BB05-01-A	NYCDDC	\$ 18,275,922.11	0%	Has not started
Installation of Catch Basins, Queens and Bronx	20-0007	SECBRQX03	NYCDDC	\$ 3,762,980.00	0%	Has not started
Jerome Reservoir and Aqueduct Rehab., Bronx		JRAQ-REH	NYCDEP	\$ 37,594,000.00	0%	Has not started
New DEP Combined Sewer & Water Main Scope, Grand Ave, Elmhurst	20-0018	n/a	Storage Constr. Co.	\$ 550,000.00	0%	Robert Caravella 646-388-9828
Replacement of Water Mains on Avenue "S" and Coney Island Avenue, Brooklyn	3075	BED-809	NYCDDC	\$ 25,430,427.44	0%	Has not started
GOSR Five Towns Drainage Improvements - Lawrence Pipe		H35132-01G	NASSAU DPW	\$ 9,181,765.00	0%	Has not started
Replacement of Underground Water & Fire Distribution Lines, Manhattan	19-0006	PL1813851	NYCHA	\$ 4,100,000.00	0%	Has not started

COUNTY OF NASSAU

CONSULTANT'S, CONTRACTOR'S AND VENDOR'S DISCLOSURE FORM

1. Name of the Entity: Triumph Construction Corp.

Address: 1354 Seneca Avenue

City: Bronx State/Province/Territory: NY Zip/Postal Code: 10474

Country: US

2. Entity's Vendor Identification Number: 134050635

3. Type of Business: Other (specify) Corporation

4. List names and addresses of all principals; that is, all individuals serving on the Board of Directors or comparable body, all partners and limited partners, all corporate officers, all parties of Joint Ventures, and all members and officers of limited liability companies (attach additional sheets if necessary):

1 File(s) uploaded Related Parties.pdf

No principals have been attached to this form.

5. List names and addresses of all shareholders, members, or partners of the firm. If the shareholder is not an individual, list the individual shareholders/partners/members. If a Publicly held Corporation, include a copy of the 10K in lieu of completing this section.

If none, explain.

Carlo Cuzzi, [REDACTED]

No shareholders, members, or partners have been attached to this form.

6. List all affiliated and related companies and their relationship to the firm entered on line 1. above (if none, enter "None"). Attach a separate disclosure form for each affiliated or subsidiary company that may take part in the performance of this contract. Such disclosure shall be updated to include affiliated or subsidiary companies not previously disclosed that participate in the performance of the contract.

1 File(s) uploaded Copy of Related parties.xlsx

7. List all lobbyists whose services were utilized at any stage in this matter (i.e., pre-bid, bid, post-bid, etc.). If none, enter "None." The term "lobbyist" means any and every person or organization retained, employed or designated by any client to influence - or promote a matter before - Nassau County, its agencies, boards, commissions, department heads, legislators or committees, including but not limited to the Open Space and Parks Advisory Committee and Planning Commission. Such matters include, but are not limited to, requests for proposals, development or improvement of real property subject to County regulation, procurements. The term "lobbyist" does not include any officer, director, trustee, employee, counsel or agent of the County of Nassau, or State of New York, when discharging his or her official duties.

Are there lobbyists involved in this matter?

YES ☐ NO ☒

(a) Name, title, business address and telephone number of lobbyist(s):

1354 Seneca Avenue

(b) Describe lobbying activity of each lobbyist. See below for a complete description of lobbying activities.

(c) List whether and where the person/organization is registered as a lobbyist (e.g., Nassau County, New York State):

8. VERIFICATION: This section must be signed by a principal of the consultant, contractor or Vendor authorized as a signatory of the firm for the purpose of executing Contracts.

The undersigned affirms and so swears that he/she has read and understood the foregoing statements and they are, to his/her knowledge, true and accurate.

Electronically signed and certified at the date and time indicated by:
Carlo Cuzzi [CCUZZI@TRIUMPHCONSTRUCTIONNY.COM]

Dated: 03/25/2021 01:08:27 PM

Title: President

The term lobbying shall mean any attempt to influence: any determination made by the Nassau County Legislature, or any member thereof, with respect to the introduction, passage, defeat, or substance of any local legislation or resolution; any determination by the County Executive to support, oppose, approve or disapprove any local legislation or resolution, whether or not such legislation has been introduced in the County Legislature; any determination by an elected County official or an officer or employee of the County with respect to the procurement of goods, services or construction, including the preparation of contract specifications, including by not limited to the preparation of requests for proposals, or solicitation, award or administration of a contract or with respect to the solicitation, award or administration of a grant, loan, or agreement involving the disbursement of public monies; any determination made by the County Executive, County Legislature, or by the County of Nassau, its agencies, boards, commissions, department heads or committees, including but not limited to the Open Space and Parks Advisory Committee, the Planning Commission, with respect to the zoning, use, development or improvement of real property subject to County regulation, or any agencies, boards, commissions, department heads or committees with respect to requests for proposals, bidding, procurement or contracting for services for the County; any determination made by an elected county official or an officer or employee of the county with respect to the terms of the acquisition or disposition by the county of any interest in real property, with respect to a license or permit for the use of real property of or by the county, or with respect to a franchise, concession or revocable consent; the proposal, adoption, amendment or rejection by an agency of any rule having the force and effect of law; the decision to hold, timing or outcome of any rate making proceeding before an agency; the agenda or any determination of a board or commission; any determination regarding the calendaring or scope of any legislature oversight hearing; the issuance, repeal, modification or substance of a County Executive Order; or any determination made by an elected county official or an officer or employee of the county to support or oppose any state or federal legislation, rule or regulation, including any determination made to support or oppose that is contingent on any amendment of such legislation, rule or regulation, whether or not such legislation has been formally introduced and whether or not such rule or regulation has been formally proposed.

RELATED PARTIES

COMPANY NAME	Ownership	%
Bari Leasing Corp.	Penny Jackson (spouse)	100%
Cuzjack Construction Corp.	Penny Jackson	1%
	Family Trust	99%
Pipeline Construction, LLC	Carlo Cuzzi	100%
Triumph Utilities Corp.	Carlo Cuzzi	100%

Related Party

Bari Leasing Corp.

Cuzjack Construction Corp.

Pipeline Construction, LLC

Triumph Utilities Corp.

Pennylane Sloop, LLC

DKMAN Insurance Company

PCJ Management

PCJ Management owns properties:

1755 Taylor Avenue, LLC

2430 Lyvere Street, LLC

2538 Holland Avenue, LLC

PCJ North Avenue, LLC

Brookmont Management, LLC

2365 Boston Post Road

1935 Central Park

Ownership

100% Penny Jackson (spouse)

1% Penny Jackson; PJ 2012 Family Trust 49.5%; CC 2012 Family Trust 49.5%

100% Carlo Cuzzi

100% Carlo Cuzzi

100% Carlo Cuzzi

100% Carlo Cuzzi

1%Carlo Cuzzi; CC IRR Insurance Trust 99%



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

01/27/2021

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Brown & Brown of New York, Inc. 1133 Westchester Avenue Suite N-136 White Plains NY 10604		CONTACT NAME PHONE (A/C, No, Ext) (914) 337-1833 FAX (A/C, No) E-MAIL ADDRESS triumphcertificates@bbinsny.com															
INSURED Triumph Construction Corp 1354 Seneca Ave Bronx NY 10474		INSURER(S) AFFORDING COVERAGE <table border="1"> <tr> <th>INSURER</th> <th>NAIC #</th> </tr> <tr> <td>INSURER A Accredited Surety and Casualty Company, Inc.</td> <td>26379</td> </tr> <tr> <td>INSURER B Liberty Mutual Holding Company, Inc.</td> <td>23043</td> </tr> <tr> <td>INSURER C James River Insurance Company</td> <td>12203</td> </tr> <tr> <td>INSURER D Endurance American Specialty Insurance Company</td> <td>41718</td> </tr> <tr> <td>INSURER E Navigators Insurance Company</td> <td>42307</td> </tr> <tr> <td>INSURER F RSUI Indemnity Company</td> <td>22314</td> </tr> </table>		INSURER	NAIC #	INSURER A Accredited Surety and Casualty Company, Inc.	26379	INSURER B Liberty Mutual Holding Company, Inc.	23043	INSURER C James River Insurance Company	12203	INSURER D Endurance American Specialty Insurance Company	41718	INSURER E Navigators Insurance Company	42307	INSURER F RSUI Indemnity Company	22314
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COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLA MS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> Contractual Liability <input checked="" type="checkbox"/> X, C, U Included GEN'L AGGREGATE LIMIT APPL'ES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC <input checked="" type="checkbox"/> OTHER: Deductible: \$100,000	Y	Y	1-TPM-NY-17-01264115	08/01/2020	08/01/2021	EACH OCCURRENCE \$ 2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV NJURY \$ 2,000,000 GENERAL AGGREGATE \$ 4,000,000 PRODUCTS - COMP/OP AGG \$ 4,000,000 \$
B	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY		Y	AS2-611-C0B44C-020	08/01/2020	08/01/2021	COMB NED SINGLE LIMIT (Ea accident) \$ 2,000,000 BODILY NJURY (Per person) \$ BODILY NJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	<input type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLA MS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ 0	Y	Y	1-TPM-NY-17-01264116	08/01/2020	08/01/2021	EACH OCCURRENCE \$ 3,000,000 AGGREGATE \$ 3,000,000 \$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPR ETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> Y/N If yes, describe under DESCRIPTION OF OPERATIONS below	N/A	Y	WA5-61D-C0B44C-010	08/01/2020	08/01/2021	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACC DENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
A	Excess Liability - 2nd Layer			1-TPM-NY-17-01264117	08/01/2020	08/01/2021	Each Occurrence \$5,000,000 Aggregate \$5,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

GOSR Five Towns Drainage Improvements: Lawrence Pipe Improvements
 Contract No. H35132-01G - Contract amount \$9,181,765.00

New York State, the New York State Housing Trust Fund Corporation, and the Municipality are included as Additional Insureds with respects to Commercial General Liability on a primary and non-contributory basis when required by written contract. Waiver of subrogation applies when required by written contract.

CERTIFICATE HOLDER

CANCELLATION

New York State Trust Fund Corpora ion
 38-40 State Street

Albany

NY 12207

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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AGENCY CUSTOMER ID: _____

LOC #: _____

ADDITIONAL REMARKS SCHEDULE

Page ____ of ____

AGENCY Brown & Brown of New York, Inc.		NAMED INSURED Triumph Construction Corp
POLICY NUMBER		
CARRIER	NAIC CODE	EFFECTIVE DATE

ADDITIONAL REMARKS**THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,****FORM NUMBER:** 25 **FORM TITLE:** Certificate of Liability Insurance: Notes

Additional Coverages:

Excess Liability 3rd Layer
Insurer C: James River Insurance Company
Policy #: 00105810-0
Policy Term: 08/01/2020 – 08/01/2021
Occurrence/Accumulated Limit: \$2,000,000

Excess Liability 4th Layer
Insurer D: Endurance American Specialty Insurance Company
Policy #: EXN30001879800
Policy Term: 08/01/2020 – 08/01/2021
Occurrence/Accumulated Limit: \$3,000,000

Excess Liability 5th Layer
Insurer E: Navigators Insurance Company
Policy #: 1S20EXC7353581V
Policy Term: 08/01/2020 – 08/01/2021
Occurrence/Accumulated Limit: \$4,000,000

Excess Liability 6th Layer
Insurer F: RSUI Indemnity Company
Policy #: NHA090890
Policy Term: 08/01/2020 – 08/01/2021
Occurrence/Accumulated Limit: \$3,000,000

Contractor's Pollution Liability
Insurer G: St. Paul Surplus Lines Insurance Company
NAIC #: 30481
Policy #: ZCC-16N60247
Policy Term: 07/29/2019 - 07/29/2021
Per Pollution Condition/Accumulated: \$5,000,000
Deductible, Each Occurrence: \$10,000

Professional Liability
Insurer H: Ironshore Specialty Insurance Company
NAIC #: 25445
Policy #: DCP7BAB125V001
Policy Term: 08/01/2020 - 08/01/2021
Each Claim/Accumulated: \$2,000,000



**Workers'
Compensation
Board**

**CERTIFICATE OF
NYS WORKERS' COMPENSATION INSURANCE COVERAGE**

1a. Legal Name & Address of Insured (use street address only) Triumph Construction Corp 1354 Seneca Ave Bronx, NY 10474 <i>Work Location of Insured (Only required if coverage is specifically limited to certain locations in New York State, i.e., a Wrap-Up Policy)</i>	1b. Business Telephone Number of Insured (718) 892-3244 1c. NYS Unemployment Insurance Employer Registration Number of Insured 05-20171 1d. Federal Employer Identification Number of Insured or Social Security Number 13-4050635
2. Name and Address of Entity Requesting Proof of Coverage (Entity Being Listed as the Certificate Holder) New York State Trust Fund Corporation 38-40 State Street Albany, NY 12207	3a. Name of Insurance Carrier Liberty Mutual Holding Company, Inc. 3b. Policy Number of Entity Listed in Box "1a" WA5-61D-C0B44C-010 3c. Policy effective period 08/01/2020 to 08/01/2021 3d. The Proprietor, Partners or Executive Officers are <input checked="" type="checkbox"/> included. (Only check box if all partners/officers included) <input type="checkbox"/> all excluded or certain partners/officers excluded.

This certifies that the insurance carrier indicated above in box "3" insures the business referenced above in box "1a" for workers' compensation under the New York State Workers' Compensation Law. **(To use this form, New York (NY) must be listed under Item 3A on the INFORMATION PAGE of the workers' compensation insurance policy).** The Insurance Carrier or its licensed agent will send this Certificate of Insurance to the entity listed above as the certificate holder in box "2".

The insurance carrier must notify the above certificate holder and the Workers' Compensation Board within 10 days IF a policy is canceled due to nonpayment of premiums or within 30 days IF there are reasons other than nonpayment of premiums that cancel the policy or eliminate the insured from the coverage indicated on this Certificate. (These notices may be sent by regular mail.) Otherwise, this Certificate is valid for one year after this form is approved by the insurance carrier or its licensed agent, or until the policy expiration date listed in box "3c", whichever is earlier.

This certificate is issued as a matter of information only and confers no rights upon the certificate holder. This certificate does not amend, extend or alter the coverage afforded by the policy listed, nor does it confer any rights or responsibilities beyond those contained in the referenced policy.

This certificate may be used as evidence of a Workers' Compensation contract of insurance only while the underlying policy is in effect.

Please Note: Upon cancellation of the workers' compensation policy indicated on this form, if the business continues to be named on a permit, license or contract issued by a certificate holder, the business must provide that certificate holder with a new Certificate of Workers' Compensation Coverage or other authorized proof that the business is complying with the mandatory coverage requirements of the New York State Workers' Compensation Law.

Under penalty of perjury, I certify that I am an authorized representative or licensed agent of the insurance carrier referenced above and that the named insured has the coverage as depicted on this form.

Approved by: John Moccia
(Print name of authorized representative or licensed agent of insurance carrier)

Approved by: John Moccia 1/27/2021
(Signature) (Date)

Title: Executive Vice President

Telephone Number of authorized representative or licensed agent of insurance carrier: 914-337-1833

Please Note: Only insurance carriers and their licensed agents are authorized to issue Form C-105.2. Insurance brokers are NOT authorized to issue it.

Workers' Compensation Law

Section 57. Restriction on issue of permits and the entering into contracts unless compensation is secured.

1. The head of a state or municipal department, board, commission or office authorized or required by law to issue any permit for or in connection with any work involving the employment of employees in a hazardous employment defined by this chapter, and notwithstanding any general or special statute requiring or authorizing the issue of such permits, shall not issue such permit unless proof duly subscribed by an insurance carrier is produced in a form satisfactory to the chair, that compensation for all employees has been secured as provided by this chapter. Nothing herein, however, shall be construed as creating any liability on the part of such state or municipal department, board, commission or office to pay any compensation to any such employee if so employed.
2. The head of a state or municipal department, board, commission or office authorized or required by law to enter into any contract for or in connection with any work involving the employment of employees in a hazardous employment defined by this chapter, notwithstanding any general or special statute requiring or authorizing any such contract, shall not enter into any such contract unless proof duly subscribed by an insurance carrier is produced in a form satisfactory to the chair, that compensation for all employees has been secured as provided by this chapter.



CERTIFICATE OF INSURANCE COVERAGE

DISABILITY AND PAID FAMILY LEAVE BENEFITS LAW

PART 1. To be completed by Disability and Paid Family Leave Benefits Carrier or Licensed Insurance Agent of that Carrier

1a. Legal Name & Address of Insured (use street address only) Triumph Construction Corp 1354 Seneca Ave Bronx, NY 10474 <small>Work Location of Insured (Only required if coverage is specifically limited to certain locations in New York State, i.e., Wrap-Up Policy)</small>	1b. Business Telephone Number of Insured (718) 892-3244 1c. Federal Employer Identification Number of Insured or Social Security Number 13-4050635
2. Name and Address of Entity Requesting Proof of Coverage (Entity Being Listed as the Certificate Holder) New York State Trust Fund Corporation 38-40 State Street Albany, NY 12207	3a Name of Insurance Carrier Standard Security Life Insurance Company of New York 3b Policy Number of Entity Listed in Box "1a" R23618-000 3c Policy effective period 01/01/2021 to 01/01/2022

4. Policy provides the following benefits:

- ☒ A. Both disability and paid family leave benefits.
☐ B. Disability benefits only.
☐ C. Paid family leave benefits only.

5. Policy covers:

- ☒ A. All of the employer's employees eligible under the NYS Disability and Paid Family Leave Benefits Law.
☐ B. Only the following class or classes of employer's employees:

Under penalty of perjury, I certify that I am an authorized representative or licensed agent of the insurance carrier referenced above and that the named insured has NYS Disability and/or Paid Family Leave Benefits insurance coverage as described above.

Date Signed 01/27/2021

John Moccia
(Signature of insurance carrier's authorized representative or NYS Licensed Insurance Agent of that insurance carrier)

Telephone Number (914)337-1833

Name and Title: John Moccia, Executive Vice President

IMPORTANT: If Boxes 4A and 5A are checked, and this form is signed by the insurance carrier's authorized representative or NYS Licensed Insurance Agent of that carrier, this certificate is COMPLETE. Mail it directly to the certificate holder.

If Box 4B, 4C or 5B is checked, this certificate is NOT COMPLETE for purposes of Section 220, Subd. 8 of the NYS Disability and Paid Family Leave Benefits Law. It must be mailed for completion to the Workers' Compensation Board, Plans Acceptance Unit, PO Box 5200, Binghamton, NY 13902-5200.

PART 2. To be completed by the NYS Workers' Compensation Board (Only if Box 4C or 5B of Part 1 has been checked)

State of New York Workers' Compensation Board

According to information maintained by the NYS Workers' Compensation Board, the above-named employer has complied with the NYS Disability and Paid Family Leave Benefits Law with respect to all of his/her employees.

Date Signed

By

(Signature of Authorized NYS Workers' Compensation Board Employee)

Telephone Number

Name and Title

Please Note: Only insurance carriers licensed to write NYS disability and paid family leave benefits insurance policies and NYS licensed insurance agents of those insurance carriers are authorized to issue Form DB-120.1. Insurance brokers are NOT authorized to issue this form.

Additional Instructions for Form DB-120.1

By signing this form, the insurance carrier identified in Box 3 on this form is certifying that it is insuring the business referenced in box "1 a" for disability and/or paid family leave benefits under the New York State Disability and Paid Family Leave Benefits Law. The Insurance Carrier or its licensed agent will send this Certificate of Insurance to the entity listed as the certificate holder in Box 2.

The insurance carrier must notify the above certificate holder and the Workers' Compensation Board within 10 days IF a policy is cancelled due to nonpayment of premiums or within 30 days IF there are reasons other than nonpayment of premiums that cancel the policy or eliminate the insured from coverage indicated on this Certificate. (These notices may be sent by regular mail.) Otherwise, this Certificate is valid for one year after this form is approved by the insurance carrier or its licensed agent, or until the policy expiration date listed in Box 3c, whichever is earlier.

This certificate is issued as a matter of information only and confers no rights upon the certificate holder. This certificate does not amend, extend or alter the coverage afforded by the policy listed, nor does it confer any rights or responsibilities beyond those contained in the referenced policy.

This certificate may be used as evidence of a Disability and/or Paid Family Leave Benefits contract of insurance only while the underlying policy is in effect.

Please Note: Upon the cancellation of the disability and/or paid family leave benefits policy indicated on this form, if the business continues to be named on a permit, license or contract issued by a certificate holder, the business must provide that certificate holder with a new Certificate of NYS Disability and/or Paid Family Leave Benefits Coverage or other authorized proof that the business is complying with the mandatory coverage requirements of the New York State Disability and Paid Family Leave Benefits Law.

DISABILITY AND PAID FAMILY LEAVE BENEFITS LAW

§220. Subd. 8

(a) The head of a state or municipal department, board, commission or office authorized or required by law to issue any permit for or in connection with any work involving the employment of employees in employment as defined in this article, and notwithstanding any general or special statute requiring or authorizing the issue of such permits, shall not issue such permit unless proof duly subscribed by an insurance carrier is produced in a form satisfactory to the chair, that the payment of disability benefits and after January first, two thousand and twenty-one, the payment of family leave benefits for all employees has been secured as provided by this article. Nothing herein, however, shall be construed as creating any liability on the part of such state or municipal department, board, commission or office to pay any disability benefits to any such employee if so employed.

(b) The head of a state or municipal department, board, commission or office authorized or required by law to enter into any contract for or in connection with any work involving the employment of employees in employment as defined in this article and notwithstanding any general or special statute requiring or authorizing any such contract, shall not enter into any such contract unless proof duly subscribed by an insurance carrier is produced in a form satisfactory to the chair, that the payment of disability benefits and after January first, two thousand eighteen, the payment of family leave benefits for all employees has been secured as provided by this article.

COUNTY OF NASSAU
DEPARTMENT OF PUBLIC WORKS
Inter-Departmental Memo

TO: Office of the County Executive
Att: Brian J. Schneider, Deputy County Executive

FROM: Department of Public Works

DATE: March 3, 2021

SUBJECT: RECOMMENDATION OF AWARD

Contract Number: H35132-01G

Title: Five Towns – Five Towns – Lawrence Drainage Pipes

Engineer's Estimate: \$7,291,388.50

Bids Received On: January 5, 2021

The bids received for the above referenced contract have been examined and the bid submitted by Triumph Contracting in the amount of \$ 9,181,765.00 is acceptable as the lowest bid (see the attached bid tabulation and bid analysis).

The low bid by Triumph Construction Corp. is 31.57% higher than the engineers estimate. The project designer, L.K. McLean Associates, performed a detailed analysis of the Contractors bid, with special attention paid to various major bid items with large variances from the engineer's estimate. The project features a remote or limited access location requiring longer hauling and delivery times to and from the Contractors yards, landfills, and suppliers. This was reflected in many items within the bid, but none as great as Item 1M, Mobilization, of which this item made up 13.61% of the bid. However, this unit price bid was within the range of the other bids received, some ranging up to 17.7% of the total bid. The impact of the project's remoteness was also reflected in unit prices bid for asphalt pavement, not only in the low bidder but also other bids received.

In addition to Mobilization, the project's coastal location and proximity to Bannister Bay as well as the need for dewatering was reflected in the items bid for pipe and culvert installation. These unit prices reflect the Contractors concerns of dewatering needed during excavations, including storm drainage and sanitary sewer installations, especially given the large-scale structures being installed under this project. Similarly, dewatering appears to have caused increased unit bid prices for both the cofferdam and bulkhead work, given the restricted work area that is available to them.

The low bid by Triumph Contracting is above the engineer's estimate and adequate funds will be available (Capital Project Number 35132).



Office of the County Executive

Att: Brian J. Schneider, Deputy County Executive

March 3, 2021

Page 2

SUBJECT: RECOMMENDATION OF AWARD

Contract Number: H35132-01G

Title: Five Towns – Five Towns – Lawrence Drainage Pipes

Engineer's Estimate: \$7,291,388.50

Bids Received On: January 5, 2021

All this being considered, the analysis determined that given the projects remote location as well as its proximity to both groundwater and coastal waters, unit pricing may be increased, and therefore, the increased bids received were justified and are acceptable.

If you approve or disapprove of the above request, please signify below, and return this memo to this office for appropriate action.



Kenneth G. Arnold
Commissioner

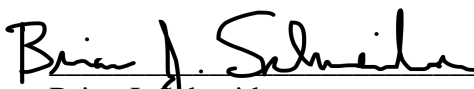
KGA:SS:jd

Attachments

c: Sean E. Sallie, Deputy Commissioner
Rakhal Maitra, Deputy Commissioner
Loretta Dionisio, Assistant to Deputy Commissioner
Richard Iadevaio, Jr., Superintendent of Highway and Drainage Construction
Joseph Cuomo, Planner II, Project Manager
CariAnn Palmese, Program Manager, Armand Corporation

APPROVED:

DISAPPROVED:

 03/03/2021

Brian J. Schneider Date
Deputy County Executive

Brian J. Schneider Date
Deputy County Executive

REQUEST FOR QUALIFICATIONS/REQUEST FOR PROPOSAL/REQUEST FOR BID CONTRACT

PART I: Approval by the Deputy County Executive for Operations must be obtained prior to ANY RFQ/RFP/RFBC

☐ RFQ ☐ RFP ☒ RFBC ☐ In-House or Requirements Work Order

Project Title: Construction of Five Towns Drainage Improvements: Lawrence Pipe Improvements

Department: Public Works Project Manager: Joseph Cuomo Date: 3/11/2020

Service Requested: Construction Services

Justification: Install check valves & increase the diameter of pipes along Meadow Ln, Marbridge Rd, and Barrett Rd. Install new drainage pipes running through the Village of Lawrence golf course and install new inlet structures. This is a GOSR funded project.

Requested by: Department of Public Works Department/Agency/Office

Project Cost for this Phase/Contract: (Plan/Design/Construction/CM/Equipment): \$7,755,000.00

Circle appropriate phase

Total Project Cost: \$9,644,084.53

Includes, design, construction and CM

Date Start Work: October, 2020

Phase being requested

Duration: 15 months

Phase being requested

Capital Funding Approval: YES ☐ NO ☐

SIGNATURE

DATE

Funding Allocation (Capital Project):

See Attached Sheet if multiyear ☐

NIFS Entered:

SIGNATURE

DATE

AIM Entered:

SIGNATURE

DATE

Funding Code:

use this on all encumbrances

Timesheet Code:

use this on timesheets

State Environmental Quality Review Act (SEQRA):

Type II Action ☒ or, Environmental Assessment Form Required ☐

Supplemental Environmental Documentation

NEPA CE

Department Head Approval:

YES ☒ NO ☐

SIGNATURE

DCE/Ops Approval:

YES ☐ NO ☐

SIGNATURE

PART II: To be submitted to Chief Deputy County Executive after Qualifications/Proposals/Contracts are received from Responding vendors.

Vendor	Quote	Comment	See Attached Sheet <input type="checkbox"/>
1.			
2.			
3.			
4.			

DCE/Ops Approval:

YES

NO

Signature

COUNTY OF NASSAU
DEPARTMENT OF PUBLIC WORKS
Inter-Departmental Memo

TO: Joseph Cuomo, Planner II

FROM: Office of the Commissioner

DATE: March 11, 2020

SUBJECT: CSEA Sub-Contracting Approval
C20-041 – Five Town Drainage Improvements - Lawrence Pipes GOSR Project

Please be aware in accordance with Section 32-3 of the CSEA/County CBA, the Department has met with CSEA representatives to discuss your proposed DPW contract referenced above. Pursuant to Section 32-3 of the CSEA/County CBA, CSEA has withdrawn its objection to the above-referenced contract known as **C20-041**.

Please prepare the necessary documentation to proceed with your work. Once the advisement is certified you may issue the contractor a Notice to Proceed.

If you have any questions, please speak with Jonathan Lesman.



Roseann D'Alleva
Deputy Commissioner

RD:las

c: Sean Sallie, Deputy Commissioner
Loretta Dionisio, Assistant to Deputy Commissioner
Jonathan Lesman, Management Analyst II



COUNTY OF NASSAU
DEPARTMENT OF PUBLIC WORKS
Inter-Departmental Memo

TO: Civil Service Employees Association, Nassau Local 830
Att: Ronald Gurrieri, Executive Vice President

FROM: Department of Public Works

DATE: March 10, 2020

SUBJECT: CSEA Notification of a proposed DPW Contract
Five Towns Drainage Improvements – Lawrence Pipes GOSR Project

The following notification is to comply with the spirit and intent of Section 32 of the County/CSEA contract. It should not be implied that the proposed DPW authorization is for work, which has "historically and exclusively been performed by bargaining unit members."

Please refer to CSEA subcontracting approval memo C17-076 dated December 7, 2018. As per the above approval memo, the County shall notify CSEA of each aspect of work being done under this agreement.

1. The work involves the following:
Install check valves & increase the diameter of pipes along Meadow Lane, Marbridge Road, Causeway Road, North Road, and Barrett Road, and install new Inlet structures. This is a GOSR funded project.
2. An estimate of the cost is: \$7,753,211.82
3. An estimate of the duration is: Fifteen (15) months

Should you wish to propose an alternative to the proposed contract/agreement, please respond within ten (10) days, to: Department of Public Works, Att: Roseann D'Alleva, Deputy Commissioner, ext. 1-0525, fax 571-9657.



Roseann D'Alleva
Deputy Commissioner

RD:SS:ac

c: Christopher Nicolino, Director, Office of Labor Relations
Sean Sallie, Deputy Commissioner
Loretta Dionisio, Assistant to Deputy Commissioner
Christopher Yansick, Unit Head, Financial Services Unit
Diane Pyne, Unit Head, Human Resources Unit
Joseph Cuomo, Planner II
CariAnn Palmese, Program Manager



U.S. DEPARTMENT OF JUSTICE
OFFICE OF JUSTICE PROGRAMS
OFFICE OF THE COMPTROLLER

**Certification Regarding
Debarment, Suspension, Ineligibility and Voluntary Exclusion
Lower Tier Covered Transactions
(Sub-Recipient)**

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 28 CFR Part 67, Section 67.510, Participants' responsibilities. The regulations were published as Part VII of the May 26, 1988 *Federal Register* (pages 19160-19211).

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON REVERSE)

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Carlo Cuzzi, President
Name and Title of Authorized Representative

1/27/21
m/d/yy


Signature

1/27/21
Date

Triumph Construction Corp.
Name of Organization

1354 Seneca Avenue, Bronx NY 10474
Address of Organization

U.S. GPO: 1987 OJP FORM 4061/1 (REV. 2/89) Previous editions are obsolete

M/WBE UTILIZATION PLAN

INSTRUCTIONS: This form is submitted at the time of bid or RFP submittal, as outlined in procurement submission instructions. This Utilization Plan must contain a detailed description of the supplies and/or services to be provided by each certified Minority and Women-owned Business Enterprise (M/WBE) under the contract. Attach additional sheets if necessary.

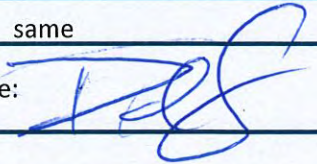
Subrecipient Name:		Project Name:	FIVE TOWNS DRAINAGE IMPROVEMENTS: LAWRENCE PIPE IMPROVEMENTS	
Offeror's Name:	Triumph Construction Corp.	Federal ID Number:	13-4050635	
Address:	1354 Seneca Avenue	Contract Number (if applicable):	H35132-01G	
City State & Zip Code:	Bronx, New York 10474	Phone:	718-861-6060	
Location of Work:	Lawrence, NY Nassau County			

MWBE Target Goal			Proposed MWBE Participation		
Category	Percentage	Amount	Category	Percentage	Amount
MBE:	15	% \$ 1,377,264.75	MBE:	6.5	% \$ 599,000.00
WBE:	15	% \$ 1,377,264.75	WBE:	8	% \$ 733,600.00
Totals:	30	% \$ 2,754,529.50	Totals:	14	% \$1,332,600.00

1. Certified M/WBE Subcontractors/Suppliers Information:		Classification NYS-ESD Certified (Choose One Only)		Federal ID No. :	Detailed Description of Work:	Dollar Value of Subcontractors/Supplies/Services	Intended performance dates on each component of the contract
		MBE	WBE				
A	Name: Citywide Paving	X	X	81-0866427	Asphalt/Paving	\$215,000.00	
	Address: 341 Nassau Ave, Brooklyn NY 11222						
	Email: nicoasphalt@yahoo.com						
	Phone: 718-302-1600						
B	Name: American Pile & Foundation LLC.	X		32-0400145	Piling and Foundations	\$239,000.00	
	Address: 61 County Line Rd, Somerville NJ						
	Email: jhunt@americanpilellc.com						
	Phone: 908-534-7430						
C	Name: Phantom Carting	X		45-2531027	Trucking	\$330,000.00	
	Address: 3 South Drive Valley Stream NY						
	Email:						
	Phone: 347-915-3867						
D	Name: Mirmax Engineering	X		45-2634879	Surveying	\$100,000.00	
	Address: 524 Buchanan Ave, SI NY						
	Email: michael.burack@gmail.com						
	Phone: 347-438-3008						

1. Certified M/WBE Subcontractors/Suppliers Information:		Classification NYS-ESD Certified (Choose One Only)		Federal ID No. :	Detailed Description of Work:	Dollar Value of Subcontractors/Supplies/Services	Intended performance dates on each component of the contract
		MBE	WBE				
A	Name: JP Hogan		X	11-3217729	Sawcutting	\$6,000.00	
	Address: 680 Gulf Ave SI NY						
	Email: apiracha@888jphogan.com						
	Phone: 718-761-7014						
B	Name: 11 Enviro Group LLC.		X	82-4659631	Pipe Cleaning	\$3,000.00	
	Address: 246 Freeman St Brooklyn NY						
	Email: jhunt@americanpilellc.com						
	Phone: 908-534-7430						
C	Name: AAL Construction Services		X	47-5577847	Concrete, Masonry,	\$395,000.00	
	Address: 1 Oak Point Ave, Bronx NY 10474				Landscaping		
	Email:						
	Phone: 201-621-3090						
D	Name: Eastern Landscaping		X	84-2628041	Landscaping	\$29,000.00	
	Address: 788 Shrewsbury Ave Tinton Falls NJ						
	Email: jhely@easternlandscape.com						
	Phone: 908-502-5858						

1. Certified M/WBE Subcontractors/Suppliers Information:		Classification NYS-ESD Certified (Choose One Only)		Federal ID No. :	Detailed Description of Work:	Dollar Value of Subcontractors/Supplies/Services	Intended performance dates on each component of the contract
		MBE	WBE				
A	Name: David Heiner Associates		X	22-2573228	Mechanical Material Supplier	\$75,600.00	
	Address: PO Box 6016- Parsippany NJ						
	Email: rmcaffrey@daveheinerassoc.com						
	Phone: 973-299-9990						
B	Name: Traffic Lane Closures		X	06-1523948	Maintenance and Protection of	\$10,000.00	
	Address: 1214 Rte 52 Carmel, NY 10512				Traffic Material Supplier		
	Email:						
	Phone: 845-228-6100						
C	Name:						
	Address:						
	Email:						
	Phone:						
D	Name:						
	Address:						
	Email:						
	Phone:						

Contractor Use:
Name of Preparer: Dominick Cuzzi
Name of Approver: same
Authorized Signature: 
Date: 2/4/2021
Email: dcuzzi@triumphconstructionny.com
Phone: 718-861-6060