

BATTERY PARK CITY AUTHORITY

REQUEST FOR PROPOSALS

FOR

2016 On-Call General Contractor

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I. SUMMARY

Battery Park City Authority d/b/a Hugh L. Carey Battery Park City Authority (“BPCA”) requests proposals (each individually, a “Proposal” or collectively, the “Proposals”) from General Construction Contractors (each individually, a “Proposer” or collectively, the “Proposers”) to provide on-call general construction services (“On-Call GC Services” or the “Work” or the “Services Required”) to BPCA from time to time as requested by BPCA for various construction and capital maintenance and repair projects (the “On-Call Projects”). The On-Call GC Services shall include, but not be limited to: (1) general interior construction; (2) civil/site work including excavation; (3) emergency response demolition and repairs, if necessary; (4) small-scale construction and demolition work; (5) testing/probes; (6) masonry; (7) miscellaneous repairs and alterations; (8) leak repair and waterproofing; and (9) provision of subcontractors for MEP and other specialized work as needed.

The On-Call Projects will include, but not be limited to, projects which are relatively straightforward and/or lower cost or which are performed in response to emergency situations or time exigencies. It is anticipated that the total contract value of any single two-year contract for On- Call GC Services shall not exceed \$550,000. BPCA may, at its election, award a contract for the Work to more than one Proposer.

Minority-Owned Business Enterprises (“MBE”) and Women-Owned Business Enterprises (“WBE”) are encouraged to submit Proposals.

This Request for Proposals, the attachments hereto and any additional information submitted herewith (collectively, the “RFP”) does not obligate BPCA to complete the selection and contract award process. BPCA reserves the right to:

- 1) Accept or reject any and all Proposals;
- 2) Request additional information or clarifications from any or all Proposers to assist BPCA in its evaluation process;
- 3) Amend or withdraw this RFP prior to the announcement of the selected firm;
- 4) Alter any key dates or deadlines related to this RFP;
- 5) Waive any non-material requirements;
- 6) For purposes of evaluation of Proposers, use information obtained by BPCA through interviews; investigation of a Proposer’s qualifications, experience, ability or financial standing; and any other material or information provided by or received from the Proposer during the procurement process;
- 7) Negotiate potential contract terms with any Proposer; and
- 8) Award the contract or contracts for the Work, in whole or in part, to one or more firms.

In case of an amendment to the RFP, all Proposers will be provided with a copy of any such amendment(s) and will be afforded the opportunity to revise their Proposals in response to the RFP amendment.

II. DESCRIPTION OF BPCA

BPCA is a public benefit corporation created in 1968 under the laws of the State of New York for the purpose of financing, developing, constructing, maintaining, and operating a planned community development of the Battery Park City site as a mixed commercial and residential community.

Under the Battery Park City Authority Act (the “Act”), BPCA has the following powers, among others: to borrow money and to issue negotiable bonds, notes or other obligations and to provide for the rights of the holders thereof; to acquire, lease, hold, mortgage and dispose of real property and personal property or any interest therein for its corporate purposes; to construct, improve, enlarge, operate and maintain Battery Park City; to make bylaws for the management and regulation of its affairs, and, subject to agreements with bondholders, for the regulation of Battery Park City; to make contracts and to execute all necessary or convenient instruments, including leases and subleases; to accept grants, loans and contributions from the United States, or the State of New York or the City of New York (the “City”), or any agency or instrumentality of any of them, or from any other source and to expend the proceeds

for any corporate purpose; to fix, establish and collect rates, rentals, fees and other charges; and to do all things necessary or convenient to carry out the powers expressly granted by the Act. BPCA has no taxing power.

Since its inception, BPCA has caused the staged development of Battery Park City, in individual parcels, creating a richly diversified mixed use community providing residential and commercial space, with related amenities such as parks, open spaces, plazas, recreational areas and a mile-long waterfront esplanade. Most individual parcels of land in Battery Park City were developed into residential and commercial buildings by tenants (“Ground Lease Tenants”) under long-term ground leases with BPCA. The Ground Lease Tenants are responsible for the maintenance, insurance and defense and indemnification of BPCA with regard to those leased parcels.

One of BPCA’s key responsibilities under the Act is to operate, maintain and repair the parks and open spaces in and around Battery Park City’s residential and commercial areas, including access points to/from Battery Park City, which is undertaken in conjunction with the Battery Park City Parks Conservancy Corporation (“BPCPC”). Together, BPCA and BPCPC maintain 36 acres of parks, playgrounds and open spaces, including the esplanade. BPCPC also develops programs and manages public events for the Battery Park City community. BPCA owns and has built out a commercial condominium unit in a residential building in Battery Park City, which serves as the BPCPC headquarters.

To obtain a copy of BPCA’s most recently completed audited financial statements, please visit BPCA’s official website at www.bpca.ny.gov. The audited financial statements and related reports found on BPCA’s website will provide you with an overview of the operations for which BPCA is responsible and the areas of expertise in which the selected Proposer must be proficient.

III. SERVICES REQUIRED

- A. If selected, Proposer will be responsible to timely provide On-Call GC Services to BPCA as delineated in **Exhibit A** (the “General Description & Scope of Work”).
- B. All work to be performed by the selected Proposer shall be performed under the supervision of a Project Manager in charge of this engagement (the “Lead PM”), who must ensure that the work completed for BPCA is performed competently and in a timely manner.

IV. KEY DATES, CONTRACT TERM AND MINIMUM QUALIFICATIONS

A. Key Dates

The following is a list of key dates, up to and including the date Proposals are due to be submitted, which is subject to change at BPCA’s discretion:

- Request for Proposals issued: **Friday March 25, 2016**
- **Pre-proposal meeting: Wednesday March 30, 2016 at 9:30am** Meeting Location: BPCA Offices, 200 Liberty Street 24th floor, New York, NY 10281 (attendance is highly recommended).
- Deadline to submit questions to BPCA: **Wednesday April 6, 2016 by 5:00 p.m.** (by email only)
 - All questions regarding this RFP should be submitted in writing via email to the “**Designated Contact**”: Michael LaMancusa, Battery Park City Authority, at michael.lamancusa@bpca.ny.gov.
- Deadline for BPCA’s response to substantive questions: **Thursday April 21, 2016** (by email)
- **DUE DATE FOR RESPONSES TO RFP: Wednesday May 4, 2016 by 5:00 p.m.** (the “Due Date”)

- Selection and notification of successful Proposer: To be determined.
- Contract start date: To be determined.

B. Anticipated Contract Term

It is anticipated that the term of the contract or contracts awarded pursuant to this RFP (the “Contract” or “Contracts”) will be two years and that the total value of the Projects completed under each Contract will not exceed \$550,000. BPCA reserves the right to terminate the Contract or Contracts at any time, with or without cause, in accordance with the terms of the Contract. BPCA’s sample form of contract is attached as Exhibit E.

C. Minimum Qualification Requirements

The following are the Minimum Qualification Requirements for this RFP. **Proposals that fail to comply with these requirements will be rejected.**

- 1) The Proposer must have an office in New York State (a New York City office is strongly preferred);
- 2) The Proposer must be licensed to do business in the State of New York; and
- 3) The Proposer must have at least five (5) years’ experience providing general contracting services for projects with values up to \$500,000.

V. GENERAL REQUIREMENTS

A. Questions regarding MBE/WBE participation, joint ventures and sub-contracting goals

Please see **Exhibit B** (attached) for contractor requirements and procedures for business participation opportunities for New York State certified MBEs/WBEs and equal employment opportunities for minority group members and women. Also included in **Exhibit B** is a Diversity Practices Questionnaire to be filled out and included in the proposal.

For questions relating to MBE/WBE participation, joint ventures and sub-contracting goals ONLY, please contact “MBE/WBE Designated Contact” Mr. Anthony Peterson at 212.417.2337.

B. Restricted Period

Applicants are restricted from making contact with anyone other than the Designated Contact or MBE/WBE Designated Contact specified above during the period from the date of publication of the notice of this RFP in the New York State Contract Reporter through approval of the Contract by BPCA (the “Restricted Period”). Employees of BPCA are required to record certain contacts during the Restricted Period, including, but not limited to, any oral, written or electronic communication with a governmental entity under circumstances where a reasonable person would infer that the communication was intended to influence BPCA’s conduct or decision regarding the governmental procurement, and to make a determination of responsibility based, in part, upon any such contact. Failure to abide by this process may result in a finding that the firm is a non-responsive Proposer.

C. Submission of Proposals

Proposals are due no later than 5:00 p.m. on Wednesday May 4, 2016

Proposers must submit six (6) paper copies of their Proposals and one (1) electronic CD-Rom copy in a sealed package clearly marked “**Proposal Enclosed – 2016 On-Call General Contractor Services**” to the Designated Contact **by messenger, overnight courier or certified mail** to the following address:

Michael LaMancusa
Battery Park City Authority

One World Financial Center, 24th Floor
New York, NY 10281

BPCA is not responsible for any internal or external delivery delays which may cause any Proposal to arrive beyond the stated Due Date. To be considered, Proposals must arrive at the time and place specified herein and be time stamped by BPCA's time stamp prior to the Due Date. Please leave ample time for building security, as late Proposals will not be accepted. Proposals submitted by fax or electronic transmission will NOT be accepted. A Proposer may, after submitting a Proposal, amend its Proposal by submitting a second, amended Proposal, clearly labeled "**Amended Proposal Enclosed – 2016 On-Call General Contractor Services,**" as long as the amended Proposal is submitted by the Due Date.

Public access to Proposals shall be governed by the relevant provisions of the Freedom of Information Law, Article 6 of the New York State Public Officers Law, and regulations adopted pursuant thereto.

D. Mandatory Forms

Proposers must complete and include with their Proposal all "Mandatory Forms," which can be found at the following URL address: http://www.bpca.ny.gov/pdf_n/Mandatory_Forms_Packet.pdf, by the Due Date.

These Mandatory Forms include the following:

- 1) NYS Standard Vendor Responsibility Questionnaire – **Submit with the Cost Proposal (as described below), one (1) original unbound set of a completed NYS Standard Vendor Responsibility Questionnaire with original ink signatures. Do not include the Standard Vendor Responsibility Questionnaire in the bound copies of the Cost Proposal.** The NYS Standard Vendor Responsibility Questionnaire must be notarized and signed by the individual(s) authorized to bind the firm contractually. Indicate the title or position that the signer holds within the firm.
- 2) State Finance Law § 139 Form 1 – **one original unbound completed SFL 139 Form 1: Professional's Certifications Pursuant to SFL § 139-j and § 139-k with original signature.** State Finance Law § 139 Forms 1 must be signed by the individual(s) authorized to bind the firm contractually.
- 3) W-9 form.
- 4) Statement of Non-Collusion.
- 5) Diversity Forms.

VI. PROPOSAL FORMAT AND CONTENTS

A) Proposal Format

The Proposal must be submitted in the following format:

- Printed on 8½" x 11" paper;
- Pages must be numbered; and

B) Proposal Content

Apart from the separately sealed Cost Proposal, as directed in Section V.E. below, each Proposal must include the following sections in the order listed:

- 1) Transmittal Letter, as follows:

The Proposal must include a signed Transmittal Letter from a person within the firm who is authorized to bind the firm, preferably the Lead PM. **Transmittal Letters must be signed. Proposals with unsigned Transmittal Letters will be rejected.**

The Transmittal Letter must include a representation by the Proposer that, except as disclosed in the Proposal, no officer or employee of the Proposer is directly or indirectly a party to or in any other manner interested financially or otherwise in this RFP.

- 2) Corporate Overview.
- 3) Discussion of its understanding of the Services Required (see Section III).
- 4) Responses to the RFP Questions/Requested Information, set forth below (Section VI.C.).
- 5) RFP Attachments (Section VI.D.)
- 6) Response to the question regarding the use of New York State businesses set forth in Section X of the RFP.
- 7) Completed MBE/WBE and EEO Policy Statement, attached as part of **Exhibit B**.

C. RFP Questions/Requested Information

- 1) Describe your firm's background, size, and history as it may be relevant to the Services Required, with an emphasis on on-call and general construction work. If your offices are located in more than one city, indicate which office will provide the services.
- 2) Describe the relevant special services your firm provides, particularly those that may not be offered by other firms.
- 3) Describe your experience and methodology for staffing on-call or task order contracts and your proposed approach to the Services Required by this RFP.
- 4) If currently known, please identify any subcontractors you intend to use for this engagement, and describe the services to be performed by each subcontractor (with the understanding that the need for and identity of certain required subcontractors may not be known until specific jobs are assigned).
- 5) Within the past three years, have there been any significant developments in your firm such as changes in ownership or restructuring? Do you anticipate any significant changes in the near future? If so, please describe.
- 6) How does your firm identify and manage conflicts of interest?
- 7) Has your firm or any of the firm's partners/employees been disciplined or censured by any regulatory body within the last 5 years? If so, please describe the relevant facts.
- 8) Within the last five years, has your firm, or a partner or employee in your firm, been involved in litigation or other legal proceedings relating to the provision of construction services? If so, please provide an explanation and the current status or disposition of the matter.
- 9) Are there any potential conflict of interest issues in your firm's performing construction services for BPCA?
- 10) List any professional or personal relationships your firm's employees may have with BPCA's Board and/or staff members of BPCA. A list of BPCA Board Members and employees is provided as Exhibit D.
- 11) List all the personnel you intend to assign to this engagement and the area(s) of specialization for each (with the understanding that additional or alternate personnel with differing areas of specialization may

need to be assigned based upon the requirements of specific jobs). Describe the role of each employee who will be assigned to this engagement.

- 12) Identify the person who will be the lead project manager (the “Lead PM”) and primary contact in providing services to BPCA, and any other person who will be listed as a “key person” in any contract with BPCA.
- 13) Describe your proposed team’s experience with similar work for other public agencies and authorities, with a particular emphasis on New York State agencies and authorities.
- 14) Describe your firm’s “backup plan” in the event the Lead PM assigned to this engagement leave the firm.
- 15) Proposers shall identify any and all exceptions taken to BPCA’s standard form of contract attached hereto as Exhibit E detailing the reasons for such exceptions. No exceptions to the contract will be considered by BPCA after submission of the proposals. BPCA maintains the right to reject proposals based on non-conformance with the standard form of contract.
- 16) In the past five years, has any client terminated its working relationship with your firm? If so, please provide a brief statement of the reasons. Provide the name of the client and each such client’s in-house counsel’s name, address and telephone number.
- 17) Please provide any additional information which would serve to distinguish your firm from other firms and that you believe may be relevant to this RFP and your capability to perform the services requested.

D. RFP Insurance/Bonding Requirements and Additional Information Requested

1) Insurance/Bonding:

The selected Proposer will be required to provide the types and amounts of insurance as listed below, for the duration of its performance of the Work. Should any work be subcontracted to another party, then the subcontractor must comply with all of the following requirements. The insurance policies listed below must also conform to the applicable terms of the Contract, as shown in BPCA’s sample form of contract attached as Exhibit E.

- **Commercial General Liability Insurance**, written on ISO Form CG 00 001 or its equivalent and with no modification to the contractual liability coverage provided therein, shall be provided on an occurrence basis and limits shall not be less than:
 - \$1,000,000 per occurrence
 - \$2,000,000 General Aggregate, which must apply on a per project basis
 - \$2,000,000 Products / Completed Operations Aggregate

BPCA, BPCPC, and the State of New York must be protected as additional insured on ISO Form CG 2010 (11/85) or its equivalent and must be included as such on all subcontracts. The Proposer must maintain Products / Completed Operations coverage for no less than three years after any construction work is completed.

- **Automobile Liability Insurance** with a Combined Single Limit of not less than \$1,000,000. Coverage must apply to the Proposer’s owned, hired, and non-owned vehicles and protect BPCA, BPCPC, and the State of New York as additional insured.
- **Workers’ Compensation, Employer’s Liability, and Disability Benefits** shall not be less than statutory limits, including United States Longshore and Harbor Workers Act coverage as required by law for a particular On-Call Project.

- **Umbrella Liability Insurance** at a limit not less than \$5,000,000 per occurrence and in the aggregate. BPCA, BPCPC, and the State of New York must be protected as additional insured and must be included as such on all subcontracts.
- **Builder's Risk / Installation Floater Insurance** at a limit of not less than \$250,000. Coverage must be written on ISO Special Form CP 10 30 04 02 or its equivalent on a completed value non-reporting basis and provide coverage for the Proposer, all subcontractors, BPCA, BPCPC, and the State of New York. Coverage must also include an Agreed Amount provision which eliminates any coinsurance provision.

The total cost of the insurance, as listed above, must be incorporated into the Cost Proposal. The additional insured protection afforded BPCA, BPCPC, and the State of New York must be on a primary and non-contributory basis. All policies must include a waiver of subrogation in favor of BPCA, BPCPC, and the State of New York, and no policies may contain any limitations / exclusions for New York Labor Law claims.

All of the carriers that provide the above required insurance must provide direct written notice of cancellation or non-renewal to BPCA, BPCPC, and the State of New York at least 30 days before such cancellation or non-renewal is effective, except for cancellations due to non-payment of premium, in which case 10 days written notice is acceptable.

At the time BPCA issues a Job Order for a particular On-Call Project, the selected Proposer may be required to obtain additional insurance depending upon the nature of the On-Call Project. Any costs associated with this additional insurance must be included in the selected Proposer's submitted Approach Plan. In addition, for any On-Call Projects with a contract price of equal to or greater than \$200,000, a payment and performance bond will be required, as set forth in the standard form of Contract (Exhibit E).

2) Appendices:

Please include professional biographies for all employees listed in your proposal.

3) References:

Please provide at least three client (3) references for whom your firm has performed similar work to that requested in this RFP. For each client, please provide the name, address and telephone number for the client's contact person.

4) Financial Statements:

Please provide a copy of your firm's most recent Audited Financial Statements (within the last year).

E. Cost Proposal

Each "Cost Proposal" must state daily trade rates, **including overtime rates**, and including supervision, overhead and profit covering the range of services contemplated herein. A list of major trades is set forth on **Exhibit C** attached hereto. Each "Cost Proposal" should include, for each of the applicable major trades set forth on Exhibit C, the appropriate wage that equals or exceeds the prevailing wage.

The cost proposal must be submitted in its own separate, sealed enveloped within the sealed package containing all other Proposal documents. Please provide six (6) copies of the Cost Proposal.

VII. THE EVALUATION PROCESS

A. Objectives

The primary objective of the evaluation process is to select a firm that:

- Demonstrates a thorough understanding of the scope of the engagement and the specific responsibilities that it entails;
- Possesses, and is willing to commit, adequate resources to handle assigned responsibilities, to cover multiple projects concurrently, to address unforeseen circumstances that may arise and to respond quickly and proficiently to emergency needs.
- Assigns highly skilled, experienced, diligent, responsible and professional personnel to perform the required services;
- Maintains high ethical standards and has an unblemished reputation; and
- Has no conflict of interest between its representation of BPCA and that of other clients.

The selection process will begin with the review and evaluation of each of the written Proposals. The purpose of this evaluation process is twofold: (1) to examine the responses for compliance with this RFP and (2) to identify the complying firms that have the highest probability of satisfactorily performing the Services Required. The evaluation process will be conducted in a comprehensive and impartial manner by a committee of BPCA’s employees selected by BPCA (the “Committee”). **The Committee will evaluate the Proposals based upon the evaluation criteria for selection set forth below.**

BPCA reserves the right to reject and return unopened to the Proposer any Proposal received after the RFP Due Date. All timely submitted Proposals will be reviewed to determine if they contain all required submittals specified herein. Incomplete Proposals may be rejected.

B. Interviews

BPCA reserves the right to determine whether interviews will be necessary for any or all of the Proposers. The purpose of the interview is to further document a Proposer’s ability to provide the Services Required, and to impart to the Committee an understanding of how specific services will be furnished. The proposed Lead PM, as well all other key personnel proposed to provide the services must be present and participate in the interview. The firm will be evaluated on the basis of whether the interview substantiates the characteristics and attributes claimed by the Proposer in its written response to this RFP and any other information requested by the Committee prior to the interview.

C. Evaluation Criteria for Selection

Selection will be based upon the following criteria:

- | | |
|--|-----|
| 1) Depth & diversity of experience and capabilities as general contractor: | 30% |
| 2) Experience providing general contracting services on an on-call or task order basis, including, but not limited to; | 25% |
| - Handling multiple projects concurrently; and | |
| - Preparing and implementing plans, strategies and protocols in response to emergency and/or disaster situations. | |
| 3) Project Team /Approach, including | 30% |
| - Any proposed sub-contractors; | |
| - Internal staffing and resource allocation approach; and | |
| - Response methodology and commitment. | |
| 4) Proposed MBE/WBE utilization plan (the “Utilization Plan”), firm MBE/WBE status, and information provided in Diversity Practices Questionnaire located in Exhibit B : | 15% |

D. Basis for Contract Award

The Contract will be awarded to the highest rated Proposer whose Proposal is determined to be responsive and in the best interests of BPCA. In the event of a tie between two or more Proposers for the highest rating, BPCA will evaluate the tied Proposals and award the contract to the Proposer who, in BPCA's sole discretion, will provide the best value to BPCA.

VIII. NON-COLLUSION

By submitting a Proposal, Proposers hereby warrant and represent that any ensuing Contract has not been solicited or secured directly or indirectly in a manner contrary to the laws of the State of New York, and that said laws have not been violated and shall not be violated as they relate to the procurement or the performance of the Contract by any conduct, including the paying or giving of any fee, commission, compensation, gift, or gratuity or consideration of any kind, directly or indirectly, to any member of the board of directors, employee, officer or official of BPCA.

IX. IRAN DIVESTMENT ACT

By submitting a Proposal or by assuming the responsibility of any Contract awarded hereunder, Proposers hereby certify that they are not on the "Entities Determined To Be Non-Responsive Bidders/Offerers Pursuant to The New York State Iran Divestment Act of 2012" list ("Prohibited Entities List") posted on the New York State Office of General Services website at: <http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf> and further certify that they will not utilize any sub-consultant that is identified on the Prohibited Entities List on this Contract. The selected Proposer agrees that should it seek to renew or extend any Contract awarded hereunder, it must provide the same certification at the time the Contract is renewed or extended. The selected Proposer also agrees that any proposed assignee of the Contract will be required to certify that it is not on the Prohibited Entities List before BPCA may approve a request for assignment of the Contract.

During the term of any Contract awarded hereunder, should BPCA receive information that a person (as defined in State Finance Law §165-a) is in violation of the above-referenced certifications, BPCA will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the New York State Iran Divestment Act of 2012 within 90 days after the determination of such violation, then BPCA shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, seeking compliance, recovering damages, or declaring the selected Proposer in default of the awarded Contract.

BPCA reserves the right to reject any request for renewal, extension, or assignment for an entity that appears on the Prohibited Entities List prior to the renewal, extension, or assignment of the Contract, and to pursue a responsibility review with the selected Proposer should it appear on the Prohibited Entities List hereafter.

X. ENCOURAGING USE OF NEW YORK STATE BUSINESSES IN CONTRACT PERFORMANCE

New York State businesses have a substantial presence in State contracts and strongly contribute to the economies of the state and the nation. In recognition of their economic activity and leadership in doing business in New York State, Proposers for this Contract for commodities, services or technology are strongly encouraged and expected to consider New York State businesses in the fulfillment of the requirements of the Contract. Such partnering may be as subcontractors, suppliers, protégés or other supporting roles.

Proposers need to be aware that all authorized users of this Contract will be strongly encouraged, to the maximum extent practical and consistent with legal requirements, to use responsible and responsive New York State businesses in purchasing commodities that are of equal quality and functionality and in utilizing services and technology. Furthermore, Proposers are reminded that they must continue to utilize small, minority and women-owned businesses, consistent with current State law.

Utilizing New York State businesses in State contracts will help create more private sector jobs, rebuild New York's infrastructure, and maximize economic activity to the mutual benefit of the contractor and its New York State business partners. New York State businesses will promote the contractor's optimal performance under the Contract,

thereby fully benefiting the public sector programs that are supported by associated procurements.

Public procurements can drive and improve the State's economic engine through promotion of the use of New York businesses by its contractors. The State therefore expects bidders/proposers to provide maximum assistance to New York businesses in their contracts. The potential participation by all kinds of New York businesses will deliver great value to the State and its taxpayers.

Proposers can demonstrate their commitment to the use of New York State businesses by responding to the question below:

Will New York State businesses be used in the performance of this contract? Yes No

If yes, identify New York State businesses that will be used and attach identifying information.

EXHIBIT A

General Description & Scope of Work

The selected Proposer shall provide general contracting services (“On-Call GC Services”) as requested by BPCA from time to time for various construction and capital maintenance and repair projects (each a “Project” and collectively the “On-Call Projects”). The On-Call GC Services shall include, but not be limited to: (1) general interior construction; (2) civil / site work including excavation; (3) emergency response demolition and repairs, if necessary; (4) small-scale construction and demolition work; (5) testing/probes; (6) masonry; (7) miscellaneous repairs and alterations; (8) leak repair and waterproofing; and (9) provision of subcontractors for MEP and other specialized work as needed. The selected Proposer shall provide all labor, equipment, tools, and materials necessary to complete each On-Call Project. The specific scope of work, including Drawings and Specifications, if applicable, for each On-Call Project will be set forth in a Job Order to be executed by and between Contractor and BPCA. In addition to the construction tasks and disciplines referenced above, the On-Call GC Services shall include all related:

- Investigation;
- Planning and scheduling;
- Supervision;
- Coordination;
- Closeout;
- Sign-offs; and
- Warranties (as applicable).

If a particular On-Call Project requires work that is outside the expertise of the selected Proposer, such Proposer may subcontract for any work and materials necessary for it to meet its obligations under the proposed contract; provided that BPCA approves the subcontractor(s) and the selected Proposer provides all required site management and supervision.

Upon notification by BPCA of a pending On-Call Project, unless otherwise directed by BPCA, the selected Proposer shall conduct a site visit to the Project area within forty-eight (48) hours and, if the duration of an On-Call Project is greater than 5 total work days and the estimated contract price for such On-Call Project is greater than \$30,000, provide an Approach Plan (as defined below) to BPCA with respect to such Project within three (3) days following the site visit. Notwithstanding the foregoing, BPCA may request, and Proposer shall conduct a site visit and provide an Approach Plan, within such time as BPCA reasonably specifies under the circumstances.

If required for an On-Call Project, the Approach Plan provided by the selected Proposer shall include the following information (the “Approach Plan”):

- Detailed estimate of costs to perform the On-Call Project, including all labor, materials, supervision, overhead and profit;
- Bar Schedule including durations and proposed start date for work to be performed;
- Logistics plan that coordinates any areas that require public access;
- Notification of all shut-downs required to perform the work;
- List of required materials, including long-lead items;
- List of required sign-offs by outside agencies;
- Staffing plan including lists of all trades, hours of work, and number of employees scheduled to perform the work (for contractor and all subcontractors);
- Management plan including emergency and non-emergency contacts; and
- Safety plan addressing OSHA compliance.

The selected Proposer shall not proceed with any On-Call Project until BPCA approves the Approach Plan as submitted, or as revised, and issues a Job Order.

EXHIBIT B

CONTRACTOR REQUIREMENTS AND PROCEDURES FOR BUSINESS PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED MBEs/WBEs AND EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITY GROUP MEMBERS AND WOMEN

Pursuant to New York State Executive Law Article 15-A and 5 NYCRR §§140-145, BPCA recognizes its obligation under the law to promote opportunities for maximum feasible participation of certified MBEs/WBEs and the employment of minority group members and women in the performance of BPCA contracts.

In 2006, the State of New York commissioned a disparity study to evaluate whether MBEs/WBEs had a full and fair opportunity to participate in state contracting. The findings of the study were published on April 29, 2010, under the title “The State of Minority and Women-Owned Business Enterprises: Evidence from New York” (the “Disparity Study”). The report found evidence of statistically significant disparities between the level of participation of MBEs/WBEs in state procurement contracting versus the number of MBEs/WBEs that were ready, willing and able to participate in state procurements. As a result of these findings, the Disparity Study made recommendations concerning the implementation and operation of the statewide certified MBEs/WBEs program. The recommendations from the Disparity Study culminated in the enactment and the implementation of New York State Executive Law Article 15-A, which requires, among other things, that BPCA establish goals for maximum feasible participation of New York State Certified MBEs/WBEs and the employment of minority groups members and women in the performance of New York State contracts.

Business Participation Opportunities for MBEs/WBEs

For purposes of this solicitation, BPCA hereby establishes an overall goal of 30% for MBE/WBE participation, 15% for MBE participation and 15% for WBE participation (based on the current availability of qualified MBEs and WBEs). A contractor (“Contractor”) on the Contract must document good faith efforts to provide meaningful participation by MBEs/WBEs as subcontractors or suppliers in the performance of the Contract and Contractor agrees that BPCA may withhold payment pending receipt of the required MBE/WBE documentation. The directory of New York State Certified MBEs/WBEs can be viewed at: <https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp?TN=ny&XID=7562>. For guidance on how BPCA will determine a Contractor’s “good faith efforts,” refer to 5 NYCRR §142.8.

In accordance with 5 NYCRR §142.13, Contractor acknowledges that if it is found to have willfully and intentionally failed to comply with the MBE/WBE participation goals set forth in the Contract, such finding constitutes a breach of Contract and BPCA may withhold payment from the Contractor as liquidated damages.

Such liquidated damages shall be calculated as an amount equaling the difference between: (1) all sums identified for payment to MBEs/WBEs had Contractor achieved the contractual MBE/WBE goals; and (2) all sums actually paid to MBEs/WBEs for work performed or materials supplied under the Contract.

By submitting a bid or Proposal, a Proposer agrees to demonstrate its good faith efforts to achieve its goals for the utilization of MBEs/WBEs by submitting evidence thereof through the New York State Contract System (the “NYSCS”), which can be viewed at <https://ny.newnycontracts.com>, provided, however, that a Proposer may arrange to provide such evidence via a non-electronic method by contacting BPCA. Please note that the NYSCS is a one stop solution for all of your MBE/WBE and Article 15-A contract requirements. For additional information on the use of the NYSCS to meet the Proposer’s MBE/WBE requirements please see the attached MBE/WBE guidance from the New York State Division of Minority and Women’s Business Development, “Your MWBE Utilization and Reporting Responsibilities Under Article 15-A.”

- A. Additionally, a Proposer agrees to submit a Utilization Plan with their bid or Proposal as evidence of compliance with the foregoing. Any modifications or changes to the Utilization Plan after the Contract award and during the term of the Contract must be reported on a revised Utilization Plan and submitted to BPCA.

- B. BPCA will review the submitted Utilization Plan and advise the Proposer of BPCA's acceptance or issue a notice of deficiency within 30 days of receipt.
- C. If a notice of deficiency is issued, Proposer agrees that it shall respond to the notice of deficiency within seven (7) business days of receipt by submitting to BPCA, at the address specified in this RFP, or by facsimile at 212-417-2279 a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by BPCA to be inadequate, BPCA shall notify the Proposer and direct the Proposer to submit, within five (5) business days, a request for a partial or total waiver of MBE/WBE participation goals. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or Proposal.
- D. BPCA may disqualify a Proposer as being non-responsive under the following circumstances:
 - 1) If a Proposer fails to submit a Utilization Plan;
 - 2) If a Proposer fails to submit a written remedy to a notice of deficiency;
 - 3) If a Proposer fails to submit a request for waiver; or
 - 4) If BPCA determines that the Proposer has failed to document good faith efforts.

Contractors shall attempt to utilize, in good faith, any MBE/WBE identified within its Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to the Contract award may be made at any time during the term of the Contract to BPCA, but must be made no later than prior to the submission of a request for final payment on the Contract.

Contractors are required to submit a Contractor's MBE/WBE Contractor Compliance & Payment Report to BPCA on a monthly basis over the term of the Contract documenting the progress made toward achievement of the MBE/WBE goals of the Contract.

Equal Employment Opportunity Requirements

By submission of a bid or Proposal in response to this RFP, the Proposer/Contractor agrees with all of the terms and conditions of the attached M/WBE – Equal Employment Opportunity Policy Statement. The Contractor is required to ensure that it shall and any subcontractors awarded a subcontract over \$25,000 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon, except where such work is for the beneficial use of the Contractor, undertake or continue programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, equal opportunity shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, and rates of pay or other forms of compensation. This requirement does not apply to: (i) work, goods, or services unrelated to the Contract or (ii) employment outside New York State.

The Proposer further agrees to submit a MBE/WBE and Equal Employment Opportunity Policy Statement, Form # 4, to BPCA with their Proposal.

To ensure compliance with Article 15-A, Proposer further agrees, where applicable, to submit with the Proposal, a staffing plan identifying the anticipated work force to be utilized on the Contract and if awarded a Contract, will, upon request, submit to BPCA a workforce utilization report identifying the workforce actually utilized on the Contract, if known, through the NYSCS; provided, however, that a Proposer may arrange to provide such report via a non-electronic method by contacting BPCA.

Further, pursuant to Article 15 of the Executive Law (the "Human Rights Law"), all other New York State and Federal statutory and constitutional non-discrimination provisions, the Contractor and sub-contractors will not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence

victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

Please Note: Failure to comply with the foregoing requirements may result in a finding of non-responsiveness, non-responsibility and/or a breach of the Contract, leading to the withholding of funds, suspension or termination of the Contract or such other actions or enforcement proceedings as are allowed by the Contract.

For questions on MBE/WBE participation, joint ventures and sub-contracting goals ONLY, please contact Mr. Anthony Peterson at 212.417.2337.



Your MBE/WBE Utilization and Reporting Responsibilities Under Article 15-A

The New York State Contract System (“NYSCS”) is your one stop tool compliance with New York State’s MBE/WBE Program. It is also the platform New York State uses to monitor state contracts and MBE/WBE participation.

GETTING STARTED

To access the system, please login or create a user name and password at <https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp?TN=ny&XID=7562>. If you are uncertain whether you already have an account set up or still need to register, please send an email to the customer service contact listed on the Contact Us & Support page, or reach out to your contract’s project manager. For verification, in the email, include your business name and contact information.

VENDOR RESPONSIBILITIES

As a vendor conducting business with New York State, you have a responsibility to utilize minority- and/or women-owned businesses in the execution of your contracts, per the MBE/WBE percentage goals stated in your solicitation, incentive proposal or contract documents. NYSCS is the tool that New York State uses to monitor MBE/WBE participation in state contracting. Through the NYSCS you will submit utilization plans, request subcontractors, record payments to subcontractors, and communicate with your project manager throughout the life of your awarded contracts.

There are several reference materials available to assist you in this process, but to access them, you need to first be registered within the NYSCS. Once you log onto the website, click on the **Help & Support** >> link on the lower left hand corner of the Menu Bar to find recorded trainings and manuals on all features of the NYSCS. You may also click on the **Help & Tools** icon at the top right of your screen to find videos tailored to primes and subcontractors. There are also opportunities available to join live trainings, read up on the “Knowledge Base” through the Forum link, and submit feedback to help improve future enhancements to the system. Technical assistance is always available through the **Contact Us & Support** link on the NYSCS website (<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp?TN=ny&XID=7562>).

For more information, contact your project manager.

**MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES – EQUAL
EMPLOYMENT OPPORTUNITY POLICY STATEMENT**

MBE/WBE AND EEO POLICY STATEMENT

I, _____ (the “Contractor”), agree to adopt the following policies with respect to the project being developed at, or services rendered to, the Battery Park City Authority (“BPCA”).

MBE/WBE

This organization will and will cause its contractors and subcontractors to take good faith actions to achieve the MBE/WBE contract participations goals set by the State for that area in which the State-funded project is located, by taking the following steps:

- (1) Actively and affirmatively soliciting bids for contracts and subcontracts from qualified State certified MBEs or WBEs, including solicitations to MBE/WBE contractor associations.
- (2) Requesting a list of State-certified MBEs/WBEs from BPCA and soliciting bids from these MBEs/WBEs directly.
- (3) Ensuring that plans, specifications, request for proposals and other documents used to secure bids will be made available in sufficient time for review by prospective MBEs/WBEs.
- (4) Where feasible, dividing the work into smaller portions to enhance participations by MBEs/WBEs and encourage the formation of joint venture and other partnerships among MBE/WBE contractors to enhance their participation.
- (5) Documenting and maintaining records of bid solicitation, including those to MBEs/WBEs and the results thereof. The Contractor will also maintain records of actions that its subcontractors have taken toward meeting MBE/WBE contract participation goals.
- (6) Ensuring that progress payments to MBEs/WBEs are made on a timely basis so that undue financial hardship is avoided, and that bonding and other credit requirements are waived or appropriate alternatives are developed to encourage MBE/WBE participation.

EEO

(a) This organization will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing diversity programs to ensure that minority group members are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts.

(b) This organization shall state in all solicitation or advertisements for employees that in the performance of the State contract all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex disability or marital status.

(c) At the request of BPCA, this organization shall request that each employment agency, labor union, or authorized representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of this organization’s obligations herein.

(d) The Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. The Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

(e) This organization will include the provisions of sections (a) through (d) of this agreement in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the State contract.

Agreed to this _____ day of _____, 2015

By _____

Print: _____ Title: _____

_____ is designated as the Contractor's Minority Business Enterprise Liaison responsible for administering the Minority and Women-Owned Business Enterprises - Equal Employment Opportunity (MBE/WBE - EEO) program.

MBE/WBE Contract Goals

30% Minority and Women's Business Enterprise Participation

___% Minority Business Enterprise Participation

___% Women's Business Enterprise Participation

EEO Contract Goals (if applicable)

___% Minority Labor Force Participation

___% Female Labor Force Participation

(Authorized Representative)

Title: _____

Date: _____

Diversity Practices Questionnaire

I, _____, as _____ (title) of _____ firm or company (hereafter referred to as the company), swear and/or affirm under penalty of perjury that the answers submitted to the following questions are complete and accurate to the best of my knowledge:

1. Does your company have a Chief Diversity Officer or other individual who is tasked with supplier diversity initiatives? Yes or No

If yes, provide the name, title, description of duties, and evidence of initiatives performed by this individual or individuals.

2. What percentage of your company's gross revenues (from your prior fiscal year) was paid to New York State certified minority and/or women-owned business enterprises as subcontractors, suppliers, joint-venture's, partners or other similar arrangement for the provision of goods or services to your company's clients or customers?

3. What percentage of your company's overhead (i.e. those expenditures that are not directly related to the provision of goods or services to your company's clients or customers) or non-contract-related expenses (from your prior fiscal year) was paid to New York State certified minority- and women-owned business enterprises as suppliers/contractors?¹

4. Does your company provide technical training² to minority- and women-owned business enterprises? Yes or No

If yes, provide a description of such training which should include, but not be limited to, the date the program was initiated, the names and the number of minority- and women-owned business enterprises participating in such training, the number of years such

¹ Do not include onsite project overhead.

² Technical training is the process of teaching employees how to more accurately and thoroughly perform the technical components of their jobs. Training can include technology applications, products, sales and service tactics, and more. Technical skills are job-specific as opposed to soft skills, which are transferable.

training has been offered and the number of hours per year for which such training occurs.

5. Is your company participating in a government approved minority- and women-owned business enterprise mentor-protégé program?

If Yes, identify the governmental mentoring program in which your company participates and provide evidence demonstrating the extent of your company's commitment to the governmental mentoring program.

6. Does your company include specific quantitative goals for the utilization of minority- and women-owned business enterprises in its non-government procurements? Yes or No

If Yes, provide a description of such non-government procurements (including time period, goal, scope and dollar amount) and indicate the percentage of the goals that were attained.

7. Does your company have a formal minority- and women-owned business enterprise supplier diversity program? Yes or No

If Yes, provide documentation of program activities and a copy of policy or program materials.

8. Does your company plan to enter into partnering or subcontracting agreements with New York State certified minority- and women-owned business enterprises if selected as the successful respondent? Yes or No

If Yes, complete the attached Utilization Plan

All information provided in connection with the questionnaire is subject to audit and any fraudulent statements are subject to criminal prosecution and debarment.

Signature of Owner/Official _____

Battery Park City Authority Request For Proposals

Printed Name of Signatory

Title

Name of Business

Address

City, State, Zip

STATE OF _____

COUNTY OF _____) ss:

On the _____ day of _____, 201_, before me, the undersigned, a Notary Public in and for the State of _____, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to this certification and said person executed this instrument.

Notary Public

EXHIBIT C
Form of Cost Proposal

<u>TRADE</u>	<u>DAILY RATE</u>
Boilermaker	_____
Carpenter (Interiors/Sheetrock)	_____
Carpenter (Dock Builders, Heavy and Highway)	_____
Carpenter (Building, Floor Coverer)	_____
Electrician (Audio, Sound, Teledata)	_____
Electrician (Building, Fire Alarm, Maintenance, Security System)	_____
Electrician (Highway and Street Lighting)	_____
Glazier (Building)	_____
Insulator (Heat and Frost)	_____
Ironworker (Building, Mover, Rigger, Structural)	_____
Ironworker (Building, Reinforcing)	_____
Laborer (Building)	_____
Laborer (Demolition)	_____
Laborer (Basic, Mason Tender)	_____
Laborer – Concrete and Asphalt Paving	_____
Mason - (Bricklayer, Building)	_____
Mason – (Pointer, Caulker, Cleaner)	_____
Operating Engineer – Building (Building, Survey, Survey Crew)	_____
Painter (Building, Dry Wall Taper)	_____
Painter – (Bridge and Structural Steel)	_____
Plumber	_____
Sheet Metal Worker	_____
Steamfitter	_____

EXHIBIT D

List of Employees

LIST OF BOARD MEMBERS

Dennis Mehiel
Donald Cappocia
Frank Branchini
Martha Gallo
Lester Petracca
Hector Batista

LIST OF BPCA & BPCPC EMPLOYEES

Curtis Afzal
Elsa Alvarez
Dana Anders
Anthony Andriano
Stephen Arciold
Kathleen Bailey
Marie Baptiste
Freddy Belliard
Scott Birdseye
Nidia Blake-Reeder
Granderson Brown
Lauren Brugess
Nancy Buivid
Anthony Buquicchio
Monica Centeno
Betty Chin
Adam Choper
Carlton Chotalal
Deshay Crabb
Gwendolyn Dawson
Henri delaVega
Gilbert Depadua
Paul Diaz-Larui
Tonasia Dopson
Abigail Ehrlich
Maria Ellison
Richard Faraino
Anitra Fauntelroy

Eric T. Fleisher
Robin Forst
Joseph Ganci
Julissa Garcia
Luis Garcia
Abigail Goldenberg
Lenron Goode
Neresa Gordon
Ned Greenberg
Patrick Greene
Evelyn Gregg
Kelly Grogan
Robert Hansen
Nicole Heater
Sankar Heerah
Sonia Henry
Hector Herrera
Craig Hudon
Shari Hyman
Kendall Jinwright
Amy Jogie
Benjamin Jones
Kadia Kane
Roland Kemp
Susie Kim
AnaMariah Knox
Karl Koenig
Betzayda Laboy
Leandro Lafuente
Michael LaMancusa
Della Lee
Triny Lima
Rene Lopcy
Luis Lopez
Robert Maggi
Evelin Maisonet
Evonne Marche
Philip Mason
Kevin McCabe
Brenda McIntyre
Princess McNeill

Shinay McNeill
Vanessa Mesine
Ronnie Mohammed
Bertha Narcisse
Robert Nesmith
Siu NG
Yoshihiro Nishida
Kevin O'Toole
Hector Oyola
Willem Paillant
Gladys Pearlman
Dahlia Pena
Churman Persaud
Anthony Peterson
Bruno Pomponio
Katherine Powell
Sandra Power
Alix Pustilnik
Robert Quon
Jason Rachnowitz
Madelin Ramirez
Manuel Rivera
Anthony Robinson
Andrea Rodriguez
Nelson Rogers
Jose Rosada
Holly Ross
Carlos Santiago
Jean Schwartz
Lindsey Senn
Robert Serpico
Rekha Sewraj-Kumar
Sean Simon
Kemnarine Singh
Seema Singh
Timothy Skipper
Sarah Smedley
Linda Soriero
Nicole Stallworth-Roper
Kareem Starks
Jerome Sturiano

John Tam
Alexis Torres
Ryan Torres
Douglas VanHorn
Noe Velasquez
Evangelio Villalobos
Sharon Wade
David Wallace
Peter Wheelwright
Eric White
Angela Whitehead
Dwight Williams
Kenneth Windman
Al Wright
Jouli Yohannes
Julian Zapata
Bingxin Zheng

EXHIBIT E

Sample Contract

JOB ORDER CONSTRUCTION AGREEMENT

between

HUGH L. CAREY BATTERY PARK CITY AUTHORITY

and

[CONTRACTOR]

Dated as of []
Contract No. []

(ON-CALL GENERAL CONTRACTING SERVICES)

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JOB ORDER CONSTRUCTION AGREEMENT

AGREEMENT (the “**Agreement**”) made as of April 10, 2015 between BATTERY PARK CITY AUTHORITY, d/b/a HUGH L. CAREY BATTERY PARK CITY AUTHORITY (“**BPCA**”), a body corporate and politic, constituting a public benefit corporation and having a place of business at 200 Liberty Street, 24th Floor, New York, New York 10281, and [CONTRACTOR], incorporated in the state of [], having an office at [] (“**Contractor**”).

W I T N E S S E T H:

WHEREAS, BPCA has fee title to certain real property located in the City, County and State of New York, generally consisting of approximately 92 acres of land located on the west side of lower Manhattan, bounded by Pier A to the South, the westerly extension of Reade Street to the North, the United States Bulkhead Line to the East and the United States Pierhead Line to the West (collectively, “**Battery Park City**”); and

WHEREAS, BPCA has caused the staged development of Battery Park City, in individual parcels, creating a richly diversified mixed use community providing residential and commercial space, with related amenities such as parks, plazas, recreational areas and a waterfront esplanade; and

WHEREAS, BPCA intends to hire a contractor to perform on-call general contracting services, consisting of the Work for various Jobs authorized pursuant to Job Orders, located in Battery Park City; and

WHEREAS, Contractor has been selected to perform the Work, upon the terms and conditions hereinafter provided; and

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth, Contractor and BPCA hereby agree as follows:

ARTICLE 1 - DEFINITIONS

The following terms, wherever used in the Contract Documents, as defined herein, shall have the meanings set forth below or in the Section enumerated below next to each term:

- (a) Agreement - as defined in the first Recital.
- (b) Agreement Termination Date - as defined in Section 3.1(a).
- (c) Approach Plan - as defined in Section 3.1.
- (d) Architect - any person designated in a Job Order to act as an architect for a Job.

(e) BPCA - as defined in first Recital of this Agreement. BPCA hereby designates Gwen Dawson, Vice President, Real Property, as the representative of BPCA for the purpose of acting on behalf of BPCA whenever action is required to be taken hereunder by BPCA. Such designation may be revoked in writing at any time after notice given by BPCA to Contractor. In addition, such representative of BPCA shall have full power and authority to delegate in writing any or all of her responsibilities hereunder to any one or more persons after notice to Contractor.

(f) Certificate of Substantial Completion - as defined in Section 8.6.

(g) Construction Manager - any person designated in a Job Order to act as construction manager for a Job.

(h) Contract Documents - as defined in Section 2.2.

(i) Contractor - as defined in the first Recital of this Agreement.

(j) Drawings - any project drawings for a Job attached as an exhibit to a Job Order.

(k) Extra Work - any work in addition to the Work to be performed by Contractor pursuant to the Contract Documents.

(l) Final Acceptance - the term "Final Acceptance" shall apply to each individual Job Order and means the date on which the Work for such Job Order has been fully completed in accordance with the Contract Documents and accepted by BPCA.

(m) Final Contract Requisition - as defined in Section 5.2.

(n) Guarantor - as defined in Section 27.3.

(o) Job - a job authorized pursuant to a Job Order. The scope of work for a Job will be set forth in a Job Order issued by BPCA and accepted in writing by Contractor.

(p) Job Contract Price - means the amount of compensation set forth in a Job Order for the performance of the applicable Job set forth in a Job Order in accordance with the scope of work attached thereto.

(q) Job Completion Date - means, if applicable, the date set forth in a Job Order by which the Contractor must achieve Final Acceptance of such Job.

(r) Job Order - a document which sets forth a specific scope of work for a Job, a time duration for the completion of the work for such Job and any special conditions that may apply to that specific Job, such as liquidated damages.

(s) Job Order Amendment - as defined in Section 9.1(b).

(t) Joint Venture - an entity created pursuant to a written agreement among two or more contractors pursuant to which each shares in the direction and performance of the Work and shares in a stated percentage of profits or losses.

(u) Key Person/Personnel - as defined in Section 27.26.

(v) Materialman - supplier of Materials.

(w) Materials - all products, materials, fixtures, tools, equipment, apparatus, and furnishings intended to form a part of the Work.

(x) Minority Business Enterprise or Minority Owned Business Enterprise or MBE - as defined in Article 26.

(y) Minority or Minority Group Member - as defined in Article 26.

(z) Payment Bond - as defined in Section 13.3.

(aa) Performance Bond - as defined in Section 13.3.

(bb) Preceding Covered Date - as defined in Section 5.5.

(cc) Product Data - illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by Contractor to illustrate a Material, product or system for some portion of the Work.

(dd) Project - means, if identified in a Job Order, the larger project of which the Work authorized by the Job Order is a part.

(ee) Purchase Order - as defined in Section 10.1(e).

(ff) Requisitions - as defined in Section 5.2.

(gg) Samples - physical examples which illustrate Materials or workmanship and establish standards by which the Work will be judged.

(hh) Site - as defined in the Job Order for a Job.

(ii) Specifications - any specifications for a Job attached as an Exhibit to a Job Order.

(jj) Subcontract - an agreement between the Contractor and a Subcontractor (as defined in subsection (mm), below) for work on the Site.

(kk) Subcontractor - a person, firm, partnership or corporation under contract with Contractor.

(ll) Target Date - means, if applicable, the target date set forth in a Job Order by which the Contractor must use its best efforts to achieve Final Acceptance of such Job.

(mm) Term - as defined in Section 3.1(a).

(nn) Total Contract Price - as defined in Article 4.

(oo) Trade Payment Breakdown - as defined in Section 5.3.

(pp) Women's Business Enterprise or Women Owned Business Enterprise or WBE - as defined in Article 26.

(qq) Work - as defined in Section 2.1.

ARTICLE 2 - SCOPE OF WORK, MATERIALS AND LABOR

2.1 Definition of Work

Contractor shall perform and complete (and shall cause all Subcontractors to perform and complete) for BPCA the work as generally described in Exhibit A (collectively, the "**Work**") annexed hereto and as specifically described in exhibit B to each Job Order issued by BPCA and accepted in writing by Contractor, each such exhibit made a part hereof, required by and in conformity with the Contract Documents. Contractor may be requested to perform several Job Orders concurrently. All materials to be furnished and labor and work to be performed and completed by Contractor and/or Subcontractors as required in the Contract Documents and in conformity with all requirements applicable with respect thereto are herein collectively referred to as the "Work."

2.2 Contract Documents

The "**Contract Documents**" shall consist of the following:

(a) This Agreement, which includes, in addition to the text comprising Articles 1 through 27, the following:

- (1) EXHIBIT A – GENERAL DESCRIPTION OF WORK
- (2) EXHIBIT B – FORM OF JOB ORDER
- (3) EXHIBIT C – MONTHLY UTILIZATION COMPLIANCE REPORTS
- (4) EXHIBIT D – PROMPT PAYMENT POLICY
- (5) EXHIBIT E – INCIDENT REPORT FORM
- (6) EXHIBIT F – RATE SCHEDULE

(b) Job Orders issued pursuant to Article 3, including any exhibits attached thereto.

(c) Any Payment and Performance Bonds (as defined in Section 13.3).

- (d) Job Order Amendments adopted pursuant to Article 9.

The Contract Documents form the contract between BPCA and Contractor. References in the Contract Documents to “the Contract”, “this Contract” or “the Construction Contract” shall be deemed to include all of the Contract Documents. References to “this Agreement” or “the Agreement” shall refer to this instrument (including the Exhibits attached hereto), which is one of the Contract Documents.

2.3 Intent of Contract Documents

(a) The intent of the Contract Documents is to include in the Work all labor and materials, insurance, tools, equipment, permits, licenses, taxes, approvals, transportation, surveys, testing, field engineering and other professional services (other than the services of BPCA’s Architect, Construction Manager, engineers, artists, and attorneys, and the inspection, survey and testing services of BPCA) and any other items required to execute and complete the Work satisfactorily and in accordance with the Contract Documents. Contractor shall perform and complete the Work in accordance with the true intent and meaning of the Contract Documents and shall perform all Work incident thereto or as is usually performed in connection therewith or as is reasonably inferable therefrom, it being the intention that all work usually performed by the trade covered by this Agreement and necessary to produce the intended result be performed by Contractor whether or not specifically covered by the Contract Documents.

(b) The Contract Documents are complementary and what is called for by one shall be as binding as if called for by all.

(c) If any conflicts or ambiguities are found among any of the Contract Documents, they shall be brought to the attention of BPCA, or, if applicable for any Job, the Construction Manager designated in the Job Order for such Job, immediately for resolution. BPCA will interpret the Contract Documents so as to secure in all cases the most substantial and complete performance of the Work as is most consistent with the needs and requirements of the Work. If there are any conflicts between this Agreement and a Job Order for a Job, the applicable provisions of the Job Order shall control for such Job; provided that no Job Order shall authorize a Job if the Job Contract Price for such Job shall cause the total sum of the Job Contract Prices for previously authorized Jobs to exceed the Total Contract Price.

(d) Addenda to parts of the Contract Documents are for the purpose of varying, modifying, rescinding or adding to the affected portion of the Contract Documents. All addenda should be read together with the portions of the Contract Documents to which they pertain. Where an addendum modifies a portion of a paragraph, a Section, or an Article, the remainder of the paragraph, Section or Article shall remain in force unless otherwise stated in the addendum.

(e) Captions, headings, cover pages, tables of contents and footnote instructions contained in the Contract Documents are inserted only to facilitate reference and for convenience and in no way define, limit or describe the scope, intent or meaning of any provision of the Agreement.

(f) Words and abbreviations which have well-known technical or trade meanings are used in the Contract Documents in accordance with such recognized meanings.

(g) Drawings and Specifications attached as exhibits to any Job Order are complementary. Anything shown in any Drawings for a Job, if applicable, and not mentioned in the Specifications for such Job, if applicable, or mentioned in the Specifications for a Job, if applicable, and not shown in the Drawings for such Job, if applicable, shall have the same effect as if shown or mentioned in both.

(h) A typical or representative detail indicated on the Drawings for a Job, if applicable, shall constitute the standard for workmanship and Materials throughout corresponding parts of the Work for such Job. Where necessary, and where reasonably inferable from the Drawings or Specifications for a Job, Contractor shall adapt such representative detail for application to such corresponding parts of the Work for such Job. The details of such adaptation shall be subject to prior approval by BPCA and if applicable for any Job, the Architect or Construction Manager designated in the Job Order for such Job. Repetitive features shown in outline on any Drawings shall be in exact accordance with corresponding features completely shown.

(i) The layout of mechanical and electrical systems, equipment, fixtures, piping, ductwork, conduit, specialty items, and accessories indicated on any Drawings is diagrammatic, and all variations in alignment, elevation, and detail required to avoid interferences and satisfy architectural and structural limitations are not necessarily shown. Actual layout of the Work for a Job shall be carried out without affecting the architectural and structural integrity and limitations of the Work for such Job and shall be performed in such sequence and manner as to avoid conflicts, provide clear access to all control points, including valves, strainers, control devices, and specialty items of every nature related to such systems and equipment, obtain maximum headroom, and provide adequate clearances as required for operation and maintenance.

2.4 Completion of Drawings and Specifications

Contractor acknowledges that there are items of work which are not drawn or specified with complete detail in the Drawings and Specifications for a Job, if applicable, but which are required for the completion of the Work for such Job. Any such item, when identified as part of the reasonable development of the Work for such Job, shall be drawn or specified by the designated Architect for such Job in consultation with Contractor, in a manner consistent with contemplated kind and quality and customary standards. When such drawing or specification is approved by BPCA, the drawing or specification so approved shall thereupon be part of the Contract Documents and the item of work shall be performed by Contractor as part of the Work for such Job without further action or order of the designated Construction Manager for such Job or BPCA and without any increase in the Job Contract Price as if such drawing and/or specification were originally included in the Contract Documents.

2.5 Title to Materials

Title to all Materials shall immediately vest in BPCA upon payment in respect of such Materials, whether or not then incorporated or installed into a Job or Project. The Materials shall then become the sole property of BPCA subject to the right of BPCA, or, if applicable for any Job, the Construction Manager or Architect designated in the Job Order for such Job, to reject same for failure to conform to the standards of any or all of the Contract Documents. Title to all Work and Materials shall be in BPCA, free and clear of all liens, claims, security interests or encumbrances. Contractor warrants that no Work or Materials shall be fabricated or delivered to the Site for any Job by Contractor or any Subcontractor or Materialman subject to any security interest, lien or similar encumbrance.

2.6 Contractor's Obligations

(a) Contractor shall in a good and workmanlike manner perform all the Work for a Job required by the Contract Documents in accordance with the best practice of Contractor's trade within the time specified herein. Contractor shall supervise and direct the Work using its best skill and attention. Contractor shall be solely responsible for all construction means, methods, techniques, sequences and procedures within the scope of Contractor's Work.

(b) Contractor shall furnish, erect, maintain, and remove such construction plant and such temporary Work as may be required for the performance of the Work for a Job. Contractor shall be responsible for the safety, efficiency and adequacy of Contractor's plant, appliances and methods, and for damage that may result from failure or improper construction, maintenance or operation of such plant, appliances and methods. Contractor shall comply with all terms of the Contract Documents, and shall do, carry on and complete the entire Work for a Job under the direction of and to the satisfaction of BPCA.

(c) Contractor shall provide all equipment, tools and materials and whatever else may be required for proper performance of the Work unless stated otherwise in the Contract Documents.

(d) Contractor shall deliver all Materials at such times and in such quantities as will insure the speedy and uninterrupted progress of the Work. All Materials shall be delivered to the Site in proper order and quantity and shall be stored at the Site, if storage space is available in BPCA's opinion, or, if applicable for a Job, the opinion of the Construction Manager designated in the Job Order for such Job, in such places as BPCA, or, if applicable for a Job, Construction Manager shall direct; provided, that no delivery of Materials shall be made to the Site of a Job without prior approval by BPCA, or if applicable for a Job, Construction Manager. Contractor has been advised and is aware that Battery Park City is located in a congested metropolitan area, and there may not be sufficient space to store Materials on the Site for such Job or Project. If storage space is unavailable on Site, Contractor shall make arrangements to store Materials off Site at Contractor's own cost. Contractor shall not be entitled to additional compensation for moving Materials from one storage area to another, whether such storage areas are on or off Site. No Materials shall be removed from the Site of a Job without the consent of BPCA, or, if applicable for a Job, Construction Manager. Contractor shall handle and take care of all Materials used in performance of the Work whether furnished by Contractor or BPCA, as the same are delivered to the Site or to any applicable offsite storage location and

shall be solely responsible for the security and condition of the same. After final completion and acceptance of the Work, or sooner if requested by Construction Manager, Contractor shall remove all surplus Materials and scaffolding furnished by it which have not been incorporated in the Work.

(e) Contractor shall follow and perform the Work in accordance with the Contract Documents as interpreted by BPCA, and, if applicable for a Job, the designated Construction Manager and/or Architect.

(f) Unless otherwise provided in the Contract Documents, Contractor shall secure and pay for all permits and governmental fees, licenses and inspections necessary for the proper execution and completion of the Work for a Job. Contractor shall give all notices and comply with all laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the performance of the Work for a Job. If Contractor observes that any of the Contract Documents are at variance with any applicable laws in any respect, Contractor shall promptly notify BPCA, and if applicable for a Job, the Architect and Construction Manager designated in the Job Order for such Job, in writing, and any necessary changes shall be accomplished by appropriate modification. If Contractor performs any Work knowing it to be contrary to such laws, ordinances, rules and regulations, and without such notice to BPCA, and, if applicable for a Job, the Architect and Construction Manager designated in the Job Order for such Job, Contractor shall assume full responsibility therefor and shall bear all costs attributable thereto.

(g) Contractor shall be responsible for collecting all paper, cartons and other debris caused by its Work or personnel, placing the same in a location designated by BPCA, or, if applicable for a Job, the Construction Manager designated in the Job Order for such Job, and keeping the portion of the Site for the Job upon which Contractor is performing the Work free from all debris.

(h) Contractor shall attend meetings as directed by BPCA or, if applicable for a Job, the Construction Manager designated in the Job Order for such Job.

2.7 “Or Equal” Clause

(a) The Materials of manufacturers referred to in any Specifications or Drawings, if applicable for a Job, are intended to establish the standard of quality and design required for such Job; however, Materials of manufacturers, other than those specified, may be used if equivalent and approved by BPCA, or if applicable for a Job, the Architect and Construction Manager designated in the Job Order for such Job.

(b) It is deemed that the term “or approved equal” is included after all Materials referred to in any Specifications or Drawings attached to a Job Order for a Job.

(c) BPCA, or, if applicable for a Job, the Architect designated in the Job Order for such Job, will initially judge the equivalency of proposed substitute Materials. If there is a designated Architect for a Job, Architect will make written recommendation of acceptance or rejection to Construction Manager and/or BPCA. BPCA or, if applicable for a Job, the

Construction Manager designated in the Job Order for such Job, will then authorize Architect to issue to Contractor written approval or rejection of the substitution.

(d) If Contractor desires to use a substitute item, Contractor shall make application to BPCA, or, if applicable for a Job, the Architect designated in the Job Order for such Job, in writing in sufficient time (with regard to the progress of the Work for such Job, the period of delivery of the goods concerned and adequate time for BPCA's or, if applicable, Architect's review) stating and fully identifying the proposed substitute, cost changes (if any), and submitting substantiating data, samples, brochures of the item proposed. It is Contractor's responsibility to provide at its sole expense sufficient evidence by tests or other means to support any request for approval of substitutions.

(e) Prior to proposing any substitute item, Contractor shall satisfy itself that the item Contractor proposes is, in fact, equal to that specified and had been used satisfactorily in similar applications to the application proposed for the Work, for at least three years, that it will fit into the space allocated and within the load allocated for the same, that it affords comparable ease of operations, maintenance and service, that its appearance, longevity and suitability for the climate and use are comparable to that specified, and that the substitution requires no change in dimension or design of any other Work of Contractor, of any other contractor or in the time required for the performance thereof.

(f) The burden of proof that a proposed substitution is equal to a specified item shall be upon Contractor, who shall support its request with sufficient test data and other means to permit BPCA, or, if applicable for a Job, the Architect designated in the Job Order for such Job, to make a fair and equitable decision on the merits of the proposal. Any item by the manufacturer other than those cited in the Contract Documents, or of brand name or model number or of generic species other than those cited in the Contract Documents, will be considered a substitution.

(g) Acceptance of substitutions shall not relieve Contractor from responsibility for compliance with all the requirements of the Contract Documents. If, notwithstanding the provisions of subsection (e) above, changes in other parts of the Work or the work of other contractors are required by its substitutions, Contractor shall be responsible for the costs of any such changes including the cost of all design and redesign services related thereto incurred by the Architect and its consultants.

(h) The Job Completion Date shall not be extended by any circumstances resulting from a proposed substitution, nor shall Contractor be entitled to any compensation for any delay caused thereby or related thereto.

2.8 Quality and Labeling

All Materials furnished shall be new and the quality thereof shall be in accordance with the Contract Documents. When Materials are specified to conform to a given standard, the Materials delivered to the Site shall bear manufacturer's labels stating that the Materials meet such standard. The above requirements shall not restrict or affect BPCA's right

to test Materials as provided in this Agreement.

ARTICLE 3 - COMMENCEMENT AND COMPLETION OF THE WORK

3.1 Commencement and Completion

(a) Upon notification of an upcoming Job from BPCA, Contractor shall: (1) unless otherwise directed by BPCA, conduct a site visit to the Site for such Job within twenty-four (24) hours of notification of a Job and, if the duration for the upcoming Job as directed by BPCA shall be more than five (5) work days and the anticipated Job Contract Price shall be more than \$30,000, (2) prepare and submit a plan with respect to the Job within forty-eight (48) hours of notification of a Job, or within such time as BPCA reasonably specifies under the circumstances (the “**Approach Plan**”). The Approach Plan shall provide the following information regarding a Job, unless otherwise specified by BPCA: (1) a trade payment breakdown of the various portions of the Work for such Job, including all labor, materials, supervision, overhead and profit, aggregating the Job Contract Price prepared in such form as specified by BPCA and supported by such data to substantiate its correctness as BPCA may require; (2) bar schedule including durations and proposed start date for Work to be performed; (3) logistics plan that coordinates any areas that require public access; (4) notification of all shut-downs required to perform the Work for such Job; (5) list of required materials, including long-lead items; (6) list of required sign-offs by outside agencies, if any; (7) staffing plan including lists of all trades, hours of work, and number of employees scheduled to perform the Work (for Contractor and all Subcontractors); (8) management plan including emergency and non-emergency contacts; and (9) safety plan addressing OSHA compliance. Upon BPCA’s approval of the Approach Plan for a Job (if applicable), BPCA shall issue a Job Order substantially in the form of Exhibit B annexed hereto and Contractor shall indicate in writing its acceptance of the Job Order. Each Job authorized pursuant to the Contract Documents will be governed by this Agreement, as supplemented by the applicable Job Order. For each Job authorized pursuant to the Contract Documents, the Job Order for such Job shall include as exhibits, a detailed scope of work for such Job, and, if applicable, the Approach Plan and any Drawings or Specifications relating to such Job. Contractor shall not commence Work for any Job prior to the date set forth on the Job Order for such Job. Contractor agrees to be bound by and comply with the Job Completion Date or Target Date for each Job, and, if applicable for such Job, the Approach Plan for such Job (as any such Approach Plan shall be updated pursuant to subsection (b)) and waives any right to charge or claim damages or any increased cost, charges or expenses against BPCA, or, if applicable for any Job, the Construction Manager or Architect designated in the Job Order for such Job, for delays or disruptions from any cause whatsoever. Contractor’s sole remedy as against BPCA, or, if applicable for any Job, the Construction Manager or Architect designated in the Job Order for such Job, for any delays or disruptions shall be as provided in Section 3.4 hereof. Notwithstanding the foregoing, the Work for a Job shall be completed by no later than the Job Completion Date set forth in the Job Order for such Job, or, if there is no Job Completion Date set forth in the Job Order for such Job, Contractor shall use its best efforts to complete the Work for such Job no later than the Target Date set forth in the Job Order for such Job, with time being of the essence in respect of said Job Completion Date or Target Date, as more fully set forth in subsection (g) below. If BPCA issues a Job Order with a Target Date specified in such Job Order, BPCA may amend such Job Order to set forth a Job Completion Date if the nature of the Job changes at any time after the

Job Order is issued. This Agreement shall terminate by [] (the “**Agreement Termination Date**”) (the period between the date hereof and the Agreement Termination Date, the “**Term**”).

(b) If there is an Approach Plan for a Job based on the criteria set forth in subsection (a) above, the Approach Plan for such Job shall be updated weekly by Contractor, or at any other time at the request of BPCA, or, if applicable for a Job, the Construction Manager designated in the Job Order for such Job, and submitted to BPCA or, if applicable for a Job, the Construction Manager designated in the Job Order for such Job, for review and approval. Failure to submit any requested update shall constitute a material breach of this Agreement. The Contractor shall promptly give written notice of any actual or potential delays to BPCA and, if applicable for a Job, the Construction Manager designated in the Job Order for such Job. If a Job is part of an ongoing Project requiring the work of other contractors, after submission of the Approach Plan for such Job, the Construction Manager designated in the Job Order for such Job shall coordinate the Approach Plan with the schedule for the Project. The Approach Plan may be revised by BPCA, or if applicable for a Job, the Construction Manager designated in the Job Order for such Job, from time to time.

(c) Contractor shall commence the Work for a Job on the date set forth in the Job Order for such Job, and shall perform the Work for such Job diligently and in accordance with the time and place requirements of the Job and the Project, if applicable, as determined and directed by BPCA, or if applicable for a Job, the Construction Manager designated in the Job Order for such Job, by using such means and methods of construction as will assure that the Work for such Job will be performed in accordance with the Contract Documents and Approach Plan, and to the satisfaction of BPCA, and, if applicable for a Job, the Architect and Construction Manager designated in the Job Order for such Job.

(d) If, in the opinion of BPCA, or, if applicable for a Job, the Construction Manager designated in the Job Order for such Job, Contractor falls behind the Approach Plan then in effect, or, if there is no Approach Plan for a Job, Contractor falls behind the schedule for such Job, Contractor shall take whatever steps may be necessary to improve its progress and shall, if requested by BPCA, or, if applicable for a Job, the Construction Manager, submit operational plans to demonstrate the manner in which the lost time may be regained. It is the responsibility of Contractor to maintain its schedule so as not to delay the progress of the Job, or if applicable, the Project and the schedules of other contractors. If Contractor delays the progress of its Work for a Job or the work of other contractors, it shall be the responsibility of Contractor to increase the number of workers, the number of shifts, the days of Work for such Job and/or, to the extent permitted by law, to institute or increase overtime operations, all without additional cost to BPCA, in order to regain any time lost and, if applicable, maintain the schedule for the Project then in effect as established by Construction Manager.

(e) If Contractor shall fail to complete the Work for a Job by the Job Completion Date for such Job, or within the time to which such completion may have been extended, BPCA may, at its option, withhold from any sums otherwise due and owing to Contractor hereunder, so much of the balance thereof as BPCA shall deem necessary to secure it against any costs, expenses, or damages which may be incurred by BPCA as a result of said failure, but any such withholding shall not be deemed to be a waiver of any rights hereunder, and Contractor shall

be liable to and shall indemnify and hold BPCA harmless from any and all cost, expense or damage incurred by BPCA by reason of such failure.

(f) Contractor shall be liable to BPCA, to the fullest extent permitted by law, for whatever actual damages (other than actual loss of beneficial use) BPCA may incur as a result of any actions or inactions of Contractor or its Subcontractors including, without limitation, interest expense and carrying costs, liabilities to other Contractors working on the Project or other third parties, job extension costs, and other losses incurred by BPCA. The provisions of this paragraph are exclusive to BPCA, and shall not accrue to other contractors or third parties.

(g) It is further agreed that time is of the essence for each and every portion of the Work for a Job. In any instance in which additional time is allowed for the completion of any Work for a Job, the new time of completion established by said extension shall be of the essence. Contractor shall not be charged with any excess cost if BPCA determines that Contractor is without fault and that the delay in completion of the Work for such Job is due to:

(1) any preference, priority or allocation order duly issued by the Government of the United States or the State of New York;

(2) an unanticipated cause beyond the control and without the fault of, or negligence of Contractor, and approved by BPCA, including, but not limited to, acts of God or of public enemy, fires, epidemics, quarantine, strikes, freight embargoes and unusually severe weather; or

(3) any delays of Subcontractors or Materialmen occasioned by any of the causes specified in subsections 1 and 2 of this paragraph.

(h) Notwithstanding the foregoing, and whether or not, at any given time, an Approach Plan, or update thereto (as appropriate) has been submitted, the Work for a Job shall be completed by the Job Completion Date for such Job.

(i) Notwithstanding anything to the contrary, a schedule submitted by Contractor showing a time of completion earlier than that specified in the Contract Documents shall not entitle Contractor to any additional compensation unless BPCA and Contractor agree in writing to such additional compensation.

3.2 Coordination with Other Contractors

If a Job Order provides that a Job shall be part of a Project with other contractors performing work for such Project, Contractor shall coordinate the Work for such Job to be performed hereunder with the work of other contractors performing work for the Project in such manner as Construction Manager shall direct. Contractor shall indemnify and hold BPCA, and if applicable for a Job, the Construction Manager and Architect designated in the Job Order for such Job, harmless from any and all claims or judgments for damages, costs and expenses to which BPCA, Construction Manager or Architect may be subjected or which they may suffer or incur by reason of Contractor's failure to promptly comply with Construction Manager's

directions. BPCA, and, if applicable for a Job, the Construction Manager and Architect designated in the Job Order for such Job, shall not, however, be liable for any damages suffered by Contractor by reason of the other contractor's failure to promptly comply with the directions so issued by Construction Manager or by reason of another contractor's default in performance. Should Contractor sustain any damage through any act or omission of any other contractor, Contractor shall have no claim against BPCA, or, if applicable for a Job, the Construction Manager or Architect designated in the Job Order for such Job, for such damage but shall have a right to recover such damage from the other contractor, under a provision similar to a provision contained in the following sentence which is part of this Agreement and which has been or will be inserted in the contracts with the other contractors engaged in the Project.

Should any other contractor having or who shall hereafter have a contract with BPCA for the performance of work upon the Project sustain any damage through any act or omission of Contractor hereunder, Contractor shall reimburse such other contractor for all such damages and to indemnify and hold BPCA, and, if applicable for a Job, the Construction Manager and Architect designated in the Job Order for such Job, harmless from all such claims. Any claim against a Performance Bond surety made by any contractor shall be subordinated to any claim of BPCA then existing or that may arise in the future against such other contractor or its Performance Bond surety.

3.3 Notice of Delay

Should Contractor be or anticipate being delayed or disrupted in performing the Work for a Job under the Contract Documents for any reason, including, without limitation, its financial condition or Contractor's general nonpayment of its debts as such debts become due, it shall promptly and in no event more than three (3) days after the commencement of any condition that is causing or is threatening to cause such delay or disruption notify BPCA, or, if applicable for a Job, the Construction Manager designated in the Job Order for such Job, in writing of the effect of such condition upon the Approach Plan for each ongoing Job, stating why and in what respects the condition is causing or is threatening to cause delay, provided, however, that notwithstanding the above, if such delay or disruption, or anticipated delay or disruption, should be the result of any change or anticipated change in Contractor's financial condition, Contractor shall notify BPCA, or, if applicable for a Job, the Construction Manager designated in the Job Order for such Job, forthwith of such cause or anticipated cause. Failure to strictly comply with this notice requirement shall be sufficient cause to deny Contractor a change in schedule and to require it to conform to the Approach Plan for any such Job(s) then in effect approved by BPCA.

3.4 Extension of Time

(a) An extension of time under any Approach Plan then in effect may be granted by BPCA subject to the provisions hereof upon written application therefor by Contractor. An application for an extension of time under any Approach Plan then in effect must set forth in detail the nature of each cause of delay in the performance of the Work, the date or dates upon which each cause of delay began and ended and the number of days delay attributable to each such cause. After the application is submitted, Contractor shall supply any other data that

BPCA, or, if applicable for a Job, the Construction Manager designated in the Job Order for such Job, may request.

(b) Contractor shall be entitled to an extension of time under any Approach Plan then in effect for delays in the performance of the Work, if caused:

- (1) solely by unanticipated acts or omissions of BPCA, or, if applicable for a Job, the Construction Manager or Architect designated in the Job Order for such Job; or
- (2) by the unanticipated acts or omissions of other contractors or unanticipated causes beyond the control and without the fault or negligence of Contractor including, but not limited to, acts of God, acts of public enemy, acts of any Government body, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather, or delays of Subcontractors or Materialmen arising from unforeseeable causes beyond the control and without the fault or negligence of both Contractor and such Subcontractors or Materialmen; provided, that Contractor shall have used its best efforts and diligently sought to have minimized any such period of delay, by taking whatever measures are necessary, including without limitation, if applicable, seeking alternate sources of Materials, other Subcontractors or other facilities in which to perform the required construction operations; and provided, further, that an application is made pursuant to the requirements of the immediately preceding paragraph.

ARTICLE 4 - CONTRACT PRICE

For the performance and completion of the Work under all Job Orders issued by BPCA and accepted in writing by Contractor in accordance with this Job Order Construction Agreement, BPCA shall pay Contractor a not-to exceed amount of [] (\$[]), (such sum is herein sometimes referred to as the “**Total Contract Price**”), paid in accordance with the rate schedule attached hereto as Exhibit F, which amount shall include any monies earned by or paid to Contractor prior to the execution of this Agreement, provided, that if the Total Contract Price shall be expressly revised by an amendment to this Agreement, the Total Contract Price shall thereafter mean the Total Contract Price as so revised. Payment for the Work for any Job shall not be made unless there is an executed Job Order for such Job.

ARTICLE 5 - METHOD, SCHEDULE AND TERMS OF PAYMENTS

5.1 Partial Payment

(a) In accordance with Requisitions submitted and approved as provided below for Work performed in accordance with this Agreement, Contractor shall be entitled to partial payment on account of the Total Contract Price in an amount equal to (i) the value, as determined in accordance with the trade payment breakdown (as defined in Section 5.3 included in an Approach Plan for a Job that is ongoing at the time a Requisition is submitted, of the

portions of the Work completed and acceptable to BPCA and, if applicable for a Job, the Construction Manager designated in the Job Order for such Job, or (ii) if there is no Approach Plan for a Job, the value of the Work completed for such Job and accepted by BPCA; provided, however, that if the Job Contract Price for a Job shall exceed \$75,000 and there shall be partial payments for such Job, BPCA shall hold a retainage equal to ten percent (10%) of the total amount of all properly requisitioned payments toward the Job Contract Price for such Job. Any such retainage shall be returned following Final Acceptance for such Job by BPCA. Partial payments shall constitute advances against the Job Contract Price until final payment is made and accepted. No partial payment made, nor approval of a portion of the Work given for purposes of making a partial payment, shall constitute an acceptance of any Work not in accordance with the Contract Documents.

(b) Upon completion of fifty percent of the Work for a Job that shall require a retainage as set forth in subsection (a) above, Contractor may make written application to BPCA requesting reduction of the retainage set forth in Section 5.1(a) hereof. Approval of such reduction of retainage and the percentage to which the retainage shall be reduced is in the sole discretion of BPCA. If BPCA approves a reduction of retainage as herein described, BPCA shall so notify Contractor in writing. Any reduction of retainage pursuant to this paragraph (b) shall not be deemed to be a waiver of retainage requirements for future partial payments.

5.2 Requisitions

Applications for partial payments (“**Requisitions**”) and application for final payment under this Agreement (“**Final Contract Requisition**”) shall be in the form previously supplied by BPCA and shall be submitted by Contractor to BPCA or its designee in five original copies in the manner hereinafter provided for the approval of BPCA. Each Requisition shall be supported by such data substantiating Contractor’s right to payment as BPCA may require.

5.3 Trade Payment Breakdown; Approach Plan

Prior to the issuance of any Job Order for a Job with a duration of more than five (5) work days and a Job Contract Price of greater than \$30,000, Contractor shall present to BPCA, or, if applicable for a Job, the Construction Manager designated in the Job Order for such Job, for approval an Approach Plan, which shall include a trade payment breakdown for such Job (the “**Trade Payment Breakdown**”) of the various portions of the Work for such Job, aggregating the Job Contract Price, prepared in such form as specified by BPCA and supported by such data to substantiate its correctness as BPCA, or if applicable for a Job, the Construction Manager may require. After approval by BPCA, the Approach Plan shall not be changed or revised in any way without the written consent of BPCA. The Job Contract Price or Job Completion Date or Target Date for a Job not requiring an Approach Plan shall not be changed or revised in any way without the written consent of BPCA. The Approach Plan, when approved by BPCA, shall be used only as a basis for Requisitions and shall not be considered as a basis for reducing or increasing the Job Contract Price or the Total Contract Price.

5.4 Payment for Stored Materials

If approved in advance of delivery by BPCA and, if applicable for a Job, the Construction Manager designated in the Job Order for such Job, payments will be made on account of 80% of the value of Materials that have not been incorporated in the Work to date, but delivered and suitably stored at the Site or at some other offsite location agreed upon in writing by BPCA and, if applicable for a Job, the Construction Manager designated in the Job Order for such Job. Such payments shall be conditioned upon submission by Contractor of bills of sale or other supporting documentation satisfactory to BPCA and, if applicable for a Job, the Construction Manager designated in the Job Order for such Job to establish BPCA's title to such Materials including applicable insurance and transportation to the Site for those Materials stored offsite. In the event that Contractor, with approval of BPCA, stores any Materials offsite, the conditions for payment of Material stored off-site shall include but not be limited to the following: (a) the Material shall be properly stored in a secured location approved by the BPCA and/or Construction Manager; (b) the Material will be covered under the BPCA's builder's risk policy subject to policy limits and restrictions; and (c) the Material may be inspected by the BPCA and/or Construction Manager to assure compliance with Contract Documents.

5.5 Receipts and Releases of Liens

With each Requisition, Contractor shall furnish its affidavit of payment and waiver of lien for Work done and Materials furnished through the date covered by the last preceding partial payment (the "**Preceding Covered Date**") and shall furnish its affidavit certifying that all Subcontractors and Materialmen have been paid for Work performed and Materials furnished through the Preceding Covered Date except for any permitted retainage. BPCA may also require Contractor to attach to each Requisition (i) affidavits of payment and waivers of lien from all Subcontractors and Materialmen dealing directly or indirectly with Contractor for Work performed and Materials furnished through the Preceding Covered Date and/or (ii) the consent of the surety issuing the Payment Bond to such payment. BPCA may require Contractor to execute a waiver of lien at the time payment is made for a Requisition for all Work performed through the date of the Requisition in respect of which payment is being made.

In addition to the documents required to be furnished by the preceding paragraph with the Final Requisition, Contractor shall furnish (y) its affidavit that there are no liens, claims or demands by, and that there is no indebtedness to, Subcontractors, Materialmen, laborers, other employees or third persons for which BPCA, or, if applicable for a Job, the Construction Manager or Architect designated in the Job Order for such Job, might in any way be responsible and (z) releases from all Subcontractors and Materialmen dealing directly or indirectly with Contractor. Should any such Subcontractor or Materialman fail or refuse to furnish such release, Contractor may be required to furnish a bond satisfactory to BPCA to indemnify it against any such lien, claim or demand. If any such lien, claim or demand remains unsatisfied after all payments are made to Contractor, Contractor shall refund to BPCA all monies that BPCA may be compelled to pay in discharging such lien, claim or demand including all costs, expenses and attorneys' fees which BPCA may incur in connection therewith.

5.6 Time of Payment

Requisitions shall be submitted by Contractor to BPCA and, if applicable for a Job, the Construction Manager designated in the Job Order for such Job, by the seventh day of each calendar month for Work for any Job(s) completed up to the last calendar day of the previous month or other day approved by BPCA, and payment shall be made (pursuant to BPCA's Prompt Payment Policy, a copy of which is attached hereto and made part hereof as Exhibit D) on or about twenty days after BPCA receives the Requisition together with the documents required pursuant to Sections 5.2 and 5.5 hereof. Contractor shall be entitled to payment only in the amount approved by BPCA and, if applicable for a Job, the Construction Manager designated in the Job Order for such Job, with respect to such Requisitions, each of which must be signed by BPCA and, if applicable for a Job, the Construction Manager designated in the Job Order for such Job, before payment is made. The value of any Work included in a Requisition for partial payment which is found unacceptable by BPCA or, if applicable for a Job, the Construction Manager designated in the Job Order for such Job, may be deducted from that or any subsequent Requisition.

5.7 [Intentionally Omitted]

5.8 Final Payment

(a) The final balance due to Contractor under a Job Order shall be payable to Contractor by BPCA, as final payment thereunder, within thirty days after all of the following have taken place:

- (1) Contractor's Final Job Order Requisition has been submitted by Contractor and approved by BPCA;
- (2) Unless otherwise specified by BPCA due to the size or nature of the Job Order, the affidavit provided for in Section 5.5 hereof has been submitted by Contractor, and any other documents or actions expressly specified in the Contract Documents as preconditions to final payment have been submitted or completed; and
- (3) any inspections or approvals with respect to any of the Work that BPCA deems legally required or appropriate by governmental authorities or by the applicable Board of Fire Underwriters have been performed or obtained.

(b) The acceptance of final payment shall constitute a waiver of all claims by Contractor.

5.9 Release and Consent of Surety

Notwithstanding any other provision of this Agreement or the other Contract Documents, before final payment pursuant to Section 5.8 shall become due pursuant hereto, Contractor shall submit to BPCA a consent of surety to final payment in form and substance

acceptable to BPCA.

5.10 BPCA's Right to Audit and Inspect Records

Contractor shall maintain and shall keep for a period of at least six years after the date of Final Acceptance of the Work, pursuant to Section 8.7, all records and other data relating to the Work. BPCA or its designee shall have the right to inspect and audit all records and other data of Contractor relating to the Work at any time and from time to time until the end of such six-year period. Contractor shall promptly respond to any inquiries of BPCA or any representative of BPCA arising out of any such inspection or audit.

5.11 Withholding of Payments

(a) BPCA may withhold payment or, because of subsequently discovered evidence, may nullify the whole or any part of any previously approved Requisition to such extent as may, in the judgment of BPCA, be necessary:

- (1) to assure payment of just claims or liens of any persons supplying labor or Materials for the Work;
- (2) to protect BPCA from loss due to defective Work or to reimburse BPCA, or, if applicable for a Job, the Construction Manager or Architect designated in the Job Order for such Job, for fines on account of non-compliance with applicable laws, rules and regulations, including rules promulgated by the Office of Safety & Health Administration;
- (3) to protect BPCA from loss due to death or injury to persons or damage to the Work or property of BPCA, other contractors or others caused by the act or neglect of the Contractor;
- (4) in the event that there is reasonable evidence that the Work will not be completed for the unpaid balance of the Contract Price;
- (5) in the event that there is reasonable evidence that the Work will not be completed within the time provided; or
- (6) in the event that Contractor persistently fails to perform the Work in accordance with the Contract Documents.

In any of such events, BPCA shall have the right to apply any such amounts so withheld in such manner as BPCA may deem proper to satisfy such claims, to secure such protection, to complete the Work or to compensate BPCA for any loss suffered by reason of Contractor's delay. Such application shall be deemed payment for the account of Contractor. In the event that BPCA gives Contractor notice that it intends to make such application, Contractor shall be estopped from disputing liability or the amount of liability unless, within three days after receipt of such notice, it indicates to BPCA in writing that it is not liable or that

the amount of its liability is different from that set forth in the notice.

(b) The provisions of this Section 5.11 are solely for the benefit of BPCA, and any action or non-action by BPCA shall not give rise to any liability on the part of BPCA. Failure to so act shall not be deemed a waiver of any present or future claims of BPCA.

ARTICLE 6 – CONTRACTOR

6.1 Superintendence by Contractor, Discipline and Employee Skills

Contractor shall provide a competent construction superintendent to be in charge of the Work. The construction superintendent shall be present at the Site during the time the Work is required to be performed and shall have full authority to accept instructions, make decisions and act for Contractor at all times. If at any time the construction superintendent is not satisfactory to BPCA or, if applicable for a Job, the Construction Manager designated in the Job Order for such Job, Contractor shall, if requested by BPCA, replace such superintendent with another satisfactory to BPCA. Contractor shall enforce strict discipline and good order at all times among Contractor's employees and all Subcontractors. Contractor shall not engage any employee not skilled in the task assigned.

6.2 Representations and Warranties

Contractor represents and warrants that:

(a) Contractor is financially solvent and is experienced in, and competent to perform the Work and has the staff, manpower, equipment, Subcontractor, and suppliers available to complete the Work within the time specified in the Contract Documents for the Job Contract Price;

(b) Contractor is familiar with all Federal, State or other laws, ordinances, orders, rules and regulations, which may in any way affect the Work; and

(c) Any temporary and permanent Work required by the Contract Documents can be satisfactorily constructed, and such construction will not injure any person or damage any property.

6.3 Verifying Dimensions and Site Conditions

(a) Before proceeding with the Work for a Job, Contractor will carefully examine the Contract Documents and the Site for such Job, and, from Contractor's own investigations, shall be satisfied as to the nature and location of the Work for such Job, the character, quality and quantity of surface and subsurface materials likely to be encountered, the character of equipment and other facilities needed for the performance of the Work for such Job, the general and local conditions, and all other conditions or items that may affect the Work. Prior to proceeding with the Work for a Job, Contractor shall notify BPCA or, if applicable for a Job, the Construction Manager designated in the Job Order for such Job, in writing of any discrepancies or errors in the Contract Documents.

(b) Before proceeding with the Work for a Job, Contractor will check all previous and surrounding work and determine the correctness of the same; failure on its part to detect or report discrepancies will relieve BPCA of liability from any and all claims to recover cost, expense, loss or damage resulting therefrom. Contractor shall take, determine, investigate and verify all field measurements, dimensions, field construction criteria and Site conditions for the performance of the Work and shall check and coordinate the information contained in the Contract Documents and the boring logs which shall be available for inspection with the requirements of the Work. Contractor shall be responsible for determining the exact location of and to verify the spatial relationships of all Work. If any conflicts or discrepancies are found in the Contract Documents or if Contractor has any questions concerning the foregoing, it shall immediately notify BPCA, or if applicable for a Job, the Construction Manager designated in the Job Order for such Job, and shall thereafter perform the Work in accordance with the directions of BPCA, or, if applicable for a Job, the Construction Manager designated in the Job Order for such Job.

6.4 Copies of Contract Documents for Contractor

At Contractor's request, BPCA shall furnish to Contractor, without charge, two sets of the Contract Documents. Any sets in excess of the number mentioned above may be furnished to Contractor at the cost of reproduction and mailing.

6.5 Meetings

Contractor shall attend all meetings as directed by BPCA or, if applicable for a Job, the Construction Manager designated in the Job Order for such Job, including meetings set forth in Section 26.3, and shall be represented at such meetings by a person having knowledge of the Work and authorized to act for Contractor at all times. If at any time such person is not satisfactory to BPCA or, if applicable for a Job, the Construction Manager set forth in the Job Order for such Job, Contractor shall, if requested by BPCA, be represented by another person satisfactory to BPCA, having knowledge of the Work and authorized to act for Contractor at all times.

6.6 Related Work

Contractor shall examine the Contract Documents for related work to ascertain the relationship of such work to the Work under the Contract Documents.

6.7 Surveys and Layout

Unless otherwise expressly provided in this Agreement, BPCA shall furnish Contractor survey points necessary for the Work, if applicable for a Job, but Contractor shall lay out the Work.

6.8 Reports and Access

Contractor shall furnish BPCA and, if applicable for a Job, the Construction

Manager designated in the Job Order for such Job, with daily and monthly manpower reports and monthly certified payroll reports on forms provided by BPCA or, if applicable for a Job, the Construction Manager designated in the Job Order for such Job, and such other reports as may be required by BPCA or, if applicable for a Job, the Construction Manager designated in the Job Order for such Job. BPCA, and, if applicable for a Job, the Construction Manager designated in the Job Order for such Job, shall have full and free access to the shops, plants and factories of Contractor, any Materialmen and Subcontractors to inform themselves as to the progress of the Work for such Job.

6.9 Financial Information

During the Term, Contractor agrees to notify BPCA forthwith in writing of any event which has caused or is reasonably anticipated to cause a material adverse change in Contractor's business or financial condition from that shown in the then most recent financial statements furnished by Contractor to BPCA. Contractor has furnished to BPCA financial statements for the year ended December 31, 2013. Contractor agrees to furnish to BPCA, at BPCA's request from time to time hereafter, quarterly, or annual financial statements (which shall be audited, if such is the practice of Contractor for financial statements covering the applicable period) and such additional information as BPCA shall deem necessary or desirable to satisfy itself of Contractor's continuing ability to complete the Work.

ARTICLE 7 - CONTRACT ADMINISTRATION

7.1 Architect's Responsibilities and Functions

(a) If an Architect is designated in a Job Order for a Job, Contractor acknowledges that the role of Architect with respect to the Work shall be as specified in this Agreement and the other applicable Contract Documents. Contractor will comply with the instructions of Architect pursuant hereto and thereto.

(b) If an Architect is designated in a Job Order for a Job, Architect's duties and services shall in no way supersede or dilute Contractor's obligation to perform and complete the Work for such Job in conformity with the Contract Documents.

7.2 Construction Manager's Responsibilities and Functions

(a) If a Construction Manager is designated in the Job Order for a Job, Construction Manager shall coordinate and schedule construction to insure that the completion of the Job, and if applicable, the Project is on schedule and that the Job, and if applicable, the Project is well constructed in accordance with the Contract Documents. Contractor acknowledges that the role of Construction Manager with respect to the Work shall be as specified in this Agreement and the other applicable Contract Documents. Contractor hereby agrees to comply with the directions and instructions of any Construction Manager designated in a Job Order for a Job.

(b) If a Construction Manager is designated in the Job Order for a Job, Construction Manager shall call for meetings of Contractor, other contractors, Subcontractors and

Materialmen as necessary for the proper coordination of the Work for such Job. Such meetings shall be held at the Site for the Job on regular working days, during regular working hours, unless otherwise directed by BPCA. Attendance shall be mandatory for all parties notified to attend.

7.3 Scope of Responsibility of Architect and Construction Manager

In no event shall any act or omission on the part of the Construction Manager or Architect for a Job relieve Contractor of its obligation to perform the Work for such Job in full compliance with the applicable Contract Documents. Neither Architect nor Construction Manager will be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, and neither will be responsible for Contractor's failure to carry out the Work in accordance with the applicable Contract Documents or the failure to fulfill any of the requirements of this Agreement.

ARTICLE 8 - INSPECTION AND ACCEPTANCE

8.1 Access to the Work

BPCA, and, if applicable for a Job, the Construction Manager or Architect designated in the Job Order for such Job, or their authorized representatives shall at all times have access to and the right to observe the Work for the Job and all facilities where the Work for such Job or any part thereof is being fabricated or stored, and Contractor shall provide proper facilities for such access and observation.

8.2 Notice of Required Inspections and Tests

If the Contract Documents, or any laws, rules, ordinances or regulations, require that any Work for a Job be inspected or tested, Contractor shall give BPCA, and, if applicable for a Job, the Construction Manager and Architect designated in the Job Order for such Job, at least five days prior written notice of readiness of the Work for such Job for inspection or testing and the date fixed for such inspection or testing.

8.3 Additional Inspections and Tests

(a) Whenever, in the opinion of BPCA, or, if applicable for a Job, the Construction Manager or Architect designated in the Job Order for such Job, it is desirable to require inspection or testing of the Work for a Job or its individual components in addition to any such testing that may be originally included in the Work for such Job, they shall have authority to do so whether or not such Work be then fabricated, installed, covered or completed. If such inspection or testing reveals a failure of the Work to comply (1) with the requirements of the Contract Documents, or (2) with respect to the performance of the Work, with laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, Contractor shall bear all costs thereof, including, if applicable for a Job, Architect's and Construction Manager's additional services made necessary by such failure; otherwise BPCA shall bear such costs, and an appropriate Job Order Amendment shall be issued.

(b) In the event that any item of the Work fails inspection or testing, BPCA, or, if applicable for a Job, the Architect or Construction Manager designated in the Job Order for such Job, may require inspection or testing of any or all of the other items of the Work for a Job at Contractor's cost and expense.

8.4 Uncovering of Work

(a) If any Work for a Job shall be covered or concealed contrary to the request of BPCA, or, if applicable for a Job, the Architect or Construction Manager designated in the Job Order for such Job, such Work shall, if required by BPCA, or, if applicable for a Job, the Architect or Construction Manager designated in the Job Order for such Job, be uncovered by examination, inspection or testing. Any examination, testing or inspection shall not relieve Contractor of the responsibility to maintain quality control over the Work. If any test results are below specified minimums, BPCA may order additional testing. The cost of such additional examination, inspection or testing, any additional professional services required, and any other expenses incurred by BPCA as a result of such examination, inspection or testing shall be borne by Contractor.

(b) In the event that a typical detail fails inspection or testing, BPCA, or, if applicable for a Job, the Architect or Construction Manager designated in the Job Order for such Job, may require inspection or testing of any or all of other such typical details at Contractor's cost and expense.

8.5 Correction of Work

Any Work for a Job not approved by BPCA, and, if applicable for a Job, the Architect and Construction Manager designated in the Job Order for such Job, shall immediately be reconstructed, made good, replaced or corrected by Contractor, including all Work of other contractors destroyed or damaged by such removal or replacement. Rejected material shall be removed immediately from the Site. Acceptance of Materials and workmanship by BPCA, and, if applicable for a Job, the Architect or Construction Manager designated in the Job Order for such Job, shall not relieve Contractor from Contractor's obligation to replace all Work which is not in full compliance with the Contract Documents.

8.6 Certificate of Substantial Completion

If requested by BPCA for a Job, Contractor shall provide written notice to BPCA, and, if applicable for a Job, the Construction Manager and/or Architect designated in the Job Order for such Job, stating that in Contractor's estimation the Work for such Job has been substantially performed in conformity with the Contract Documents. BPCA, or, if applicable for a Job, the Architect and/or Construction Manager shall perform an inspection for the purposes of determining whether the Work has been so performed, commencing such inspection within ten (10) days of receipt of such notice and completing it with all due diligence. When BCPA, or, if applicable, Architect and/or Construction Manager find upon inspection that, to the best of their knowledge and belief, the Work is so performed, they shall prepare and

deliver to Contractor, or if applicable, BPCA for delivery to Contractor, a certificate specifying the date of substantial completion of the Work for such Job for purposes of this Agreement (“**Certificate of Substantial Completion**”) and a punch list of items of Work for such Job remaining to be completed.

The delivery of a Certificate of Substantial Completion shall not terminate or alter Contractor’s obligation under the Contract Documents to complete the Work as expeditiously as practicable in conformity with the Contract Documents and to fulfill all terms and conditions of this Agreement.

8.7 Completion of Work and Acceptance

Upon their receipt of written notice from Contractor stating its belief that the Work for a Job has been fully performed in conformity with the Contract Documents, and confirming that Contractor has completed any items of Work for a Job previously noted to it by BPCA, or, if applicable for a Job, the Architect and/or Construction Manager designated in the Job Order for such Job, as not having been acceptably completed in any punch list or otherwise, BPCA, or, if applicable for a Job, the Architect and/or Construction Manager designated in the Job Order for such Job, shall perform an inspection for purposes of determining whether the Work has been so performed. BPCA, or, if applicable for a Job, the Architect and Construction Manager designated in the Job Order for such Job, shall commence such inspection within ten (10) days of receipt of such notice and shall pursue and complete it with all due diligence. When BPCA and, if applicable for a Job, Construction Manager find upon inspection that, to the best of their knowledge and belief, the Work for such Job, has been so performed, they shall prepare a certificate of final completion, and, upon delivery by BPCA to Contractor of said certificate, the Work for such Job shall be deemed to be finally accepted by BPCA (such delivery of each certificate of final completion to Contractor for each Job authorized hereunder is hereinafter referred to as “**Final Acceptance**”).

Final Acceptance shall not terminate or alter Contractor’s obligation under this Agreement to complete the Work in conformity with the Contract Documents and to fulfill all terms and conditions of this Agreement and the Contract Documents.

ARTICLE 9 - CHANGES IN THE WORK

9.1 Job Order Amendments

(a) BPCA may, at any time, in any quantity or amount, without notice to the sureties and without invalidating or abandoning this Agreement, order Extra Work pursuant to an amendment to this Agreement or a Job Order Amendment (as defined in Section 9.1(b) below); provided that any change in the Total Contract Price must be made pursuant to an amendment to this Agreement. Notwithstanding the terms of subsection 3.1(a) hereof, BPCA may, but shall be under no obligation to, change the manner, sequence or method of performance of the Work for a Job or direct acceleration of the Work and Contractor shall, therefor, be entitled to a Job Order Amendment (as defined in Section 9.1(b)) provided that such change or acceleration was not ordered to maintain the Approach Plan for a Job or to coordinate the Work for such Job with the work of other contractors. Contractor shall be obligated to perform changed Work for

a Job promptly in conformity with any Job Order Amendment for a Job issued in accordance herewith and may not suspend or otherwise refuse to perform the Work for a Job contained therein or any other aspect of the Work for a Job required under the Contract Documents because a Job Order Amendment has yet to be fully executed.

(b) “**Job Order Amendment**” shall mean a written order issued by BPCA to Contractor for a Job after execution of this Agreement and the Job Order for such Job, authorizing or requiring:

- (i) Extra Work,
- (ii) items that were erroneously deleted or omitted from the Work for such Job,
- (iii) items that were included in the Work for such Job but were subsequently deleted,
- (iv) an extension or decrease of time to complete Work for such Job,
- (v) an increase or reduction in the Job Contract Price, or
- (vi) any other change in the Job Order or in the sequence of performing or phasing of the Work for such Job.

(c) All Job Order Amendments shall be prepared, signed and issued by BPCA and to be valid, must be countersigned by Contractor.

9.2 Change in Job Contract Price and Time and Total Contract Price

(a) The Job Contract Price for any Job will not be revised due to any change of the Work for such Job except as and to the extent expressly provided in a Job Order Amendment. The Total Contract Price will not be revised except as and to the extent expressly provided in an amendment to this Agreement. The amount by which the Job Contract Price is to be increased or decreased by any Job Order Amendment shall be determined by BPCA and, if applicable for a Job, the Construction Manager designated in the Job Order for such Job, by one or more of the following methods:

- (1) accepting an amount agreed upon by BPCA and Contractor;
- (2) applying the applicable unit prices and alternates where the Work for such Job involved is covered by unit prices in this Agreement;
- (3) receiving from Contractor a detailed breakdown satisfactory to BPCA and, if applicable for a Job, the Construction Manager designated in the Job Order for such Job, including actual time slips and invoices, itemizing the direct cost of labor and Materials to perform the changed

Work and adding thereto fifteen percent (15%) to cover profit and all indirect and overhead costs, except that where the changed Work is performed by a Subcontractor or Materialman, the direct cost of labor and Materials to perform the changed Work plus fifteen percent (15%) for profit and all indirect and overhead costs to Subcontractor or Materialman and an additional sum for profit and all indirect and overhead costs of Contractor equal to ten percent (10%) of the first \$100,000, five percent (5%) of the second \$100,000 and three percent (3%) of any cost in excess of \$200,000 to Contractor. No allowance shall be paid on the premium portion of overtime pay. Where the changed Work involves both an increase and a reduction in any contract Work, the above percentage override shall be applied only on the amount, if any, by which the cost of the increase exceeds the cost of the reduction.

- (4) receiving from Contractor a true copy of its bid work sheets to determine the contract price for the elimination of any contract Work for such Job. The amount of reduction shall not include the overhead or profit of Contractor for the eliminated Work. Should Contractor fail to furnish BPCA with such bid work sheets, BPCA, or, if applicable for a Job, the Construction Manager designated in the Job Order for such Job, shall determine the amount of the reduction. The determination of BPCA or Construction Manager shall be final and binding unless erroneously or fraudulently arrived at, or arbitrary and capricious;
- (5) adding to the Job Contract Price only the amount of the premium portion of overtime pay resulting from an acceleration of the Work; or
- (6) adding to the Job Contract Price, the actual incremental labor and equipment costs incurred by the Contractor resulting from a change in the manner, sequence or method of performing the Work for such Job.

(b) The compensation specified in a Job Order Amendment shall constitute a release and full payment for the Extra Work covered thereby and for any delay and disruption cost or expense occasioned by reason of said change in the Work for any Job.

(c) No time extension shall be granted Contractor by reason of the issuance of any Job Order Amendment unless it is expressly stated therein.

(d) A Job Order Amendment shall not be valid if it shall cause the total sum of all previously authorized Job Contract Prices to exceed the Total Contract Price.

9.3 [Intentionally Omitted]

9.4 Changed Conditions

(a) BPCA assumes no responsibility for the correctness of any boring or other subsurface information and makes no representation of any kind regarding subsurface conditions and test borings, reports, rock cores, foundation investigation and topographical maps which may be made available to Contractor.

(b) Contractor shall promptly, and before such conditions are disturbed, notify Construction Manager of: (1) subsurface or latent physical conditions differing materially from those indicated in the Contract Documents, or (2) unknown physical conditions of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents. BPCA, or, if applicable for a Job, the Construction Manager designated in the Job Order for such Job, shall promptly investigate the conditions, and if it finds that such conditions do materially so differ and cause an increase or decrease in Contractor's cost of, or the time required for, performance of any part of the Work under the Contract Documents, Contractor shall be paid in the manner provided for payment with respect to any Job Order Amendment and receive, if warranted, a time extension.

(c) No claim of Contractor under this clause shall be allowed unless Contractor has given the notice required in subsection (b) above.

ARTICLE 10 - SUBCONTRACTS AND PURCHASE ORDERS

10.1 Selection of Subcontractors and Materialmen and Approval of Subcontracts and Purchase Orders

(a) Contractor shall provide to BPCA in the Approach Plan for each Job, the names of all persons with whom it has contracted or intends to contract or hereafter contracts with respect to the Work for each Job.

(b) Except as specifically provided herein, Contractor shall not enter into any Subcontracts or issue any Purchase Orders to any Materialmen in connection with the performance of Contractor's obligations hereunder without the prior written consent of BPCA to the use of each such Subcontractor or Materialman, and to the agreement to be entered into between Contractor and any such Subcontractor or Materialman. Contractor shall inform BPCA in writing of any interest it may have in a proposed Subcontractor or Materialman. No such consent by BPCA, or employment, contract, or use by Contractor, shall relieve Contractor of any of its obligations hereunder nor may BPCA be held responsible in any way for the performance of a Subcontractor or Materialman to whom BPCA gave its consent.

(c) Contractor shall be responsible for the performance of the Work of any Subcontractors or Materialmen engaged, including the maintenance of schedules, coordination of their Work and resolutions of all differences between or among Contractor and any Subcontractors. It is expressly understood and agreed that any and all Subcontractors or Materialmen engaged by Contractor hereunder shall at all times be deemed engaged by Contractor and not by BPCA.

(d) Upon the request of BPCA, Contractor shall cause any Subcontractor or Materialman employed by the Contractor in connection with the Contract Documents to execute a copy of an Agreement wherein such Subcontractor or Materialman shall acknowledge that it has read and is fully familiar with the terms and provisions hereof and agrees to be bound thereby as such terms and provisions are or may be applicable to such Subcontractors or Materialmen.

(e) Contractor shall submit to BPCA promptly following execution, three copies of every revision, amendment, modification or cancellation executed or issued by Contractor with respect to any Subcontractor or Materialman. BPCA is not obligated to make payment on account of Work performed or Materials furnished by a Subcontractor or a Materialman under a Subcontract or contract for construction supplies or Materials (hereinafter “**Purchase Order(s)**”) unless there shall have been filed with BPCA prior to the submission of a Requisition for each payment, three copies of such Subcontract or Purchase Order containing the provisions required by this Agreement to be contained therein, except as may otherwise be specified by BPCA with respect to Purchase Orders for minor purchases.

10.2 Access by BPCA and Others

Contractor shall include a provision in all Subcontracts and Purchase Orders stating that, to permit verification of Contractor’s costs, BPCA shall have the right to have its representatives inspect and audit the books of account and records of the Subcontractor and Materialmen, including the right to make excerpts from such books and records. All payments by Contractor to a Subcontractor or Materialman shall be by check specifically indicating that payment is attributable to this Agreement and identifying the invoice(s) for which payment is being made. Contractor shall include a provision in all Subcontracts and Purchase Orders that will enable representatives of the State of New York, BPCA, and, if applicable for a Job, the Construction Manager designated in the Job Order for such Job, as the case may be, to obtain access during working hours to the appropriate books of account and records of the Subcontractors or Materialmen relating to the Work to determine if there is compliance with the requirements of law or the Contract Documents.

10.3 Retainage

Contractor may provide for a retainage under any of its Subcontracts or Purchase Orders provided that where a Subcontract or Purchase Order provides for a retainage, the retainage shall be no greater in percentage than that provided for under Sections 5.1 or 5.7 hereof with respect to Contractor itself, unless otherwise approved in writing by BPCA. Contractor shall submit with each Requisition a statement setting forth the amounts of all retainage, if any, under its Subcontracts and Purchase Orders.

10.4 Miscellaneous

(a) Contractor shall be fully responsible for the work, acts and omissions of Subcontractors and Materialmen, and of persons either directly or indirectly employed by Subcontractors and Materialmen.

(b) Contractor's use of Subcontractors and Materialmen shall not diminish Contractor's obligation to complete the Work in accordance with the Contract Documents. Contractor shall control and coordinate the work of Subcontractors and Materialmen.

(c) Nothing contained in this Agreement or the other Contract Documents shall create any contractual relationship between Subcontractors or Materialmen and BPCA, or, if applicable for a Job, the Construction Manager or Architect designated in the Job Order for such Job. Nothing in this Section shall obligate BPCA to pay or to see to the payment of any sums to any Subcontractor or Materialmen.

(d) Contractor shall include a provision in all Subcontracts and Purchase Orders exceeding \$50,000, requiring the Subcontractor or Materialman, if requested by BPCA, until the Subcontractor or Materialman finishes its portion of the Work, to deliver to Contractor unaudited and, if available, audited financial statements of the Subcontractor or Materialman similar to the obligation of Contractor under Section 6.8 and promptly upon receipt thereof Contractor shall deliver copies thereof to BPCA.

ARTICLE 11 - ASSIGNMENT

11.1 No Assignment of Duties

Contractor shall not assign this Agreement or any other Contract Document or the performance of any obligations of Contractor under this Agreement or any other Contract Document, nor enter into any Subcontract in respect of the Work for any Job or any part thereof except in compliance with Article 10 hereof and with the prior written consent of BPCA, and each and every such assignment, Purchase Order and Subcontract without such compliance and consent shall be void and shall revoke and annul this Agreement and the other Contract Documents.

11.2 No Assignment of Monies

Contractor shall not assign any monies payable hereunder nor execute and deliver any order for payment unless Contractor and the assignee shall have complied with the following terms and conditions:

(a) the assignee shall be a commercial bank or finance company regularly engaged in the business of provided financing to construction contractors and shall be providing such financing to Contractor;

(b) the assignee shall, simultaneously with the assignment, execute and deliver to BPCA an undertaking, in favor of BPCA, in form and substance satisfactory to BPCA, providing that:

- (1) assignee will cause Contractor to apply for trust purposes, as defined in New York Lien Law Article 3-A (the "**Lien Law**"), all funds advanced by assignee to Contractor;

(2) assignee will file a copy of the assignment, containing the covenant required by the Lien Law, with the County Clerk of New York County and the head of the agency having charge of the underlying project;

(c) the assignee shall agree with BPCA in writing that BPCA and Contractor may modify any of the terms of this Agreement or the other Contract Documents, including any of the terms of payment, without the consent of assignee;

(d) the assignee shall agree with BPCA in writing that after the effective date of the assignment, BPCA may make payment directly to any Subcontractor or Materialman without any liability to the assignee;

(e) the assignee shall agree with BPCA in writing that the assignee shall require and cause Contractor to keep his books and records in the form and manner described in New York Consolidated Laws Service Lien Law Article 3-A Section 75; and

(f) the assignee shall agree with BPCA in writing that the assignee will indemnify and hold BPCA harmless from and against any loss, claim or expense incurred as a result of any failure of performance in accordance with the terms of such undertaking.

11.3 Assignment by BPCA

This Agreement or any rights of BPCA under this Agreement, including any guaranties or warranties of workmanship or material, may at any time be assigned by BPCA to the State of New York or any political subdivision, public corporation or agency of the State.

ARTICLE 12 - MECHANICS' LIENS AND CLAIMS

If any mechanic's lien or other claim shall be filed for or on account of the Work, Contractor shall discharge such lien or claim within thirty days of receiving written notice of such lien or other claim.

ARTICLE 13 – INSURANCE AND CONTRACT SECURITY

13.1 Insurance

(a) Contractor shall procure and maintain all of the insurance required under this Article 13 until Final Acceptance of the Work for each Job authorized under the Contract Documents, except with respect to Completed Operations Coverage, as described in 13.1(f)(3) below.

(b) Contractor shall not commence physical performance of the Work for any Job at the Site for such Job until Contractor has obtained, and required each Subcontractor to obtain, all the insurance required under this Article and until it has furnished to BPCA the certificate or certificates of insurance required by Section 13.1(c) hereof.

(c) Contractor shall furnish to BPCA, before or upon execution of this Agreement, attention: Sharon Wade, Executive Assistant, a certificate or certificates of the insurance required under this Article and, upon BPCA's request, certified copies of the original policies of insurance, within the time period required by BPCA and before commencing physical performance of the Work for any Job at the Site for such Job. Such certificate or certificates shall be in form satisfactory to BPCA, shall list the various coverages and shall contain, in addition to any other provisions required hereby, a provision that the policy shall not be changed, canceled or reduced and that it shall be automatically renewed upon expiration and continued in force until two years after Final Acceptance for each Job unless BPCA is given 90 days' written notice to the contrary. Such certificates shall also include riders providing that violation of any of the terms of any policy shall not by itself invalidate such policy. Such policies and certificates should name as additional insureds BPCA, Battery Park City Parks Conservancy Corporation ("BPCPC"), the State of New York, and, if applicable for a Job, the Construction Manager and/or Architect designated in the Job Order for such Job.

(d) All insurance required to be procured and maintained must be procured from insurance companies that have a financial rating by A.M. Best Company as published in the most current key rating guide of "A-X" or better and which are authorized to do business in the State of New York.

(e) If at any time any of the required insurance policies should be canceled, terminated or modified so that insurance is not in effect as required, then, if BPCA shall so direct, Contractor shall suspend performance of the Work. If the Work is not suspended then BPCA may, at BPCA's option, obtain insurance affording coverage equal to that required, the cost of such insurance to be payable by Contractor to BPCA.

(f) Contractor and each Subcontractor shall secure in a form satisfactory to BPCA:

(1) Worker's Compensation and Employer's Liability Insurance (including United States Longshoreman & Harbor Workers and Jones Act Coverages) during the Term for the benefit of such employees as are required to be insured by the applicable provisions of law and voluntary compensation for employees excluded from statutory benefits. Employer's Liability Insurance and benefits resulting from disease shall not be less than an annual aggregate amount of [] DOLLARS (\$[]) for each consecutive 12-month period.

(2) Disability Benefit Insurance during the life of this Agreement for the benefit of such employees as are required to be insured by the applicable provisions of law.

(3) Commercial General Liability Insurance as follows:

Standard commercial general liability insurance policy with contractual, products and completed operations and explosion, blasting, collapse, excavation and underground damage liability coverages, under the

occurrence policy format, issued to and covering the liability of Contractor for all the Work and operations relating thereto and all obligations assumed by Contractor under this Agreement including, but not limited to indemnity obligations in an amount which shall not be less than the following limits:

Combined Single Limits, Bodily Injury
and Property Damage Liability

[] DOLLARS (\$[]) per each occurrence and []
DOLLARS (\$[]) in the aggregate.

Product and Completed Operations

[] DOLLARS (\$[])

- (i) The completed operations coverage shall continue in force until three years after Final Acceptance of the Work for each Job authorized under the Contract Documents, and shall contain, in addition to any other provisions required hereby, a provision that the policy shall not be changed, canceled or reduced. As a condition precedent to the making of final payment, Contractor shall furnish BPCA with a certified copy of the completed operations policy.

(4) Automobile Liability Insurance as follows:

A policy covering the use in connection with the Work of all owned, non-owned and hired vehicles bearing license plates, or under the circumstances that such vehicles are being used they are required by the Motor Vehicle Laws of the State of New York to bear license plates. The coverage under such policy shall not be less than the following limits:

Combined Single Limits,
Bodily Injury and Property Damage Liability

[] DOLLARS (\$[]) per each occurrence.

- (5) Contractor shall secure, pay for, and maintain Property Insurance necessary for protection against the loss of owned, borrowed or rented equipment, tools and materials used in Contractor's performance of the Work. The requirement to secure and maintain such insurance is solely for the benefit of Contractor. Contractor's failure to secure such insurance or to maintain adequate levels of coverage shall not render BPCA or any other Additional Insureds, or their agents and employees,

responsible for any such losses, and Owner, the other Additional Insureds, and their agents and employees shall have no such liability.

- (6) Umbrella Liability Insurance excess of general liability, automobile liability, and Employer's Liability in an amount of not less than [] DOLLARS (\$[]).
- (7) [OTHER POLICIES, AS APPLICABLE]

(g) The insurance required under subsections 13.1(f)(3), (4),(5) and (6) shall be of a type which shall protect Contractor and Subcontractors, respectively, against damage claims which may arise from operations under this Agreement and the other Contract Documents, whether such operations be by the insured or by anyone directly or indirectly employed by the insured. Each of the aforesaid policies shall provide that the insurance company or an attorney approved and retained by the insurance company shall defend any suit or proceeding against BPCA or any officers, agents or employees of BPCA whether or not such suit is groundless, false or fraudulent. Notwithstanding the foregoing, BPCA shall have the right to engage its own attorneys for the purpose of defending any suit or proceeding against it or its respective officers, agents or employees, and, in such event, Contractor shall, indemnify BPCA for all attorneys' fees and disbursements and other costs incurred by it arising out of, or incurred in connection with, any such defense. The said insurance shall name BPCA, BPCPC, the State of New York, and, if applicable for a Job, the Construction Manager and Architect designated in the Job Order for such Job, as additional insureds as respects this location and shall, where applicable, be written on an occurrence basis and shall contain a provision that it is primary and that any similar insurance which BPCA, BPCPC, the State of New York, Construction Manager, Architect, Contractor or Subcontractor elect to carry for their own benefit is secondary or excess and not contributing insurance.

(h) BPCA, at BPCA's cost and expense, may, at its sole option, procure and maintain such insurance as shall in the opinion of BPCA, protect BPCA from contingent liability of BPCA to others for damages arising from bodily injury, including death and property damages which may arise from operations under this Agreement. The procurement and maintenance of such insurance by BPCA shall not in any way be construed or be deemed to relieve Contractor from, or to be a limitation on the nature or extent of, such obligations and risk.

13.2 Effect of Procurement of Insurance

Neither the procurement nor the maintenance of any type of insurance by BPCA or Contractor shall in any way be construed or be deemed to limit, discharge, waive or release Contractor from any of the obligations and risks impressed upon Contractor by this Agreement or to be a limitation on the nature or extent of such obligations and risks.

13.3 Contract Security

If a Job Order is issued by BPCA with a Job Contract Price equal to or greater

than TWO HUNDRED THOUSAND DOLLARS (\$200,000), Contractor shall, if it has not already done so, furnish to BPCA, with the execution of such Job Order, to BPCA, a bond in the form acceptable to BPCA in an amount at least equal to one hundred percent (100%) of the Job Contract Price for performance of the Work (the “**Performance Bond**”), and a labor and material payment bond in the form acceptable to BPCA in an amount at least equal to one hundred percent (100%) of the Job Contract Price for the payment of all persons performing labor or providing Materials in connection with the Work (the “**Payment Bond**”). The surety on said bond shall be a surety company authorized to do business in the State of New York and shall be rated at last B+ by A.M. Best and Company, or meet such other requirements as are acceptable to BPCA.

13.4 Additional or Substitute Bond

If at any time BPCA shall be or shall become dissatisfied with any surety or sureties then obligated upon the Performance Bond or the Payment Bond, or if for any other reason such bonds shall cease to be adequate security to BPCA, Contractor shall within five (5) days after notice from BPCA to do so, substitute an acceptable bond or bonds in such form and sum and signed by such other surety or sureties as may be satisfactory to BPCA, except that the penal sum of said bond shall not exceed the Job Contract Price. No further payments shall be deemed due nor shall be made until the new surety or sureties shall have furnished such an acceptable bond or bonds to BPCA.

ARTICLE 14 - CLAIMS FOR EXTRA WORK

(a) If Contractor is of the opinion that (i) any work that it has been ordered to perform is Extra Work and not Work as set forth in the Contract Documents, (ii) any action or omission of BPCA, or, if applicable for a Job, the Construction Manager or Architect designated in the Job Order for such Job, is contrary to the terms and provisions of the Contract Documents and will require the performance of Extra Work or will cause additional expense to Contractor or (iii) any determination, order or directive of BPCA, Construction Manager or Architect is contrary to the terms of the Contract Documents and will require the performance of Extra Work or will cause additional expense to Contractor, Contractor shall:

- (1) promptly comply with each determination, order or directive and proceed diligently with the performance of the Work in accordance with BPCA’s instructions,
- (2) notify BPCA, and, if applicable for a Job, the Construction Manager and Architect designated in the Job Order for such Job, in writing within seventy-two (72) hours of such determination, order, act or omission that Contractor believes such Work will require it to perform Extra Work or incur additional expense and the basis for Contractor’s conclusion and request a final determination thereon by BPCA; and
- (3) present to BPCA, and, if applicable for a Job, the Construction Manager designated in the Job Order for such Job, for signature daily time and Material tickets to confirm quantities of Material and hours of labor in

cases where Contractor is performing the Work which it considers to be Extra Work.

If BPCA determines that (x) such work is Work required to be performed hereunder and not Extra Work, (y) such action or omission is proper, or (z) such determination, order or directive is proper, Contractor, in order to reserve its right to claim compensation for or damages resulting from the performance of such work or the compliance with such determination, order or directive, must notify BPCA in writing within three (3) working days after receiving notice of BPCA's determination that it is performing such work or complying with such determination, order or directive under protest.

In addition to the foregoing, Contractor must submit to BPCA, and, if applicable for a Job, the Construction Manager and Architect designated in the Job Order for such Job, within thirty (30) days after it has performed such work or complied with such determination, order or directive, a detailed statement of the extra expense claimed to have been incurred and of any claimed damages resulting from the performance of such work or the compliance with such determination, order or directive.

(b) No claim for Extra Work shall be allowed unless the same was done pursuant to written order approved in writing by BPCA. Contractor's failure to comply with any provision of this Article:

- (1) shall constitute a conclusive and binding determination on the part of Contractor that such action, omission, determination, order or directive does not involve Extra Work, has not caused extra expense or damages to Contractor, and is not contrary to the terms and provisions of the Contract Documents; and
- (2) shall constitute an irrevocable waiver by Contractor of any claim for compensation for or damages resulting from the performance of such work or the compliance with such determination, order or directive.

(c) The value of claims for Extra Work, if allowed, shall be determined by the methods described in Section 9.2(a).

ARTICLE 15 - TERMINATION

15.1 Termination for Cause

(a) If any of the following events shall occur (each, an "**Event of Default**"), then BPCA may serve written notice upon Contractor and upon Contractor's surety, if any, terminating this Agreement at a specified date. The notice shall contain the reasons for termination but shall not be effective to terminate this Agreement if Contractor cures all Events of Default stated in the notice prior to the date specified in the notice of termination.

- (1) Contractor shall violate any substantial provision of this Agreement or the other Contract Documents, including, without limitation, by failing

to maintain the schedule for the work in the Approach Plan for a Job or, for a Job that does not require an Approach Plan, by the Job Completion Date then in effect in accordance with, or failing to discharge any of its responsibilities under, Section 3.1(d) hereof, including abandonment of the Work by Contractor, or by failing to indemnify and hold harmless BPCA (as required by Sections 3.1(e), 3.2, 17.5, 21.1, 21.2, 22(c) or any other provision of this Agreement) from and against any and all claims, liabilities, losses, costs or damages arising out of Contractor's performance of, or failure to perform, its obligations under this Agreement or the Contract Documents in accordance with its terms, or if the Contractor fails to maintain the insurance required by the provisions of Article 13; provided that it shall not be an Event of Default if Contractor fails to complete the Job by the Target Date, if any, set forth in a Job Order; or

- (2) any material adverse change shall take place in the financial condition of the Contractor;
- (3) Contractor takes any action which would result in it becoming the subject of any insolvency proceeding. The term "insolvency proceeding" as used herein shall include the filing of a petition for relief under Title 11 of the United States Code by Contractor or the consent, acquiescence or taking of any action by Contractor, or the filing by or against Contractor of petition or action, looking to or seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any other regulation; or the appointment, with or without the consent of Contractor, of any trustee, custodian, receiver or liquidator of Contractor or of any property or assets of Contractor; or Contractor's making of an assignment for the benefit of creditors or its inability to pay its debts as they become due;
- (4) Contractor misrepresented or omitted information in its submission of the Statement of Qualifications of Contractor submitted by Contractor to BPCA in connection with this Agreement; or
- (5) any partner, principal, director, officer or shareholder owning in excess of five percent (5%) of the stock of Contractor shall have been convicted of a felony.

(b) Upon the occurrence of an Event of Default, at BPCA's option exercised by written notice to Contractor, title to any or all of Contractor's Materials, equipment, work product, work in process and dies and tools, whether on the Site for a Job or off site, which are necessary or useful in completing the Work for any Job shall vest in BPCA and BPCA may take possession of and utilize the same for completion of the Work; provided that title to such items shall revert to Contractor upon effectuation of a cure of the Event of Default prior to the termination of this Agreement. If no cure has been effected, this Agreement has been

terminated and BPCA has taken possession of the same, then after BPCA has taken possession and the Work shall have been completed by or on behalf of BPCA, BPCA shall pay to Contractor, in respect to the items for which title has vested in BPCA, an amount equal to the sum of:

- (1) the direct costs of Contractor for such Materials and Work in progress, and
- (2) the depreciated book value of such tools and dies less, if BPCA elects to return the tools and dies to Contractor, the salvage value thereof. BPCA shall have the right to set off against such payment due to Contractor any amounts then due and payable by Contractor to BPCA which may accrue as damages owing by Contractor to BPCA under the terms of this Agreement. Contractor shall execute any further documents (including Form UCC-1 Financing Statements to give public notice of the potential ownership interest of BPCA as set forth herein) required by BPCA to confirm the terms of this subsection 15.1(b).

(c) Upon termination of this Agreement, BPCA shall have the right, in addition to all other rights and remedies, to complete or have the Work for a Job completed by such means and in such manner, by contract or otherwise, with or without public letting as permitted by law, as BPCA deems advisable. BPCA may deduct any loss it incurs thereby from any payment then or thereafter due to Contractor without prejudice to any other remedy BPCA may have.

(d) Immediately upon termination in accordance with the provisions of this Section, each and every Subcontract and Purchase Order entered into by Contractor shall, at BPCA's option, be automatically assigned to BPCA, and Contractor shall insert a provision to this effect in all Subcontracts and Purchase Orders.

(e) Contractor shall, upon the date when such termination shall take effect, promptly notify the union or unions, if any, having jurisdiction over the work by its employees that it releases the Project and consents that the Work be performed by others and Contractor expressly authorizes BPCA to notify the union or unions of such release in the name of Contractor. The failure, neglect or refusal of Contractor to issue such release or the disclaimer by it of the effectiveness of the release issued by BPCA shall subject Contractor to all damages sustained by BPCA.

(f) If this Agreement shall have been terminated by BPCA pursuant to this Section 15.1 and it shall be finally determined by BPCA or a court of competent jurisdiction that adequate grounds for such termination did not exist, then such termination shall be deemed a termination for convenience of BPCA under Section 15.2 hereof and the sole right, remedy and recourse of Contractor against BPCA shall be governed and determined by Section 15.2 hereof.

15.2 Termination for Convenience of BPCA

- (a) BPCA, at any time, may terminate this Agreement for its own convenience. Any

such termination shall be effected by delivering to Contractor a notice of termination specifying the extent to which performance of Contractor's Work under this Agreement and the other Contract Documents is terminated and the date upon which such termination becomes effective. Upon receipt of the notice of termination, Contractor shall:

- (1) stop work under this Agreement and the Contract Documents on the date specified in the notice of termination;
- (2) place no further Purchase Orders or Subcontracts for Materials, services or facilities;
- (3) unless directed otherwise by BPCA, terminate all Purchase Orders and Subcontracts;
- (4) assign to BPCA, in the manner, at the times, and to the extent directed by BPCA, or, if applicable for a Job, the Construction Manager designated in the Job Order for such Job, all of the right, title and interest of Contractor under the Purchase Orders and Subcontracts so terminated, in which case BPCA shall have the right, in its sole discretion, to settle or pay any or all claims arising out of the termination of such Purchase Orders and Subcontracts;
- (5) to the extent required by BPCA, or, if applicable for a Job, the Construction Manager designated in the Job Order for such Job, settle all outstanding liabilities and all claims arising out of such termination of Purchase Orders and Subcontracts, with the approval or ratification of BPCA, or, if applicable, the Construction Manager designated in the Job Order for such Job, which approval or ratification shall be final for all the purposes of this Section 15.2;
- (6) transfer title to BPCA and deliver in the manner, at the time, and to the extent, if any, directed by BPCA, or, if applicable for a Job, the Construction Manager designated in the Job Order for such Job, (i) the fabricated or unfabricated parts, Work in process, completed Work, supplies, and other Material produced as a part of, or acquired in connection with the performance of, the Work terminated by the notice of termination, and (ii) the completed or partially completed plans, drawings, work product, information and other property, which if this Agreement and the other Contract Documents had been completed, would have been required to be furnished to BPCA; and
- (7) take such action as may be necessary, or as BPCA, or, if applicable for a Job, the Construction Manager designated in the Job Order for such Job, may direct, for the protection and preservation of the property related to this Agreement and the other Contract Documents which is in the possession of Contractor and in which BPCA has or may acquire an

interest.

(b) In the event of a termination of this Agreement pursuant to this Section 15.2, Contractor shall be paid by BPCA only the aggregate of any unpaid amount of the Job Contract Price for each completed or ongoing Job authorized pursuant to the Contract Documents, the fair and reasonable value of Materials stored on the Site for any Job and under order for which Contractor is responsible for payment, less any sums properly deductible by BPCA, except that in no event shall Contractor be entitled to compensation in excess of Total Contract Price.

15.3 Suspension of Work

(a) BPCA may at any time and for any reason direct Contractor to suspend, stop, or interrupt the Work for a Job or any part thereof for a period of time. Such direction shall be in writing and shall specify the period during which the Work for such Job is to be stopped. Upon receipt of a direction of suspension, Contractor shall, as soon as practicable, cease performance of the Work for such Job as ordered and take immediate affirmative measures to protect the Work for such Job from loss or damage. Contractor shall resume the Work for such Job upon the date specified in such direction or upon such other date as BPCA may thereafter specify in writing.

(b) The period during which the Work for such Job shall have been suspended, stopped or interrupted may, if warranted, be added to the time fixed for performance. A suspension, stoppage or interruption of the Work pursuant to this provision shall not give rise to any claim against BPCA for additional compensation.

ARTICLE 16 - COMPOSITE DRAWINGS AND COOPERATION

Where Contractor shall perform Work for a Job in close proximity to work of other contractors or subcontractors, or where there is evidence that Contractor's Work may interfere with work of other contractors, or subcontractors, Contractor shall assist in arranging space conditions to make satisfactory adjustment for the performance of such work and the Work for such Job. Contractor shall prepare composite scale working drawings and specifications as directed by the Construction Manager, clearly showing how Contractor's Work for such Job is to be performed in relation to work of other contractors or Subcontractors. Such direction may include the following: the scale of the drawings, where the drawings are to be drafted, the number of prints or reproducibles, and the requirement of attendance at meetings. The determination as to who shall provide the composite drawings and the contents of the same shall rest exclusively with BPCA, or, if applicable for a Job, the Construction Manager designated in the Job Order for such Job. Upon request by BPCA, or, if applicable for a Job, the Construction Manager designated in the Job Order for such Job, Contractor shall sign and be bound by such composite drawings. Such signature shall indicate Contractor's acknowledgment that such drawing is acceptable as related to its Work for such Job covered or included in such drawing. If Contractor performs the Work for such Job in a manner that causes interference with the work of other contractors, or Subcontractors, Contractor shall make the changes necessary to correct the condition as directed by the Construction Manager.

ARTICLE 17 - PROTECTION OF RIGHTS, PERSONS AND PROPERTY

17.1 Accident Prevention

Contractor shall at all times take every precaution against injuries to persons or damage to property and for the safety of persons engaged in the performance of the Work for a Job.

17.2 Safety Programs

Contractor shall be responsible for the initiation, maintenance and supervision of safety precautions and programs as prescribed by BPCA, or, if applicable for a Job, the Construction Manager designated in the Job Order for such Job, in connection with the Work for such Job.

17.3 Protection of Work and Property

(a) Contractor shall at all times guard BPCA's property from injury or loss in connection with the Work for a Job. Contractor shall at all times guard and protect the Site for a Job, the Work for such Job and adjacent property. Contractor shall replace or make good any such loss or injury unless such loss or injury is caused directly by BPCA.

(b) Contractor shall have full responsibility to install, protect and maintain all Materials in proper condition and forthwith repair, replace and make good any damage thereto until Final Acceptance of the Work for a Job.

(c) No provision is included for stresses or loads imposed by construction operations. If Contractor desires to place such loads in excess of the design load (as shown on the Drawings or Specifications, if applicable for a Job), Contractor shall submit to BPCA, or, if applicable for a Job, the Architect designated in the Job Order for such Job, drawings and calculations prepared by, and bearing the seal of a professional engineer, showing the proposed method for supporting such loads, for BPCA's, or if applicable for a Job, Architect's review and approval. No loading of any kind in excess of design loads shall be placed on any part of the Project prior to Architect's approval of such submitted drawings and calculations. The costs of the Architect's review, if any, shall be reimbursed to BPCA by Contractor.

(d) Contractor shall be responsible for all cutting, fitting or patching that may be required to complete the Work for a Job, to make its several parts fit together properly and to make the Work for such Job fit together properly with previous and surrounding work. The requirement to cut, fit or patch shall be determined by BPCA, or, if applicable for a Job, the Construction Manager designated in the Job Order for such Job; provided, that structural elements of the Job, or if applicable, the Project, shall not be cut, patched, or otherwise altered or repaired without prior authorization by BPCA. Authorization to proceed with remedial operation on any damaged or defective element or portion of the Job, or, if applicable, the Project shall not constitute a limitation or a waiver of BPCA's, or, if applicable to a Job, Construction Manager's or Architect's right to require the removal and replacement of any Work for such Job which fails to fulfill the requirements of the Contract Documents.

17.4 Adjoining Property

Contractor shall protect all adjoining property and shall repair or replace any such property damaged or destroyed during the progress of the Work for a Job.

17.5 Risks Assumed by Contractor

(a) Contractor solely assumes the following risk whether such risk arises from acts or omissions (whether negligent or not and whether supervisory or otherwise) of BPCA, or, if applicable for a Job, the Construction Manager, and/or Architect designated in the Job Order for such Job, or Contractor, of any Subcontractor, of any Materialman, of third persons or from any other cause, including unforeseen obstacles and difficulties which may be encountered in the performance of the Work, whether such risk is within or beyond the control of Contractor and whether such risk involves any legal duty, primary or otherwise, imposed upon BPCA:

the risk of loss or damage, direct or indirect, of whatever nature, to the Work or to any Materials furnished, used, installed or received by BPCA, Contractor or any Subcontractor, Materialmen or workmen performing services or furnishing Materials for the Work, whether such Work or Materials are stored at the Site or at an offsite location in accordance with Section 5.4 hereof. Contractor shall bear such risk of loss or damage until Final Acceptance of the Work for a Job, by BPCA or until completion of such Materials or removal of such Materials from the Site following a determination that they will no longer be needed for the Project and delivery to the location at which they are to be subsequently stored or disposed of, whichever event occurs last. .

(b) Contractor shall not, without obtaining express advance permission of BPCA, raise any defense involving in any way the: (i) jurisdiction of any court in which BPCA brings an action arising under this Agreement or the other Contract Documents, (ii) the governmental nature of BPCA, or (iii) the provisions of any statutes respecting suits against BPCA.

(c) Contractor's obligations under this Article 17 shall not be deemed waived, limited or discharged by the enumeration or procurement of any insurance for liability for damages.

(d) Neither Final Acceptance of the Work for a Job nor any payment made hereunder shall release Contractor from Contractor's obligations under this Article 17. The enumeration elsewhere in this Agreement of particular risks assumed by Contractor or of particular claims for which Contractor is responsible shall not be deemed to limit the effect of the provisions of this Article 17 or to imply that Contractor assumes or is responsible for only risks or claims of the type enumerated; and neither the enumeration in this Article 17 nor the enumeration elsewhere in this Agreement of particular risks assumed by Contractor of particular claims for which Contractor is responsible shall be deemed to limit the risks which Contractor would assume or the claims for which Contractor would be responsible in the

absence of such enumerations.

(e) The Contractor is advised that the Work under this Agreement and the other Contract Documents may impose certain obligations and requirements mandated by the U.S. Department of Labor Occupational Safety and Health Administration regulations, Title 29 CFR Part 1926.62 Lead Exposure in Construction, relative to the potential exposure to lead by its employees. The Contractor assumes entire responsibility and liability for complying fully in all respects with these regulations.

(f) Contractor agrees that any unsatisfied claims of BPCA arising from Contractor's obligations under this Article 17 or Article 13 may be offset or deducted by BPCA from any payments due to Contractor hereunder.

ARTICLE 18 - USE PRIOR TO ACCEPTANCE BY BPCA

(a) If before Final Acceptance of Work for a Job, BPCA desires to use the Site for such Job or any part thereof that is completed or partly completed, or to place or install therein or thereon equipment, BPCA shall have the right to do so, and Contractor shall in no way interfere with or object to such use by BPCA.

(b) Such use shall not (1) constitute acceptance of space, systems, Materials or elements of the Work for such Job, (2) affect the start of any guaranty period, nor (3) affect the obligations of Contractor to complete the Work for such Job in accordance with the requirements of this Agreement or other obligations of Contractor under the Contract Documents.

(c) Contractor shall continue the performance of the Work for such Job in a manner that shall not unreasonably interfere with such use by BPCA.

ARTICLE 19 - EXEMPTION FROM SALES AND COMPENSATING USE TAXES

19.1 BPCA Exempt

BPCA is exempt from payment of sales and compensating use taxes of the State of New York and of cities and counties thereof on all Materials that will become an integral component of the completed Project pursuant to this Agreement.

19.2 Certificates

Contractor shall obtain and cause Subcontractors and Materialmen to obtain any and all necessary certificates or other documentation from the appropriate governmental agency or agencies, and use such certificates or other documentation as required by law, rule or regulations to obtain said tax exemption.

ARTICLE 20 - WARRANTIES AND GUARANTIES

20.1 In General

(a) Contractor guarantees that all Work performed and all Materials furnished will conform to the applicable Contract Documents as to kind, quality, functions, design and characteristics of material and workmanship. Contractor shall remove, replace and repair, at its sole cost and expense, all defects in workmanship, Materials, ratings, capacities, or design characteristics occurring in or to the Work including, without limitation, any portion of the Work furnished or performed by any Subcontractor or Materialman, within one year from the date of Final Acceptance for a Job. Contractor guarantees that all Work performed and all Materials furnished will conform to the applicable Contract Documents as to kind, quality, functions, design and characteristics of material and workmanship. Contractor hereby acknowledges that BPCA may be required to incur substantial expense if correction of the Work is required particularly if such correction involves the uncovering, removal or replacement of concrete, wiring and piping installed at the Site. If Contractor shall fail to reimburse BPCA for any such expense which may become payable as provided in this paragraph, BPCA shall be entitled to deduct such expense from any payments required to be made by BPCA to Contractor pursuant to this Agreement and the other applicable Contract Documents. Contractor, upon demand, shall pay for any and all damage to any Work affected by or from such defects and all expenses necessary to remove, replace and repair such Work that may be damaged in removing, replacing or repairing such defects.

(b) The benefits of this Article 20 shall inure to the benefit of BPCA and its respective successors and assigns. In addition, any bond or guaranty that may be required of Contractor or any Subcontractor or Materialman under the Contract Documents shall inure to the benefit of BPCA and its respective successors and assigns.

(c) The rights and remedies afforded BPCA under this Article are in addition to and not in lieu of and do not in any way affect, change, alter, modify, vary or prejudice any right, remedy or recourse that BPCA may have under other provisions of this Agreement, the Contract Documents or pursuant to law.

20.2 Additional Guaranties

In addition to the general guaranty set forth in Section 20.1, any other guaranties set forth in the Contract Documents shall be applicable.

20.3 Repair by Another

If BPCA has requested Contractor to correct any Work and Contractor shall not have completed any correction of the Work as shall be required pursuant to this Article 20 within ten (10) working days after receipt of written notice from BPCA specifying the defect or damage required to be removed, replaced or repaired, or if such defect or damage is of such a nature that it cannot be completely removed, repaired and replaced within such ten (10) day period and Contractor shall not have diligently commenced removing, repairing and replacing such defect and damage within such ten (10) day period or shall not thereafter with reasonable diligence and in good faith proceed to do such work, BPCA may employ such other person, firm or corporation as it may choose, to perform such removal, replacement and repair, and

Contractor shall, upon demand, pay to BPCA all amounts that BPCA expends for such removal, replacement and repair.

ARTICLE 21 - INDEMNITY

21.1 Delay or Failure

Contractor and its sureties shall be responsible for and pay to BPCA, all loss, damage and additional cost incurred by reasons or on account of (i) the unexcused delays of Contractor (determined as set forth in Section 3.1 hereof) or (ii) Contractor's failure to fully and completely carry out the terms of this Agreement and the other Contract Documents.

21.2 Inventions

In addition to the indemnity set forth in Section 17.5(a), Contractor shall indemnify and hold BPCA harmless from all claims, demands or liabilities of any kind or nature, including costs and expenses, for or on account of any patented or unpatented plan, design, invention, article, arrangement, appliance, Material, or preparation, manufactured, used or followed in the performance of or incident to the Work hereunder, and shall defend any and all actions arising out of the same. In the event of any injunction or legal action by reason thereof, which shall operate to stop or retard the Work, BPCA shall have the right to substitute such other articles of like kind as will enable it to complete the Job, or, if applicable, the Project, and all costs and expenses occasioned thereby shall be borne by Contractor.

21.3 Liability

Contractor shall hold BPCA, BPCPC, the State of New York, and any Construction Manager or Architect designated in the Contract Documents and their servants, agents and employees harmless from and shall indemnify them against any and all liability, loss, cost, damage or expense, including attorneys' fees, by reason of claims of Contractor's employees or employees of its Subcontractors or Materialmen for injuries or death or by reason of claims of any other person or persons, including BPCA, BPCPC, the State of New York, and any Construction Manager or Architect designated in the Contract Documents, and their servants, agents or employees, for injuries to person or property or for death occasioned in whole or in part by any act or omission of Contractor, its Subcontractors and Materialmen and their servants, agents and employees whether or not it is contended that BPCA contributed thereto or was responsible therefor by reason of nondelegable duty. If, however, this indemnification is limited by applicable law, then the said indemnification hereby shall be similarly limited to conform with such law, it being the intention that this indemnification shall be as permitted by applicable law. BPCA may retain any monies due or to become due hereunder sufficient to indemnify BPCA, BPCPC, the State of New York, and any Construction Manager or Architect designated in the Contract Documents, and their servants, agents and employees against such injuries, claims, suits, actions, costs or damages should any such claim arise. Contractor shall, at the sole option of BPCA and upon written demand of BPCA, assume the defense in behalf of BPCA, BPCPC, the State of New York, and any Construction Manager or Architect designated in the Contract Documents, or their servants, agents or employees of any action or proceeding commenced against them whether or not Contractor is named as a

party therein as part of Contractor's aforementioned obligation to indemnify and hold them harmless.

ARTICLE 22 - PATENTS AND ROYALTIES

(a) In the performance of the Work, Contractor will not use or furnish any patented appliance, article, device or method of construction unless it has authorization for such use. Contractor shall pay all royalty and license fees.

(b) Any approval of Materials by Architect shall be construed merely as an approval of their adequacy for the Work.

(c) Contractor will be responsible for all claims against BPCA for the infringement of any patents. Contractor shall defend all suits and claims for infringement of any patent rights and shall indemnify and hold BPCA harmless from loss on account thereof. Any expenses incurred by Contractor in connection with suits and claims will not offset the Job Contract Price.

(d) Contractor hereby and presently grants to BPCA an irrevocable and non-exclusive license to utilize all of the Contractor's rights in and to all:

- (1) United States patents and patents registered in any other foreign country;
- (2) Proprietary knowledge, data and trade secrets; and
- (3) Engineering data and information necessary in connection with and solely in connection with, all work performed by BPCA or other contractors hired by BPCA to complete the work after termination of this Agreement pursuant to Section 15.1.

Each Purchase Order and Subcontract shall contain a similar clause with respect to the rights of Subcontractor and Materialman in and to the foregoing, in form and substance acceptable to BPCA, granting BPCA the aforesaid license. BPCA shall not be obligated to pay any royalties, license fees or any other consideration to Contractor or any Subcontractor or Materialman for this license. Contractor and each Subcontractor and Materialman shall execute a separate license agreement, in form and substance satisfactory to BPCA, concurrently with the execution of this Agreement, or any Job Order, Subcontract or Purchase Order, or within ten (10) days thereafter, embodying the terms of this Section. On request, Contractor and each Subcontractor and Materialman shall furnish BPCA with copies of all related Engineering and technical data required to complete the work.

ARTICLE 23 - AS-BUILT DRAWINGS

(a) If BPCA determines that as-built drawings are required for a Job, BPCA shall furnish to Contractor, at BPCA's expense, one physical set and two electronic copies (on disk) of 48" x 36" Drawings, on which Contractor, where applicable, shall record the installation of underground utilities, concealed piping, concealed valves and control equipment and record changes in the Work. Such recording shall be kept current and include final and actual sizes as

well as the location and elevation of the above figures and offset distances in feet and inches to permanent surface improvements such as buildings, retaining walls or curbs. During the progress of the Work for such Job, at the request of Construction Manager and prior to the approval of any Requisition of Contractor, Contractor shall provide a 48" x 36" PDF to BPCA of the up to-date Drawings showing the Work as installed. At completion of the Work, Contractor shall complete, sign and date the 48" x 36" physical set of Drawings and deliver it to Architect.

(b) After review by Architect and return to Contractor for any required changes, Contractor shall furnish to BPCA, at Contractor's expense, at least one physical set and two electronic copies (on disk) of 48" x 36" final Drawings, if such Drawings are requested by BPCA for a Job.

ARTICLE 24 - SHOP DRAWINGS AND SAMPLES

24.1 Contractor Submittal

Contractor shall submit to BPCA, or, if applicable for a Job, the Construction Manager designated in the Job Order for such Job, any shop drawings, Product Data and Samples required by the Contract Documents and shall adhere to all submittal and scheduling requirements with respect thereto. After review of such shop drawings, Product Data and Samples by BPCA, or, if applicable for a Job, the Construction Manager designated in the Job Order for such Job, and their approval by Architect, if applicable, each of such items shall be returned in accordance with the procedures established therefor.

24.2 Contractor's Responsibility

Architect's approval of shop drawings, Product Data and Samples shall not relieve Contractor of responsibility for and deviation from the requirements of the Contract Documents. Contractor shall be responsible for the accuracy of the shop drawings, Product Data and Samples and for the conformity of Documents unless Contractor has notified Architect of the deviation in writing at the time of submission and has received from Architect written approval by separate letter of the specified deviations. Architect's approval shall not relieve Contractor of responsibility for errors or omissions in the shop drawings, Product Data or Samples.

ARTICLE 25 – NOTICES

Whenever it is provided herein that notice, demand, request, consent, approval or other communication shall or may be given to, or served upon, either of the parties by the other, or whenever either of the parties desires to give or serve upon the other any notice, demand, request, consent, approval or other communication with respect hereto, each such notice, demand, request, consent, approval or other communication shall be in writing and shall be effective for any purpose only if given or served by hand with proof of delivery, by delivery by an overnight courier service which obtains receipts, or by mailing the same by express or certified mail, postage prepaid, return receipt requested, addressed to:

(a) if to BPCA:

Gwen Dawson, Vice President, Real Property, Battery Park City Authority, 200 Liberty Street, 24th floor, New York, NY 10281

with a copy to: Alix Pustilnik, General Counsel, at the same address

or to such other address as BPCA may from time to time designate in the manner set forth above.

(b) if to Contractor:

[NAME], [TITLE], [CONTRACTOR] located at [ADDRESS]

or to such other addresses as Contractor may from time to time designate in the manner set forth above.

(c) Every notice, demand, request, consent, approval or other communication hereunder shall be deemed to have been given or served (i) in the case of express or certified mail, on the date the receipt is dated by the Post Office or express mail carrier, as the case may be, and (ii) in the case of notice by hand or by overnight courier service, upon delivery, as evidenced by a signed receipt.

ARTICLE 26 - EMPLOYMENT AND DIVERSITY

26.1 Definitions

The following terms shall have the meanings set forth below for the purposes of this Article 26:

(a) “**Certified Business.**” A business verified as a minority or women-owned business enterprise by the Division or such other New York State agency authorized to make such certification.

(b) “**Diversity Program.**” The program by which BPCA shall monitor Contractor’s compliance with the requirements set forth in (i) the MBE/WBE Required Participation Plan and (ii) the Utilization Plan.

(c) “**Division.**” The Division of Minority and Women’s Business Development of the New York State Department of Economic Development.

(d) “**Director.**” The Director or the Executive Director of the Division.

(e) “**Directory.**” The directory of certified businesses prepared by the Director for use by BPCA and contractor in complying with the provisions of the Executive Law of the State of New York, Article 15-A.

(f) **“MBE/WBE Required Participation Plan.”** The plan previously submitted by Contractor to BPCA listing the certified MBEs and/or WBEs which the Contractor intends to use in the performance of this agreement in order to ensure that MBEs and WBEs are awarded a fair share of the total dollar value that is to be paid for the Work.

(g) **“Minority” or “Minority Group Member.”** A United States citizen or permanent resident alien who is and can demonstrate membership in one of the following groups:

- (1) Black persons having origins in any of the Black African racial groups;
- (2) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American descent of either Indian or Hispanic origin, regardless of race;
- (3) Native American or Alaskan native persons having origins in any of the original peoples of North America; or
- (4) Asian and Pacific Islander persons having origins in any of the Far East countries, South East Asia, the Indian subcontinent or the Pacific Islands.

(h) **“Minority-owned Business Enterprise” (“MBE”).** A business enterprise, including a sole proprietorship, partnership or corporation that is:

- (1) at least 51 percent owned by one or more Minority Group Members;
- (2) an enterprise in which such Minority ownership is real, substantial and continuing;
- (3) an enterprise in which such Minority ownership has and exercises the authority to control and operate, independently, the day-to-day business decisions of the enterprise; and
- (4) an enterprise authorized to do business in the State of New of New York and is independently owned and operated.

(i) **“Subcontract.”** An agreement providing for a total expenditure in excess of \$25,000 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon between a contractor or consultant and any individual or business enterprise, including a sole proprietorship, partnership, corporation, or not-for-profit corporation, in which a portion of a contractor’s obligation is undertaken or assumed, but shall not include any construction, demolition, replacement, major repair, renovation, planning or design or real property or improvements thereon for the beneficial use of the contractor.

(j) **“Utilization Plan.”** A plan previously submitted by Contractor to BPCA which sets forth the proposed percentages of employees who are either Minority Group Members or women and who will be used by Contractor to perform the Work.

(k) **“Women-owned Business Enterprise” (“WBE”).** A business enterprise, including a sole proprietorship, partnership or corporation that is:

- (1) at least 51 percent owned by one or more United States citizens or permanent resident aliens who are women;
- (2) an enterprise in which the ownership interest of such women is real, substantial and continuing;
- (3) an enterprise in which such women ownership has and exercises the authority to control and operate, independently, the day-to-day business decisions of the enterprise; and
- (4) an enterprise authorized to do business in the State of New York and which is independently owned and operated.

26.2 Equal Employment Opportunities for Minority Group Members and Women

(a) During the performance of the Work, Contractor agrees as follows:

- (1) Contractor shall not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status; shall undertake or continue existing programs to ensure that Minority Group Members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status; and shall make and document its good faith effort to achieve prompt and full utilization of Minority Group Members and women at all levels and in all segments of its work force where deficiencies exist.
- (2) At the request of BPCA, Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of Contractor’s obligations herein.
- (3) Contractor shall state in all solicitations or advertisements for employees that in the performance of the Work, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.
- (4) Contractor and any Subcontractor shall be required to submit compliance

reports in accordance with this Section 26 relating to their operations and the implementation of the Diversity Program in effect as of the date of execution of this Agreement.

- (5) Contractor shall submit an EEO policy statement to BPCA within seventy-two hours of notice from BPCA of the awarding of this contract to Contractor. If Contractor does not have an existing EEO policy statement, BPCA may provide to Contractor a model statement.

(b) Contractor shall include the provisions of Section 26.2(a) in every Subcontract in such a manner that the provisions will be binding upon each Subcontractor as to the Work in connection with this contract's execution.

(c) Contractor shall comply with the provisions of the Human Rights Law of the State of New York, and all other City, State and Federal statutory and constitutional non-discrimination provisions. Contractor and Subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest

(d) Miscellaneous

- (1) The provisions of this Section shall not be binding upon Contractor or its Subcontractors in the performance of Work or the providing of services, or any other activities that are unrelated, separate or distinct from this Agreement and the Contract Documents as expressed by their terms.
- (2) The requirements of this Section shall not apply to any employment outside New York State, or application for employment outside such state, or solicitations, or advertisements therefore, or any existing programs of diversity regarding employment outside New York State and the effect of contract provisions required by this section shall be so limited.

(e) Enforcement

The parties agree to be bound by provisions of Article 15-A of the Executive Law of the State of New York and by the regulations adopted thereunder.

26.3 Workforce Participation

(a) Contractor is required to make and document good faith efforts to achieve the participation of [] percent ([]%) Minority Group Members and [] percent ([])% women in the workforce for each trade or services utilized by Contractor in the Work as set

forth in the Utilization Plan.

(b) To ensure compliance with this Section, Contractor shall submit a staffing plan to document the composition of the proposed workforce to be utilized in the performance of this contract by the specified categories listed, including ethnic background, gender, and Federal occupational categories. Contractors shall complete the staffing plan form and submit it as part of their bid or proposal or within a reasonable time, but no later than the time of award of the contract.

(c) The participation for Minority Group Members and women employees must be substantially uniform throughout the work.

(d) Contractor shall not participate in the transfer of Minority Group Member employees or women employees from employer to employer or from project to project for the sole purpose of satisfying the participation goals above set forth.

(e) In achieving such participation, Contractor is required to make good faith efforts to find and employ qualified Minority Group Members and women supervisory personnel and journeymen.

(f) Contractor shall meet with BPCA, and such other persons as BPCA may invite, on a periodic basis as required by BPCA to discuss issues relating to Minority Group Members and women workforce participation. At such meetings, Contractor shall report on the names of its Subcontractors then engaged in construction on the project to which the Work relates or which within 60 days are scheduled to be engaged in construction of such project, on the nature of the work and anticipated construction schedule of Contractor and Subcontractors, on the anticipated hiring needs of Contractors and Subcontractors, on the names of the responsible foremen directly employed by Contractor, and such information requested by BPCA that will then promote the employment of Minority Group Members and women. Contractor shall use its best efforts to obtain the above information and shall, upon BPCA's request, cause its Subcontractors to attend said meetings and provide the above information.

(g) Compliance reports with respect to the Utilization Plan ("**Utilization Compliance Reports**") which shall be submitted to BPCA's Diversity officer on a monthly basis and shall be in accordance with the following:

- (1) BPCA may require that Contractor submit Utilization Compliance Reports for the duration of this contract to BPCA regarding Contractor's operation and implementation of the Utilization Plan portion of the Diversity Program in effect as of the date of execution of this Agreement.
- (2) The Utilization Compliance Reports shall include information on any Subcontractor involved in the performance of the contract with regard to the Subcontractor's compliance with the Diversity Program.
- (3) The Utilization Compliance Reports shall include, but are not limited to

the following:

- (i) a breakdown of the Subcontractors by ethnic background, gender or such other categories as may be required by BPCA;
- (ii) the actions the Contractor and Subcontractors have taken to meet the components of the Diversity Program;
- (iii) how Contractor and Subcontractors intend to utilize participation of Minority Group Members and women in their workforce in connection with the performance of the Work and timetables therefor during the remainder of their performance of the Work.

(h) Any failure by Contractor to submit a required Utilization Compliance Report, including information on any of its Subcontractor's compliance, may be deemed a breach of contract with respect to this Agreement.

(i) Contractor shall include the provisions in Section 26.3 in every Subcontract, and such provisions shall be binding upon each Subcontractor.

26.4 Minority Business Enterprise (MBE) Participation and Women's Business Enterprise Participation

(a) Contractor shall make good faith efforts to attain the participation of [] percent ([]%) MBEs and/or WBEs in the total dollar value of the Work.

(b) The total dollar value of the Work for purposes of determining compliance with the MBE/WBE Required Participation Plan shall be calculated as follows:

- (1) if an MBE and WBE is not the Contractor -- the dollar value of the Work subcontracted to MBEs and WBEs; provided, however, that where materials are purchased from an MBE or WBE that acts merely as a conduit for goods manufactured or produced by a non-MBE or non-WBE, only that portion of the price paid for such materials that will accrue as profit to the MBE or WBE and/or the Fee received by the MBE or WBE shall be included;
- (2) if Contractor is a joint venture including one or more MBEs or WBEs as joint venturers -- the Total Contract Price multiplied by the percentage of the joint venture's profits (or losses) that are to accrue to the MBE and WBE joint venturer(s) under the joint venture agreement; and
- (3) if an MBE or WBE is Contractor or where Contractor is a joint venture consisting entirely of MBEs or WBEs -- the Contract Price.

(c) Monthly compliance reports with respect to the MBE/WBE Required Participation Plan (“**MBE/WBE Compliance Reports**”) shall be required as follows:

- (1) MBE/WBE Compliance Reports shall be submitted to BPCA on a monthly basis and shall include information with respect to:
 - (i) dividing the Work to be subcontracted into smaller portions, where economically and technically feasible;
 - (ii) actively and affirmatively making a good faith effort to solicit bids for subcontracts from qualified MBEs and WBEs identified in the directory of certified businesses available at the office of the BPCA’s Diversity Officer, including the circulation of solicitations to Minority contractor associations. Contractor shall maintain records detailing the efforts made to provide for meaningful MBE and WBE participation in the Work, including the names and addresses of all MBEs and WBEs contacted and, if any such MBE or WBE is not selected as a joint venture or subcontractor, the reasons for such decision;
 - (iii) making plans and specifications for prospective work available to MBEs and WBEs in sufficient time for review;
 - (iv) utilizing the services and cooperating with those organizations providing technical assistance to BPCA in connection with the participation of MBEs and WBEs in the project to which the Work relates;
 - (v) encouraging the formation of joint ventures, partnerships or other similar arrangements among subcontractors where appropriate;
 - (vi) ensuring that provision is made to provide progress payments to MBEs and WBEs on a timely basis; and
 - (vii) not requiring bonds from and/or providing bonds and insurance for MBEs and WBEs where appropriate, and/or assisting in obtaining bonds and insurance for MBEs and WBEs where feasible.
- (2) MBE/WBE Compliance Reports that shall be submitted to the Diversity Department on a monthly basis.
- (3) MBE/WBE Compliance Reports shall also include, but not be limited to, the following information:
 - (i) the name, address and telephone number of each certified MBE and WBE which Contractor is using or intends to use to comply with the MBE/WBE Required Participation Plan.

- (ii) a brief description of the contract scope of work to be performed for the Contractor by each certified MBE and WBE and the scheduled dates for performance;
- (iii) a statement of whether the Contractor has a written agreement with each certified MBE and WBE which Contractor is using or intends to use, and if requested, copies of such agreements;
- (iv) the actual total cost of the contract scope of work to be performed by each certified MBE and WBE for this Agreement; and
- (v) the actual amounts of any payments made by Contractor to each certified MBE and WBE as of the date the MBE/WBE Compliance Report was submitted.

(d) Contractor shall provide BPCA with Monthly MBE/WBE and Workforce Utilization Reports, by the last calendar day of each month, in the form of Exhibit C hereto. Failure to provide such reports shall be an event of default of Contractor's obligations pursuant to Article 15.1 (a) (1) hereof.

(e) Contractor shall provide proof of payment to all Subcontractors and Materialmen in the form of a waiver of lien or cancelled check, with each request for payment. Failure to provide such proof of payment shall be an event of default of Contractor's obligations pursuant to Article 15.1 (a) (1) hereof.

26.5 Failure to Comply

(a) In accordance with 5 NYCRR §142.13, Contractor acknowledges that if it is found to have willfully and intentionally failed to comply with the MBE/WBE participation goals set forth herein or any other requirements set forth in this Article 26, such finding constitutes a breach of contract and BPCA may withhold payment from the Contractor as liquidated damages.

(b) Such liquidated damages shall be calculated based on the actual cost incurred by BPCA related to BPCA's expenses for personnel, supplies and overhead related to establishing, monitoring, and reviewing certified MBE/WBE programmatic goals and Diversity and Equal Opportunity compliance.

ARTICLE 27 - STANDARD PROVISIONS

27.1 Provision Required by Law Deemed Inserted

Each and every provision of law and governmental regulation required by law to be inserted in the Contract Documents shall be deemed to be inserted therein and this Agreement shall read and shall be enforced as though so included therein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon

the application of either party, this Agreement shall be deemed to be amended to make such insertion or correction. If this Agreement contains any unlawful provision, the same shall be deemed of no effect and shall, upon the application of either party, be deemed stricken from this Agreement without affecting the binding force of the remainder.

27.2 Compliance with Laws, Rules and Regulations

Contractor and each Subcontractor and Materialman shall comply fully with all applicable laws, rules and regulations pertaining to the Project and the Work.

27.3 Applicable Law, Forum and Jurisdiction

This Agreement and the other Contract Documents shall be governed by the laws of the State of New York. All actions or proceedings relating, directly or indirectly, to this Agreement and the other Contract Documents shall be litigated only in courts located within the County of New York. Contractor, any guarantor of the performance of its obligations hereunder (including sureties for Payment and Performance Bonds) (“**Guarantor**”) and their successors and assigns hereby subject themselves to the jurisdiction of any state or federal court located within such county, waive the personal service of any process upon them in any action or proceeding therein and consent that such process be served by certified or registered mail, return receipt requested, directed to the Contractor and any successor at Contractor’s address hereinabove set forth, to Guarantor and any successor at the address set forth in the instrument of guaranty and to any assignee at the address set forth in the instrument of assignment. Such service shall be deemed made as of the date of the return receipt.

27.4 No Third Party Rights

Nothing in this Agreement or the other Contract Documents shall create or shall give to third parties any claim or right of action against BPCA, or any Construction Manager or Architect designated in the Contract Documents, beyond such as may legally exist irrespective of this Agreement.

27.5 Exculpation; Limitation of Liability

In no event shall any claim be asserted under this Agreement by Contractor or any Subcontractor or Materialman against any member, officer, employee, lessee, consultant or agent of BPCA, Construction Manager, or Architect. By execution of this Agreement, Contractor agrees to look solely to BPCA with respect to any claim which may arise. It is hereby understood by and between the parties hereto that BPCA shall only be liable to the extent of monies available to BPCA.

27.6 Protection of Lives and Health

(a) Contractor’s, Subcontractor’s and Materialman’s attention is specifically called to the rules and regulations, codes and bulletins of the New York State Department of Labor. Attention is also directed to the standards imposed under the Federal Occupational Safety and

Health Act of 1970, as amended.

(b) Contractor shall maintain an accurate record of all cases of death, occupational disease, and injury requiring medical attention or causing loss of time from work, arising out of and in the course of employment on work under this Agreement, and shall immediately notify BPCA in writing of any injury which results in hospitalization or death. Contractor shall also complete and submit to BPCA the "Incident Report Form" attached hereto and made a part hereof as Exhibit E within 48 hours of the occurrence of any such injury.

(c) Contractor alone shall be responsible for the safety, efficiency and adequacy of contractor's work, plant, appliances and methods, and for any damage that may result from the failure, or the improper construction, maintenance, or operation of such work, plant, appliances and methods.

27.7 Waiver of Immunity Clause

Contractor hereby agrees to the provisions of New York Public Authorities Law Section 2875, which require that a person, when called before a grand jury, head of a State department, temporary State commission, or other State agency, the Organized Crime Task Force in the State Department of Law, head of a department or other City agency, which is empowered to compel the attendance of witnesses and examine them under oath, to testify in an investigation concerning any transaction or contract had with the State, any political subdivision thereof, or with any public department, agency or official of the State, a public authority or with any public department, agency or official of the State or of any political subdivision thereof or of a public authority, that person must sign a waiver of immunity against subsequent criminal prosecution or to answer any relevant questions concerning such transaction or contract. Upon the refusal of any person to comply with such provisions:

(a) such person, and any firm, partnership or corporation of which such person is a member, partner, director or officer shall be disqualified from thereafter selling to or submitting bids to or receiving awards from or entering into any contracts with any public authority or official thereof, for goods, work or services, for a period of five (5) years after such refusal; and

(b) any and all contracts made with any public authority or official thereof, by such person, and by any firm, partnership or corporation of which such person is a member, partner, director or officer may be canceled or terminated by the public authority without incurring any penalty or damages on account of such cancellation or termination, but any monies owing by the public authority for goods delivered or work done prior to the cancellation or termination shall be paid.

27.8 Prohibited Interests

No official of BPCA who is authorized in such capacity and on behalf of BPCA to negotiate, make, accept, or approve, or take part in negotiating, making, accepting, or approving any Architectural, Engineering, inspection, Job Order, Purchase Order or any Subcontract in connection with the Work, shall become directly or indirectly interested

personally in the Agreement or the other Contract Documents. Contractor is advised that no official or employee of BPCA is permitted to indirectly solicit, accept, or receive gifts whether in the form of money, service, loan, travel, entertainment, hospitality, thing or promise, or in any other form. No officer, official, employee, architect, attorney, engineer, inspector or consultant of or for BPCA who is authorized in such capacity and on behalf of BPCA to exercise any legislative, executive, supervisory or other similar functions in connection with the Work, shall become directly or indirectly interested personally in the Agreement, any Purchase Order, any Job Order, Subcontract, insurance contract, or any other contract pertaining to the Work.

27.9 Labor Provisions

(a) It is hereby agreed that all applicable provision of the Labor Law of the State of New York shall be carried out in the performance of the Work.

(b) Contractor specifically agrees, as required by New York Labor Law Sections 220 and 220-d as amended, that:

- (1) no laborer, workman or mechanic, in the employ of Contractor, Subcontractor, Materialman or other person doing or contracting to do the whole or any part of the Work contemplated by the Contract Documents shall be permitted or required to work more than eight (8) hours in any one calendar day or more than five (5) days in any one week, except in the emergencies set forth in the Labor Law.
- (2) the wages paid for a legal day's work shall be not less than the prevailing rate of wages as defined by law;
- (3) the minimum hourly rate of wage to be paid shall be not less than that stated in the Contract Documents and as shall be designated by the Industrial Commissioner of the State of New York; and
- (4) Contractor shall post at appropriate conspicuous points at the Site, a schedule showing all determined minimum wage rates for the various classes of laborers and mechanics to be engaged in the Work and all deductions, if any, required by law to be made from unpaid wages actually earned by the laborers and mechanics so engaged.

(c) The minimum wage rates, if any, herein specified for apprentices shall apply only to persons working with the tools of the trade which such persons are learning under the direct supervision of journeymen mechanics. Except as otherwise required by law, the number of apprentices in each trade or occupation employed by Contractor or any Subcontractor or Materialman shall not exceed the number permitted by the applicable standards of the New York State Department of Labor, or, in the absence of such standards, the number permitted under the usual practice prevailing between the unions and the employers' association of the respective trades or occupations.

(d) All employees of Contractor and each Subcontractor and Materialman shall be paid in accordance with the provisions of the Labor Law.

(e) Contractor agrees that, in case of underpayment of wages to any worker engaged in the Work by Contractor or any Subcontractor or Materialman, BPCA shall withhold from Contractor out of payments due an amount sufficient to pay such worker the difference between the wages actually paid such worker for the total number of hours worked, and that BPCA may disburse such amount so withheld by BPCA for and on account of Contractor to the employee to whom such amount is due. Contractor further agrees that the amount to be withheld pursuant to this paragraph may be in addition to the percentages to be retained by BPCA pursuant to other provisions of the Contract Documents.

(f) The Labor Law provides that this Agreement may be terminated for cause and no sum paid for any Work done thereunder upon a second conviction for willfully paying less than:

- (1) the stipulated wage scale as set forth in New York Labor Law Section 220, subdivision 3, as amended, or
- (2) less than the stipulated minimum hourly wage scale as specified in Labor Law, Section 220-d, as amended.

(g) Contractor specifically agrees, as required by the New York Labor Law Section 220-e, as amended, that:

- (1) in the hiring of employees for the performance of Work under this Agreement or any Job Order, Subcontract or Purchase Order hereunder, or for the manufacture, sale or distribution of Materials, equipment or supplies hereunder, but limited to operations performed within the territorial limits of the State of New York, no Contractor, Subcontractor, Materialman or any person acting on behalf of such Contractor or Subcontractor, or Materialman, shall by reason of race, creed, color, sex or national origin discriminate against any citizen of the State of New York who is qualified and available to perform the work to which the employment relates;
- (2) no Contractor, Subcontractor, Materialman, or any person on behalf of such Contractor, Subcontractor or Materialman shall, in any manner, discriminate against or intimidate any employee hired for the performance of work under this Agreement on account of race, creed, color, sex or national origin;
- (3) there may be deducted from the amount payable to Contractor, by BPCA under this Agreement, a penalty of \$50.00 for each person for each calendar day during which such person was discriminated against or intimidated in violation of the terms of this Agreement; and

- (4) this Agreement may be canceled or terminated for cause by BPCA and all monies due or to become due hereunder may be forfeited for a second or any subsequent violation of the terms or conditions of this Section of this Agreement.

(h) Where applicable, Contractor agrees to settle labor disputes in accordance with the provisions of The New York Plan For The Settlement of Jurisdictional Disputes Between The Building And Construction Trades Council Of Greater New York And The Building Trades Employers' Association Of The City of New York.

27.10 Disputes Resolution Procedure

(a) The provisions of this Article shall constitute Contractor's sole means for challenging any determination, order or other act or omission of BPCA or otherwise asserting against BPCA any claim of whatever nature arising under, or in any way relating to, this Agreement (any such challenge or assertion by Contractor being herein referred to as a "**Dispute(s)**"). Exhaustion of these dispute resolution procedures, including the judicial review set forth below, shall be the parties' sole remedy in connection with any Dispute.

(b) The parties to this Agreement hereby authorize and agree to the resolution of all Disputes arising out of, under or in connection with, this Agreement in accordance with the following and pursuant to the procedures set forth in paragraph (c) of this Section 27.10. With respect to any Dispute which relates in whole or primary part to technical issue(s) under this Agreement including, without limitation, determinations as to the acceptability or fitness of any Work, the meaning or interpretation of the Contract Documents, the question of whether any Work falls within the scope of the Specifications set forth in the Contract Documents, the acceptability of any proposed substitutions, modifications or other submissions under this Agreement or the other Contract Documents, the disapproval of proposed Subcontractors or Materialmen (to the extent such disapproval is related to technical issues), the extension of time to the extent related to a technical matter, the question of whether substantial completion or final completion has been achieved, the parties hereby authorize the General Counsel of BPCA, or his/her designee, (hereinafter referred to as the "**Arbiter**"), acting personally, to render a final and binding decision.

(c) All Disputes shall be initiated through a written submission by either party (such submission to be hereinafter referred to as the "**Dispute Notice**") to the Arbiter within ten (10) days of the determination, order or other act or omission which is the subject of the Dispute. Within ten (10) days after the submission of such Dispute Notice, the party initiating the Dispute shall provide the Arbiter with all evidence and other pertinent information in support of the party's position and/or claim. Within thirty (30) days from the date of the Dispute Notice, the party against whom the Dispute Notice was filed shall submit any and all materials which it deems pertinent to the Arbiter. Upon submission of a Dispute Notice to the Arbiter, the Arbiter shall render its decision in writing and deliver a copy of same to the parties within a reasonable time not to exceed sixty (60) days after the receipt of all materials. In rendering such decision, the Arbiter may seek such technical or other expertise as it shall deem necessary or appropriate (notifying both parties to the Dispute when he/she so seeks such other information or expertise)

and seek any such additional oral and/or written argument or materials from either or both parties to the Dispute as he/she deems fit. The Arbiter shall have the discretion to extend the time for submittals required hereunder. The Arbiter's ability to render and the effect of a decision hereunder shall not be impaired or waived by any negotiations or settlement offers in connection with the matter presented, whether or not the Arbiter participated therein, or by any prior decision of others, or by any termination or cancellation of this Agreement. The decision of the Arbiter shall be final and binding on both parties to this Agreement.

(d) It is expressly understood and agreed that the pendency of a Dispute hereunder shall at no time and in no respect constitute a basis for any modification, limitation or suspension of Contractor's obligation to fully perform in accordance with this Agreement and that Contractor shall remain fully obligated to perform the Work notwithstanding the existence of any such Dispute.

27.11 Additional Provisions Relating to the Prosecution of Claims for Money Damages

(a) Except as otherwise provided in this Agreement, if Contractor claims or intends to claim compensation or money damages for any damage or loss sustained by reason of any determination, order or other act or omission of BPCA, Contractor shall furnish a written notice to the Arbiter setting forth the nature of the claim and the extent of the damage sustained within ten (10) days of the occurrence of such loss or damages. This written notice shall constitute Contractor's submission to the Arbiter for the purposes of requesting the Arbiter's determination in accordance with Section 27.10 above. Any such claim shall state as fully as then possible all information relating thereto and shall be supported by any then available documentation, including daily records showing all costs incurred. Such information shall be supplemented with any and all further information, including information relating to the quantum of losses or damages sustained, as soon as practicable after the information becomes or reasonably should become known to the Contractor.

(b) Any claim for compensation or monetary damages, the successful prosecution of which necessarily depends upon a technical determination favorable to Contractor, may not proceed unless and until Contractor first obtains such a favorable determination with respect to the technical issue and must be made within ten (10) days of such determination; moreover, Contractor must submit to the Arbiter any documentation or proof in support of the monetary claim within fifteen (15) days of such determination in order to proceed with such a claim. This written notice shall constitute Contractor's submission to the Arbiter for the purposes of requesting the Arbiter's determination in accordance with Section 27.10 above.

(c) Compliance with the provisions hereof shall constitute a condition precedent to the Contractor's submission of a Dispute pursuant to Section 27.10 with respect to any claim for compensation or monetary damages and the Contractor shall be deemed to have waived any claim not submitted in accordance herewith.

(d) Any final determination of the Arbiter with respect to a Dispute initiated pursuant to this Article 27 shall be subject to review solely in the form of a challenge following the decision by the Arbiter in a Court of competent jurisdiction of the State of New York,

County of New York, under Article 78 of the New York Civil Practice Law and Rules or a United States Court located in New York City under the procedures and laws applicable in that court, it being understood the review of such Court shall be limited to the question of whether or not the Arbitrator's determination is arbitrary, capricious or lacks a rational basis. No evidence or information shall be introduced or relied upon in such proceeding which has not been duly presented to the Arbitrator in accordance with this Article 27.

27.12 Limitation on Actions

(a) Subject to the provisions of Section 27.11, no action or proceeding shall lie or shall be maintained by Contractor against BPCA, or any Construction Manager or Architect designated in the Contract Documents unless (i) such action or proceeding shall be commenced within six (6) months of the Agreement Termination Date; or (ii) if this Agreement is terminated by BPCA prior to Agreement Termination Date, unless such action or proceeding is commenced within six (6) months after the date of such termination.

(b) Nothing in this Section 27.12 shall be construed to modify or lengthen a shorter limitations period provided by applicable law.

(c) No action or proceeding shall be commenced by Contractor against BPCA, or any Construction Manager or Architect designated in the Contract Documents, except in the Supreme Court of the State of New York, County of New York.

(d) Nothing in this Section 27.12 shall be construed to suggest that Contractor, under any circumstances, may bring an action or proceeding against any Construction Manager or Architect designated in the Contract Documents.

27.13 Waiver of Remedies

Contractor acknowledges that it can be compensated adequately by money damages for any breach of this Agreement which may be committed by BPCA, or any Construction Manager or Architect designated in the Contract Documents. Contractor agrees that no default, act or omission of BPCA, or any Construction Manager or Architect designated in the Contract Documents shall constitute a material breach of contract entitling Contractor to cancel or rescind this Agreement or to suspend or abandon performance thereof, other than the failure of BPCA to make a payment of the Job Contract Price in accordance with the terms hereof solely because sufficient funds to pay the Job Contract Price have not been appropriated or will otherwise not be made available to BPCA. Contractor hereby waives any and all rights and remedies to which Contractor might otherwise be or become entitled because of any wrongful act or omission of BPCA, or any Construction Manager or Architect designated in the Contract Documents, except as provided in this Section 27.13 and Contractor's right to money damages.

27.14 Modification of Agreement

No change in or modification, termination or discharge of this Agreement or any

other Contract Document in any form whatsoever shall be valid or enforceable unless it is in writing and signed by the party to be charged therewith or its duly authorized representative, provided, however, that any change in or modification, termination or discharge of this Agreement or any other Contract Document expressly provided for in this Agreement shall be effective as so provided.

27.15 Signs and Parking

Contractor agrees that it shall not display on or about the Site for a Job any sign, trademark or other advertisement without the approval of BPCA. Contractor shall not and shall not permit any of its Subcontractors or Materialmen to park any vehicles on the Site for a Job.

27.16 Entire Agreement

The Contract Documents constitute the entire agreement between the parties and incorporate all prior understandings in connection with the subject matter hereof.

27.17 Rights and Remedies

The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by BPCA, or any Construction Manager or Architect designated in the Contract Documents, including, but not limited to, the making of any payment or permitting Contractor to continue with the performance of the Work shall constitute a waiver of any right or duty afforded any of them under this Agreement or the other Contract Documents, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

27.18 Participation in International Boycott Prohibited

Contractor agrees, as a material condition of this Agreement and the other Contract Documents, that neither Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated or is participating or shall participate in an international boycott in violation of the provisions of the United States Export Administration Act of 1969, as amended, or the United States Export Administration Act of 1979, as amended, or the Regulations of the United States Department of Commerce promulgated thereunder. This Agreement shall be rendered forfeit and void by the Comptroller of the State of New York if, subsequent to execution, such person, firm, partnership or corporation has been convicted of a violation of the provisions of either of such federal acts or such Regulations or has been found upon the final determination of the United States Commerce Department or any other appropriate agency of the United States to have violated the provisions of either of such federal acts or such Regulations.

27.19 Compliance with "Buy-American" Statutes

Contractor and any substantially owned or affiliated person, firm, partnership or corporation agrees to comply with the New York Public Authorities Law, Section 2603-A as amended (affects steel or steel products).

27.20 Permitted Successors

References to parties and entities herein shall be deemed to include their permitted successors.

27.21 MacBride Fair Employment Principles

If the amount payable to Contractor under this Agreement and the other Contract Documents is greater than \$15,000, Contractor hereby certifies that it and/or any individual or legal entity in which it holds a 10% or greater ownership interest, and any individual or legal entity that holds a 10% or greater ownership in it, either have no business operations in Northern Ireland; or 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, as set forth in New York State Finance Law Article XI Section 165(5), and shall permit independent monitoring of their compliance with such Principles.

27.22 Iran Divestment Act

By signing this Agreement and the other Contract Documents, each person and each person signing on behalf of any other party certifies, and in the case of a joint bid 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.

27.23 Termination for Failure to Disclose Under State Finance Law §139k

BPCA reserves the right to terminate this Agreement in the event it is found that the certification filed by Contractor pursuant to New York State Finance Law §139-k was intentionally false or intentionally incomplete. Upon such finding, BPCA may exercise its termination right by providing written notification to the Contractor in accordance with the written notification terms of this contract. If a contract is terminated in accordance with State Finance Law §139k(5), BPCA, its subsidiaries and affiliates, will include a statement in BPCA's procurement record describing the basis for any action taken under the termination provision.

27.24 Labor Peace

The Contractor and its Subcontractors and Materialmen shall not employ on the Work any labor, materials or means whose employment, or utilization during the course of this Agreement or the other Contract Documents, may tend to or in any way cause or result in strikes, Work stoppages, delays, suspension of Work or similar troubles by workers employed by the Contractor or its Subcontractors, Materialmen, or by any of the trades working in or

about the buildings and premises where Work is being performed under this Agreement or the other Contract Documents, or by other contractors or their subcontractors pursuant to other agreements, or on any other building or premises owned or operated by BPCA, its contractors or affiliates. Any violation by the Contractor of this requirement may be considered as proper and sufficient cause for declaring the Contractor to be in default, and for BPCA to take action against Contractor as set forth in Article 15 of this Agreement, or such other Section of this Agreement as BPCA may deem proper.

27.25 Comptroller's Approval

If this Agreement is considered an "eligible contract," as defined by New York Code, Rules and Regulations Title 2 Part 206.2, it is subject to the New York State Comptroller's approval, and therefore shall not be valid and enforceable until that approval has been obtained. A contract is considered an "eligible contract," as defined by Title 2 of NYCRR Part 206.2, if it is not a specifically exempt contract, is executed by a state authority on or after March 1, 2010, the aggregate consideration under the contract may reasonably be valued in excess of one million dollars (including all reasonably anticipated renewals and amendments), AND the contract (A) was or shall be awarded on a single-source basis, sole-source basis or pursuant to any other method of procurement that is not a competitive procurement OR (B) shall be paid in whole or in part with monies appropriated by the State, either directly to a state authority or to a state agency that pays the money to a state authority.

27.26 Key Person/Personnel

The parties understand that in entering into this Agreement, BPCA has relied upon Contractor's representation that [NAME], [TITLE] (hereinafter the "**Key Personnel**") will be directly and consistently involved in supervising the Work and actively engaged in the day-to-day management of the Work, which shall include attending mandatory Project meetings. If the Key Personnel is/are not available as described herein, or if the Key Personnel depart from the firm or severs his/her/their relationship with the Contractor, or for whatever other reason is/are not available to work on the Jobs, then BPCA shall have the right to terminate this Agreement. The parties also agree that at any time during the course of the Work, BPCA may designate additional or substitute key personnel to perform the Work. Contractor agrees to make the additional or substituted key personnel available under the same conditions set forth herein.

27.27 Binding Agreement

A binding contract between the parties shall exist only if and at such time as both parties have executed this Agreement.

27.28 General Responsibility

(a) The Contractor shall at all times during the Term remain responsible. The Contractor agrees, if requested by BPCA or its designee, to present evidence of Contractor's continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.

(b) BPCA or its designee, in its sole discretion, reserves the right to suspend any or all activities under this Agreement, at any time, when BPCA discovers information that calls into question the responsibility of Contractor. In the event of such suspension, Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, Contractor must comply with the terms of the suspension order. Activity under the Agreement and the other Contract Documents may resume at such time as BPCA or its designee issues a written notice authorizing a resumption of performance under the Agreement.

(c) Upon written notice to the Contractor, and a reasonable opportunity to be heard with appropriate BPCA officials or staff, the Agreement may be terminated by BPCA or its designee at Contractor's expense where Contractor is determined by BPCA or its designee to be nonresponsible. In such event, BPCA or its designee may complete the contractual requirements in any manner BPCA may deem advisable and pursue available legal or equitable remedies for breach.

27.29. Counterparts

This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one instrument, but the Agreement shall not be deemed effective unless signed by all parties.

27.30. Section Headings

Section headings contained in this Agreement are for convenience only and shall not be considered for any purpose in governing, limiting, modifying, construing or affecting the provisions of this Agreement and shall not otherwise be given legal effect.

27.31. Subordination of Terms in the Exhibits

In the event of a conflict of terms, the terms stated in Articles 1-27 herein, shall take precedence over and shall prevail over any printed, typed, or handwritten terms located in the Exhibits.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, as of the date first above written.

BATTERY PARK CITY AUTHORITY, d/b/a
HUGH L. CAREY BATTERY PARK CITY AUTHORITY

By: _____

Name: _____

Title: _____

[CONTRACTOR]

By: _____

Name: _____

Title: _____

FEIN # []

General Description of Work

Form of Job Order

JOB ORDER

CONTRACT #[]-[1]

THIS JOB ORDER is issued as of the [] day of [], 20[] by Battery Park City Authority, d/b/a Hugh L. Carey Battery Park City Authority (“BPCA”) having an office at 200 Liberty Street, 24th Floor, New York, NY 10281, and hereby accepted by [] (“Contractor”) having an office at []. Except as expressly provided herein, all of the provisions contained in the document attached as Exhibit A hereto entitled “Job Order Construction Agreement” dated as of [], 2016 are incorporated by reference in their entirety herein and shall be deemed to be a part of this Job Order to the same extent as if such provisions had been set forth in full herein. Terms defined in such document shall have the same meanings as originally set forth therein.

BPCA and Contractor hereby agree as follows:

ARTICLE 1 - WORK

Contractor shall provide all work (the “Job Order Work”) required by the Job Scope of Work attached hereto as Exhibit B (the “Job”), including furnishing all labor, equipment and materials necessary to perform the Work. *[INCLUDE IF JOB DURATION IS GREATER THAN 5 WORK DAYS AND JOB CONTRACT PRICE IS GREATER THAN \$30,000 - Contractor’s performance of the Work shall conform to the Approach Plan attached hereto as Exhibit C.]* The Site for the Job Order Work is [provide description of Site]. *[INCLUDE IF THERE ARE DRAWINGS AND SPECIFICATIONS RELATING TO THE JOB- The Drawings and Specifications attached hereto as Exhibit D and E are made a part hereof and shall constitute a part of the Contract Documents.]* *[INCLUDE IF THERE IS A DESIGNATED CONSTRUCTION MANAGER, ARCHITECT, ENGINEER OR ARTIST FOR A JOB – [Name of Construction Manager] is hereby designated as the “Construction Manager” for the Job and [Name of Architect] is hereby designated as the “Architect” for the Job. The address for notices under the Contract Documents to Construction Manager is []. The address for notices under the Contract Documents to Architect is [].]*

Contractor confirms by signing and accepting this Job Order that a complete and careful investigation of the Site for the Job has been performed to insure there are no known or avoidable conflicts which would delay completion or accomplishment of the Job Order Work.

BPCA reserves the right to increase or decrease the quantity and scope of any item or portion of the Job Order Work, or to omit any item or portion of the Job Order Work as determined by BPCA.

ARTICLE 2 - JOB CONTRACT PRICE

Subject to the provisions of the Contract Documents, BPCA will pay to Contractor for the performance of Job Order Work hereunder, [a lump sum of \$[] [the not-to-exceed amount of \$[], payable in accordance with the rates set forth herein.]

ARTICLE 3 – JOB COMPLETION DATE

Subject to the provisions of the Contract Documents, Contractor shall complete the Job Order Work by [insert completion date] (the “Job Completion Date”). *[INCLUDE IF THERE IS NO SPECIFIC JOB COMPLETION DATE – Contractor shall use its best efforts to complete the Job Order Work by [insert Target Date] (the “Target Date”). A failure to complete the Job Order Work by such Target Date shall not be an Event of Default.]*

ARTICLE 4 - REPRESENTATIONS AND WARRANTIES

Contractor hereby represents and warrants to BPCA that this Job Order is duly authorized, signed and delivered by Contractor, and that the representations and warranties set forth in the Job Order Construction Agreement are true and correct as of the date hereof.

ARTICLE 5 - LIQUIDATED DAMAGES

[INSERT IF APPLICABLE] If Contractor fails to complete any Job Order Work by the Job Completion Date, Contractor shall pay to BPCA, as liquidated damages and not as a penalty, [insert amount of liquidated damages]].

ARTICLE 6 – ADDITIONAL TERMS

[INSERT ANY ADDITIONAL TERMS THAT ARE DIFFERENT FROM THE JOB ORDER CONSTRUCTION AGREEMENT]

BATTERY PARK CITY AUTHORITY, d/b/a
HUGH L. CAREY BATTERY PARK CITY AUTHORITY

By: _____

Name: _____

Title: _____

Agreed and Accepted:

[]

By: _____

Name: _____

Title: _____

FEIN # []

Exhibit A to Job Order

Job Order Construction Agreement dated [], 2016

Exhibit B to Job Order

Job Scope of Work

[Insert Job Scope of Work]

Exhibit C to Job Order

[Insert Approach Plan, if any]

Exhibit D to Job Order

[Insert Drawings, if any]

Exhibit E to Job Order

[Insert Specifications, if any]

MONTHLY UTILIZATION COMPLIANCE REPORTS

Name of Prime/Subcontractor: _____ Contact Person: _____

 Address: _____

 Phone #: (_____) _____ Fax #: (_____) _____
 Tracking Report for the Month of _____ Year
 Contract #: _____

Name of Vendor/Subcontractor Address/Phone-Fax/Contact Person	WBE MBE	Total Amount Contracted to Date	Total Amount Billed to Date	Total Amount Paid to Date	Total % to Date

Please note on or before the seventh day following each month of the Term of this Agreement, contractor shall submit this report regarding M/WBE utilization during the preceding month. This report shall be signed and verified by an officer of Contractor and must be accompanied by copies of supporting documents, including but not limited to cancelled checks, both front and back, as well as any invoices for M/WBE firms listed therein.

Hugh L. Carey Battery Park City Authority WORK FORCE EMPLOYMENT UTILIZATION REPORT

Name of Contractor _____ Reporting Period _____

Type of Report: Contract Specific Work Force Total Work Force Check if NOT-FOR-PROFIT

Federal Id/Payee Id No.: _____ Check One: <input type="checkbox"/> Prime Contractor <input type="checkbox"/> Subcontractor Contract Amount: \$ _____	Contract No.: _____ Location of Work: _____ Product/Service Provided: _____ Expected EEO Participation: Minority _____ % Women _____ % Contract Start Date: _____ Percent of Job Completed: _____
--	--

Number of Employees											Total Percent Minority Employees	Total Percent Female Employees	
Federal Occupational Category	Total Number of Employees		Black (Not of Hispanic Origin)		Hispanic		Asian of Pacific Islander		Native American/ Alaskan Native				
	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female			
Official/Admin													
Professionals													
Technicians													
Sales Workers													
Office & Clerical													
Craft Workers													
Operatives													
Laborers													
Service Workers													
TOTALS													

Company Officials Name _____	Title _____
Company Official's Signature _____	Date _____
Address _____	Telephone Number (____) _____

HUGH L. CAREY BATTERY PARK CITY AUTHORITY
PROMPT PAYMENT POLICY

Section 9002.1

Statement of Policy and Purpose. This Prompt Payment Policy is adopted pursuant to Section 2880 of the Public Authorities Law, requiring each public benefit corporation to promulgate rules and regulations detailing its policy with respect to making prompt payment to contractors.

Section 9002.2

Definitions. For the purpose of this Part, the following terms shall have the following meanings unless the context shall clearly indicate otherwise:

- (a) “Authority” shall mean the Hugh L. Carey Battery Park City Authority.
- (b) “Contract” shall mean an enforceable agreement entered into by the Authority and a Contractor, including purchase orders. Bond resolutions and any leases to which the Authority is a party, including any leases between the Authority and any of its tenants or subtenants, as well as any related agreements which are an integral part of such leases or subleases, are not Contracts within the meaning of this Section.
- (c) “Contractor” shall mean any person, partnership, private corporation or association providing or performing any of the following pursuant to a Contract:
 - (i) selling materials, equipment or supplies or leasing property or equipment to the Authority;
 - (ii) constructing, reconstructing, rehabilitating or repairing buildings, streets or other improvements for or on behalf of the Authority; or
 - (iii) rendering or providing services to the Authority.
- (d) “Designated Payment Office” shall mean that department within the Authority to which a proper invoice is to be submitted by a Contractor; unless otherwise, specified, the Designated Payment Office shall be:

Office of the Chief Financial Officer
Hugh L. Carey Battery Park City Authority
One World Financial Center, 24th Floor

New York, New York 10281-1097

Attention: Accounts Payable

- (e) "Prompt Payment" shall mean payment of a debt due and owing by the Authority pursuant to a Contract before interest accrues thereon pursuant to the provisions of this Part.
- (f) "Proper Invoice" shall mean a written request or invoice for contract payment setting forth the description, price and quantity of goods, property or services provided by a Contractor, such request or invoice being both in accordance with the terms of the Contract and in such form, and supported by such other substantiating documentation, as the Authority may reasonably require.
- (g) "Receipt of a Proper Invoice" shall mean either:
 - (i) The date on which a Proper Invoice is received by the Designated Payment Office or
 - (ii) The date on which the Authority receives the purchased goods, property or services covered by the Proper Invoice, whichever is later.
- (h) "Set-off" shall mean the reduction by the Authority of a payment due to a Contractor by an amount equal to the amount of an unpaid legally enforceable debt owed by the Contractor to the Authority.

Section 9002.3

Applicability. This Part shall apply to all Contracts entered into on or after April 29, 1988.

Section 9002.4

- (a) Payment Request Procedure. Contractors owed money by the Authority shall deliver a Proper Invoice to the Designated Payment Office. The Designated Payment Office will log the receipt date of each invoice, and send it to the department unit within the Authority that received the goods, property or services from the Contractor for review and verification of the Contractor's performance in accordance with the Contract. Contractors with Contracts which provide for payment at specific dates or intervals shall also be required to provide a Proper Invoice which certifies that the obligations required under such Contract have been performed prior to such date(s) or during such interval(s) and review and verification of the work of these Contractors will take place upon receipt of such Proper Invoice; payment shall be made in accordance with the terms of such Contracts.
- (b) Prompt Payment Schedule. The schedule of the time in which the Authority will make prompt payment under a Contract is as follows:

- (i) For invoices received on or after July 1, 1989, payment will be made by the Authority within 30 calendar days, excluding legal holidays, after Receipt of a Proper Invoice.
 - (ii) For Contracts which provide for payment at one or more specific dates or intervals, payment will be made in accordance with the terms of such Contracts, but interest shall only be payable if payment is not made within the time provided as in (i) above.
 - (iii) This schedule will not apply in those instances where payment is being delayed by reason of any of the exceptions listed in Section 9002.4(e) or where the time in which to make payment is being tolled for any of the reasons listed in Section 9002.4(f) herein, in which cases the time for payment shall be there provided.
- (c) Interest Computation. If the Authority fails to make payment in accordance with the prompt payment schedule set forth in Section 9002.4(b) above, the Authority will pay interest to the affected Contractor at the rate equal to that set by the State Tax Commission for corporate taxes pursuant to Section 1096(e) of the Tax Law.
- (d) Funds Available to Pay Interest Penalties. The Authority will pay interest as provided herein with monies available to the Authority for operating and administrative expenses pursuant to its approved budget.
- (e) Extension of Payment Time. Any of the following facts, conditions or situations are determined by the Authority to be exceptions to the prompt payment schedule set forth in Section 9002.4(b) and to justify extensions of the time by which payment must be made (the amount of time of such extension being as established by the Authority's Treasurer consistent with this Part, with notice provided to the Contractor):
- (i) Statutory or Contract provisions requiring an inspection period or an audit prior to payment;
 - (ii) The absence of a state appropriation which is necessary to authorize payment;
 - (iii) A requirement for federal government examination of a Proper Invoice prior to payment;
 - (iv) Extraordinary delay between the time of the provision of goods, property or services by a Contractor and the receipt of a Proper Invoice by the Authority;
 - (v) Failure by a Contractor to submit documents required by the Contract or reasonably required by the Authority prior to payment;
 - (vi) Where time is taken in the processing of an invoice by the State Department of Taxation and Finance, the State Division of the Budget, the Office of the State

Comptroller, or any other entity external to the Authority that is or may be required by statute, regulation or Contract to approve or process Authority payments.

- (f) Defects or Improprieties. The following facts or conditions toll the prompt payment schedule set forth in Section 9002.4(b):
 - (i) A reasonable belief by the Authority in the existence of any defects(s), including any incompleteness or failure of compliance with the terms of the Contract, in or with respect to the goods, property or services delivered;
 - (ii) A reasonable belief by the Authority in the existence of any defect(s) in the invoice; or
 - (iii) A reasonable belief by the Authority in suspected impropriety of any kind. In order to toll the prompt payment schedule without penalty, the Authority has fifteen calendar days after receipt of an invoice to send a Contractor notification of such defects or improprieties. Authority notification shall be by letter to the Contractor, setting forth any such defect or impropriety in reasonable detail, sent to the address indicated for notices under the Contract or, if no such address is provided, sent to the address set forth in the invoice provided that, in the event that the Authority fails to so notify the Contractor within such fifteen days, the sole effect of such failure to so notify the Contractor shall be that the number of days allowed for payment shall be reduced by the number of days between such fifteenth day and the date of the Authority's transmitting such notifications. In the event that the Authority fails to provide reasonable grounds for its contention that any such defect or impropriety exists, the date by which Contract payment shall be made shall be calculated from the date of receipt of an invoice.

Section 9002.5

- (a) Annual Report. The Authority shall prepare an annual report on the scope and implementation of this prompt payment policy. The report shall include, but not be limited to, the following:
 - (i) A listing of the types or categories of contracts which the Authority entered into during the twelve-month fiscal year covered by the report with an indication whether each such type or category of contract was subject to this prompt payment policy, and if it was not, the reason(s) why not;
 - (ii) The number and amount of interest payments made for contracts, arranged according to each such type or category;
 - (iii) The number of interest chargeable days, and the total number of days taken to process each late contract payment; and

- (iv) A summary of the principal reasons why such late payments occurred.
- (b) Within ninety (90) days after the completion of each such fiscal year, copies of this annual report shall be filed with the State Comptroller, the State Director of the Budget, the Chairman of the Senate Finance Committee and the Chairman of the Assembly Ways and Means Committee.
- (c) Copies of its annual report shall be made available to the public upon reasonable request at the Authority's main office.

Section 9002.6

- (a) Amendment. The Authority shall have the power to amend this Part by promulgating amended rules and regulations at any time, and within thirty days of the adoption of any such amendments hereto, the Authority shall file copies with the State Comptroller, the State Director of the Budget, the Chairman of the Senate Finance Committee and the Chairman of the Assembly Ways and Means Committee.
- (b) Contract Incorporation. The policy statement in effect at the time that a Contract is entered into is hereby incorporated into and made a part of that Contract.
- (c) Public Access. The Authority shall make copies of this policy statement available to the public upon reasonable request at the Authority's main office. The Authority shall also provide a copy of this policy statement to each Contractor at or prior to the time a Contract is entered into.
- (d) Inapplicability. This policy is not applicable to payments due and owing by the Authority to any other governmental entity, agency, public benefit corporation or the employees thereof when acting in or incidental to their public employment capacity, to interest on judgments rendered by a court against the Authority pursuant to any other provision of law, or to situations where the Authority exercises a legally authorized Set-off against all or part of a payment due a Contractor.
- (e) Legal Processes. The Authority is under no liability to pay interest pursuant to this policy for any period after a Contractor has filed a claim, given notice of an intention to file a claim or commenced legal action seeking any payment of interest; interest during such period shall only be paid as directed by the court in accordance with such other provisions of law as may be applicable.
- (f) Interpretation. This Part shall be interpreted consistent with and to fulfill the purposes of Section 2880 of the Public Authority Law.

INCIDENT REPORT FORM

Please complete all sections of this form:

Injured party's First and Last Names:

First and Last Names and telephone number of person completing this form:

When and to whom did you report this incident?

Identify the injured party's employer and state his/her occupation/reason for being at the site:

Description of location, project and/or complete address of incident:

Date and time incident occurred:

Date and time project manager/field representative was notified, who notified and method of notification:

P#:() -

