

CONSTRUCTION FRAUD TASK FORCE

Memorandum of Understanding

The Construction Fraud Task Force

This Memorandum of Understanding (“MOU”) memorializes the agreement among the New York County District Attorney’s Office (“DANY”) and its partners, the New York City Department of Investigation (“DOI”), the New York City Business Integrity Commission (“BIC”), the New York State Insurance Fraud (“NYSIF”), the New York State Department of Labor (“DOL”), the New York State Office of the Inspector General (“NYS-IG”), the Metropolitan Transportation Authority Office of the Inspector General (“MTA-IG”), the Port Authority of New York and New Jersey Office of Inspector General (“PANYNJ-IG”), and the Occupational Safety and Health Administration (“OSHA”) and the Wage and Hour Division (“WHD”) of the U.S. Department of Labor (collectively, the “Member Agencies”), to form a Construction Fraud Task Force (the “Task Force”).

DANY and the Member Agencies have agreed to combine their investigative resources to identify, investigate, and prosecute criminal health and safety lapses (including, for example, manslaughter, reckless endangerment, and assault), and corruption and fraud (including, for example, bribery, larceny, insurance fraud, prevailing wage and other wage theft, safety training fraud, and licensee fraud) in the construction industry in the New York City metropolitan area. The Task Force will also recommend appropriate industry reforms, and public policy and legislative proposals to address systemic problems.

To further these common interests, the Member Agencies will cooperate with one another, subject to the general limitation that any such cooperation must be consistent with each agency’s own statutory obligations and enforcement efforts.

Authority and Supervision

DANY will coordinate the work of the Task Force. This MOU and membership in the Task Force do not create any additional legal rights for DANY or any Member Agencies, or any obligations other than those set forth herein.

DANY and the Member Agencies will retain supervision over their respective employees who are assigned to the Task Force.

The Member Agencies agree to make appropriate staff available as needed for Task Force investigations, and acknowledge that all Member Agency staff working with

the Task Force will remain employed by and report to their respective Member Agency for personnel and other administrative matters. Each Member Agency will be responsible for the salary (including applicable overtime), benefits, leave time, performance evaluations, workers' compensation, and other administration matters of its employees.

DANY and DOI also separately and specifically agree that DOI will assign an employee to the Task Force who will respond to all critical injuries and/or fatalities that occur on a construction site and/or in or near a building in Manhattan. Said DOI employee will also participate in securing the scene of the injury and/or fatality, executing search warrants, conducting interviews, and briefing Task Force partners.

OSHA has the authority to enter into this MOU pursuant to 29 U.S.C. 651(b)(10). WHD has the authority to enter into this MOU pursuant to 29 U.S.C. 211(b).

Investigative Procedures and Record-Keeping

All investigative reports of the Task Force will be prepared in the format of the preparing investigator's respective agency. All original reports, along with the original investigative notes, shall be maintained in a case file or other organized records under the control of the agency employing the investigator who records the particular investigative activity, with copies to be provided to DANY. When more than one Member Agency participates in the same investigation, investigative tasks shall be coordinated by DANY between/among the participating agencies.

DANY shall coordinate and approve all investigative methods and activities (such as interviews, surveillance, undercover operations, search warrants, interception of telephonic and electronic communications, and pen registers) related to the Task Force's investigations of violations of New York State or local law. Each Task Force member, subject to availability, shall provide the necessary personnel to facilitate the investigative methods and conduct the investigative activities. Investigative methods and activities shall be consistent with the policy and procedures of DANY and the participating Member Agencies.

All investigative reports, memoranda of interviews, results of undercover operations, and/or any other investigative activity and/or any information obtained by any Member Agency related to a Task Force investigation will be shared with the other Task Force members and shall not be disclosed to any agencies, entities or individuals outside of the Task Force without the explicit consent of DANY and participating Member Agencies, except as required by law.

Confidentiality

Each Member Agency understands and agrees that all Task Force investigations and any investigative methods and/or activities (including interviews, surveillance, undercover operations, search warrants, interception of telephonic and electronic communications, and pen registers) and inquiries from other investigative or government agencies concerning such investigations, will be treated as confidential, and will only be disclosed in accordance with the New York State Law, federal law where relevant, or by court order.

Confidential information means information that may be privileged or otherwise exempt from disclosure to the public or other unauthorized persons under state and federal laws. Confidential information may include: the identity of persons who have given information to the agencies in confidence or under circumstances in which confidentiality can be implied; any employee statements in enforcement files that were obtained under these conditions; internal opinions, policy statements, memoranda, and recommendations of state or federal employees, including (but not limited to) investigators and supervisors; any records that would otherwise not be subject to disclosure under law as non-final, intra- or inter-agency documents; information or records covered by the attorney-client privilege and the attorney work-product privilege; personal information protected by any relevant law or regulation; individually identifiable health information; and confidential business information and trade secrets.

No Member Agency shall have authority to waive any applicable privilege or doctrine on behalf of another agency, nor shall any waiver of an applicable privilege or doctrine by one party be construed to apply to another party.

In the event that there is a public proceeding, such as a hearing or trial, in which certain records, such as confidential information, may be used, or testimony of Member Agency employees sought, the Task Force will notify each respective Member Agency.

The Member Agencies acknowledge and understand that all information, files, documents, and evidence “related to the subject matter” of a prosecution of a Task Force investigation shall be disclosed by DANY pursuant to and in accordance with CPL Article 245.

Information Exchange Between/Among Member Agencies

When confidential information is exchanged between/among Member Agencies, it will not be released to the public, or to any third party, without the express

permission of the agency providing that information, except as required by law.¹ Upon receipt of a public disclosure request, the Member Agencies agree to provide each other with notice of the request to prevent the release of information until the investigation is complete.

When confidential information is exchanged between/among Member Agencies, it shall be used and accessed only for the limited purposes of carrying out activities pursuant to this MOU. The information shall not be duplicated or re-disclosed without the express written consent or authority of the agency providing the information, a court order, or as required by law.

For security purposes, information (including paper-based documents and electronic information such as emails and CDs) exchanged pursuant to this MOU remains the responsibility of the donor agency while in transit. The Member Agencies agree to establish a communication protocol for notifying each agency's designated point of contact when information is sent to or received from that agency, including information on the form of the transfer and the media type and quantity (when appropriate). An agency expecting to receive information will notify the donor agency if the information is not received as of the next business date following the agreed-upon delivery date.

After a Member Agency receives information from the donor agency, the donor agency retains no responsibility for any security incidents, inadvertent disclosure, or the physical and information technology safeguards in place for protecting that information by the agency that received it.

In the event that the agency receiving the information experiences a security lapse that results in the inadvertent disclosure of the data exchanged pursuant to this MOU, the agency experiencing the lapse will send formal notification to the donor agency's designated contact person and DANY immediately after detection. The written electronic notification will describe the security lapse in detail, including what data exchanged pursuant to this MOU may have been inadvertently disclosed.

Public Information Requests

Should any Member Agency receive a request or subpoena that would, fairly construed, seek production of privileged information that it received pursuant to this MOU, the party receiving such a request or subpoena shall notify DANY that such a request or subpoena has been received, so that DANY may file any appropriate

¹ Exchange of information between/among Member Agencies pursuant to this MOU shall not be deemed public disclosure under the New York State Freedom of Information Law, Pub. Off. L. Article 6 (§§ 84-90), or the federal Freedom of Information Act, 5 U.S.C. 552.

objections or motions, or take any other appropriate steps, to preclude or condition the production of such information.

Each Member Agency agrees it will immediately notify all Task Force members of any and all requests for information that relate to Task Force investigations. Such requests for information include, but are not limited to, requests made under the Freedom of Information Law (“FOIL”). Disclosures to the public regarding Task Force activities, including disclosures made under FOIL, will be coordinated by all Task Force members. The Task Force will not release confidential information regarding any investigation, including FOIL requests, while such investigation is pending, and until all appeals have been exhausted.

Prosecutions

DANY shall have the right of first refusal to prosecute any crime(s) under New York State or local law stemming from a Task Force investigation, and DANY shall make all prosecutorial decisions with respect to such crimes. Any Member Agency contemplating making a referral to the Department of Justice for any federal crime(s) stemming from a Task Force investigation will confer with DANY before doing so.

Seizures and Forfeiture

Assets seized in connection with Task Force cases will be forfeited under New York State law unless the Task Force decides to pursue federal asset forfeiture. All State asset forfeiture sharing will be pursuant to CPLR § 1349.

Press Releases

All press releases related to Task Force activities will be coordinated by the Member Agencies who were involved in the investigations.

Amendment

This MOU may be amended by deletion or modification of any provision contained herein, or by the addition of new provisions. Any such amendment shall have no force and effect unless, and until, such modification is reduced to writing and signed by an authorized representative of each of the parties hereto.

Duration

For all Members except for OSHA and WHD, this MOU will terminate at the conclusion of all ongoing Task Force investigations or until terminated by written notice by the withdrawing party. For OSHA and WHD, this MOU will terminate five (5) years from the effective date, subject to renewal by the parties.

Approval

This MOU shall become effective when signed by all the parties identified below. This MOU may be signed in counterparts.

Alvin L. Bragg, Jr.
District Attorney
New York County District Attorney's Office
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Date

Jocelyn Strauber
Commissioner
New York City Department of Investigation
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Date

Elizabeth Crotty
Commissioner and Chair
New York City Business Integrity Commission
100 Church Street
New York, NY 10007

Date

Roberta Reardon
Commissioner
New York State Department of Labor
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Date

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Date

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Date

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Acting Inspector General
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Two Penn Plaza
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Date

John Gay
Inspector General
The Port Authority of New York and New Jersey
Office of the Inspector General
5 Marine View Place
Hoboken, NJ 07030

Date

Douglas L. Parker
Assistant Secretary of Labor for Occupational Safety and Health
Occupational Safety and Health Administration
U.S. Department of Labor

Date

Jessica Looman
Principal Deputy Administrator
Wage and Hour Division
U.S. Department of Labor

Date