

NON-PROSECUTION AGREEMENT BETWEEN SCHIAVONE
CONSTRUCTION CO. LLC AND THE UNITED STATES
ATTORNEY'S OFFICE FOR THE EASTERN DISTRICT OF NEW YORK

SCHIAVONE CONSTRUCTION CO. LLC ("SCHIAVONE") by its undersigned President, Jose Antonio Lopez-Monis Plaza, and its undersigned attorney, Austin V. Campriello, both of whom are acting pursuant to authority granted by SCHIAVONE's Board of Managers, and the UNITED STATES ATTORNEY'S OFFICE FOR THE EASTERN DISTRICT OF NEW YORK (the "Office"), hereby enter into this Agreement (the "Agreement").

I. Introduction

1. On December 27, 2007, Dragados Inversiones USA, S.L. ("Dragados") purchased Schiavone Construction Co. ("OLD SCHIAVONE") from the shareholders of OLD SCHIAVONE. Effective December 31, 2008, OLD SCHIAVONE was merged into SCHIAVONE.

2. The Office has informed SCHIAVONE that since January 2006, OLD SCHIAVONE has been the subject of a criminal investigation conducted by the Office, the United States Department of Labor, Office of the Inspector General ("DOL-OIG"), the United States Department of Transportation, Office of the Inspector General ("DOT-OIG"), the Metropolitan Transportation Authority, Office of the Inspector General ("MTA-OIG"), the New York City Department of Investigation ("DOI") and the New York State Attorney General's Office, Organized Crime Task Force ("OCTF").

3. SCHIAVONE acknowledges that between 2002 and 2007, as a result of the conduct of certain OLD SCHIAVONE executives and employees, OLD SCHIAVONE violated Title 18, United States Code, Section 1341, as set forth in the Joint Statement of Facts (Attachment A) (hereinafter referred to as the "Unlawful Conduct"), by engaging in a scheme to defraud the New York City Department of Environmental Protection (the "DEP"), the MTA, and certified companies under the New York State Minority and Women-owned Business Enterprise and Disadvantaged Business Enterprise ("MWDBE") programs in connection with four capital construction projects OLD SCHIAVONE was performing.

4. SCHIAVONE accepts responsibility to remediate OLD SCHIAVONE's commission of the Unlawful Conduct by entering into the Agreement and by, among other things, the proactive and remedial actions that it has taken to date, its continuing full cooperation with the Office, the DOL-OIG, the DOT-OIG, the MTA-OIG, DOI and OCTF (collectively, the "Investigating Agencies") and the other undertakings as set forth in the Agreement. The Agreement will be in effect for three years, to begin on the date of execution.

II. Schiavone's Remedial Measures

5. From February 7, 2008, when a search warrant was executed by the Office on SCHIAVONE's premises and SCHIAVONE received a grand jury subpoena, SCHIAVONE has cooperated with the Office's investigation, which has included providing documents

and making SCHIAVONE employees available for interviews upon the request of the Office. SCHIAVONE has provided the DEP and the MTA with amended reports to adjust the MWDBE participation percentage amounts performed by the MWDBE companies for the contract work regarding the DEP and MTA Projects to correct misreporting caused by the Unlawful Conduct. SCHIAVONE has also informed the Office that the three OLD SCHIAVONE employees who were the main focus of the Office's investigation are no longer employed by SCHIAVONE.

6. SCHIAVONE agrees to execute a Stipulation Of Settlement And Decree of Forfeiture (Attachment B), which is appended hereto and its terms incorporated herein by reference, and pay forfeiture to the United States of America in the amount of \$20,000,000. Such payment shall be made by certified check made payable to the "United States Department of the Treasury," and shall be delivered to AUSA Kathleen Nandon on or before December 15, 2010.

7. SCHIAVONE agrees to pay investigative costs to the MTA-OIG in the amount of \$1,833,500, and investigative costs to DOI in the amount of \$539,760.

8. SCHIAVONE represents that its Board of Managers and senior management have taken numerous proactive and remedial actions in response to the Unlawful Conduct, which included:

- (A) In September 2008, SCHIAVONE established the position of Ethics and Compliance Officer (the "Compliance Officer") and hired an

attorney to fill that position. The Compliance Officer reports directly to the President and has direct access to the Board of Managers. The Compliance Officer has created a Contractor Compliance MWDBE Policy and Procedures Manual and distributed it to employees. The Compliance Officer has also updated SCHIAVONE's Code of Ethics and Code of Business Conduct, which was created after the purchase of OLD SCHIAVONE.

- (B) The Compliance Officer has implemented a compliance and ethics program at SCHIAVONE modeled after the Federal Sentencing Guidelines recommendations that includes training and education to all SCHIAVONE employees regarding SCHIAVONE's Code of Ethics, anonymous reporting mechanisms within SCHIAVONE for employees to report fraud or misconduct, internal controls, audit and monitoring, discipline and incentives, risk analysis and corrective action.
- (C) SCHIAVONE has also implemented MWDBE training for all its employees that includes distribution and discussion of the regulations for each of those programs and government reports regarding the implementation, defrauding and enforcement of these programs.
- (D) SCHIAVONE has implemented a hotline to its Compliance Officer, which includes an email reporting mechanism, which enables employees to report suspicions of fraud or other misconduct within SCHIAVONE and/or related to SCHIAVONE construction projects.
- (E) SCHIAVONE has retained Thatcher Associates to perform an independent review of SCHIAVONE's MWDBE Policies and Procedures as written and implemented on MTA projects. SCHIAVONE has authorized Thatcher Associates to share the results of their review directly with the MTA-OIG.

9. SCHIAVONE agrees that its continued cooperation with the Office's investigation and the Investigating Agencies, which is in effect for three years from the date the Agreement is executed, includes, but is not limited to, the following:

(A) Complete and truthful disclosing of information that SCHIAVONE possesses that the Office and/or the Investigating Agencies request concerning the Unlawful Conduct. Should any waiver of privilege be required to make such disclosure, the Office notes that it shall be in conformity with the requirements set forth in the United States Department of Justice Memorandum entitled Principles of Federal Prosecution of Business Organizations;

(B) Assembling, organizing and/or providing all information, testimony, documents, records or other tangible material that SCHIAVONE possesses or has in its custody, or control, as may be reasonably requested by the Office and/or the Investigating Agencies;

(C) Using the reasonable best efforts of SCHIAVONE to make available any present and former employees of SCHIAVONE or OLD SCHIAVONE to provide information and/or testimony as requested by the Office and/or the Investigating Agencies, including but not limited to, sworn testimony in court proceedings with respect to the Unlawful Conduct, as well as interviews with the Office and law enforcement officials.

Cooperation under this paragraph shall include identification of witnesses who, to the knowledge of SCHIAVONE, may have material information regarding the Unlawful Conduct, or records which may have material information regarding the Unlawful Conduct;

(D) Providing any information, testimony, documents, records or other tangible material deemed necessary by the Office or a court with respect to the Unlawful Conduct to establish the evidentiary foundation necessary to admit into evidence documents in any criminal or other proceeding; and

(E) Consenting to any and all disclosures of any information, testimony, documents, records or other tangible material provided by SCHIAVONE to the Office pursuant to the Agreement to any other governmental agency designated by the Office as the Office deems appropriate, and with respect to any such materials that constitute "matters occurring before the grand jury" within the meaning of Rule 6(e) of the Federal Rules of Criminal Procedure, consenting to (i) any order sought by the Office permitting such disclosures, and (ii) the Office's ex parte or in camera application for such orders.

III. Consequences of Breach and Additional Terms

10. In consideration of SCHIAVONE's (a) acceptance of responsibility to remediate OLD SCHIAVONE's Unlawful Conduct as set forth in the Joint Statement of Facts (Attachment A); (b) cooperation to date and agreement to continue to cooperate with the Office and the Investigating Agencies as described in

paragraph 9; (c) agreement to make payment as set forth in paragraph 6 of \$20,000,000 in forfeiture to the United States of America; (d) agreement to make respective payments of investigative costs of \$1,833,500 to the MTA-OIG and \$539,760 to DOI as set forth in paragraph 7; (e) compliance in the future with all applicable laws, including federal, state and local construction contracting laws and regulations, including MWDBE and Local Business Enterprise program laws and regulations; and (f) agreement otherwise to comply with all of the terms of the Agreement, the Office will not institute or pursue any criminal charges against SCHIAVONE for the Unlawful Conduct. This non-prosecution provision binds only the Office. The Office shall bring this agreement to the attention of other prosecuting offices upon SCHIAVONE's request.

11. SCHIAVONE understands and agrees that should the Office, in its sole discretion, determine that SCHIAVONE has deliberately given false, incomplete, or misleading information under the Agreement, has otherwise deliberately violated any provisions of the Agreement or has committed, or attempted to commit, any crime other than the Unlawful Conduct, then SCHIAVONE will be subject to prosecution for any state or federal criminal violation of which the Office has knowledge, including prosecution relating to the Unlawful Conduct. SCHIAVONE agrees that in the event of the foregoing, any prosecution relating to the Unlawful Conduct that is not time-barred by the applicable

statute of limitations on the date of the Agreement may be commenced against SCHIAVONE between the date of signing the Agreement and three years, in accordance with the Agreement, notwithstanding the expiration of any statute of limitations prior to the end of that three-year period. Such waiver is knowing, voluntary and made after consultation with counsel.

12. Should the Office determine during the three-year term of the Agreement that SCHIAVONE has committed any state or federal crime commenced subsequent to the date of the Agreement, SCHIAVONE shall, in the sole discretion of the Office, thereafter be subject to prosecution for any federal crimes of which the Office has knowledge. The commission of an additional state or federal crime by SCHIAVONE shall constitute a breach of the agreement.

13. Furthermore, it is agreed that if the Office, in its sole discretion, determines that SCHIAVONE has committed any crime or otherwise violated any provision of the Agreement within three years from the date of the execution of the Agreement, (i) all statements by or on behalf of SCHIAVONE to the Office and/or the Investigative Agencies, or other designated law enforcement or regulatory officials, including but not limited to the Unlawful Conduct as agreed to by the parties in the Joint Statement of Facts (Attachment A), testimony given by any agent of SCHIAVONE before a grand jury or other tribunal, whether prior to or subsequent to the signing of the Agreement, and any leads

from such statements or testimony, shall be admissible in any and all criminal proceedings hereafter brought against SCHIAVONE;

(ii) SCHIAVONE shall not assert any claim under the United States Constitution, any statute, Rule 11(f) of the Federal Rules of Criminal Procedure, Rule 410 of the Federal Rules of Evidence, or any other federal rule that statements made by or on behalf of SCHIAVONE prior to or subsequent to the Agreement, or any leads therefrom, should be suppressed; and (iii) SCHIAVONE agrees to waive indictment and proceed by felony information. However, nothing in the Agreement shall constitute a waiver of any Confrontation Clause rights under the Sixth Amendment to the U.S. Constitution that SCHIAVONE may have.

14. SCHIAVONE agrees that the decision whether conduct or statements of any individual will be imputed to SCHIAVONE for the purpose of determining whether SCHIAVONE has knowingly, intentionally and materially violated any provision of the Agreement shall be in the sole discretion of the Office. If the Office determines that SCHIAVONE has committed a knowing, intentional and material breach of any provision of this Agreement, the Office shall provide written notice of the alleged breach to SCHIAVONE, addressed to its counsel, Austin V. Campriello, Esq., Byran Cave LLP., 1290 Avenue of the Americas, New York, New York 10104, or to any successor that SCHIAVONE may designate, and provide SCHIAVONE with a two-week period from the date of receipt of such notice in which to make a presentation to

the Office, or its designee, to demonstrate that no breach has occurred, or, to the extent applicable, that the breach was not knowing, intentional or material, or has been cured. Upon request by SCHIAVONE, the Office may, in its sole discretion, agree in writing to extend this two-week period, including to provide SCHIAVONE with an opportunity to cure any breach of this Agreement. The parties to the Agreement expressly understand and agree that if SCHIAVONE fails to make a presentation to the Office, or its designee, within the two-week period (or other period agreed to by the Office), the Office may, in its sole discretion, conclusively presume that SCHIAVONE is in knowing, intentional and material breach of the Agreement.

15. SCHIAVONE agrees that it shall not, through its attorneys, Board of Managers, agents, or employees, make any public statement, in litigation or otherwise, contradicting its acceptance of responsibility to remediate OLD SCHIAVONE's Unlawful Conduct as set forth in the Joint Statement of Facts (Attachment A). Any such contradictory statement by SCHIAVONE, its present or future attorneys, Board of Managers, agents, or employees shall constitute a breach of the Agreement and SCHIAVONE thereafter shall be subject to prosecution as specified in paragraphs 11, 12, 13 and 14. The decision as to whether any such contradictory statement will be imputed to SCHIAVONE for the purpose of determining whether SCHIAVONE has breached the Agreement shall be at the sole discretion of the Office. Upon

the Office's notifying SCHIAVONE of any such contradictory statement, SCHIAVONE may avoid a finding of a breach of the Agreement by publicly repudiating such statement within 72 hours after receipt of notice by the Office. This Paragraph shall not apply to any statement made by any current or former SCHIAVONE officer, board member or employee who has been charged with a crime or other wrongdoing by the government or any agency thereof, or their representatives.

16. The parties understand and agree that the exercise of discretion by the Office or its designee is not subject to review in any court or tribunal outside the Office.

17. Except to the extent permitted by the Office, SCHIAVONE agrees that, if it sells or merges all or substantially all of its business operations as they exist as of the date of the Agreement to or into a single purchaser or group of affiliated purchasers during the term of the Agreement, SCHIAVONE shall include in any contract for sale, plan of reorganization, or merger, a provision binding the purchaser/successor to SCHIAVONE's obligations described in the Agreement, provided however that the obligations imposed by the Agreement will not extend to the governance and operation of a purchasing or investing entity that acquires some or all of SCHIAVONE's stock, as long as that entity maintains SCHIAVONE as a separate corporate entity. The Office agrees that if a mortgagee that is wholly independent of SCHIAVONE's current Board of Mangers,

officers, employees, and shareholders takes ownership of SCHIAVONE through foreclosure, the obligations imposed by the Agreement will not extend to that mortgagee.

18. It is understood that the Agreement is binding on SCHIAVONE and the Office, but specifically does not bind any other Federal agencies, any state or local law enforcement agencies, any licensing authorities, or any regulatory authorities. However, if requested by SCHIAVONE or its attorneys, the Office will bring to the attention of any such agencies, including but not limited to any licensing authorities, the Agreement, the cooperation of SCHIAVONE and its compliance with its obligations under the Agreement, and any corporate reforms specified in the Agreement. It is the intent of the parties to the Agreement that the Agreement does not confer or provide any benefits, privileges or rights to any individual or entity other than the parties hereto, and that the Agreement, including its attachments, shall be admissible in any proceeding brought by the Office. Moreover, SCHIAVONE may raise defenses or assert affirmative claims in any civil proceedings brought by private parties as long as doing so does not otherwise violate any term of the Agreement.

19. Except as set forth herein, this Agreement in no

way limits or affects any right, including right of inspection and/or enforcement, held by the United States, the DEP, the MTA, or any other governmental body, pursuant to applicable federal, state, or local laws, regulations, or permits. Further, reserved and excluded from the scope of this Agreement is any civil liability, including but not limited to claims under the False Claims Act, Title 31, United States Code sections 3729-33, or at common law for the Unlawful Conduct. In addition, nothing herein shall be read in any way to alter, affect, abrogate, or impair the ability and obligation of the United States, the DEP or the MTA to take any investigative or enforcement action for any future conduct, including but not limited to any administrative, civil, or criminal enforcement action, or to make any inquiry of SCHIAVONE concerning any present or future alleged violation of federal law, regulation, or order.


20. The Agreement sets forth all the terms of the agreement between SCHIAVONE and the Office. No modifications or additions to the Agreement shall be valid unless they are in writing and signed by the Office, SCHIAVONE's attorney, and a duly authorized representative of SCHIAVONE. The agreement supersedes all prior promises, agreements or conditions between

the parties. To become effective, the Agreement must be signed by all signatories listed below. The Agreement may be signed in counterparts.

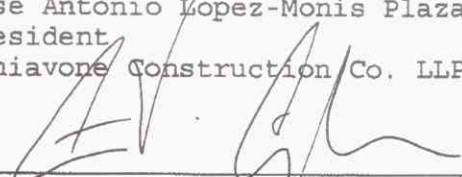
Dated: Brooklyn, New York
November 29, 2010

LORETTA E. LYNCH
United States Attorney
Eastern District of New York

By: Richard P. Donoghue
Richard P. Donoghue
Assistant United States Attorney
Chief, Criminal Division



Jose Antonio Lopez-Monis Plaza
President
Schiavone Construction Co. LLP



Austin V. Campriello, Esq.
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