

USDC SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
DOC #: \_\_\_\_\_  
DATE FILED: 8/17/2021

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

UNITED STATES OF AMERICA,  
  
Plaintiff,  
  
v.  
  
TOWER MAINTENANCE CORP. *et al.*,  
  
Defendants.

**19 Civ. 2096 (AT)(RWL)**

**STIPULATION AND ORDER OF SETTLEMENT AND DISMISSAL  
AS TO DEFENDANT TOWER MAINTENANCE CORP.**

WHEREAS, this Stipulation and Order of Settlement and Dismissal (“Stipulation”) is entered into by and among plaintiff the United States of America (the “Government” or “United States”), by its attorney, Audrey Strauss, United States Attorney for the Southern District of New York, and defendant Tower Maintenance Corp. (“Tower,” and together with the Government, the “Parties”), by its authorized representatives;

WHEREAS, the United States Department of Transportation (“US-DOT”) promulgated regulations entitled “Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs” to provide opportunities for businesses owned by socially and economically disadvantaged individuals to work on federally-funded public construction projects, *see* 49 C.F.R. Part 26 (the “DBE Regulations”);

WHEREAS, Tower is a New York-based steel painting company that has been certified as a DBE since approximately 2008 and has performed steel painting services in its capacity as a certified DBE on federally-funded construction projects;

WHEREAS, the DBE Regulations require that certain federally-funded projects have specific goals for DBE participation and that contractors make good faith efforts to meet or exceed those DBE goals, *see* 49 C.F.R. §§ 26.37, 26.45, 26.53;

WHEREAS, under the DBE Regulations, payments made to a DBE contractor count toward the DBE goal only if the DBE is performing a “commercially useful function” on the project, meaning that the DBE is “responsible for execution of the work on the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved,” 49 C.F.R. § 26.55;

WHEREAS, US-DOT provided federal funds to the New York City Department of Transportation (“NYC-DOT”) for the Brooklyn-Bridge Rehabilitation project (Contract No. BRC 270 C/P (Contract #6)) (the “Brooklyn Bridge Project”), and NYC-DOT set forth a goal that 14% of the value of the work performed on the project go to DBEs;

WHEREAS, US-DOT provided federal funds to the Metropolitan Transportation Authority and the New York City Transit Authority (together, “MTA”) for work on an elevated structure at Queens Plaza (Contract No. C-34904) (the “Queens Plaza Project”), and MTA set forth a DBE participation goal of 17% of the value of the work on the project;

WHEREAS, the Government commenced this action by filing a complaint in this Court against Tower and its co-defendants under the False Claims Act, codified at 31 U.S.C. §§ 3729-3733, and common law, and amended the complaint on August 15, 2019 (the “Amended Complaint”);

WHEREAS, the Amended Complaint alleges that Ahern Painting Contractors, Inc. (“Ahern”), a former co-defendant in this matter that executed a Stipulation and Order of Settlement and Dismissal with the Government in October 2019 (ECF No. 41), entered into contracts to provide industrial painting work on the Brooklyn Bridge Project and the Queens

Plaza Project, and agreed to make good faith efforts to meet or exceed a DBE participation goal of approximately 14% of the value of the Ahern Painting's Brooklyn Bridge contract and 17% of the Queens Plaza contract. Ahern represented to NYC-DOT and MTA that it would fulfill the DBE participation goals for the Brooklyn Bridge and Queens Plaza Projects by retaining Tower, a DBE, to perform steel painting work, in connection with which Tower would perform a commercially useful function on both projects as required by the DBE regulations, including by managing and supervising the steel painting work assigned to Tower;

WHEREAS, the Amended Complaint further alleges that co-defendant Spectrum Painting Corp. ("Spectrum") – a non-DBE – managed and supervised much of the work that Tower was retained to perform as a DBE on the Brooklyn Bridge and Queens Plaza Projects such that Tower did not perform a commercially useful function on either project, and Tower thereby knowingly or recklessly presented or caused to be presented false or fraudulent claims to NYC-DOT and to the MTA for payment for the DBE work (the "Covered Conduct");

WHEREAS, the Amended Complaint makes no allegations regarding the quality of performance of steel painting work by Tower on the Brooklyn Bridge or Queens Plaza Projects; any misconduct or violations with respect to any projects other than the Brooklyn Bridge or Queens Plaza Projects; or any distinct DBE participation goal imposed on any party (including Tower) other than the DBE participation goals imposed on Ahern;

WHEREAS, the Parties have, through this Stipulation, reached a mutually agreeable resolution addressing the Government's claims in the Amended Complaint against Tower for the Covered Conduct;

NOW, THEREFORE, upon the Parties' agreement IT IS HEREBY ORDERED that:

## TERMS AND CONDITIONS

1. The Parties agree that this Court has subject matter jurisdiction over this action and consent to this Court's exercise of personal jurisdiction over each of them.
2. Tower admits, acknowledges and accepts responsibility for the following conduct (the "Admitted Conduct"):
  - a. In early 2010, Tower knew that Ahern entered into an agreement with Skanska Koch Inc. ("Skanska") for industrial painting and rehabilitation work on the Brooklyn Bridge Project. Tower understood that as a subcontractor on the Brooklyn Bridge Project, Ahern was obligated to meet or exceed Ahern's DBE participation goal on the project. Tower also knew that Ahern expected to use Tower, a certified DBE, to fulfill a substantial part of Ahern's DBE participation goal for the Brooklyn Bridge Project.
  - b. In early 2010, a then-employee of Tower and an employee at Spectrum (the "Spectrum Manager") agreed that Spectrum would provide Tower certain financial assistance (in the form of loans and use of equipment) and project management services on the Brooklyn Bridge Project. Pursuant to that agreement, the Tower employee and the Spectrum Manager conducted a walk-through of the Brooklyn Bridge worksite with an Ahern superintendent for the Brooklyn Bridge Project. The Spectrum Manager participated in the walk-through to assist Tower in preparing the bid Tower submitted to Ahern for its anticipated work as a DBE subcontractor on the Brooklyn Bridge project.
  - c. In mid-2010, Tower in fact entered into a subcontract with Ahern to perform painting and blasting work on the Brooklyn Bridge Project, which Tower expected would be counted toward Ahern's DBE participation goal for the project.
  - d. In connection with the Brooklyn Bridge Project, Tower signed and submitted to Ahern various documents stating that the DBE work subcontracted to Tower would be performed by Tower alone. Specifically, Tower signed and submitted:
    - (1) A DBE Utilization Worksheet dated December 1, 2010, in which Tower acknowledged that "no work may be assigned by [Tower] to a second tier subcontractor"; and
    - (2) Approximately 8 Contractor Reports of Contract Payments submitted between March 2013 and July 2015 in connection with claims for payment, each of which listed the amount Ahern paid/owed to Tower as of the date of the report, and each of which

included a certification by Tower that the “work/services/product was performed/supplied and supervised solely” by Tower, as well as a certification by Ahern that the payment made was for work performed by Tower.

- e. Tower knew that the DBE Utilization Worksheet and the Contractor Reports of Contract Payments were submitted to NYC-DOT. NYC-DOT relied on the DBE Utilization Worksheet and the Contractor Reports of Contract Payments signed by Tower to determine whether Ahern met the DBE goals for the Brooklyn Bridge Project.
- f. In mid-2011, Tower knew that Ahern entered into a contract with the MTA to provide overcoat painting on the elevated structure at the Queens Plaza subway station, and that Ahern was obligated to meet or exceed its DBE participation goal for the Queens Plaza Project. Tower also knew that Ahern was going to use Tower as the DBE contractor on the Queens Plaza Project to meet Ahern’s DBE participation goal. In 2011, Tower entered into a subcontract with Ahern to perform painting and blasting work on the Queens Plaza Project, which Tower expected would be counted toward Ahern’s DBE participation goal for that project.
- g. In May and June 2011, Tower and Spectrum memorialized two “consulting agreements” for painting and blasting work on the Brooklyn Bridge and Queens Plaza Projects. Pursuant to those agreements, Tower and Spectrum agreed that Spectrum would “perform certain consulting services,” including “providing project management support” as requested by Tower, and would furnish equipment to Tower for the two projects. The agreements further provided that Spectrum would be reimbursed for certain expenses and receive 50% of all profits from the Tower DBE work on the projects.
- h. The key terms of the consulting agreements between Tower and Spectrum – including Tower’s agreement to pay Spectrum 50% of all of its profits from the two projects, Spectrum’s agreement to provide project management support, and Spectrum’s agreement to furnish equipment to Tower for the projects – were not formally disclosed in writing to Ahern, nor were they disclosed in any way to Skanska, NYC-DOT, or MTA. Tower represented to Ahern that it had retained Spectrum as a “Lead, Health, Safety, and Quality Control” consultant for the Brooklyn Bridge Project and the Queens Plaza Project. Tower informed Ahern of Tower’s arrangement with Spectrum, but Tower was never asked to provide additional documentation regarding its arrangement with Spectrum nor did Tower ask whether it was required to provide further disclosures.
- i. Consistent with the consulting agreements, Tower requested that Spectrum provide project management support for the DBE work that Tower was retained to perform on the Brooklyn Bridge and Queens Plaza Projects. Spectrum provided the requested project management services, including by

overseeing the performance of certain jobs on the sites and ensuring that work performed conformed to project plans and specifications.

- j. In addition to the Spectrum Manager, Spectrum had two other employees providing project management support to Tower for the DBE work subcontracted to Tower on the Brooklyn Bridge and Queens Plaza Projects: a superintendent (the “Spectrum Superintendent”) and a health and safety supervisor (the “Spectrum Safety Supervisor”). All three Spectrum employees reported to Spectrum’s president and Tower’s president. The Spectrum Manager, the Spectrum Superintendent, and the Spectrum Safety Supervisor were Spectrum employees paid by Spectrum (although Spectrum sought reimbursement from Tower for amounts paid to the Spectrum Superintendent and was reimbursed in part by Tower, and Tower paid the Spectrum Safety Supervisor from September until December 2012).
  - k. In documents that Tower submitted to Ahern in 2010, Tower identified the Spectrum Manager as a “Tower VP” or as a Tower employee working on the Brooklyn Bridge Project. And in documents Tower submitted to Ahern in 2011 in connection with the Queens Plaza Project, Tower identified the Spectrum Manager as a “Director” of Tower. In addition, the Spectrum Manager, the Spectrum Superintendent, and the Spectrum Safety Supervisor identified themselves to others working on the Brooklyn Bridge and Queens Plaza Projects as Tower employees.
  - l. In March 2013, Tower failed to correct the misstatement of the Spectrum Manager who attended a meeting that Tower and Ahern had with NYC-DOT regarding the status of Tower’s DBE work on the Brooklyn Bridge Project, including when the Spectrum Manager identified himself as a Tower representative, rather than a Spectrum employee.
  - m. In addition to informing Ahern that Spectrum would perform work on the Brooklyn Bridge and Queens Plaza projects, Tower should have disclosed Spectrum’s work to the NYC-DOT and MTA DBE officers designated on the projects, and it should have sought clarification from Ahern regarding whether Ahern disclosed Spectrum’s involvement in accordance with Ahern’s obligations.
  - n. Tower should have proactively disclosed to the relevant DBE officer the details of its financial arrangement with Spectrum relative to the Brooklyn Bridge and Queens Plaza Projects, including that Tower and Spectrum’s agreements relative to the projects included profit sharing and provisions for Spectrum to provide Tower financing for Tower’s performance of work on the projects.
3. Tower shall pay to the Government the sum of \$150,000 (the “Settlement Amount”), in accordance with instructions to be provided by the Financial Litigation Unit of the

United States Attorney's Office for the Southern District of New York. The entire Settlement Amount constitutes restitution to the United States. Tower shall pay the Settlement Amount in six installment payments according to the schedule set forth below:

- a. Tower shall make a first installment payment of twenty-five thousand dollars (\$25,000) within sixty (60) business days of the Effective Date;
- b. On or before September 1, 2022, Tower shall make a payment of twenty-five thousand dollars (\$25,000);
- c. On or before September 1, 2023, Tower shall make a payment of twenty-five thousand dollars (\$25,000);
- d. On or before September 1, 2024, Tower shall make a payment of twenty-five thousand dollars (\$25,000);
- e. On or before September 1, 2025, Tower shall make a payment of twenty-five thousand dollars (\$25,000);
- f. On or before September 1, 2026, Tower shall make a payment of twenty-five thousand dollars (\$25,000).

4. Tower shall execute and agree to the entry of a consent judgment in favor of the Government and against Tower in the amount of \$150,000, a copy of which is attached hereto as Exhibit A (the "Consent Judgment"). The Government may use the Consent Judgment to obtain a security interest in any asset or property of Tower, but shall not engage in other collection activity with respect to the Consent Judgment so long as Tower fully complies with the terms of this Stipulation. Pursuant to this Stipulation, Tower agrees to pay and the Government agrees to accept the Settlement Amount in full satisfaction of the Consent Judgment.

Should Tower comply fully with the payment schedule set forth in Paragraph 3 above as well as the other terms of this Stipulation, the Consent Judgment shall be deemed to be satisfied in full and, upon Tower's request, the Government shall file with the Clerk of the Court and deliver to Tower a Full Satisfaction of Judgment. In the event that Tower fully pays the Settlement Amount faster than as provided in the payment schedule set forth in Paragraph 3 above, and fully

complies with all other terms of the Stipulation, the Consent Judgment shall be deemed to be satisfied in full and, upon Tower's request, the Government shall file with the Clerk of the Court and deliver to Tower a Full Satisfaction of Judgment. Should Tower fail to comply fully with the payment schedule set forth in Paragraph 3 above or any other term of this Stipulation, Tower shall be in default of this Stipulation, in which case the Government may take any of the actions set forth in Paragraph 9 below.

5. Tower agrees to cooperate fully and truthfully with the Government's investigation of individuals and entities not released in this Stipulation. Upon reasonable notice, Tower shall encourage, and agrees not to impair, the cooperation of its directors, officers, and employees, and shall use its best efforts to make available, and encourage, the cooperation of former directors, officers, and employees for interviews and testimony, consistent with the rights and privileges of such individuals. Tower further agrees to furnish to the Government, upon request, complete and unredacted copies of all non-privileged documents, reports, memoranda of interviews, and records in its possession, custody, or control concerning any investigation of the Covered Conduct that it has undertaken, or that has been performed by another on its behalf.

6. Subject to the exceptions in Paragraph 8 (concerning reserved claims) below and subject to Paragraph 9 (concerning default), Paragraph 11 (concerning bankruptcy proceedings), and Paragraph 13 (concerning disclosure of financial information) below, and conditioned on Tower's full compliance with the terms of this Stipulation, including full payment of the Settlement Amount to the Government pursuant to Paragraph 3 above, the Government releases Tower, including its subsidiaries and corporate predecessors, successors and assigns, from any civil or administrative monetary claim that the United States has for the Covered Conduct under the FCA, the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a, the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812, and the common law theories of fraud, payment by



mistake, and unjust enrichment. For avoidance of doubt, this Stipulation does not release any current or former officer, director, employee, or agent of Tower from liability of any kind.

7. Tower fully and finally releases the United States, its agencies, officers, employees, servants, and agents from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that Tower has asserted, could have asserted, or may assert in the future against the United States, its agencies, officers, employees, servants, or agents related to the Covered Conduct or the United States' investigation, prosecution and settlement thereof.

8. Notwithstanding the releases given in Paragraph 6 above, or any other term of this Stipulation, the following claims of the Government are specifically reserved and are not released by this Stipulation:

- a. any liability arising under Title 26, United States Code (Internal Revenue Code);
- b. any criminal liability;
- c. except as explicitly stated in this Stipulation, any administrative liability or enforcement right, including but not limited to the suspension or debarment rights of any federal agency;
- d. any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;
- e. any liability based upon obligations created by this Stipulation; and
- f. any liability of individuals.

9. The Settlement Amount represents the amount the United States is willing to accept in compromise of its civil claims arising from the Covered Conduct, due solely to Tower's financial condition as reflected in the Financial Disclosures referenced in Paragraph 13 below. Tower shall be in default of this Stipulation if Tower fails to pay the Settlement Amount as provided in the payment schedule set forth in Paragraph 3 above or if Tower fails to comply materially with any other term of this Stipulation that applies to it ("Default"). The Government

will provide a written Notice of Default to Tower of any Default in the manner set forth in Paragraph 23 below. Tower shall then have an opportunity to cure the Default within seven (7) calendar days from the date of receipt of the Notice of Default by making the payment due under the payment schedule. If Tower fails to cure the Default within seven (7) calendar days of receiving the Notice of Default and in the absence of an agreement with the United States to modified payment schedule (“Uncured Default”), the remaining unpaid balance of the Settlement Amount shall become immediately due and payable. In the event of an Uncured Default, the United States may initiate a collection action or take any other action with respect to the unpaid portion of the amount specified in the Consent Judgment attached hereto as Exhibit A. Tower also agrees that the United States, at its sole discretion, may (i) retain any payments previously made, rescind this Stipulation, and reinstate the claims asserted against Tower in the Amended Complaint, or bring any civil and/or administrative claim, action, or proceeding against Tower for the claims that would otherwise be covered by the releases provided in Paragraph 6 above, with any recovery reduced by the amount of any payments previously made by Tower to the Government under this Stipulation; (ii) take any action to enforce this Stipulation in a new action or by reinstating the Amended Complaint; (iii) offset the remaining unpaid balance from any amounts due and owing to Tower and/or affiliated companies by any department, agency, or agent of the Government at the time of Default or subsequently; and/or (iv) exercise any other right granted by law, or under the terms of this Stipulation, or recognizable at common law or in equity. The Government shall be entitled to any other rights granted by law or in equity by reason of Default, including referral of this matter for private collection. In the event the Government pursues a collection action, Tower agrees immediately to pay the Government the greater of (i) a ten-percent (10%) surcharge of the amount collected, as allowed by 28 U.S.C. § 3011(a), or (ii) the Government’s reasonable attorneys’ fees and expenses incurred in such an action. In the event

that the Government opts to rescind this Stipulation pursuant to this paragraph, Tower waives and agrees not to plead, argue, or otherwise raise any defenses of statute of limitations, laches, estoppel or similar theories, to any civil or administrative claims that (i) are filed by the Government against Tower within 120 days of written notification that this Stipulation has been rescinded, and (ii) relate to the Covered Conduct, except to the extent these defenses were available on August 15, 2019. Tower agrees not to contest any offset, recoupment, and/or collection action undertaken by the Government pursuant to this paragraph, either administratively or in any state or federal court, except on the grounds of actual payment to the Government.

10. Tower, having truthfully admitted to the Admitted Conduct set forth in Paragraph 2 above, agrees it shall not, through its attorneys, agents, officers, or employees, make any public statement, including but not limited to, any statement in a press release, social media forum, or website, that contradicts or is inconsistent with the Admitted Conduct or suggests that the Admitted Conduct is not wrongful (a “Contradictory Statement”). Any Contradictory Statement by Tower, its attorneys, agents, officers, or employees, shall constitute a violation of this Stipulation, thereby authorizing the Government to pursue any of the remedies set forth in Paragraph 9 above, or seek other appropriate relief from the Court. Before pursuing any remedy, the Government shall notify Tower that it has determined that Tower has made a Contradictory Statement. Upon receiving notice from the Government, Tower may cure the violation by repudiating the Contradictory Statement in a press release or other public statement within four business days. If Tower learns of a potential Contradictory Statement by its attorneys, agents, officers, or employees, Tower must notify the Government of the statement within 24 hours. The decision as to whether any statement constitutes a Contradictory Statement or will be imputed to Tower for the purpose of this Stipulation, or whether Tower adequately repudiated a Contradictory Statement to cure a violation of this Stipulation, shall be within the sole discretion of the Government. Consistent with this

provision, Tower may raise defenses and/or assert affirmative claims or defenses in any proceeding brought by private and/or public parties, so long as doing so would not contradict or be inconsistent with the Admitted Conduct.

11. Tower waives and shall not assert any defenses it may have to any criminal prosecution or administrative action relating to the Covered Conduct that may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Stipulation bars a remedy sought in such criminal prosecution or administrative action.

12. In exchange for valuable consideration provided in this Stipulation, Tower acknowledges the following:

- a. Tower has reviewed its financial situation and warrants that it is solvent within the meaning of 11 U.S.C. §§ 547(b)(3) and 548(a)(1)(B)(ii)(I) and shall remain solvent following payment to the United States of the Settlement Amount.
- b. In evaluating whether to execute this Agreement, the Parties intend that the mutual promises, covenants, and obligations set forth herein constitute a contemporaneous exchange for new value given to Tower, within the meaning of 11 U.S.C. § 547(c)(1), and the Parties conclude that these mutual promises, covenants, and obligations do, in fact, constitute such a contemporaneous exchange.
- c. The mutual promises, covenants, and obligations set forth herein are intended by the Parties to, and do in fact, constitute a reasonably equivalent exchange of value.
- d. The Parties do not intend to hinder, delay, or defraud any entity to which Tower was or became indebted on or after the date of any transfer contemplated in this Stipulation, within the meaning of 11 U.S.C. § 548(a)(1).
- e. If Tower's obligations under this Stipulation are avoided for any reason (including but not limited to through the exercise of a trustee's avoidance powers under the Bankruptcy Code) or if, before the Settlement Amount is paid in full, Tower or a third party commences a case, proceeding, or other action under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors seeking any order for relief of Tower's debts, or to adjudicate Tower as bankrupt or insolvent, or seeking appointment of a receiver, trustee, custodian, or other similar official for Tower or for all or any substantial part of Tower's assets:

- (1) the Government may rescind the releases in this Stipulation and bring any civil and/or administrative claim, action, or proceeding against Tower for the claims that would otherwise be covered by the releases provided in Paragraph 6 above; and
  - (2) the Government has an undisputed, noncontingent, and liquidated allowed claim against Tower in the amount of one hundred fifty thousand dollars (\$150,000), less any payments received pursuant to the Stipulation, provided, however, that such payments are not otherwise avoided and recovered from the Government by Tower, a receiver, trustee, custodian, or other similar official for Tower; and
- f. Tower agrees that any civil and/or administrative claim, action, or proceeding brought by the Government under Paragraph 11(e) above is not subject to an “automatic stay” pursuant to 11 U.S.C. § 362(a) because it would be an exercise of the Government’s police and regulatory power. Tower shall not argue or otherwise contend that the Government’s claim, action, or proceeding is subject to an automatic stay and, to the extent necessary, consents to relief from the automatic stay for cause under 11 U.S.C. § 362(d)(1). Tower waives and shall not plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any such civil or administrative claim, action, or proceeding brought by the Government within 120 days of written notification to Tower that the releases have been rescinded pursuant to this paragraph, except to the extent such defenses were available on August 15, 2019.

13. Tower has provided sworn financial disclosures and supporting documents (“Financial Disclosures”) to the Government and the Government has relied on the accuracy and completeness of those Financial Disclosures in reaching this Stipulation. Tower warrants that the Financial Disclosures are complete, accurate, and current. If the Government learns of asset(s) in which Tower had an interest at the time of the execution of this Stipulation that were not disclosed in the Financial Disclosures, or if the Government learns of any false statement or misrepresentation by Tower on, or in connection with, the Financial Disclosures, and if such nondisclosure, false statement, or misrepresentation changes the estimated net worth of Tower as reflected in the Financial Disclosures by fifteen thousand dollars (\$15,000) or more, the Government may at its option: (a) rescind this Stipulation and reinstate its lawsuit based on the Covered Conduct, or (b) let the Stipulation stand and collect the full Settlement Amount plus one

hundred percent (100%) of the net value of Tower's previously undisclosed assets. Tower agrees not to contest any collection action undertaken by the Government pursuant to this provision, and agrees that it will immediately pay the Government the greater of (i) a ten-percent (10%) surcharge of the amount collected in the collection action, as allowed by 28 U.S.C. § 3011(a), or (ii) the Government's reasonable attorneys' fees and expenses incurred in such an action. In the event that the Government pursuant to this paragraph rescinds this Stipulation, Tower waives and agrees not to plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any civil or administrative claims that (a) are filed by the Government within 120 calendar days of written notification to Tower that this Stipulation has been rescinded, and (b) relate to the Covered Conduct except to the extent these defenses were available on August 15, 2019.

14. Tower agrees to the following:

- a. Unallowable Costs Defined: All costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47) incurred by or on behalf of Tower and its present or former officers, directors, employees, shareholders, and agents in connection with:
  - (1) the matters covered by this Stipulation;
  - (2) the United States' audit(s) and civil investigation(s) of the matters covered by this Stipulation;
  - (3) Tower's investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil investigation(s) in connection with the matters covered by this Stipulation (including attorney's fees);
  - (4) the negotiation and performance of this Stipulation;
  - (5) the payment Tower makes to the United States pursuant to this Agreement,

are unallowable costs for government contracting purposes (hereinafter referred to as Unallowable Costs).

- b. Future Treatment of Unallowable Costs: Unallowable Costs will be separately determined and accounted for by Tower, and Tower shall not charge such Unallowable Costs directly or indirectly to any contract with the United States.
- c. Treatment of Unallowable Costs Previously Submitted for Payment: Within 90 days of the Effective Date of this Stipulation, Tower shall identify and repay by adjustment to future claims for payment or otherwise any Unallowable Costs included in payments previously sought by Tower or any of its subsidiaries or affiliates from the United States. Tower agrees that the United States, at a minimum, shall be entitled to recoup from Tower any overpayment plus applicable interest and penalties as a result of the inclusion of such Unallowable Costs on previously submitted requests for payment. The United States, including the Department of Justice and/or the affected agencies, reserves its rights to audit, examine, or re-examine Tower's books and records and to disagree with any calculations submitted by Tower or any of its subsidiaries or affiliates regarding any Unallowable Costs included in payments previously sought by Tower, or the effect of any such Unallowable Costs on the amount of such payments.

15. This Stipulation is intended to be for the benefit of the Parties only. The Parties do not release any claims against any other person or entity except as otherwise provided herein.

16. Each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Stipulation.

17. Any failure by the Government to insist upon the full or material performance of any of the provisions of this Stipulation shall not be deemed a waiver of any of the provisions hereof, and the Government, notwithstanding that failure, shall have the right thereafter to insist upon the full or material performance of any and all of the provisions of this Stipulation.

18. This Stipulation is governed by the laws of the United States. The exclusive jurisdiction and venue for any dispute relating to this Stipulation is the United States District Court for the Southern District of New York. For purposes of construing this Stipulation, this Stipulation shall be deemed to have been drafted by all Parties to this Stipulation and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

19. This Stipulation constitutes the complete agreement between the Parties with respect to the subject matter hereof. This Stipulation may not be amended except by written consent of the Parties. Forbearance by the Government from pursuing any remedy or relief available to it under this Agreement shall not constitute a waiver of rights under this Stipulation.

20. The undersigned counsel represent and warrant that they are fully authorized to execute this Stipulation on behalf of the persons and the entities indicated below.

21. This Stipulation is binding on Tower's successors, transferees, heirs, and assigns.

22. Any notice pursuant to this Stipulation shall be in writing and shall, unless expressly provided otherwise herein, be delivered by hand, express courier, or e-mail transmission followed by postage-prepaid mail, and shall be addressed as follows:

TO THE UNITED STATES:  
Mónica P. Folch and David J. Kennedy  
Assistant United States Attorneys  
United States Attorney's Office  
Southern District of New York  
86 Chambers Street, Third Floor  
New York, New York 10007  
Email: monica.folch@usdoj.gov  
david.kennedy2@usdoj.gov

TO DEFENDANT TOWER:  
Chris Georgoulis  
GEORGOULIS PLLC  
120 Wall Street, Suite 1803  
New York, New York 10005  
T: 212-425-7854 F: 212-422-5360  
Email: cg@georgoulis.com

23. This Stipulation may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Stipulation. E-mails that attach signatures in PDF form or facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Stipulation.




24. The effective date of this Stipulation is the date upon which the Stipulation is approved by the Court (the "Effective Date").

Agreed to by:

Dated: New York, New York  
August 16, 2021

**FOR THE UNITED STATES:**

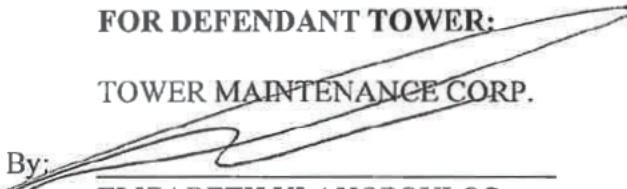
AUDREY STRAUSS  
United States Attorney for the  
Southern District of New York

By:   
MÓNICA P. FOLCH  
DAVID J. KENNEDY  
Assistant United States Attorneys  
86 Chambers Street, Third Floor  
New York, New York 10007  
Tel.: (212) 637-6659/2733

Dated: New York, New York  
Aug 16, 2021

**FOR DEFENDANT TOWER:**


TOWER MAINTENANCE CORP.

By:   
ELIZABETH VLAHOPOULOS  
President

By:   
GEORGOULIS PLLC  
CHRIS GEORGOULIS  
120 Wall Street, Suite 1803  
New York, New York 10005  
Tel: 212-425-7854  
Email: cg@georgoulis.com

SO ORDERED.

Dated: August 17, 2021  
New York, New York

  
ANALISA TORRES  
United States District Judge