

BATTERY PARK CITY AUTHORITY

REQUEST FOR PROPOSALS

FOR

General Contractor –Planter & Tree Pit Rails / Planting Area Construction

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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 general contractor services to BPCA for the fabrication, installation and repair of planter/tree pit rails in various locations within Battery Park City and the construction of a new planting area adjacent to the BPC Ballfields (collectively, the “Project”). As set forth more fully in the Scope of Work attached hereto as Exhibit A, services shall include, but not be limited to: (1) construction of a new planting area along the southern edge of the BPC Ballfield; (2) Fabrication and installation of hoop rails around planting beds within Belvedere Park; and (3) fabrication and installation of new metal hoop rails, as well as repairs to existing hoop rails, in various areas of Battery Park City.

Minority-Owned Business Enterprises (“MBE”), Women-Owned Business Enterprises (“WBE”) and Service-Disabled Veteran-Owned Business Enterprises (“SDVOB”) are encouraged to submit Proposals.

This Request for Proposals, the attachments 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 Request for Proposals (“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;
- 6) Negotiate potential contract terms with any Proposer; and
- 7) Award the proposed services, 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, 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. This function has been delegated by BPCA to the Battery Park City Parks Conservancy Corporation (“BPCPC”) through a written Management Agreement. BPCPC carries out its mission by maintaining 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 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. For an overview of BPCPC’s operations, please visit its website at www.bpcpc.org.

III. SERVICES REQUIRED

- A. Proposer will be responsible for the services delineated in the Scope of Work attached hereto as Exhibit A (the “Scope of Work” or the “Services Required”).
- B. The Services Required shall be performed under the supervision of a Project Manager in charge of this engagement (the “Lead PM”) who must ensure that such services are rendered 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: July 25, 2016
- Pre-proposal meeting: August 2, 2016 at 9:30 am. Meeting Location: BPCA Offices, 200 Liberty Street 24th floor, New York, NY 10281 (attendance is highly recommended).
- Deadline to submit questions to BPCA: August 8, 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: August 19, 2016 (via BPCA Website).
- **DUE DATE FOR RESPONSES TO RFP: August 29, 2016 by 5:00 p.m. (the “Due Date”).**
- Selection and notification of successful Proposer: To be determined.
- Anticipated Contract start date: October 2016.

B. Anticipated Contract Term/Value

It is anticipated that the term of the contract awarded pursuant to this RFP (the “Contract”) will be for a period of twelve (12) months, although the work duration is not expected to exceed seven months. BPCA reserves the right to terminate the Contract at any time, with or without cause.

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 firm must be authorized to do business in the State of New York.
- 2) The Proposer must complete and submit all mandatory forms as set forth in Section V(D) with its Proposal.
- 3) The Proposer must have at least five (5) years’ experience in general site construction in public spaces and/or parks and the fabrication and installation of metal planter rails.

V. GENERAL REQUIREMENTS

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

Please see Exhibit B (attached) (“Diversity Requirements”) for contractor requirements and procedures for business participation opportunities for New York State certified MBEs/WBEs/SDVOBs and equal employment opportunities for minority group members and women.

For questions relating to MBE/WBE/SDVOB participation, joint ventures and sub-contracting goals ONLY, please contact “MBE/WBE/SDVOB 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, August 29, 2016.

Proposers must submit six (6) paper copies of their Proposals and one (1) electronic copy in a sealed package clearly marked “**General Contractor – Planter & Tree Pit Rails / Planting Area Construction**” to the Designated Contact by messenger, overnight courier or certified mail to the following address:

Michael LaMancusa
Battery Park City Authority
200 Liberty Street, 24th Floor
New York, NY 10281

BPCA is not responsible for any internal or external delivery delays that 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 – General Contractor – 'Planter & Tree Pit Rails / Planting Area Construction'**" as long as the amended Proposal is submitted by the Due Date.

BPCA is not liable or responsible in any way for any expenses incurred in the preparation of a Proposal in response to this RFP. All information submitted in response to this RFP is subject to the Freedom of Information Law, Article 6 of the New York State Public Officers Law ("FOIL"), which requires public access to certain documents possessed by BPCA, unless a specific exemption applies. Proposers are responsible for identifying any information in their respective Proposal considered to be confidential and exempt from FOIL..

D. Mandatory Forms

Proposers must complete and include with their Proposal all "Mandatory Forms," which can be found at the following URL address:

<http://bpca.ny.gov/wp-content/uploads/2015/03/Vendor-ResponsibilityQuestionnaire.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 printed on either 8½" x 11" or 8½" x 14" paper. The Proposal will be evaluated on the basis of its content, not length. BPCA reserves the right to disqualify Proposals that fail to comply with any of these instructions.

B. Proposal Content

Proposal in response to this RFP 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. Cover 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.

- Executive Summary.
- A discussion of Proposer's approach to the Project, addressing proposed procedures, staffing and logistics for executing the Scope of Work, as required by Section VI(C)(11).
- Responses to the RFP Questions/Requested Information, including the Bar Chart Schedule described in Section VI(C)(12).
- Cost Proposal, as described below.
- Response to the question regarding the use of New York State businesses set forth in Section X of the RFP.
- Completed MBE/WBE and EEO Policy Statement, attached as part of Exhibit B.

C. RFP Questions/Requested Information

- 1) Describe your firm's background, staff, and history as they may be relevant to the Services Required, with an emphasis on experience performing general site construction in public spaces and/or parks and metal planter rail fabrication/installation work in New York City.
- 2) Has your firm or have any of the firm's partners/employees been disciplined or censured by any regulatory body within the last five (5) years? If so, please describe the relevant facts.
- 3) Has your firm filed for bankruptcy protection or reorganization, or had bankruptcy proceedings initiated against it, within the last five (5) years? If so, please describe the relevant facts.
- 4) Are there any potential conflict of interest issues posed by your performing the Services Required for BPCA?
- 5) If selected, will your firm assign any person to this Project who was previously an employee of BPCA? If so, please i) identify when (month and year) that person's employment at BPCA terminated, and ii) describe that person's involvement, if any, with matters related to the Project during his/her employment at BPCA.
- 6) 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 whom is attached as Exhibit J.
- 7) Identify the person who will be Lead PM and primary contact in providing services to BPCA, and who will be listed as a "key person" in any contract with BPCA.
- 8) Describe your firm's "backup plan" in the event that the Lead PM, or one or more of the key persons, assigned to the Project leaves your firm.
- 9) To the extent not previously provided in response to questions 1. and 2., above, describe your proposed team's experience (including both direct contract work and work performed under subcontracts) with projects similar to this one for other public agencies and authorities, with a particular emphasis on New York State and City agencies and authorities or Federal government agencies or authorities. Include contract dates, the nature of the project performed, the contracting agency, the contract number (if known) and the agency supervisor for each.
- 10) Discuss your approach to the Project, addressing your proposed procedures, staffing and logistics for executing the Scope of Work, along with the safety measures that you will employ to address public safety considerations during the performance of the Project.

- 11) Submit a Bar Chart Schedule detailing the manner in which the Scope of Work will be completed. This should include sequencing of the associated work, manpower staffing level, work shifts, and specific indications of all project milestones and successful overall completion.
- 12) Itemize the portions of the Scope of Work you intend to perform with your firm's resources and/or workforce as well as the portions of the Work for which you propose to utilize sub-contractors.
- 13) Provide a list of any proposed subcontractors for the completion of the Project.
- 14) Identify any and all exceptions taken to BPCA's standard form of contract attached hereto as Exhibit C 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 listed exceptions to the standard form of contract.
- 15) Please provide any additional information and/or credentials that 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 Required.

D. Other Required Information

1) References:

Please provide at least three (3) client 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 contact.

2) Appendices:

- a. Include resumes for all key management personnel listed in your Proposal, including the staff that your firm is proposing to assign to this project.
- b. Provide a copy of each addendum submitted by BPCA with regard to this Proposal (if applicable) and a signed acknowledgment of receipt of each addendum. Such addenda, if any, will be posted on the BPCA website prior to the due date of this RFP and it is each Proposer's responsibility to ensure that it has reviewed, signed, and included each addenda with its Proposal.

3 Financial Statements:

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

4) Cost Proposal Information

Three (3) copies of the "Cost Proposal" must be provided in a separately sealed envelope that is included with the Proposal submission. The Cost Proposal must be labeled "General Contractor –Planter & Tree Pit Rails / Planting Area Construction" and must include:.

- 1) Cost proposal in the form attached hereto as Exhibit D ("Cost Proposal Form").
- 2) Labor rates in the form attached hereto as Exhibit E ("Labor Rates").
- 3) Schedule of values in the form attached hereto as Exhibit F ("Schedule of Values").

The Cost Proposal, regardless of whether it is bound, should be submitted in its own separate envelope within the sealed package containing all other Proposal documents. For the avoidance of doubt, the Cost Proposal must be submitted separately and unbound from the remainder of the Proposal documents.

VII. INSURANCE REQUIREMENTS

A) General Requirements

The total cost of the required insurance listed in paragraphs B) and C) below, 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 below 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.

B) Insurance Requirements for the Selected Proposer

The selected Proposer will be required to obtain and provide proof of the types and amounts of insurance listed below: (i) as a condition precedent to the award of the contract for the Project; and (ii) continuing throughout the entire Term. 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 C.

- 1. Commercial General Liability Insurance**, written on ISO Form CG 00 01 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 location / per project basis
- \$2,000,000 products/completed operations aggregate

BPCA, BPCPC, and the State of New York must be protected as additional insureds on ISO Form CG 2010 (11/85) or its equivalent on policies held by the selected Proposer and any of its subcontractors. Should the Proposer's work include construction activities of any kind then the Proposer must maintain Products / Completed Operations coverage for no less than three years after the construction work is completed, and continue to include Additional Insured protection for BPCA, BPCPC & The State of New York for the prescribed timeframe. When providing evidence of insurance the Proposer must include a completed Acord 855 NY form.

- 2. 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.
- 3. 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 applicable to the operations of the Proposer.

4. **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 insureds on policies held by the selected Proposer and any of its subcontractors.
5. **Builder's Risk / Installation Floater Insurance** in an amount not less than 100% of the Full Contract Price. 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 and include BPCA as a loss payee.

C) Insurance Requirements for all Subcontractors

Any subcontractor(s) utilized by the selected Proposer will be required to obtain the types and amounts of insurance listed below: (i) as a condition of commencing any Work; and (ii) continuing throughout the duration of the subcontractor's Work. 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 C.

1. **Commercial General Liability Insurance**, written on ISO Form CG 00 01 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 location / per project basis
- \$2,000,000 products/completed operations aggregate

BPCA, BPCPC, and the State of New York must be protected as additional insureds on ISO Form CG 2010 (11/85) or its equivalent on policies held by all subcontractors. Should the subcontractor's work include construction activities of any kind then the subcontractor must maintain Products / Completed Operations coverage for no less than three years after the construction work is completed and continue to include Additional Insured protection for BPCA, BPCPC & the State of New York for the prescribed timeframe. When providing evidence of insurance the subcontractor must include a completed Acord 855 NY form.

2. **Automobile Liability Insurance** with a combined single limit of not less than \$1,000,000. Coverage must apply to the subcontractor's owned, hired, and non-owned vehicles and protect BPCA, BPCPC, and the State of New York as additional insured.
3. **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 applicable to the operations of the subcontractor.
4. **Subcontractors will also be required to obtain all other insurances listed in Section (B) unless otherwise approved in writing by BPCA prior to commencement of any Subcontractor's work.**

VIII. 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 it entails;
- Possesses adequate resources to handle assigned responsibilities and to handle unforeseen circumstances that may arise;
- 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 performance of the Services Required and its work on behalf of other clients.

The selection process will begin with the review and evaluation of each of the 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 participate in the Project must be present and participate in the interview. The Committee will evaluate whether the Proposer substantiates the characteristics and attributes claimed in its written response to this RFP and any other information requested by the Committee or that the Committee deems relevant.

C. Evaluation Criteria for Selection

Selection will be based upon the following criteria:

Experience and expertise in relevant general site construction, with an emphasis on public area and park work and the fabrication and installation of metal rails in public spaces and parks	40%
Approach to work and schedule	20%
Strength and efficiency of Proposer's staffing plan, including competence of assigned staff and subcontractors	20%
Proposed MBE/WBE utilization plan (the "Utilization Plan") and/or Firm MBE/WBE status	8%
Diversity Practices Questionnaire	10%
Proposed SDVOB utilization plan and or Firm SDVOB status	2%

D. Basis for Contract Award

The Contract will be awarded to the highest rated Proposer whose Proposal is determined to be responsive, subject to a determination that the Cost Proposal is fair and reasonable and represents the best value for BPCA given the requirements of the Project.

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

SCOPE OF WORK

I. Tree Pit Rails

The selected Proposer shall: (1) fabricate and install new hoop rails around twenty-six (26) tree pits; and (2) repair existing hoop rails in twenty (20) additional tree pit locations (“Scheduled Tree Pit Locations”). Such work shall be performed in strict accordance with the Drawings and Specifications attached hereto at Exhibit G (the “TPR Construction Documents”), in all respects including material, location, and schedule, without exception.

Prior to fabrication and installation, the selected Proposer shall:

- Conduct a survey of the existing dimensions of the Scheduled Tree Pit Locations. Such survey, together with a list of proposed post-installation tree pit dimensions shall be provided to BPCA for review and approval in the form set forth on Table 2 of Exhibit G; 2015 Hoop Rail Installation & Repair Drawing Page C005.00
- Submit to BPCA for review and approval all shop drawings for all prefabricated and field assembled portions of tree pit hoop rails;
- Submit to BPCA for review and approval a safety plan, which shall be updated as necessary.

Subsequent to receiving the required approval(s) from BPCA, the selected Proposer shall:

- Fabricate new and replacement hoop rails in accordance with the TPR Construction Documents;
- Provide any and all necessary equipment (safety cones, caution tape, blockades, etc.) and personnel to ensure safety of all pedestrians and park users throughout performance of the Project, as set forth in the approved safety plan;
- Remove existing tree pit metal frames, together with any additional interfering materials as necessary to allow the installation of new hoop rails;
- Salvage and deliver to the Parks Conservancy’s Headquarters any granite/cobble blocks that are removed for tree pit size adjustments; and
- Install new and replacement hoop rails in accordance with the TPR Construction Documents.

II. Ballfield Planting Area

The selected Proposer shall install new fence, concrete and soils at an area south of the Battery Park City Ballfield (the “Ballfield Planting Area”). Such work shall entail the remove existing materials including, but not limited to, asphalt, fill, sand, cobblestones and fencing. Such work shall be performed in strict accordance with the material, location, and schedule Drawings and Specifications attached hereto at Exhibit H (the “BFP Construction Documents”). Such work shall conform to the BFP Construction Documents in all respects including material, location, and schedule, without exception.

The selected Proposer shall, among other things:

- Conduct a preconstruction survey.

- Erect work zone safety control devices.
- Install temporary plastic barrier fence.
- Install type III construction barricades.
- Install temporary silt fence.
- Excavate area along southern Ballfield fence to remove cobblestone, asphalt & sand up to 30" below grade.
- Place 10" thick sub-base material as specified in the BFP Construction Documents.
- Place 10" thick soil C as specified in the BFP Construction Documents
- Place 10" thick soil A as specified in the BFP Construction Documents.
- Excavate 4" of sand and compact the Subbase.
- Place 4" of concrete sidewalk as shown in the BFP Construction Documents.
- Compact all material in accordance with the BFP Construction Documents.
- Remove temporary silt fence, temporary plastic barrier fence, type III barricades and work zone safety control devices.

After completion of the Ballfield Planting Area work, the selected Proposer shall clean and remove from all catch basins and manholes, within the limits of the contract, all materials and debris deposited therein as the direct result of its work at the Ballfield Planting Area.

III. Belvedere Rails

The selected Proposer shall furnish all labor, materials, equipment and services necessary to furnish, fabricate, transport and install new rails around specified planting areas in Belvedere Park (the "Belvedere Rails"), located north of the North Cove Marina and south of 300 Vesey Street. All services shall be performed in strict accordance with the material, location, and schedule Drawings and Specifications attached hereto at Exhibit I (the "Belvedere Construction Documents")I, in all respects including material, location, and schedule, without exception.

The selected Proposer shall, among other things:

- Conduct a preconstruction survey.
- Provide tree protection.
- Provide temporary protective fencing around areas of daily work.
- Coordinate excavation schedule with Battery Park City Parks Conservancy for all railing installations.
- Install rails as indicated in Belvedere Construction Documents.

IV. General Considerations

- The selected Proposer shall employ stringent safety measures when performing any and all work, as tree pits, Belvedere Park and the Ballfield are located in both public parks and public street rights-of-way.
- The selected Proposer shall obtain any and all necessary permits for performance of the Project, including, but not limited to, a BPCA site permit.
- A foreman shall be assigned to the Project for its duration. Such foreman must be a full-time employee of the selected Proposer who has been employed by the selected Proposer for at least one (1) year.
- The selected proposer shall not commence any work under the contract prior to a pre-construction conference among the selected Proposer, BPCA representatives and other concerned governmental and utility company representatives. At this conference, all special requirements, scheduling and details concerning maintenance and protection of traffic will be fully explained and discussed.

- During progression of work, the selected Proposer shall, at all times, keep the specific work sites and all adjacent premises free from materials, debris and rubbish and shall remove the aforementioned from any portion of a specific work site or adjacent area, if, in the opinion of the BPCA, such materials, debris, or rubbish constitutes a nuisance or is objectionable.
- Upon completion of the Scope of Work, the selected Proposer shall take away all erection plants, tools, temporary structures, and materials belonging to the Selected Proposer and shall remove and promptly dispose of all water, dirt, rubbish or any other foreign substances.

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.

Business Participation Opportunities for SDVOBs

For purposes of this solicitation, BPCA hereby establishes an overall goal of 6% for SDVOB participation. A Contractor must document good faith efforts to provide meaningful participation by SDVOBs as subcontractors or suppliers in the performance of the Contract and Contractor agrees that BPCA may withhold payment pending receipt of the required SDVOB documentation. The directory of New York State Certified SDVOBs can be viewed at: http://www.ogs.ny.gov/Core/docs/CertifiedNYS_SDVOB.pdf. For guidance on how BPCA will determine a Contractor's "good faith efforts," refer to 9 NYCRR §252.2(f)(2).

In accordance with 9 NYCRR §252.2(s), Contractor acknowledges that if it is found to have willfully and intentionally failed to comply with the SDVOB participation goals set forth in the Contract, such finding constitutes a breach of Contract and Contractor shall be liable for damages as specified in the Contract.

Such 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 SDVOB programmatic goals.

- 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 SDVOB 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 SDVOB 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 SDVOB Contractor Compliance & Payment Report to BPCA on a monthly basis over the term of the Contract documenting the progress made toward achievement of the SDVOB 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.

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

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.

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 _____

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

BPCA's standard form of contract

(attached)

CONSTRUCTION AGREEMENT

between

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

and

CONTRACTOR COMPANY NAME

**Dated as of _____
Contract No. ????**

(PROJECT NAME)

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EXHIBITS

CONSTRUCTION AGREEMENT

AGREEMENT made as of the _____ day of _____, 2011, between BATTERY PARK CITY AUTHORITY, d/b/a HUGH L. CAREY BATTERY PARK CITY AUTHORITY, a body corporate and politic, constituting a public benefit corporation and having a place of business at One World Financial Center, 24th Floor, New York, New York 10281 ("Authority," "BPCA" or "Owner") and CONTRACTOR COMPANY NAME, a corporation incorporated under the laws of STATE, having an office at Street Address, City, Zip, Phone, ("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 type of services services, consisting of the Work, as hereinafter defined, for the location (the "Project"), located in and adjacent to location, in Battery Park City, in the Borough of Manhattan, County, City and State of New York (the "Site"); and

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

WHEREAS, Contractor and BPCA entered into a Letter of Intent, dated as of August 31, 2011 (the "Letter of Intent"), under which BPCA authorized Contractor to perform the Work, as hereinafter defined, up to a funding maximum of \$50,000. The terms and conditions of such Letter of Intent are hereby superseded by the terms and conditions set forth herein; (if there is no Letter of Intent, omit this Recital).

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 Section 2.2(a).
- (b) Agreement Termination Date - as defined in Section 3.1(a)
- (c) Architect - Name, address, etc. or n/a.
- (d) Artist - n/a.
- (e) Authority - as defined in the introductory clause of this Agreement.

(f) BPCA - as defined in the introductory clause of this Agreement. BPCA hereby designates BPCA Person and Title, Project Manager, 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.

- (g) Certificate of Substantial Completion - as defined in Section 8.6.
- (h) Change Order - as defined in Section 9.1(b).
- (i) Construction Manager - Name, address, etc. or n/a.
- (j) Contract Documents - as defined in Section 2.2.
- (k) Contract Price - as defined in Article 4.

(l) Contract Time - the duration of time during which Construction Manager schedules and coordinates the Work of Contractor pursuant to Section 7.2 hereof.

- (m) Contractor - as defined in the introductory clause of this Agreement.
- (n) Drawings - Project drawings comprising part of Exhibit B.
- (o) Engineer - Name, address, etc. or n/a.

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

(q) Field Order - as defined in Section 9.3.

(r) Final Acceptance - as defined in Section 8.7.

(s) Final Requisition - as defined in Section 5.2.

(t) Guarantor - as defined in Section 27.3.

(u) 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.

(v) Key Person/Personnel - as defined in Section 27.25.

(w) Letter of Intent - as defined in the fifth whereas clause of this Agreement.

(x) Materialman - Supplier of Materials.

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

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

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

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

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

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

(ee) 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.

(ff) Progress Schedule - as defined in Section 3.1(a).

(gg) Project - as defined in the third Recital of this Agreement.

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

(ii) Requisitions - as defined in Section 5.2.

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

- (kk) Site - as defined in the third whereas clause of this Agreement.
- (ll) Specifications - the specifications comprising part of Exhibit C.
- (mm) Subcontract - An Agreement between the Contractor and a Subcontractor (as defined in subSection (nn), below) for work on the Site.
- (nn) Subcontractor - A person, firm, partnership or corporation under contract with Contractor.
- (oo) Term - as defined in Section 3.1(i).
- (pp) Trade Payment Breakdown - as defined in Section 5.3.
- (qq) Women's Business Enterprise or Women Owned Business Enterprise or WBE - as defined in Article 26.
- (rr) Work - as defined in Section 2.1.
- (ss) Work Completion Date - as defined in Section 3.1(a).

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 more particularly described in Exhibit A - Scope of Work annexed hereto and made a part hereof, required by and in conformity with the Contract Documents in connection with the construction of the Project on the Site. 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 instrument (the "Agreement"), which includes, in addition to the text comprising Articles 1 through 27, the following:

(1) Exhibit A:

(2) Exhibit B:

Etc.

- (b) The Payment and Performance Bonds (as defined in Section 13.3).
- (c) Change Orders 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 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 in or between the Drawings and Specifications, or among any of the Contract Documents, they shall be brought to the attention of Construction Manager immediately for resolution. Engineer and Construction Manager 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. In the event that Engineer and Construction Manager shall disagree as to the interpretation of the Contract Documents, such dispute shall be presented to BPCA, which shall have sole authority to resolve the dispute.

(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 or a Section, the remainder of the paragraph or Section 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 Contract.

(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 are complementary. Anything shown in the Drawings and not mentioned in the Specifications, or mentioned in the Specifications and not shown in the Drawings, shall have the same effect as if shown or mentioned in both.

(h) A typical or representative detail indicated on the Drawings shall constitute the standard for workmanship and material throughout corresponding parts of the Work. Where necessary, and where reasonably inferable from the Drawings or Specifications, Contractor shall adapt such representative detail for application to such corresponding parts of the Work. The details of such adaptation shall be subject to prior approval by Engineer. Repetitive features shown in outline on the 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 the 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 shall be carried out without affecting the Architectural and structural integrity and limitations of the Work 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 but which are required for the completion of the Work. Any such item, when identified as part of the reasonable development of the Work, shall be drawn or specified by Engineer 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 without further action or order of Construction Manager or BPCA and without any increase in the Contract Price (as hereinafter defined) as if such drawing and 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 the Project. The Materials shall then become the sole property of BPCA subject to the right of BPCA, Construction

Manager or Engineer 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 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 required by this Agreement 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. Contractor shall be responsible for the safety, efficiency and adequacy of Contractor's plant, appliances and methods, and for damage which 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 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 Construction Manager's opinion, in such places as Construction Manager shall direct; provided, that no delivery of Materials shall be made to the Site without prior approval by Construction Manager. No Materials shall be removed from the Site without the consent of 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 Engineer, Construction Manager, and BPCA.

(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. 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. If Contractor observes that any of the Contract Documents are at variance with any applicable laws in any respect, Contractor shall promptly notify Engineer and Construction Manager 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 Engineer and Construction Manager, 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 Construction Manager and keeping the portion of the Site upon which Contractor is performing the Work free from all debris.

(h) Contractor shall attend meetings as directed by BPCA or Construction Manager.

2.7 “Or Equal” Clause

(a) The Materials of manufacturers referred to in the Specifications and on the Drawings are intended to establish the standard of quality and design required by Engineer; however, Materials of manufacturers, other than those specified, may be used if equivalent and approved by Engineer, Construction Manager and BPCA.

(b) It is deemed that the term “or approved equal” is included after all Materials referred to in the Specifications or on the Drawings.

(c) Engineer will initially judge the equivalency of proposed substitute Materials. Engineer will make written recommendation of acceptance or rejection to Construction Manager and/or BPCA. Construction Manager and/or BPCA will then authorize Engineer 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 Engineer in writing in sufficient time (with regard to the progress of the Work, the period of delivery of the goods concerned and adequate time for Engineer’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 Engineer 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 Engineer and his consultants.

(h) The Contract Time 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, Completion and Progress Schedule

(a) Contractor agrees to be bound by and comply with the Progress Schedule and the Work Completion Date and the progress schedule for completion and progress of the Work (with the original progress schedule, as the Progress Schedule shall be updated pursuant to subSection (b), below, being referred to herein as the "Progress Schedule") and waives any right to charge or claim damages or any increased cost, charges or expenses against BPCA, Construction Manager, or Engineer, for delays or disruptions from any cause whatsoever. Contractor's sole remedy as against BPCA, Construction Manager, or Engineer for any delays or disruptions shall be as provided in Section 3.4 hereof. Notwithstanding the foregoing, the Work shall be completed by no later than DATE (the "Work Completion Date") with time being of the essence in respect of said Work Completion Date, as more fully set forth in subSection (h) below; this Agreement shall terminate by DATE (the "Agreement Termination Date").

(b) Contractor has prepared a Progress Schedule detailing, without limitation, all

items of Work to be performed. Such Progress Schedule shall be updated weekly, or at any other time at the request of Construction Manager or BPCA, and submitted to Construction Manager and BPCA for review and approval. Failure to submit any requested update shall constitute a material breach of this Agreement. After submission of the Progress Schedule for the Work, Construction Manager shall coordinate the Progress Schedule for the Work in coordination with the Progress Schedule for the entire Project. The Progress Schedule for the Work may be revised by Construction Manager from time to time.

(c) Contractor (shall commence the Work upon receipt of a written notice to proceed signed by BPCA/commenced the Work pursuant to the Letter of Intent, and shall prosecute the Work diligently and in accordance with the time and place requirements of the Project as determined and directed by Construction Manager, by using such means and methods of construction as will assure that the Work will be performed hereunder in accordance with the Contract Documents and Progress Schedule, and to the satisfaction of BPCA, Engineer, and Construction Manager.

(d) If, in the opinion of Construction Manager, Contractor falls behind the Progress Schedule then in effect, Contractor shall take whatever steps may be necessary to improve its progress and shall, if requested by 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 Project or the schedules of other contractors. If Contractor delays the progress of its Work 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 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 maintain the Progress Schedule then in effect as established by Construction Manager.

(e) If Contractor shall fail to complete the Work by the Work Completion Date, 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) If Contractor shall neglect, fail or refuse to complete the Work by DATE, or upon the expiration of any proper extension granted by Owner, Contractor agrees to pay to Owner \$1,000.00 (One Thousand Dollars), not as a penalty, **but as liquidated** damages, for each and every calendar day that the Contractor is in default. Default shall include abandonment of the Work by Contractor.

(g) Said amount of liquidated damages is agreed upon by and between Contractor and Owner because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages which Owner would sustain in the event of delay in completion, and said amount is agreed to be the amount of damages sustained by Owner and said amount may be

retained from time to time by Owner.

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

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

(2) to an unforeseeable 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, acts of BPCA, fires, epidemics, quarantine, strikes, freight embargoes and unusually severe weather; and

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

(i) Notwithstanding the foregoing, and whether or not, at any given time, a Progress Schedule, or update thereto (as appropriate) has been submitted, the Work shall be completed by the Work Completion Date (with the period between commencement of the Work and the Work Completion Date being referred to herein as the "Term").

3.2 Coordination with Other Contractors

Contractor shall coordinate the Work 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, Construction Manager and Engineer harmless from any and all claims or judgments for damages, costs and expenses to which BPCA, Construction Manager or Engineer may be subjected or which they may suffer or incur by reason of Contractor's failure to comply with Construction Manager's directions promptly. If Contractor notifies Construction Manager in writing that another contractor is failing to coordinate its work with the Work to be performed hereunder, Construction Manager shall promptly investigate the charge. If Construction Manager finds that charge to be true, it shall promptly issue such direction to the other contractor with respect thereto as the situation may require. BPCA, Construction Manager and Engineer shall not, however, be liable for any damages suffered by Contractor by reason of the other contractor's failure promptly to 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, Construction Manager or Engineer 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 agrees to reimburse such other contractor for all such damages and to indemnify and hold BPCA, Construction Manager and Engineer 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 hereunder 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 which is causing or is threatening to cause such delay or disruption notify Construction Manager in writing of the effect of such condition upon BPCA's Progress Schedule, 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 Construction Manager forthwith of such cause or anticipated cause. Failure strictly to comply with this notice requirement shall be sufficient cause to deny Contractor a change in schedule and to require it to conform to the Progress Schedule then in effect established by Construction Manager.

3.4 Extension of Time

(a) An extension of time under the Progress Schedule 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 the Progress Schedule 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 Construction Manager may request.

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

- (1) solely by acts or omission of BPCA, Construction Manager or Engineer;
or
- (2) by the acts or omissions of other contractors or unforeseeable 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, BPCA shall pay Contractor a lump sum amount of \$XXXXXXXXXXXXXXXX, (such sum is herein sometimes referred to as the "Contract Price"), which amount shall include any monies paid heretofore in accordance with the Letter of Intent, provided, that if the Contract Price shall be expressly revised by a Change Order in accordance with Article 9 hereof, the Contract Price shall thereafter mean the Contract Price as so revised. Contractor will submit appropriate Time Sheets in the form of Exhibit F.

ARTICLE 5 - METHOD, SCHEDULE AND TERMS OF PAYMENTS

5.1 Partial Payment

(a) In accordance with Requisitions (as defined in Section 5.2) 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 Contract Price in an amount equal to the value, as determined in accordance with the Trade Payment Breakdown (as defined in Section 5.3), of the portions of the Work completed and acceptable to BPCA and Construction Manager for purposes of such payment, less a retainage equal to ten percent (10%) of the total amount of all prior partial payments. Partial payments shall constitute advances against the 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, 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 (“Final Requisition”) shall be in the form previously supplied by BPCA and shall be submitted by Contractor to Construction Manager or its designee in five original copies in the manner hereinafter provided for the approval of BPCA and Construction Manager. Each Requisition shall be supported by such data substantiating Contractor’s right to payment as BPCA and Construction Manager may require.

5.3 Trade Payment Breakdown

Prior to the submission of the first Requisition, Contractor shall present to Construction Manager for approval a trade payment breakdown (the “Trade Payment Breakdown”) of the various portions of the Work, aggregating the Contract Price, prepared in such form as specified by BPCA and supported by such data to substantiate its correctness as Construction Manager may require. After approval by BPCA and Construction Manager, the Trade Payment Breakdown shall not be changed or revised in any way without the written consent of Construction Manager. The Trade Payment Breakdown, when approved by Construction Manager, shall be used only as a basis for Requisitions and shall not be considered as a basis for reducing or increasing the Contract Price.

5.4 Payment for Stored Materials

If approved in advance of delivery by BPCA and Construction Manager, payments will be made on account of 80% of the value of Materials not incorporated in the Work but delivered and suitably stored at the Site or at some other offsite location agreed upon in writing by BPCA and Construction Manager. Such payments shall be conditioned upon submission by Contractor of bills of sale or other supporting documentation satisfactory to BPCA and Construction Manager 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, Construction Manager, or Engineer 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 Construction Manager by the seventh day of each calendar month for Work completed up to the last calendar day of the previous month or other day approved by BPCA, and payment shall be made 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 Construction Manager with respect to such Requisitions, each of which must be signed by BPCA, and Construction Manager before payment is made. The value of any Work included in a Requisition for partial payment which is found unacceptable by BPCA, or Construction Manager may be deducted from that or any subsequent Requisition.

5.7 Reduction of Retainage

Upon the issuance of a Certificate of Substantial Completion, as defined in Section 8.6, Contractor shall submit a Requisition in an amount equal to the Contract Price less an amount equal to two times the value of the Work on the punch list as determined by Construction Manager and less the total amount of all prior payments. Upon approval of the same by BPCA, BPCA shall pay to Contractor the amount approved less any amount which BPCA is entitled to withhold hereunder.

5.8 Final Payment

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

(1) Contractor's Final Requisition has been submitted by Contractor and

approved by BPCA, and Construction Manager;

- (2) 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, before final payment pursuant to Section 5.8 shall become due pursuant hereto or before reduction of retainage, Contractor shall submit to BPCA a consent of surety to final payment or reduction of retainage in a 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, Construction Manager and Engineer 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

Contractor shall provide a competent construction superintendent to be in charge of the Work. The construction superintendent shall devote full time to the Work, 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 Construction Manager, 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 Agreement for the 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;

(c) any temporary and permanent Work required by this Agreement can be satisfactorily constructed, and such construction will not injure any person or damage any property; and

(d) Contractor has carefully examined the Contract Documents and the Site and, from Contractor's own investigations, is satisfied as to the nature and location of the Work, 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, the general and local conditions, and all other conditions or items which may affect the Work. Prior to submitting its bid for performance of the Work, Contractor notified BPCA or Construction Manager in writing of any discrepancies or errors in the Contract Documents.

6.3 Verifying Dimensions and Site Conditions

Before proceeding with the Work, 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 Construction Manager and shall thereafter perform the Work in accordance with the directions of Construction Manager.

6.4 Copies of Contract Documents for Contractor

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 Construction Manager, 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 Construction Manager,

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, Owner shall furnish Contractor survey points necessary for the Work, but Contractor shall lay out the Work.

6.8 Reports and Access

Contractor shall furnish BPCA and Construction Manager with daily and monthly manpower reports on forms provided by Construction Manager and such other reports as may be required by BPCA or Construction Manager. BPCA, Construction Manager and Engineer 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.

6.9 Financial Information

Until completion of the Work, 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 regarding the period from January 1, 2010 through December 31, 2010. 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 Engineer's Responsibilities and Functions

Contractor acknowledges that the role of Engineer with respect to the Work shall be as specified in this Agreement. Contractor will comply with the instructions of Engineer pursuant hereto.

Engineer's duties and services shall in no way supersede or dilute Contractor's

obligation to perform and complete the Work in conformity with the Contract Documents.

7.2 Construction Manager's Responsibilities and Functions

(a) Construction Manager shall coordinate and schedule construction to insure that the completion of the Project is on schedule and that 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. Contractor hereby agrees to comply with the directions and instructions of Construction Manager.

(b) Construction Manager shall call for meetings of Contractor, other contractors, Subcontractors and Materialmen as necessary for the proper coordination of the Work. Such meetings shall be held at the Site 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 Engineer and Construction Manager

In no event shall any act or omission on the part of the Construction Manager or Engineer relieve Contractor of its obligation to perform the Work in full compliance with the Contract Documents. Neither Engineer 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 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, Construction Manager, Engineer or their authorized representatives shall at all times have access to and the right to observe the Work and all facilities where the Work 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 be inspected or tested, Contractor shall give BPCA, Construction Manager and Engineer timely notice of readiness of the Work 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, Construction Manager or Engineer, it is

desirable to require inspection or testing of the Work or its individual components in addition to any such testing which may be originally included in the Work, 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 Engineer's and Construction Manager's additional services made necessary by such failure; otherwise BPCA shall bear such costs, and an appropriate Change Order shall be issued.

(b) In the event that any item of the Work fails inspection or testing, BPCA, Engineer or Construction Manager may require inspection or testing of any or all of the other items of the Work at Contractor's cost and expense.

8.4 Uncovering of Work

(a) If any Work shall be covered or concealed contrary to the request of BPCA, Engineer or Construction Manager, such Work shall, if required by BPCA, Engineer or Construction Manager, 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, Engineer or Construction Manager 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 not approved by BPCA, Engineer and Construction Manager 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 material and workmanship by BPCA 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

Upon their receipt of written notice from Contractor stating that in Contractor's estimation the Work has been substantially performed in conformity with the Contract Documents, Engineer 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 Engineer 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 BPCA for delivery to Contractor a certificate specifying the date of substantial completion of the Work for purposes of this Agreement ("Certificate of Substantial Completion") and a punch list of items of Work remaining to be completed prior to the completion of the Work.

The delivery of a Certificate of Substantial Completion 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.

8.7 Completion of Work and Acceptance

Upon their receipt of written notice from Contractor stating its belief that the Work has been fully performed in conformity with the Contract Documents, and confirming that Contractor has completed any items of Work previously noted to it by Engineer and Construction Manager as not having been acceptably completed in any punch list or otherwise, Engineer and Construction Manager shall perform an inspection for purposes of determining whether the Work has been so performed. Engineer and Construction Manager 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 Construction Manager find upon inspection that, to the best of their knowledge and belief, the Work has been so performed, they shall prepare a certificate of final completion, and, upon delivery by BPCA to Contractor of said certificate, the Work shall be deemed to be finally accepted by BPCA (such delivery of the certificate of final completion to Contractor is hereinafter referred to as "Final Acceptance").

ARTICLE 9 - CHANGES IN THE WORK

9.1 Change Orders

(a) BPCA may, at any time, in any quantity or amount, without notice to the sureties and without invalidating or abandoning the contract, order Extra Work. 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 or direct acceleration of the Work and Contractor shall, therefor, be entitled to a Change Order (as defined in Section 9.1(b)) provided that such change or acceleration was not ordered to maintain the Progress Schedule or to coordinate the Work with the work of other contractors. Contractor shall not perform any Extra Work or change in the Work unless it has received a Change Order or Field Order (as defined in Section 9.3) duly signed as hereinafter provided. Contractor shall be obligated to perform changed Work promptly in conformity with any Change Order or Field Order issued in accordance herewith.

(b) "Change Order" shall mean a written order issued by the Authority to Contractor after execution of this Agreement, authorizing or requiring:

- (i) Extra Work,
- (ii) items which were erroneously deleted or omitted from the Work,

- (iii) items which were included in the Work but were subsequently deleted,
- (iv) an extension of time to complete Work,
- (v) an increase or reduction in the payment to Contractor;, or
- (vi) any other change in the Contract Documents or in the sequence of performing or phasing of the Work.

(c) All Change Orders shall be prepared, signed and issued by Construction Manager at the instruction of BPCA, and to be valid, must be countersigned by BPCA and Contractor.

9.2 Change in Contract Price and Time

(a) The Contract Price will not be revised due to any change of the Work except as and to the extent expressly provided in the Change Orders. The amount by which the Contract Price is to be increased or decreased by any Change Order shall be determined by BPCA and Construction Manager by one or more of the following methods:

- (1) by accepting an amount agreed upon by BPCA and Contractor;
- (2) by applying the applicable unit prices and alternates where the Work involved is covered by unit prices in this Agreement;
- (3) by receiving from Contractor a detailed breakdown satisfactory to BPCA and Construction Manager, including actual time slips and invoices, itemizing the direct cost of labor and material 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 material 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) by receiving from Contractor a true copy of its bid work sheets to determine the contract price for the elimination of any contract Work.

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, then Construction Manager shall determine the amount of the reduction. The determination of Construction Manager shall be final and binding unless erroneously or fraudulently arrived at, or arbitrary and capricious;

- (5) by adding to the Contract Price only the amount of the premium portion of overtime pay resulting from an acceleration of the Work; or
- (6) by adding to the 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.

(b) The compensation specified in a Change Order 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.

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

9.3 Field Orders

Construction Manager shall have the authority to order minor changes in the Work by the issuance of written field orders ("Field Orders"), which may be issued without prior approval by BPCA. Field Orders must be countersigned by Contractor. Minor changes in the Work for purposes of this Section shall mean only changes which do not necessitate or warrant any revision in the Contract Price in excess of \$5,000 or affect the time of performance of Contractor's Work, any change in the basic character or design of the Project, or deviation from design standards established for the Project. Except as otherwise provided in the preceding sentence relating to an increase in the Contract Price, no claim for an increase in the Contract Price may be based upon any Field Order. If Contractor, on a receipt of a Field Order, claims that the change of Work involved necessitates a Change Order, it shall proceed in accordance with the Field Order under protest and notify BPCA immediately of its claim for additional compensation for Extra Work pursuant to Article 14.

9.4 Changed Conditions

(a) 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 this Agreement. Construction Manager 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 this Agreement, Contractor shall be paid in the manner provided

for payment with respect to any Change Order and receive, if warranted, a time extension.

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

ARTICLE 10 - SUBCONTRACTS AND PURCHASE ORDERS

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

(a) Contractor shall submit to Construction Manager, within 21 calendar days of notice to proceed, the names of all persons with whom it has contracted or intends to contract or hereafter contracts with respect to the Work.

(b) Except as specifically provided herein, Contractor shall not enter into any Subcontracts or issue any Purchase Orders (as hereinafter defined) 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.

(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 this Agreement to execute a copy of the 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. Contractor shall include a provision in all Subcontracts and Purchase Orders that will enable representatives of the State of New York, Construction Manager and BPCA, 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 this Agreement.

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 shall create any contractual relationship between Subcontractors or Materialmen and BPCA, Construction Manager or Engineer. 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 the performance of any obligations of Contractor under this Agreement, nor enter into any Subcontract in respect of the Work 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.

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 Article 3-A of the Lien Law of the State of New York (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;

(c) the assignee shall agree with BPCA in writing that BPCA and Contractor may modify any of the terms of this Agreement, 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 Section 75 of the Lien Law; 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 promptly discharge such lien or 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, 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 at the Site 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: **XXXXXXXXXXXXXXXXXXXX**, 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 at the Site. 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 unless BPCA is given 90 days' written notice to the contrary. Such policies and certificates should name as additional insureds BPCA, Battery Park City Parks Conservancy Corporation (the "Conservancy"), the State of New York, Construction Manager, and Engineer.

(d) All insurance required to be procured and maintained must be procured from insurance companies which 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 form satisfactory to BPCA:
- (1) Worker's Compensation and Employer's Liability Insurance, including USL & H (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 \$1,000,000 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 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 in an amount which shall not be less than the following limits:

Combined Single Limits, Bodily Injury
and Property Damage Liability

\$XXXXXXXXXX per each occurrence and \$XXXXXXXXXX in the aggregate.

The completed operations coverage shall continue in force until three years after Final Acceptance of the Work 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, or under the circumstances under which such vehicles are being used being 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

\$XXXXXXXXXXXX per each occurrence.

- (5) Marine Protection and Indemnity ("P&I") insurance of not less than XXXXXXXXXXXXXXX per occurrence, if Contractor or any of its Subcontractors utilizes floating equipment, barges or floats, or performs marine-related construction, covering any and all claims for personal injury, death and property damage arising out of or in connection with this Agreement.
- (6) Pollution Liability Insurance, on an occurrence basis, providing coverage for bodily injury liability, property damage or environmental damage caused by pollution conditions with a limit of liability of not less than XXXXXXXXXXXXXXX per occurrence and in the aggregate. The policy shall include coverage for environmental clean-up on land, in air and on water. The policy shall include coverage for completed operations for two (2) years after the completion of the performance of the Work, gradual and sudden and accidental pollution coverage, with a time element of no less than seven (7) days' notice and thirty (30) days' reporting. The policy shall not contain a sunset provision, or any other provision, which would prohibit the reporting of a claim and the subsequent defense and indemnity that would normally be provided by the policy. The policy shall provide transportation coverage for the hauling of hazardous materials from the Project Site to the final disposition location.
- (7) Vessel Pollution Liability Insurance, on an occurrence basis, providing coverage for bodily injury liability, property damage or environmental damage caused by pollution conditions, emanating from any floating equipment, barges or floats, utilized by Contractor or SubContractors in the performance of Marine related construction, with a limit of liability of not less than XXXXXXXXXXXXXXX per occurrence and in the aggregate. The policy shall include coverage for environmental clean-up on land, in air and on water.
- (8) Umbrella Liability Insurance, excess of general liability, automobile liability, Protection and Indemnity ("Marine Liability"), vessel pollution and Employer's Liability, in an amount of not less than XXXXXXXXXX.

(g) The insurance required under subSections 13.1 (f) 3, 4 and 5 shall be of a type which shall protect Contractor and Subcontractors, respectively, against damage claims which may arise from operations under this Agreement, 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, the Conservancy, the State of New York, Construction Manager and Engineer as additional insured 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, the Conservancy, the State of New York, Construction Manager, and Engineer 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.

(i) BPCA shall, at all times during the period of construction and until completion and Final Acceptance of the Work procure and maintain at the cost and expense of BPCA "Builders Risk" insurance, or its functional equivalent, against direct physical loss or damage to the Work and on all Materials to be made a part of the Work in the names of BPCA, Construction Manager, Contractor and Subcontractors, said amount of insurance to be procured and maintained on a one hundred percentage (100%) completed value basis on the insurable portion of the Work, which insurance shall contain a deductible provision for all losses except flood and earthquake in the amount of \$10,000 and a deductible provision for flood and earthquake in the amount of \$10,000. Owner recognizes that the deductible applicable to flood and earthquake may be greater than \$10,000 due to insurance market conditions and shall notify Contractor if such deductible is greater than \$10,000. Losses up to and including the amounts of such deductible provisions shall be borne by Contractor. The insurance specified above may, in certain instances, include other parties as named insureds, as the interests of such parties may appear. Loss, if any, is to be made adjustable with and payable to BPCA on behalf and for the named insureds as the interests of such insureds may appear. BPCA shall, in BPCA's sole discretion, have power to adjust and to settle with the insureds any loss or claim under such insurance. The above is not intended to be a complete, full or accurate description of the coverage provided by the policies of insurance, copies of which are on file with BPCA. This subSection (i) is not intended to create or give any rights to Contractor or Subcontractors other

than those which may be made available to such Contractors or Subcontractors under the terms of such policies. BPCA assumes no obligation to obtain insurance other than that evidenced by said policies. Contractor and Subcontractors shall not violate or permit to be violated any term or condition of such policies and shall at all times satisfy the safety requirements of BPCA and of the insurance companies issuing the aforementioned policies. The Contractor shall, upon notification by BPCA, obtain such insurance at BPCA's expense on a date determined by BPCA, which date shall not be less than (thirty) (30) days after notice to Contractor of such determination by the BPCA.

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

Contractor shall, if it already has not done so, furnish to BPCA, with the execution of this Agreement, to BPCA, a bond in an amount at least equal to one hundred percent (100%) of the Contract Price for performance of the Work (the "Performance Bond") and also a labor and material payment bond in an amount at least equal to one hundred percent (100%) of the Contract Price for the payment of all persons performing labor or providing Materials in connection with the Work (the "Payment Bond").

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 Contract Price as adjusted by Change Orders. 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 which 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, Construction Manager or Engineer 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 Engineer 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) not suspend Work but 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, Construction Manager and Engineer in writing within 72 hours of such determination, order or directive of its reasons for its opinion and request a final determination thereon by BPCA, and
- (3) present to the Construction Manager 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) work is Work required to be performed hereunder and not Extra Work, (y) action or omission is proper or (z) a 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, Construction Manager and Engineer 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 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.

ARTICLE 15 - TERMINATION

15.1 Termination for Cause

(a) If any of the following events shall occur (an “Event of Default”) then BPCA or Construction Manager 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, including, without limitation, by failing to maintain the Progress Schedule then in effect in accordance with, or failing to discharge any of its responsibilities under, Section 3.1(d) hereof, 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 in accordance with its terms; or
- (2) any material adverse change shall take place in the financial condition of the Contractor;
- (3) any action shall be taken by Contractor 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 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 shall have 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 Owner's option exercised by written notice to Contractor, title to any or all of Contractor's Materials, equipment, work in process and dies and tools, whether on the Site or off site, which are necessary or useful in completing the Work shall vest in Owner and Owner 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 Owner has taken possession of the same, then after Owner has taken possession and the Work shall have been completed by or on behalf of Owner, Owner shall pay to Contractor, in respect to the items for which title has vested in Owner, 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 Owner elects to return the tools and dies to Contractor, the salvage value thereof. Owner shall have the right to set off against such payment due to Contractor any amounts then due and payable by Contractor to Owner which may accrue as damages owing by Contractor to Owner 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 Owner as set forth herein) required by Owner 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 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. In the event that it shall be determined that a termination under this paragraph was wrongful or not justified, such termination shall be conclusively deemed to be 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.

(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 a court of competent jurisdiction that adequate grounds for such termination did not exist, then such termination shall be deemed a termination for convenience as provided hereunder.

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 the Contract 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 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 Construction Manager, 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 Construction Manager, settle all outstanding liabilities and all claims arising out of such termination of Purchase Orders and Subcontracts, with the approval or ratification of Construction Manager, 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 the Construction Manager (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, information and other property, which if this Agreement had been completed, would have been required to be furnished to BPCA;
- (7) take such action as may be necessary, or as the Construction Manager

may direct, for the protection and preservation of the property related to this Agreement 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 apportioned Contract Price for Work installed, the fair and reasonable value of Materials stored on the Site 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 the 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 or any part thereof for a period of time. Such direction shall be in writing and shall specify the period during which the Work is to be stopped. Upon receipt of a direction of suspension, Contractor shall, as soon as practicable, cease performance of the Work as ordered and take immediate affirmative measures to protect the Work from loss or damage. Contractor shall resume the Work 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 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 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. Contractor shall prepare composite scale working drawings and Sections as directed by Construction Manager, clearly showing how Contractor's Work 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 Construction Manager. Upon request by Construction Manager, 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 covered or included in such drawing. If Contractor performs work in a manner which causes interference with the work of other contractors, or subcontractors, Contractor shall make the changes necessary to correct the condition as directed by 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.

17.2 Safety Programs

Contractor shall be responsible for the initiation, maintenance and supervision of safety precautions and programs as prescribed by Construction Manager in connection with the Work.

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. Contractor shall at all times guard and protect the Site, the Work 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.

(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), Contractor shall submit to Engineer drawings and calculations prepared by, and bearing the seal of a professional engineer, showing the proposed method for supporting such loads, for Engineer'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 Engineer's approval of such submitted drawings and calculations. The costs of the Engineer's review 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, to make its several parts fit together properly and to make the Work fit together properly with previous and surrounding work. The requirement to cut, fit or patch shall be determined by Construction Manager; provided, that structural elements of 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 Project shall not constitute a limitation or a waiver of BPCA's, Construction Manager's or Engineer's right to require the removal and replacement of any Work 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.

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, Construction Manager, of Engineer 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 prosecution 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 by BPCA or until completion or removal of such Materials from the Site and the vicinity thereof, whichever event occurs last. A portion of the risk of such loss or damage may be insured against under the terms of a "builder's risk" insurance policy maintained in the name of Contractor, among others, as described in Section 13.1(i). Notwithstanding the status of any actual or potential recovery or claim under the said "builder's risk" insurance policy, in the event of any loss or damage, Contractor immediately shall repair, replace or make good any such loss or damage.

(b) Contractor shall not, without obtaining express advance permission of BPCA, raise any defense involving in any way jurisdiction of any court in which BPCA brings an action arising under this Agreement, governmental nature of BPCA or 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 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 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 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 the BPCA arising from Contractor's obligations under this Article 17 or Article 13 (Insurance) 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, BPCA desires to use the Site or any part thereof which 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 (1) shall not constitute acceptance of space, systems, Materials or elements of the Work, nor shall such use affect the start of any guaranty period and (2) shall not affect the obligations of Contractor for work which is not 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 in a manner which 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 which will become an integral component of the completed Project pursuant to this Agreement.

19.2 Certificates

Contractor, Subcontractors and Materialmen shall 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 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. Contractor guarantees that all Work performed and all Materials furnished will conform to the 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. Contractor, upon demand, shall pay for all damage to all other work resulting from such defects and all expenses necessary to remove, replace and repair such other work which 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 which 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 Section 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 which BPCA may have under other provisions of this Agreement 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 which 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.

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 Project, and all costs and expenses occasioned thereby shall be borne by Contractor.

21.3 Liability

Contractor shall hold BPCA, the Conservancy, the State of New York, Construction Manager and Engineer 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 its 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, the Conservancy, the State of New York, Construction Manager, and Engineer 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, the Conservancy, the State of New York, Construction Manager, and Engineer 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, the Conservancy, the State of New York, Construction Manager, and Engineer 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 prosecution 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 Engineer 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 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:

- (1) all United States patents and patents registered in any other foreign country;
- (2) all proprietary knowledge, data and trade secrets; and
- (3) all 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 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) Contractor shall be furnished by BPCA, at BPCA's expense, with 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, 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 Engineer.

(b) After review by Engineer 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.

ARTICLE 24 - SHOP DRAWINGS AND SAMPLES

24.1 Contractor Submittal

Contractor shall submit to Construction Manager the 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 Construction Manager and their approval by Engineer, each of such items shall be returned in accordance with the procedures established therefor.

24.2 Contractor's Responsibility

Engineer'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 Engineer of the deviation in writing at the time of submission and has received from Engineer written approval by separate letter of the specified deviations. Engineer'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:

Name & Title of BPCA Person, Battery Park City Authority, One World Financial Center, 24th floor, New York, NY 10281

with a copy to: 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, address & Company

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

(c) if to Construction Manager

Name, Company and Address (if there is a CM).

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

(d) if to Engineer/Architect/etc.

Name, Company, Address.

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

(e) 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 Owner 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 Owner 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 a Consultant to Owner 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 Owner 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 Owner, 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 Owner within seventy-two hours of notice from Owner of the awarding of this contract to Contractor. If Contractor does not have an existing EEO policy statement, Owner 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, all other 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 as expressed by its 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 _____ or n/a % Minority Group Members and _____ or n/a % 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 Owner, and such other persons as Owner may invite, on a periodic basis as required by Owner 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 Owner 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 Owner'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 Owner's Diversity officer on a monthly basis and shall be in accordance with the following:

- (1) Owner may require that Contractor submit Utilization Compliance Reports for the duration of this contract to Owner 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 Owner;
 - (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 Consultant 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 _____ % MBE and _____ % WBE 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 and WBE which acts merely as a conduit for goods manufactured or produced by a non-MBE and non-WBE, only that portion of the price paid for such materials which will accrue as profit to the MBE or WBE and/or the Fee received by the MBE and WBE shall be included;
- (2) if Contractor is a joint venture including one or more MBEs and WBEs as joint venturers -- the Fee multiplied by the percentage of the joint venture's profits (or losses) which are to accrue to the MBE and WBE joint venturer(s) under the joint venture agreement; and
- (3) if an MBE and WBE is Contractor or where Contractor is a joint venture consisting entirely of MBEs and WBEs -- the Fee.

(c) 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 Owner 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 Owner'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 Owner 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 which 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 Owner with Monthly M/WBE and Workforce Utilization Reports, by the last calendar day of each month, **in the form of “Exhibit ????”** hereto. Failure to provide such reports shall be an event of default of contractor’s obligations pursuant to Article 15.1 (a) (1) hereof. **(IF NO GOALS, JUST WRITE, “M/WBE and**

Workforce Utilization Reports – n/a”).

(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. **(IF NO GOALS, JUST WRITE, “Contractor Proof of Payment – n/a”).**

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 M/WBE participation goals set forth herein or any other requirements set forth in this Article 26, such finding constitutes a breach of contract and Owner may withhold payment from the Contractor as liquidated damages.

(b) Such liquidated damages shall be calculated based on the actual cost incurred by Owner related to Owner’s expenses for personnel, supplies and overhead related to establishing, monitoring, and reviewing certified M/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 or the Work.

27.3 Applicable Law, Forum and Jurisdiction

This Agreement shall be governed by the laws of the State of New York. All actions or proceedings relating, directly or indirectly, to this Agreement 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 shall create or shall give to third parties any claim or right of action against BPCA, Construction Manager, or Engineer 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 Engineer. 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.

(c) Contractor alone shall be responsible for the safety, efficiency and adequacy of contractor's work, plant, appliances and methods, and for any damage which 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 Section 2875 of the Public Authorities Law of the State of New York which require that upon the refusal of 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, to sign a waiver of immunity against subsequent criminal prosecution or to answer any relevant questions concerning such transaction or contract:

(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, Purchase Order or any Subcontract in connection with the work, shall become directly or indirectly interested personally in the Agreement. 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, 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, 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 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 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 Labor Law, Section 220-e, as amended, that:

- (1) in the hiring of employees for the performance of Work under this Agreement or any 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 action 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 submission under this Agreement, 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 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 for any damage or loss sustained by reason of any act, neglect, fault or

default 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 seven (7) 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 it 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 five (5) business 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.

(c) Compliance with the provisions hereof shall constitute a condition to the Contractor's submission of a Dispute pursuant to Section 27.10 with respect to any claim for compensation 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 Arbiter'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 Arbiter 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, Construction Manager, or Engineer unless (i) such action or proceeding shall be commenced within six (6) months of the date of the issuance of the Certificate of Substantial Completion to Contractor; or (ii) in the case of an action or proceeding for moneys due pursuant to Section 5.7 hereof, or arising exclusively from or pertaining exclusively to work performed after the date of issuance of the Certificate of Substantial Completion, unless such action or proceeding is commenced no later than six (6) months after the issuance of the certificate of final completion to Contractor; or (iii) if this Agreement is terminated by BPCA prior to the issuance of the Certificate of Substantial Completion, 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, Construction Manager, or Engineer 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 Construction Manager, or Engineer.

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, Construction Manager, or Engineer. Contractor agrees that no default, act or omission of BPCA, Construction Manager, or Engineer 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 Contract Price in accordance with the terms hereof solely because sufficient funds to pay the Contract Price have not been appropriated or will otherwise not be made available to BPCA. Except as provided in this Section 27.13, Contractor hereby waives any and all rights and remedies to which Contractor might otherwise be or become entitled to because of any wrongful act or omission of BPCA, Construction Manager, or Engineer saving only Contractor's right to money damages.

27.14 Modification of Agreement

No change in or modification, termination or discharge of this Agreement 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 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 any sign, trademark or other advertisement without the approval of BPCA and Construction Manager. Contractor shall not and shall not permit any of its Subcontractors or Materialmen to park any vehicles on the Site.

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, Construction Manager, or Engineer or Contractor 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, 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, 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 State 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 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 Section 165 (5.) of New York's State Finance Law, and shall permit independent monitoring of their compliance with such Principles.

27.22 Termination for Failure to Disclose Under NYS Finance Law §139k

BPCA reserves the right to terminate this contract 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.

27.23 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, 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 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.

27.24 Comptroller's Approval

If this Agreement is considered an "eligible contract," as defined by Title 2 of NYCRR 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 where the aggregate consideration under the contract may reasonably be valued in excess of one million dollars, AND the contract is either (A) 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 which pays the money to a state authority.

27.25 Key Person/Personnel

The parties understand that in entering into this Agreement, BPCA has relied upon Contractor's representation that Name, Title, Company and Name, Title, Company

(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 are not available as described herein, or if the Key Personnel depart from the firm or severs their relationship with the Contractor, or for whatever other reason are not available to work on the Project, 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.

27.26 Form of Agreement Not an Offer

Notwithstanding anything herein to the contrary, the submission of this form of Agreement by BPCA to Contractor shall not constitute an offer, and execution hereof by Contractor shall not be considered acceptance of an offer. A binding contract between the parties shall exist only if and at such time as both parties have executed this document.

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 NAME

By: _____

Name: _____

Title: _____

EXHIBIT D

COST PROPOSAL

(Proposer to submit executed Cost Proposal on its letterhead)

Date:

Battery Park City Authority
One World Financial Center - 24th Floor
New York, New York 10281

Attention: Mr. Michael LaMancusa
Contacts Administrator

Dear Mr. LaMancusa:

The undersigned (the "Proposer") hereby proposes to provide all specified work necessary to perform the work for the **General Contractor – Planter & Tree Pit Rails / Planting Area Construction** project.

Base Proposal

A total Lump sum amount of \$_____ (_____ Dollars and _____ Cents) to perform all work associated with the Project and as described in Exhibit A ("Scope of Work) of the Authority's Request for Proposals ("RFP").

Schedule of Values and Labor Rates

1. The Proposer has submitted with its Proposal: a unit cost schedule for all associated work, according to the attached Schedule of Values for the Scope of Work in Exhibit A of the RFP.
2. The Proposer has submitted with its Proposal: labor rates for all trades, including all costs except overhead and profit. Prices shown include base hourly rate, overtime rate, insurance and benefits.

Name of Proposer:

By: _____

Title: _____

EXHIBIT E

FORM OF LABOR RATES

(Attached)

LABOR RATES

The following labor rates are to be listed by craft and classification (Foreman, Journeyman, etc.) and are to include base wages, benefits, taxes, insurance and payroll costs complete. Overhead and profit are not to be included:

<u>CRAFT</u>	<u>CLASSIFICATION</u>	<u>HOURLY RATES</u>	<u>OVERTIME</u>
<u>LABORER</u> <u>CONCRETE</u>	_____	_____	_____
<u>CARPENTER</u>	_____	_____	_____
<u>IRON WORKER</u>	_____	_____	_____
<u>LABORER</u>	_____	_____	_____
<u>LABORERS - LESS</u> <u>SKILLED</u>	_____	_____	_____
<u>OPERATING</u> <u>ENGINEER</u>	_____	_____	_____
<u>FIELD</u> <u>SUPERVISOR</u>	_____	_____	_____
<u>FOREMAN</u>	_____	_____	_____
<u>TEAMSTER</u>	_____	_____	_____
<u>ELECTRICIAN</u>	_____	_____	_____
<u>PLUMBER</u>	_____	_____	_____

<Name of Company>

<Name of Proposer>

Signed

Date

By: <Printed Name>

EXHIBIT F

SCHEDULE OF VALUES

All prices are for work furnished and installed, measured in place.

(1) For TREE PIT RAIL

ITEM NO.	APPROXIMATE QUANTITY	PRICE COMPLETE IN PLACE ITEMS WITH PRICE WRITTEN IN WORDS	UNIT PROPOSAL PRICE		AMOUNT PROPOSED
			DOLLA RS	CENT S	DOLLARS AND CENTS
1	1 LF	Tree Pit Rail FOR: _____ DOLLARS CENTS			
2	1 LF	Repair of Existing Tree Pit Rail FOR:_____ DOLLARS CENTS			

(2) For BALLFIELD PLANTING AREA

ITEM NO.	APPROXIMATE QUANTITY	PRICE COMPLETE IN PLACE ITEMS WITH PRICE WRITTEN IN WORDS	UNIT PROPOSAL PRICE		AMOUNT PROPOSED
			DOLLA RS	CENT S	DOLLARS AND CENTS
1	30 CY	UNCLASSIFIED EXCAVATION AND DISPOSAL FOR: _____ DOLLARS CENTS			
2	3 CY	CONCRETE SIDEWALK AND DRIVEWAYS FOR:_____ DOLLARS CENTS			
3	40 LF	REMOVAL AND DISPOSAL OF CHAIN LINK FENCE FOR: _____ DOLLARS CENTS			
4	10 CY	TOP SOIL TYPE A FOR: _____ DOLLARS CENTS			
5	10 CY	TOP SOIL TYPE C FOR: _____ DOLLARS CENTS			
6	10 CY	SUB-BASE MATERIAL FOR: _____ DOLLARS CENTS			

Battery Park City Authority Request For Proposals

7	60 LF	FURNISH, DELIVER & INSTALL HOOP RAIL FOR: _____ DOLLARS CENTS			
8	100 LF	TEMPORARY PLASTIC BARRIER FENCE FOR: _____ DOLLARS CENTS			
9	1 LS	WORK ZONE SAFETY CONTROL FOR: _____ DOLLARS CENTS			
10	20 LF	TYPE III CONSTRUCTION BARRICADES FOR: _____ DOLLARS CENTS			
11	1 LS	PRECONSTRUCTION SURVEY FOR: _____ DOLLARS CENTS			
12	1 LS	MOBILIZATION FOR: _____ DOLLARS CENTS			

(3) For BELVEDERE RAILS

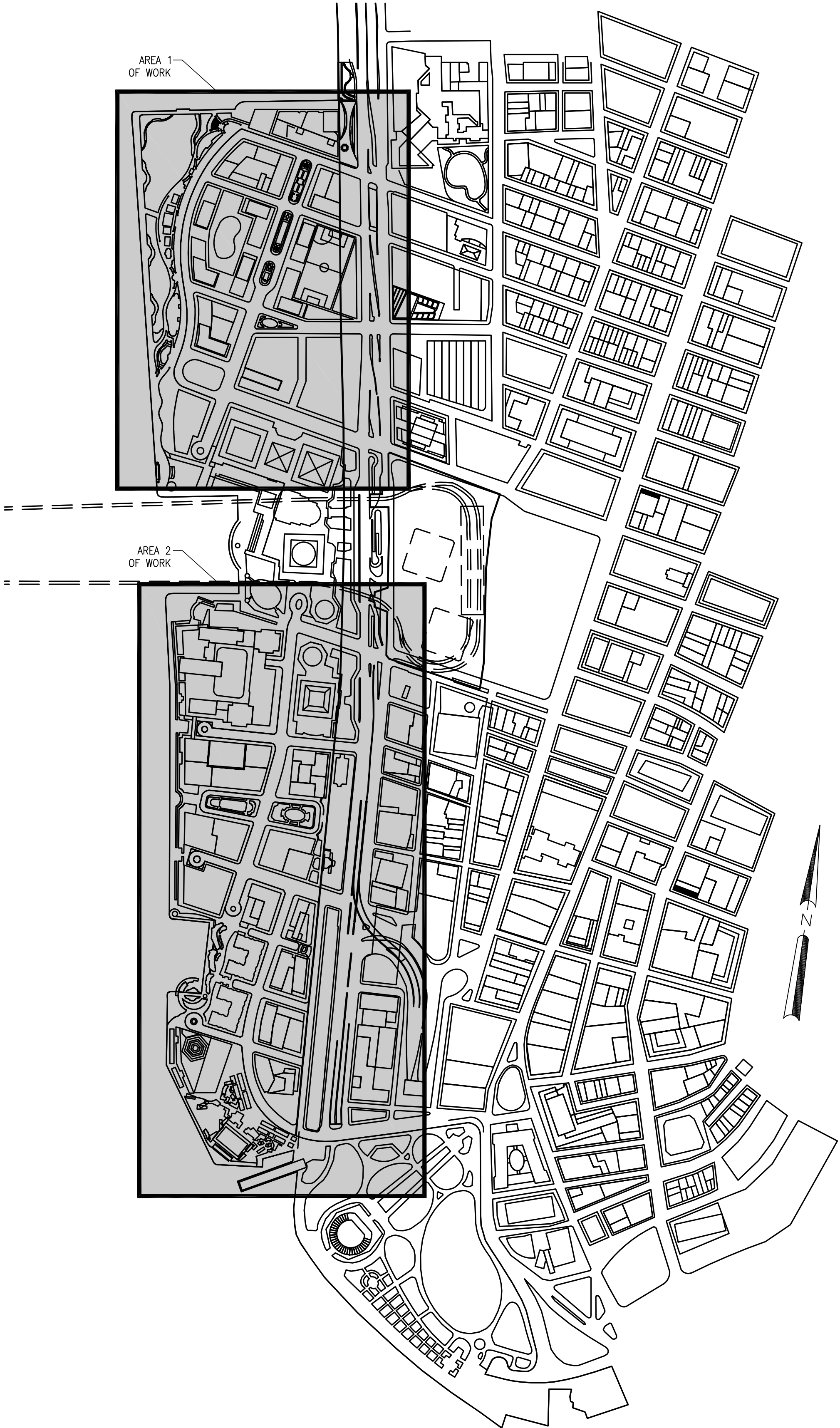
ITEM NO.	APPROXIMATE QUANTITY	PRICE COMPLETE IN PLACE ITEMS WITH PRICE WRITTEN IN WORDS	UNIT PROPOSAL PRICE		AMOUNT PROPOSED
			DOLLA RS	CENT S	DOLLARS AND CENTS
1	LS	Furnish and Install Railing FOR: _____ DOLLARS CENTS			

EXHIBIT G
TREE PIT RAILS
DRAWINGS & SPECIFICATIONS

2015 HOOP RAIL INSTALLATION AND REPAIRS

HUGH L. CAREY BATTERY PARK CITY AUTHORITY

LIST OF DRAWINGS	
DRAWING #	DESCRIPTION
C001.00	TITLE SHEET
C002.00	GENERAL NOTES AND SPECIFICATIONS
C003.00	HOOP RAIL REPAIRS SCHEDULE
C004.00	STANDARD HOOP RAILS & REPAIRS TREE PIT LOCATION PLAN
C005.00	STANDARD HOOP RAIL SCHEDULE
C006.00	STANDARD HOOP RAIL DETAILS



Consultants:

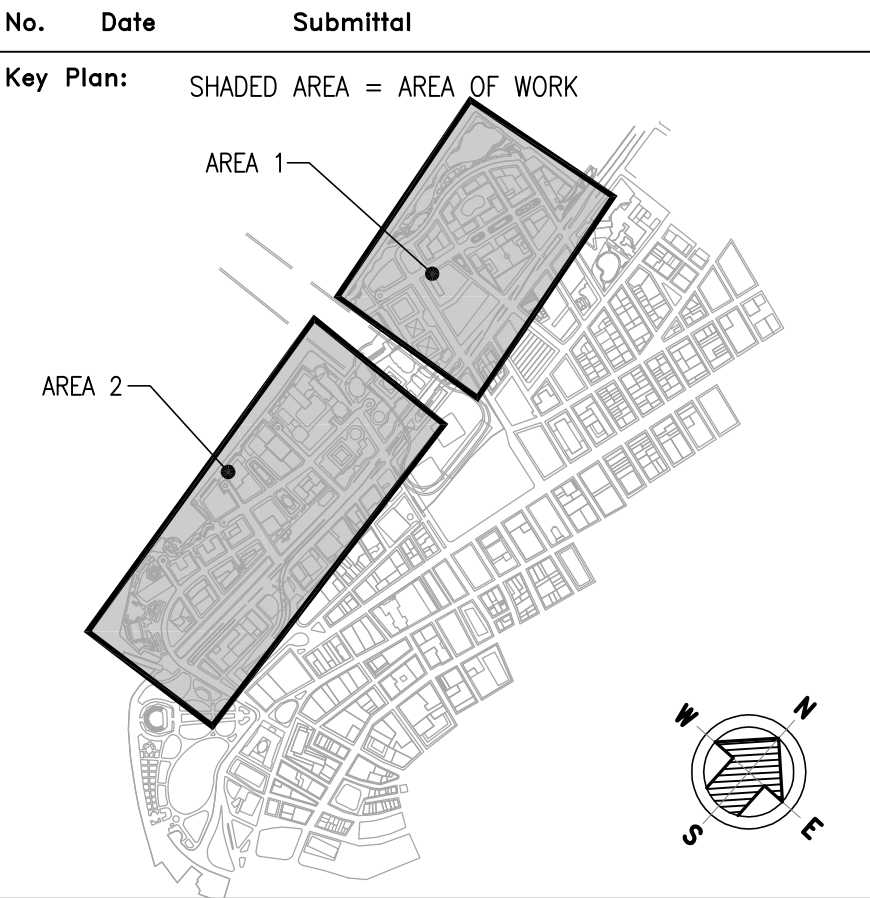


ENSIGN ENGINEERING, P.C.
1111 Calhoun Ave.
Bronx, N.Y. 10465

TEL. 718-863-5590 FAX. 718-863-6178
WWW.ENSIGNENGINEERING.COM

NOTE: Drawing may be
printed at reduced scale.
Refer to graphic scale.

No.	Date	Revision



Project Engineer:		CARL J. CANNIZZARO, P.E.
Designer:		FRANCO MARCIANO
Drawn by:		ADRIAN S. WILLIAMS
Checked by:		CARL J. CANNIZZARO, P.E.
Design No. or LLW No.:	Facility Code:	Date:
—	N/A	09/28/15

Project:

2015 Hoop Rail Installation & Repairs
Battery Park City Authority

Address:

MANHATTAN
NEW YORK, NY

Drawing Title:

TITLE SHEET

Drawing No.:

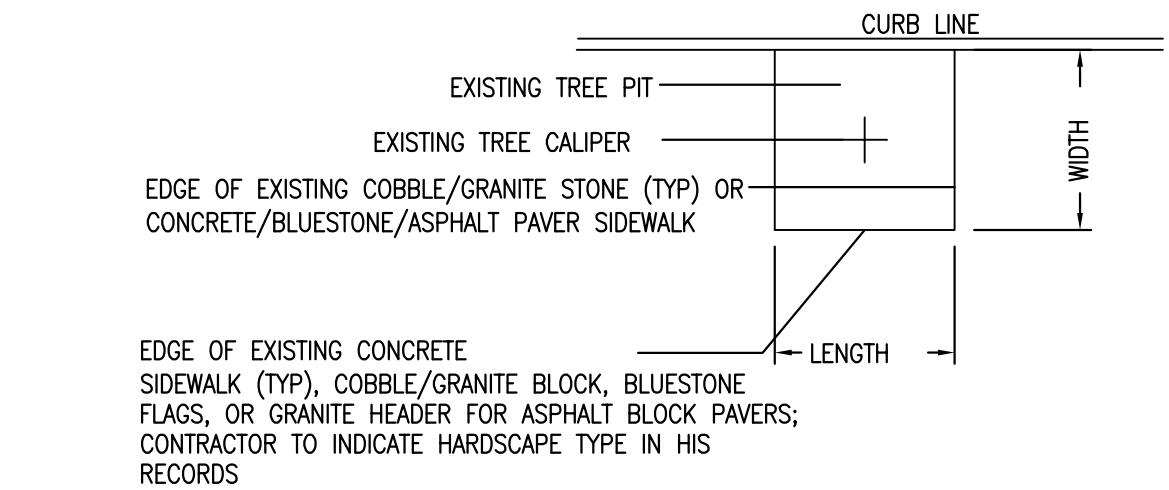
C001.00

Sheets in Contract:

01 of 06

GENERAL CONSTRUCTION NOTES:

1.1. IT IS MANDATORY THAT THE CONTRACTOR TO BE PRESENT AT THE PRE-BID WALK THROUGH, AT WHICH TIME VERIFICATION OF HOOP RAIL REPAIR AND NEW HOP RAIL DIMENSIONS WILL BE RECORDED ON TABLE 2 ON SHEET C005.00. THIS TABLE IS TO BE SUBMITTED AS PART OF THE BID DOCUMENT. THE CONTRACTOR SHALL SURVEY DIMENSIONS ACCORDING TO THE ILLUSTRATION BELOW



1.2. PRIOR TO SUBMISSION OF HIS FINAL BID PRICE THE CONTRACTOR SHALL CONSULT WITH BPCPC'S CONSTRUCTION MANAGER FOR OBTAINING ALL PERMITS REQUIRED TO PERFORM THE WORK SHOWN IN THESE DRAWINGS, INCLUDING MAINTENANCE AND PROTECTION OF TRAFFIC, AS REQUIRED BY BPCCA AND/OR THE CITY OF NEW YORK TO ENSURE INCLUSION OF THESE ITEMS IN HIS BID PRICE, IF REQUIRED.

1.3. THE CONTRACTOR'S SURVEY RECORD OF EXISTING TREE PIT SIZES AND HIS PROPOSED FINAL TREE PIT DIMENSIONS SHALL BE SUBMITTED TO BPCPC'S CONSTRUCTION MANAGER AND THE ENGINEER FOR THEIR REVIEW AND RECORD AT LEAST TEN (10) BUSINESS DAYS PRIOR TO PERFORMING ANY WORK. PREFABRICATION OF ANY OF THE ITEMS SHOWN IN THESE DRAWINGS IS NOT PERMITTED.

1.4. THE CONTRACTOR SHALL REMOVE EXISTING TREE PIT METAL FRAMES AND ALL INTERFERING MATERIALS AS NECESSARY TO ALLOW FOR THE INSTALLATION OF NEW HOOP RAILS WHERE SCHEDULED.

1.5. THE CONTRACTOR SHALL SALVAGE AND STORE ALL GRANITE/COBBLE BLOCKS REMOVED FOR TREE PIT SIZE ADJUSTMENTS REQUIRED. SALVAGED GRANITE/COBBLE BLOCKS SHALL BE STORED AT A LOCATION AS DIRECTED BY BPCPC.

1.6. CONTRACTOR TO COORDINATE WITH BPCPC FOR SOURCING OF MATERIALS USED FOR TREE PIT WORK. IE. COBBLE STONE, ASPHALT PAVERS AND SOIL.

TABLE 1 NOTES:

2.1. THE RECOMMENDED REPAIR(S) AT EACH LOCATION REFLECT THE ENGINEER'S ASSESSMENT OF THE DAMAGE OBSERVED PRIOR TO AWARD OF THIS CONTRACT AND DOES NOT NECESSARILY REFLECT THE EXTENT OF DAMAGE TO BE REPAIRED AT THE TIME OF CONSTRUCTION.

2.2. ALL RECOMMENDED REPAIRS SHALL INCLUDE FIELD WELDING, TOUCH UP PAINTING AND RESTORATION OF TREE PITS TO THE SATISFACTION OF BPCPC.

2.3. THE CONTRACTOR SHALL SUBMIT SHOP DRAWINGS FOR ALL REPAIRS SCHEDULED FOR REVIEW AND APPROVAL BY THE ENGINEER. SEE BELOW FOR TYPICAL PARTIAL REPAIRS.

2.4. LOCATIONS RECEIVING NEW HOOP RAIL UNITS SHALL BE INSTALLED AS PER THE DETAILS SHOWN ON C006.00. THE CONTRACTOR SHALL FIELD VERIFY AND MATCH THE WIDTH AND LENGTH DIMENSIONS OF THE EXISTING HOOP RAIL UNIT TO BE REPLACED.

2.6. THE CONTRACTOR SHALL BURN THROUGH ALL WELDS NECESSARY TO REMOVE DAMAGED HOOPS AND SIDE PLATES TO BE REWORKED AND RESET AND/OR REPLACED IN-KIND; REPAIRS SHALL CONFORM TO APPLICABLE DETAILS SHOWN ON DRAWING C006.00.

SPECIFICATIONS: STANDARD TREE PIT HOOP RAILS

PART 1 – GENERAL

1.1. DESCRIPTION

THE WORK SHALL CONSIST OF THE FURNISHING OF ALL LABOR AND MATERIALS FOR FABRICATING AND INSTALLING THE TREE PIT HOOP RAILS AS SHOWN HEREIN THESE DRAWINGS.

BATTERY PARK CITY AUTHORITY SHALL BE REFERRED TO HEREIN AS BPCCA. BATTERY PARK CITY PARKS CONSERVANCY SHALL BE REFERRED TO HEREIN AS BPCPC. ENSIGN ENGINEERING P.C. SHALL BE REFERRED TO HEREIN AS THE ENGINEER.

1.2. SUBMITTALS

1.2.A. THE CONTRACTOR SHALL SUBMIT SHOP DRAWINGS FOR ALL PREFABRICATED AND FIELD ASSEMBLED PORTIONS OF THE TREE PIT HOOP RAILS FOR REVIEW AND APPROVAL BY THE ENGINEER.

1.2.B. THE CONTRACTOR SHALL SUBMIT HIS SURVEY RECORD OF EXISTING TREE PIT SIZES, USING TABLE 1 (SHEET C005.00) IN THE PLANS, TO BPCPC'S CONSTRUCTION MANAGER AND THE ENGINEER.

PART 2 – PRODUCT

2.1. MATERIALS

2.1.A. ALL STEEL MEMBERS SHALL BE HOT DIPPED GALVANIZED, ASTM A36 STEEL OR ZINC CLAD IV, UNLESS OTHERWISE NOTED ON THE PLANS.

2.1.B. ALL WELDING OPERATIONS (SHOP OR FIELD) SHALL BE PERFORMED IN CONFORMANCE WITH THE AMERICAN WELDING SOCIETY (AWS), LATEST REVISION.

2.1.C. ALL STEEL MEMBERS AS SHOWN ON THE PLANS SHALL BE CLEANED USING COMMERCIAL BLAST CLEANING AND PREPARED FOR PAINTING.

2.1.C.1A. PRIMER SHALL BE ONE (1) COAT ZINC CLAD IV BY SHERWIN WILLIAMS, OR APPROVED EQUAL, WITH DRY FILM THICKNESS NOT LESS THAN 3 MILS.

2.1.C.2A. ZINC CLAD IV STEEL MEMBERS SHALL RECEIVE ONE (1) COAT OF EACH OF THE FOLLOWING INTERMEDIATE COATS:

2.1.C.2A.1. MACROPOXY 646 FAST CURE EPOXY BY SHERWIN WILLIAMS, OR APPROVED EQUAL, WITH DRY FILM THICKNESS NOT LESS THAN 5 MILS.

2.1.C.2A.2. ACRYLON ACRYLIC POLYURETHANE BY SHERWIN WILLIAMS, OR APPROVED EQUAL, WITH DRY FILM THICKNESS NOT LESS THAN 3 MILS.

2.1.C.3A. TOP COAT SHALL BE TWO (2) COATS DTM ACRYLIC COATING BY SHERWIN WILLIAMS, OR APPROVED EQUAL, WITH DRY FILM THICKNESS NOT LESS THAN 2.5 MILS PER COAT.

2.1.D. WHERE THE PRIMER IS SHOP APPLIED TO STEEL, INTERMEDIATE AND FINISH COATS SHALL BE THE PRODUCT OF THE SAME MANUFACTURER. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE COMPATIBILITY OF ALL PAINT SYSTEMS, INCLUDING FACTORY SUPPLIED ITEMS AND SHOP APPLIED PRIME AND FIELD FINISH COATS.

2.1.E. THE COLOR WILL BE SELECTED FROM THE MANUFACTURER'S STANDARD COLORS TO MATCH EXISTING AS DETERMINED AND APPROVED BY BPCPC.

2.2. FABRICATION

2.2.A. THE CONTRACTOR SHALL NOT PREFABRICATE THE COMPLETED TREE PIT HOOP RAILS. THE CONTRACTOR SHALL REFER TO THE PLANS AND DETAILS TO DETERMINE PORTIONS OF THE TREE PIT HOOP RAILS THAT CAN BE PREFABRICATED AND COMPLY WITH PART 1.2., SUBMITTALS OF THESE SPECIFICATIONS.

2.2.B. THE CONTRACTOR SHALL COMPLY WITH ALL FIELD ASSEMBLY REQUIREMENTS AS SHOWN IN THE PLAN DETAILS, INCLUDING ALL FIELD WELDS AND PARTS ADJUSTMENTS FOR PROPER FITTING OF HOOP RAILS WITHIN EXISTING TREE PITS.

2.2.C. THE CONTRACTOR SHALL PAINT ALL PREFABRICATED PORTIONS OFF-SITE. THE CONTRACTOR SHALL PERFORM PAINT TOUCHUPS UPON COMPLETION OF EACH FITTING AND FIELD ASSEMBLY TO THE SATISFACTION OF BPCPC.

PART 3 – EXECUTION

3.1. STIPULATIONS INCLUDED UNDER THE PLANS, DETAILS, AND PLAN'S GENERAL CONSTRUCTION NOTES SHALL BE DEEMED PART OF THESE SPECIFICATIONS.

3.2. THE CONTRACTOR SHALL PROVIDE FOR THE SAFETY AND PROTECTION OF TRAFFIC AND PEDESTRIANS BY INCORPORATING MAINTENANCE AND PROTECTION MEASURES IN ACCORDANCE WITH THE MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES (MUTCD) AND NEW YORK CITY DEPARTMENT OF TRANSPORTATION (NYCDOT) REQUIREMENTS.

3.3. THE CONTRACTOR SHALL PERFORM ALL WORK WITH CARE SO AS NOT TO DAMAGE/INJURE EXISTING TREES WITHIN TREE PITS. ANY SUCH DAMAGE, RESULTING IN THE NEED FOR REPLACING DAMAGED/INJURED TREE(S) IN-KIND SHALL BE THE TOTAL RESPONSIBILITY OF THE CONTRACTOR AT NO ADDITIONAL COST TO BPCCA OR BPCPC.

3.4. THE CONTRACTOR MAY NOT STORE ANY MATERIALS WITHIN THE TREE PIT.

3.5. EXISTING TREE PIT HOOP RAILS DEEMED NON STANDARD BY THE BPCPC SHALL BE REMOVED WITH CARE AND DISPOSED OF TO AN APPROVED OFF-SITE LOCATION. THE CONTRACTOR SHALL VERIFY AND CONFIRM ALL SUCH REMOVALS WITH BPCPC. ANY INADVERTENT REMOVALS PERFORMED BY THE CONTRACTOR SHALL BE REPLACED TO MATCH EXISTING CONDITIONS AT NO ADDITIONAL COST TO BPCCA OR BPCPC.

3.6. ONCE FULLY ASSEMBLED IN THE FIELD, UNPAINTED PORTIONS OF EACH TREE PIT HOOP RAIL ASSEMBLY SHALL BE PAINTED AS SPECIFIED HEREIN AND LET DRY PRIOR TO BEING DOWEL ANCHORED TO HARDSCAPES AND STAKED INTO GROUND. TOUCH UPS TO THE PAINT AFTER INSTALLATION MAY BE REQUIRED AS DIRECTED BY BPCPC.

3.7. ONCE DRY, THE CONTRACTOR SHALL SET FULLY ASSEMBLED TREE PIT HOOP RAILS INTO PLACE, TO A DEPTH WHERE THE TOP EDGE OF STEEL PLATES ARE FLUSH TO FINISHED GRADES, INCLUDING BACK FACE OF CURBS, EDGE OF SIDEWALKS, ASPHALT PAVERS, COBBLE/GRANITE BLOCK PAVERS, ETC. THE CONTRACTOR SHALL HAND EXCAVATE THE PIT PERIMETER AS NECESSARY TO FACILITATE THE FLUSH SETTING AND DOWEL ANCHORING.

3.8. ONCE THE TREE PIT HOOP RAILS ARE SET FLUSH AND DOWEL ANCHORED, THE CONTRACTOR SHALL HAND TAMP CORNER STAKES AND PERFORM THE FIELD WELDING SHOWN ON THE DETAILS. HAND TAMPING SHALL BE PERFORMED WITH CARE SO AS NOT TO DAMAGE NEW TREE PIT HOOP RAILS.

3.9. FIELD WELDS SHALL BE PAINTED AS PER SPECIFICATIONS OF SECTION 2.1.C.

3.10. UPON COMPLETION OF EACH TREE PIT HOOP RAIL INSTALLATION, THE CONTRACTOR SHALL RESTORE TREE PIT CONDITIONS TO THE SATISFACTION OF BPCPC. ANY DAMAGE TO THE NEW TREE PIT HOOP RAILS CAUSED BY THE CONTRACTOR'S OPERATIONS SHALL BE REPAIRED OR REPLACED BY THE CONTRACTOR AT NO ADDITIONAL COST TO BPCCA OR BPCPC.

PART 4 – MEASUREMENT

THE QUANTITY TO BE MEASURED FOR PAYMENT SHALL BE THE NUMBER OF LINEAR FEET OF TREE PIT HOOP 1" RAILS TO BE CONSTRUCTED AND INSTALLED. MEASUREMENT SHALL BE TAKEN ALONG THE TOP EDGE OF THE 1/2" X 4" STEEL PLATES.

PART 5 – PRICE TO COVER

THE CONTRACT PRICE PER LINEAR FOOT OF TREE PIT HOOP RAIL SHALL COVER:

1. THE COST OF ALL LABOR, MATERIALS AND EQUIPMENT REQUIRED TO CONSTRUCT AND INSTALL TREE PIT HOOP RAILS, INCLUDING REMOVAL AND DISPOSAL OF ALL INTERFERING MATTER (REGARDLESS OF ITS NATURE), HAND EXCAVATION, BACKFILLING, TREE PIT RESTORATION, IN FULL COMPLIANCE WITH THE REQUIREMENTS OF THE PLANS AND THESE SPECIFICATIONS OR AS DIRECTED BY BPCPC.
2. ALL LABOR, MATERIALS AND EQUIPMENT REQUIRED TO MAKE MINOR ADJUSTMENTS TO EXISTING TREE PIT OPENINGS AS NECESSARY AND/OR AS DIRECTED BY BPCPC.
3. REPAIR AND/OR RECONSTRUCTION OF EXISTING HARDSCAPES, INCLUDING CURBS (ALL TYPES), SIDEWALKS (ALL TYPES), AND PAVERS (ALL TYPES) DAMAGED AS A RESULT OF THE CONTRACTOR'S OPERATIONS.
4. MAINTENANCE AND PROTECTION OF PEDESTRIAN AND VEHICULAR TRAFFIC IN ACCORDANCE WITH NYCDOT REQUIREMENTS, AS NECESSARY.
5. OBTAINING ALL REQUIRED PERMITS.

TABLE 2: HOOP RAIL WIDTH (W) ADJUSTMENT GUIDELINES

WIDTH RANGE OF EXISTING PLANTING STRIPS	RECOMMENDED TREE PIT FINAL WIDTH (W) DIMENSION	TREE PIT HOOP RAIL FIELD ASSEMBLY REQUIREMENT
> 4'-10" TO < 5'-0"	SET WIDEST POSSIBLE BETWEEN BACK OF CURB AND FRONT EDGE OF SIDEWALK	COLD BEND FOR LARGEST (W) ***
= 5'-0"	SET W = 5'-0"	COLD BENDING NOT REQUIRED
> 5'-0" TO ≤ 5'-10"	SET WIDEST POSSIBLE BETWEEN BACK OF CURB AND FRONT EDGE OF SIDEWALK	COLD BEND TO FIT ***
> 5'-10" TO > 6'-0"	SET WIDEST POSSIBLE BETWEEN BACK OF CURB AND FRONT EDGE OF SIDEWALK	COLD BEND TO FIT ***
= 6'-0"	SET WIDEST POSSIBLE BETWEEN BACK OF CURB AND FRONT EDGE OF SIDEWALK	COLD BENDING NOT REQUIRED

* WIDTH OF PLANTING STRIP SHALL BE THE DISTANCE BETWEEN THE BACK FACE OF CURB AND FRONT EDGE OF SIDEWALK

** THE CONTRACTOR SHALL ADJUST TREE PIT WIDTHS TO LISTED MINIMUM DIMENSION ONLY WHEN A TREE PIT, SCHEDULED FOR HOOP RAIL TREATMENT, IS FLANKED BY COBBLE/GRANITE BLOCKS ALONG ONE OR BOTH SIDES. WIDTHS OF TREE PITS IMMEDIATELY FLANKED BY THE BACK FACE OF CURBS AND CONCRETE, BLUESTONE AND/OR ASPHALTIC CONCRETE SIDEWALK PAVERS SHALL NOT BE ADJUSTED.

*** ALL END HOOP RAILS AND CORNER HOOP RAILS SHALL BE COLD BENT SYMMETRICALLY PRIOR TO FIELD WELDING AND INSTALLATION

NOTE

THE CONTRACTOR SHALL RESPECT EXISTING SIZE AND LAYOUT WHERE REPAIRS ARE MADE TO AN EXISTING TREE PIT.

LENGTH (L) ADJUSTMENT GUIDELINE NOTES:

1. TREE PITS SCHEDULED FOR HOOP RAIL TREATMENT, FLANKED BY COBBLE/GRANITE BLOCKS AT BOTH ENDS AND WITH LENGTHS LESS THAN 5'-2" LONG SHALL BE MODIFIED BY THE CONTRACTOR TO HAVE A FINAL ADJUSTED LENGTH EQUAL TO THE MINIMUM DIMENSION (5'-2" LONG) SHOWN.

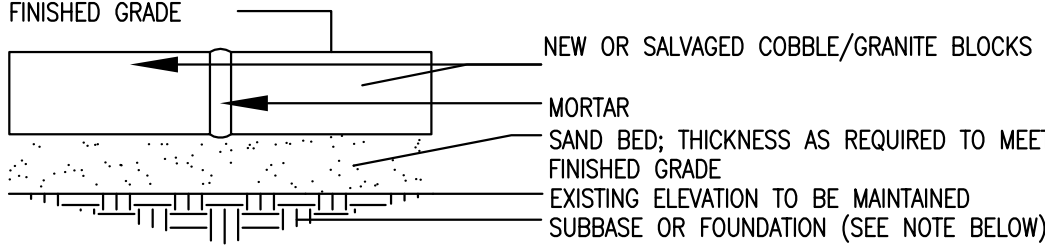
2. WHENEVER AN EXISTING TREE PIT IS LONGER THAN 5'-2", THE CONTRACTOR SHALL CONSULT WITH BPCPC'S CONSTRUCTION MANAGER PRIOR TO ADJUSTING THE PIT LENGTH TO THE MINIMUM L DIMENSION SHOWN. THE CONTRACTOR IS HEREIN ADVISED THAT THIS REDUCTION IN PIT LENGTH IS CONTINGENT ON THE EXISTING TREES' ROOT SYSTEM GROWTH/SPREAD, AND SHALL ONLY BE PERFORMED UPON APPROVAL BY BPCPC.

3. NEW COBBLE/GRANITE BLOCKS REQUIRED FOR ADJUSTING TREE PIT WIDTHS (W) AND LENGTHS (L) SHALL BE DEEMED INCLUDED IN THE CONTRACTOR'S BID PRICE.

4. CUTTING, SETTING AND/OR RESETTING OF EXISTING AND/OR NEW COBBLE/GRANITE BLOCKS SHALL BE DEEMED INCLUDED IN THE CONTRACTOR'S BID PRICE.

5. REMOVAL AND DISPOSAL OF EXISTING HOOP RAILS SHALL BE DEEMED INCLUDED IN CONTRACTOR'S BID PRICE

TYPICAL COBBLE/GRANITE BLOCK PAVER SECTION



NOTE: SUBBASE OR FOUNDATION MATERIAL SHALL BE FIELD VERIFIED BY THE CONTRACTOR AS EXISTING CONDITIONS MAY VARY. WORK REQUIRED IN ADJUSTING SUBBASE OR FOUNDATION HORIZONTAL LIMITS SHALL BE INCLUDED IN THE CONTRACTOR'S BID PRICE.

ALLOWANCE:

THE CONTRACTOR SHALL INCLUDE A LINE ITEM IN THE BID FOR \$10,000.00 FOR UNFORESEEN REPAIR WORK.

ABBREVIATIONS:

BPCCA	BATTERY PARK CITY AUTHORITY
BPCPC	BATTERY PARK CITY PARK CONSERVANCY
NIC	NOT IN CONTRACT
N.T.S.	NOT TO SCALE
V.I.F.	VERIFY IN FIELD



Consultants:



ENSIGN ENGINEERING, P.C.
1111 Calhoun Ave.
Bronx, N.Y. 10465

TEL: 718-863-5590 FAX: 718-863-6178
WWW.ENSIGNENGINEERING.COM

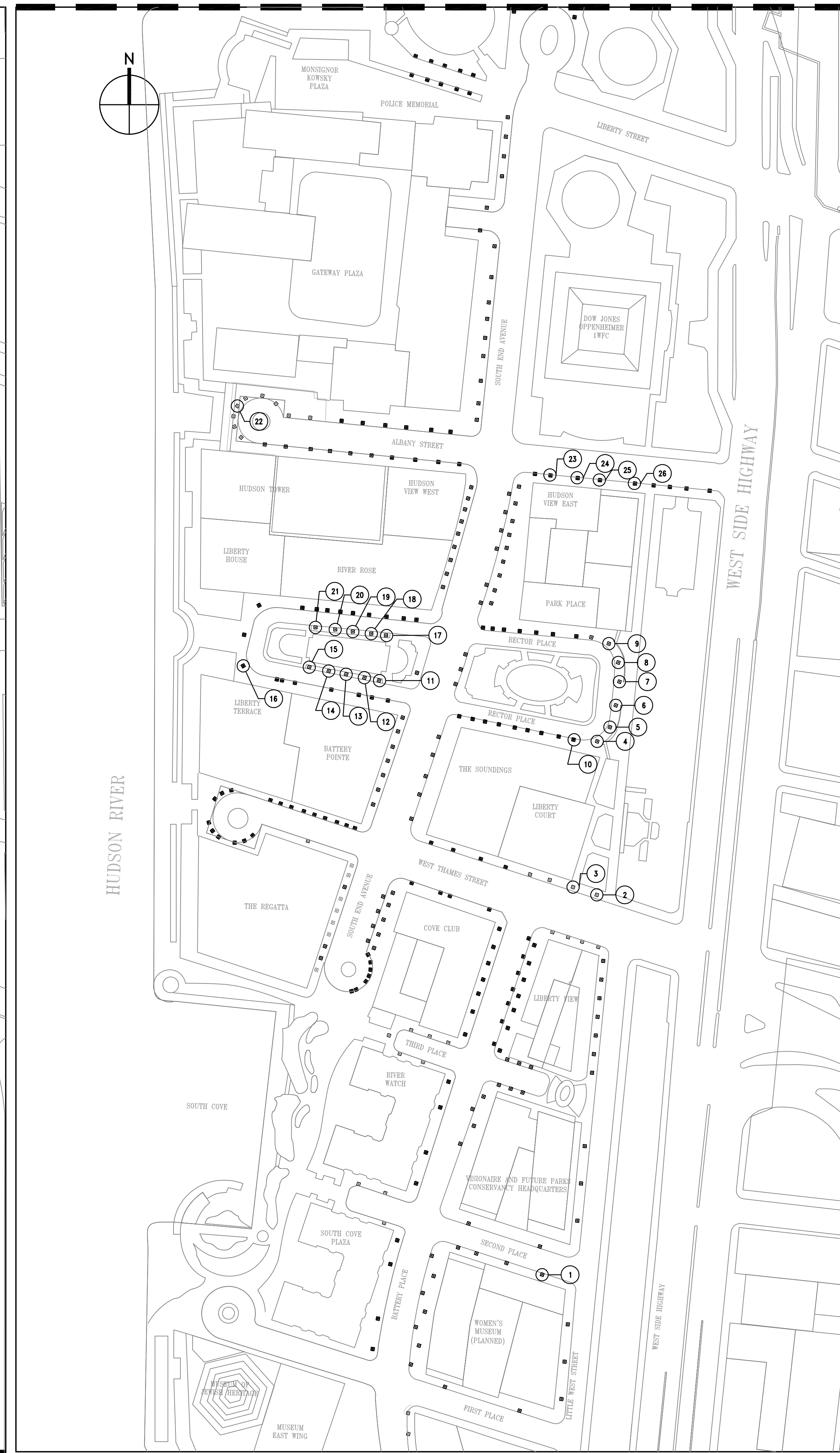
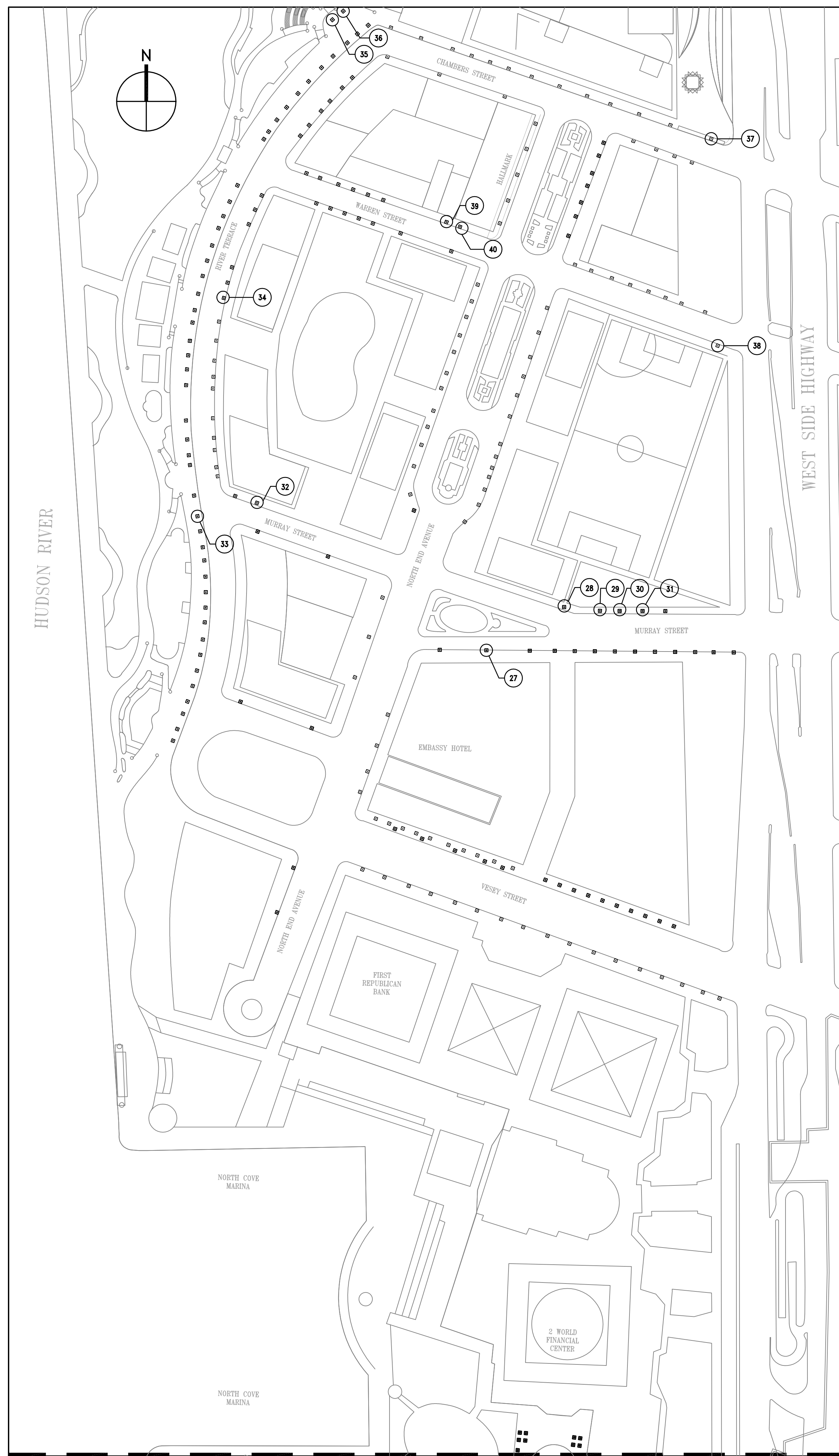
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No.	Date	Revision

No.	Date	Submittal
Key Plan: SHADED AREA = AREA OF WORK		

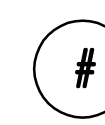
Project Engineer:		CARL J. CANNIZZARO, P.E.
Designer:		FRANCO MARCIANO
Drawn by:		ADRIAN S. WILLIAMS
Checked by:		CARL J. CANNIZZARO, P.E.
Design No. or LLW No.:	Facility Code:	Date:
—	N/A	09/28/15

Project: 2015 Hoop Rail Installation & Repairs Battery Park City Authority	
Address: MANHATTAN NEW YORK, NY	
Drawing Title: GENERAL NOTES AND SPECIFICATIONS	
Drawing No.: C002.00	
Sheets In Contract: 02 of 06	



LEGEND:

- EXISTING OR PROPOSED TREE PIT
HOOP RAILS



NEW HOOP RAIL INSTALLATION/EXISTING
TO BE REPAIRED;
SEE TABLE 1: HOOP RAIL
REPAIR/INSTALLATION SCHEDULE ON
C003.00.

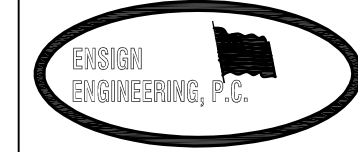
NOTES:

1. CONTRACTOR SHALL VERIFY ALL DIMENSIONS AND LOCATIONS SHOWN WITH BPCPC PRIOR TO START OF WORK.
2. SEE ADDITIONAL GENERAL NOTES AND SPECIFICATIONS ON C002.00.
3. SEE C006.00 FOR STANDARD HOOP RAIL DETAILS.



HUGH L. CAREY
BATTERY PARK
CITY AUTHORITY

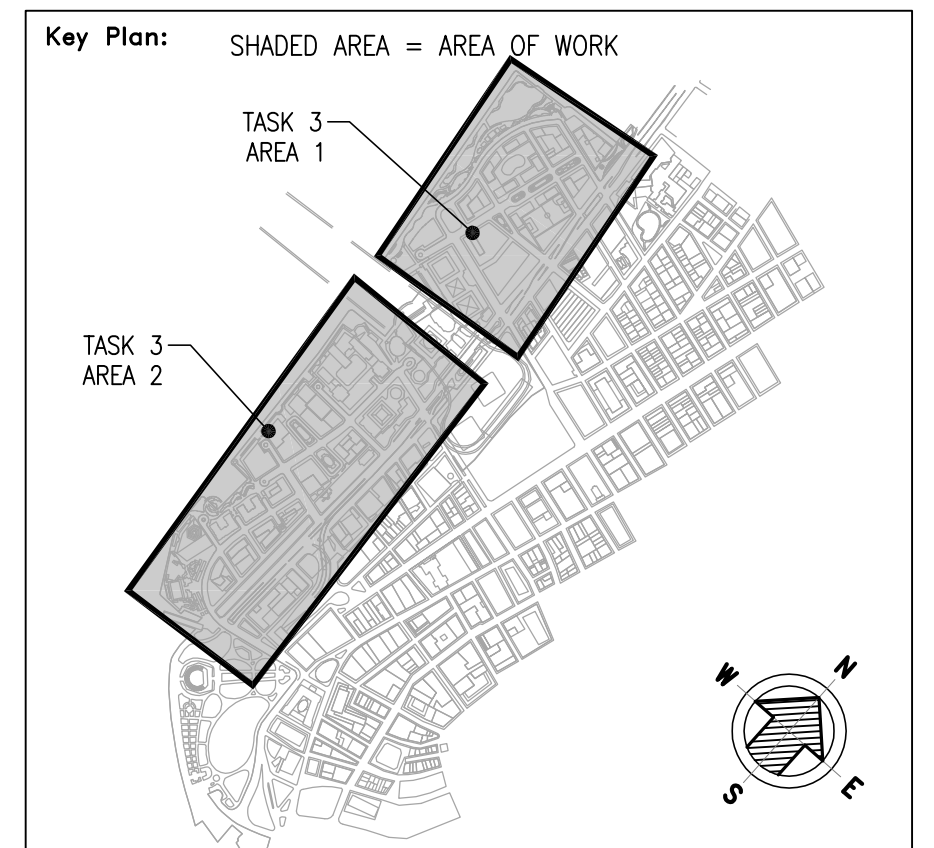
Consultants:



ENSIGN ENGINEERING, P.C.
1111 Calhoun Ave.
Bronx, N.Y. 10465

TEL. 718-863-5590 FAX. 718-863-6178
WWW.ENSIGNENGINEERING.COM

NOTE: Drawing may be printed at reduced scale. Refer to graphic scale.

[illegible]

Project Engineer:		CARL J. CANNIZZARO, P.E.
Designer:		FRANCO MARCIANO
Drawn by:		ADRIAN S. WILLIAMS
Checked by:		CARL J. CANNIZZARO, P.E.
Design No. or LLW No.:	Facility Code:	Date:
—	N/A	09/28/15

Project:	2015 Hoop Rail Installation & Repairs Battery Park City Authority
----------	--

Address: MANHATTAN
NEW YORK, NY

<p>Drawing Title:</p> <p>STANDARD HOOP RAILS & REPAIRS TREE PIT LOCATION PLAN</p>
--

Drawing No.:

C004.00

Sheets in Contract:
04 of 06

TREE PIT LOCATION NUMBER	CONTRACTOR'S TREE PIT FIELD DIMENSIONS		CONTRACTOR'S PROPOSED FINAL TREE PIT DIMENSIONS		TREE PIT WITHIN PLANTING STRIP (YES/NO)	TYPICAL TREE PIT ADJUSTMENT DETAIL TYPE*
	WIDTH (W) (FT/IN)	LENGTH (L) (FT/IN)	WIDTH (W) (FT/IN)	LENGTH (L) (FT/IN)		
01						
02						
03						
04						
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Diagram 1 illustrates two alternative methods for installing a curb around an existing tree. Both methods involve a curb with a 6-inch radius, indicated by a circle labeled '6' and 'C006'. The left method shows a curb with a 6-inch radius, requiring replacement of rails and edge plates and corner hoops. The right method shows a curb with a 6-inch radius, also requiring replacement of rails and edge plates and corner hoops. Both methods maintain the existing tree and the rails and edge plate.

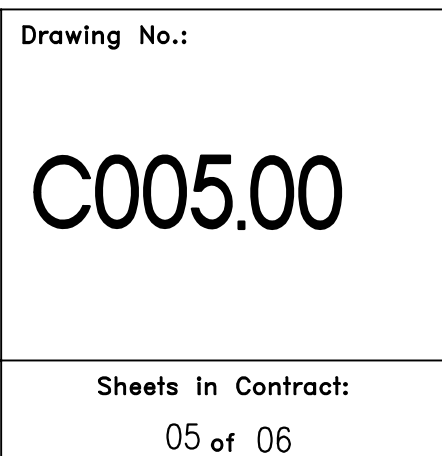
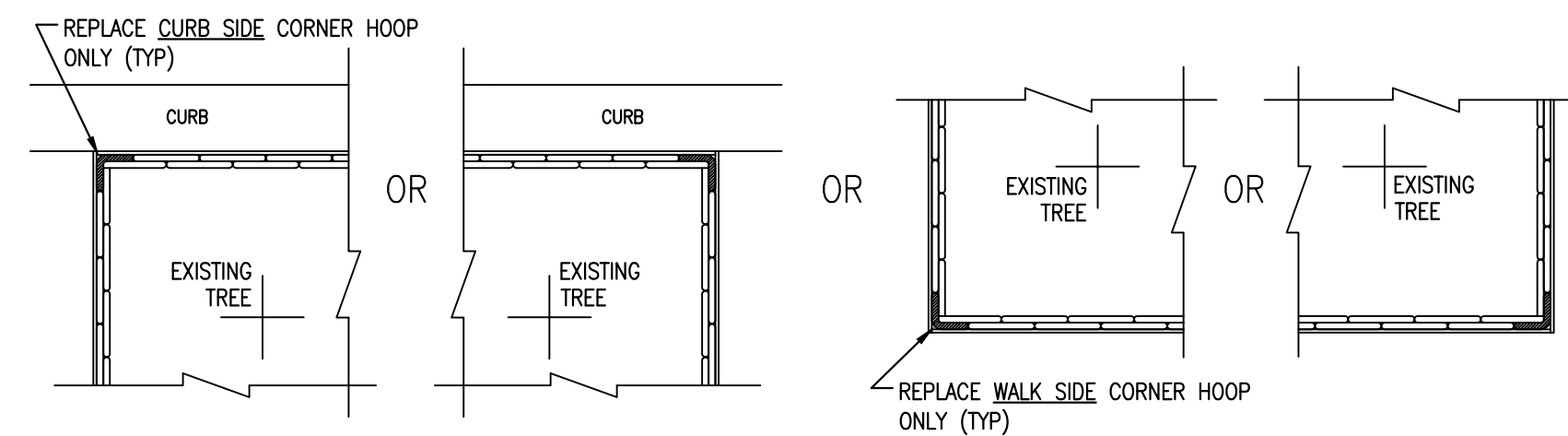
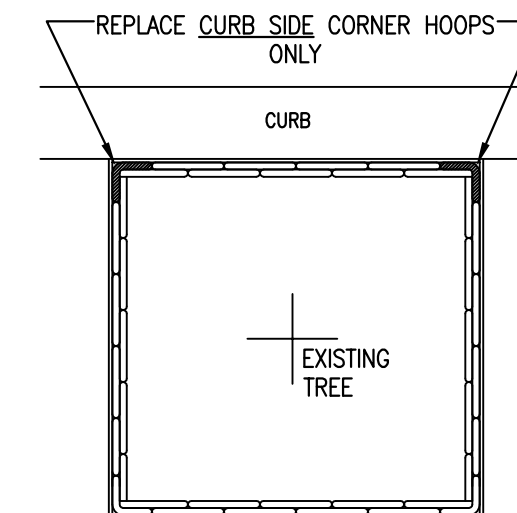
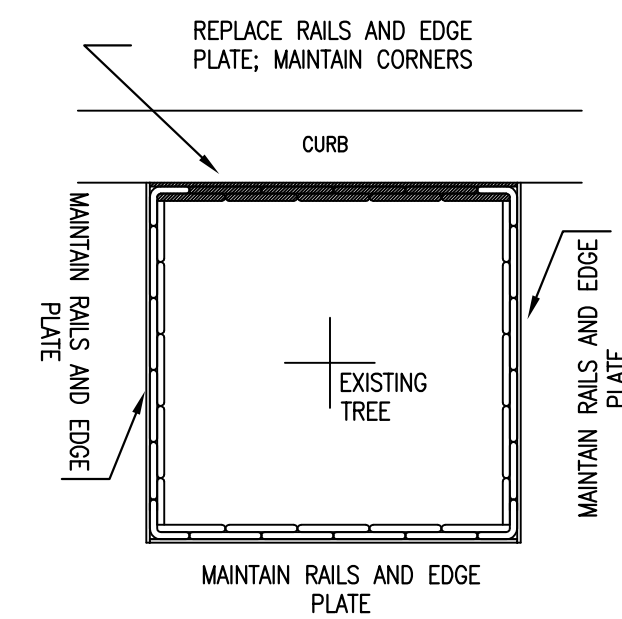


EXHIBIT H
BALLFIELD PLANTING AREA
DRAWINGS & SPECIFICATIONS

BATTERY PARK CITY AUTHORITY

REPAIR AT

MURRAY STREET BALL FIELD

CITY OF NEW YORK, BOROUGH OF

MANHATTAN



LOCATION MAP
N.T.S.

	LIST OF DRAWINGS	
DRAWING NO.	DESCRIPTION	SHEET NO.
C-01	COVER SHEET	1
C-02	ESTIMATE OF QUANTITIES	2
C-03	EXISTING PLAN & SECTION	3
C-04	PROJECT LIMITS	4
C-05	EXISTING AND PROPOSED CROSS SECTIONS	5

DESIGNED BY: M. GHALY, P.E.		DRAWN BY: M. GHALY, P.E.		CHECKED BY: DA		BATTERY PARK CITY AUTHORITY	
				REVISIONS		MURRAY STREET BALL FIELD	
						COVER SHEET	
						CITY OF NEW YORK, BOROUGH OF MANHATTAN	
						<div><div>KSE</div><div>KS ENGINEERS, P.C.</div></div>	
						Engineers • Surveyors • Construction Managers 65 Broadway, Suite 401, New York, N.Y., 10006 Phone: (212) 616-2657, Fax: (212) 616-3060	
SCALE: AS SHOWN		DATE: 07/06/2015		PROJECT NO.: 1637-TASK 4		SHEET NO.: 1 OF 5	
DIEGO ALAIMO PROFESSIONAL ENGINEER N.Y. LICENSE NO. 053085-1							

ESTIMATE OF QUANTITIES

<u>Project Item Number:</u>	<u>NYSDOT Item Number:</u>	<u>Item Description:</u>	<u>Unit:</u>	<u>Quantity</u> <u>:</u>	<u>Price \$</u> <u>per Unit:</u>	<u>Total \$</u> <u>per</u> <u>Item:</u>
1637/4-01	203.02	UNCLASSIFIED EXCAVATION AND DISPOSAL	C.Y.	30		
1637/4-02	608.0101	CONCRETE SIDEWALK AND DRIVEWAYS	C.Y.	3		
1637/4-03		REMOVAL AND DISPOSAL OF CHAIN LINK FENCE	L.F.	40		
1637/4-04	610.1403	TOP SOIL TYPE A	C.Y.	10		
1637/4-05	610.1403	TOP SOIL TYPE C	C.Y.	10		
1637/4-06	8304.11	SUB-BASE MATERIAL	C.Y.	10		
1637/4-07		FURNISH, DELIVER & INSTALL HOOP RAIL	L.F.	60		
1637/4-08	607.4101001	TEMPORARY PLASTIC BARRIER FENCE	L.F.	100		
1637/4-09	619.0101	WORK ZONE SAFETY CONTROL	L.S.	1		
1637/4-10	619.04	TYPE III CONSTRUCTION BARRICADES	L.F.	20		
1637/4-11		PRECONSTRUCTION SURVEY	L.S.	1		
1637/4-12	699.040001	MOBILIZATION	L.S.	1		
		Total Construction cost:				

SCOPE OF WORK - SITE RELATED

1. COMMENCE PRE-CONSTRUCTION SURVEY.
2. ERECT WORK ZONE SAFETY CONTROL DEVICES.
3. INSTALL TEMPORARY PLASTIC BARRIER FENCE.
4. INSTALL TYPE III CONSTRUCTION BARRICADES.
5. INSTALL TEMPORARY SILT FENCE.
6. EXCAVATE, COBBLESTONE, ASPHALT AND SAND UP TO 30” DEEP.
7. PLACE AND COMPACT 10” SUB-BASE MATERIAL SPECIFIED BY BPCA.
8. PLACE HOOP RAIL AROUND THE PERIMETER OF THE WORK AREA
9. PLACE AND COMPACT 10” SOIL C SPECIFIED BY BPCA.
10. PLACE AND COMPACT 10” SOIL A SPECIFIED BY BPCA.
11. EXCAVATE 4" OF SAND AND PLACE 4" OF CONCRETE SIDEWALK.
12. REMOVE TEMPORARY SILT FENCE, TEMPORARY PLASTIC BARRIER FENCE, TYPE III BARRICADES AND WORK ZONE SAFETY CONTROL DEVICES.

CONSTRUCTION SEQUENCE

GENERAL:

WORK REQUIRED:

THE CONTRACTOR SHALL NOT COMMENCE ANY WORK UNDER THE CONTRACT PRIOR TO SCHEDULING A PRE-CONSTRUCTION CONFERENCE AMONG THE CONTRACTOR, THE BPCA REPRESENTATIVES AND OTHER CONCERNED GOVERNMENTAL AND UTILITY COMPANY REPRESENTATIVES. AT THIS CONFERENCE ALL SPECIAL REQUIREMENTS, SCHEDULING AND DETAILS CONCERNING MAINTENANCE AND PROTECTION OF TRAFFIC WILL BE FULLY EXPLAINED AND DISCUSSED.

CHANGES, CONTINGENCIES,

EXTRA WORK AND DEDUCTIONS:

THE AUTHORITY RESERVES THE RIGHT, AT ANY TIME DURING THE PROGRESS OF THE WORK, TO ALTER THE PLANS OR OMIT ANY PORTION OF THE WORK AS IT MAY DEEM REASONABLY NECESSARY FOR THE PUBLIC INTEREST. MAKING ALLOWANCE FOR ADDITIONS AND DEDUCTIONS AT THE PRICES NAMED IN THE PROPOSAL FOR THE WORK, WITHOUT CONSTITUTING GROUNDS FOR CLAIM BY ARISING FROM DIFFERENCE BETWEEN ESTIMATED QUANTITIES AND THE ACTUAL QUANTITIES PLACED IN THE FINAL WORK.

SITE HOUSEKEEPING:

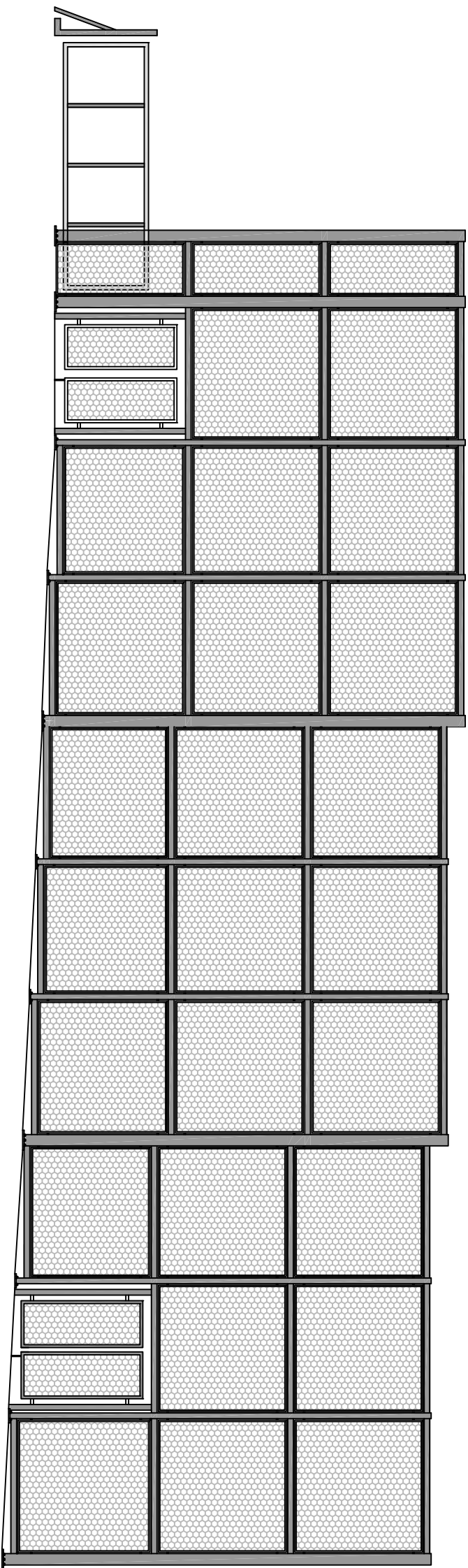
DURING PROGRESSION OF WORK, THE CONTRACTOR SHALL AT ALL TIMES, KEEP THE SITE AND ADJACENT PREMISES FREE FROM MATERIALS, DEBRIS AND RUBISH AND SHALL REMOVE THE AFOREMENTIONED FROM ANY PORTION OF THE SITE. IF IN THE OPINION OF THE BPCA, SUCH MATERIALS, DEBRIS, OR RUBBISH CONSTITUTES A NUISANCE OR IS OBJECTIONABLE.

THE CONTRACTOR SHALL REMOVE FROM THE SITE ALL OF THIS SURPLUS MATERIALS AND TEMPORARY STRUCTURES WHEN NO FURTHER NEED THEREFORE DEVELOPS AND SHALL RESTORE THE SITE TO A NEAT ORDERLY CONDITION.

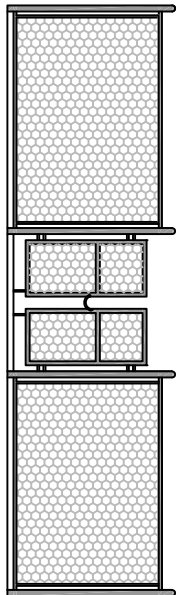
AT THE CONCLUSION OF THE WORK, ALL ERECTION PLANT, TOOLS, TEMPORARY STRUCTURES, AND MATERIALS, BELONGING TO THE CONTRACTOR SHALL BE PROMPTLY TAKEN AWAY, AND HE SHALL REMOVE AND PROMPTLY DISPOSE OF ALL WATER, DIRT, RUBBISH OR ANY OTHER FOREIGN SUBSTANCES.

AFTER COMPLETION OF THE WORK, UNDER THE CONTRACT, THE CONTRACTOR SHALL CLEAN AND REMOVE FROM ALL CATCH BASINS AND MANHOLES, WITHIN THE LIMITS OF THE CONTRACT, ALL MATERIALS AND DEBRIS DEPOSITED THEREIN AS DIRECT RESULT OF HIS OPERATIONS. NO SEPARATE PAYMENT WILL BE MADE FOR THIS WORK UNLESS SPECIFIC PAY ITEMS ARE INCLUDED IN THE CONTRACT.

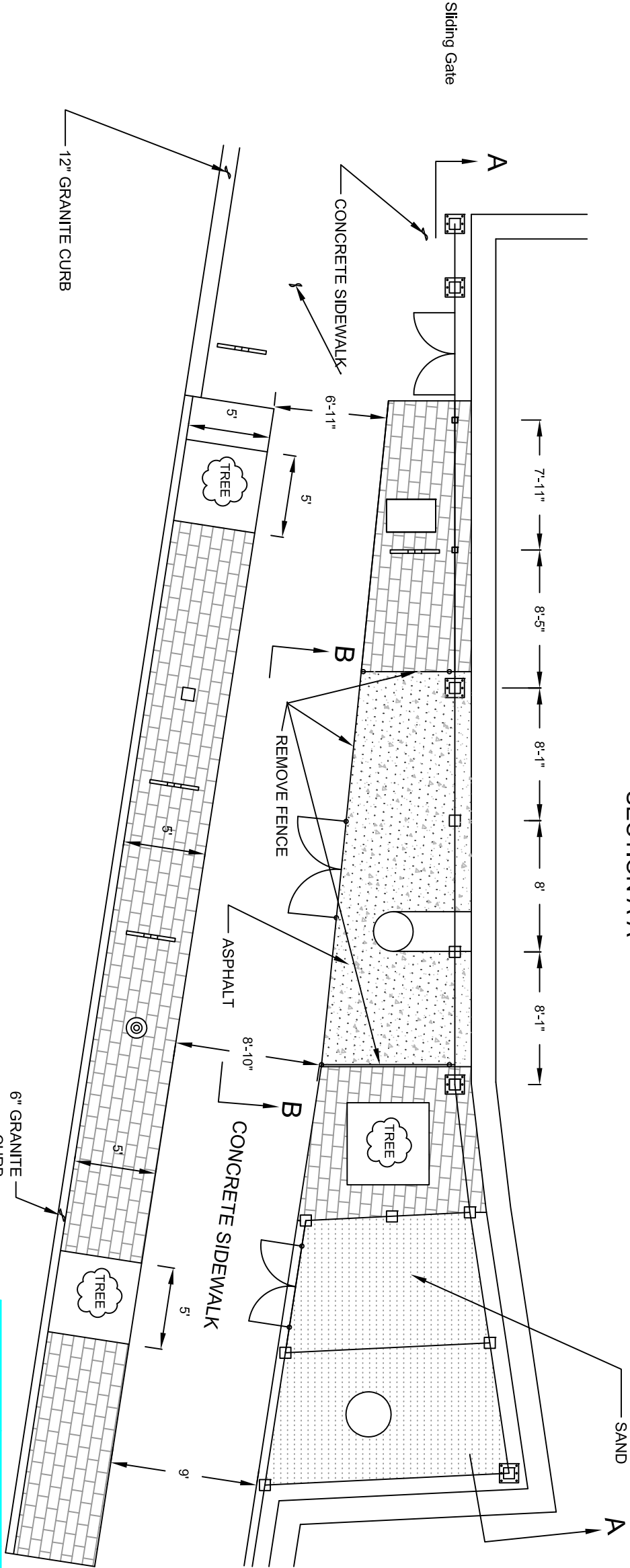
DESIGNED BY: M. GHALY, P.E.	DRAWN BY: M. GHALY, P.E.	CHECKED BY: DA	BATTERY PARK CITY AUTHORITY MURRAY STREET BALL FIELD		
		REVISIONS			
DIEGO ALAIMO PROFESSIONAL ENGINEER N.Y. LICENSE NO. 053085-1		SCALE: AS SHOWN	DATE: 07/09/2015	PROJECT NO.: 1637-7ASK 4	SHEET NO.: 2 OF 5
<div>ESTIMATE OF QUANTITIES CITY OF NEW YORK, BOROUGH OF MANHATTAN</div>			<div><div><div>KSE</div><div>KS ENGINEERS, P.C.</div></div><div>Engineers • Surveyors • Construction Managers 66 Broadway, Suite 401, New York, N.Y. 10006 Phone: (212) 616-2607, Fax: (212) 616-3060</div></div>		



ELEVATION
SECTION A-A



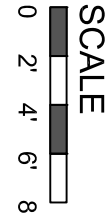
ELEVATION
SECTION B-B



LEGEND

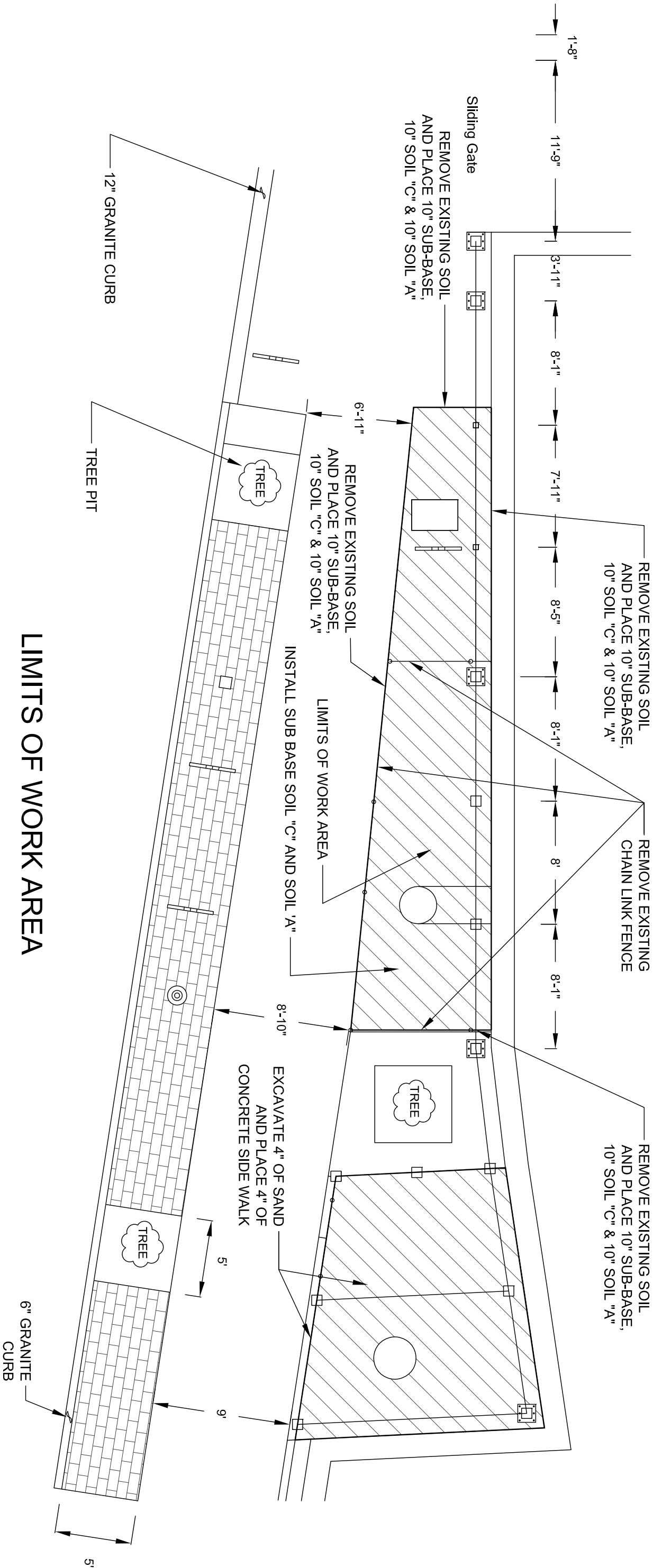
- BIKE RACK
- LIGHT POLE
- MANHOLE
- TREE PIT
- UTILITY BOX
- FDNY BOX
- COBBLESTONE
- POST BASE PLATE

MURRAY STREET BALL FIELD SITE PLAN

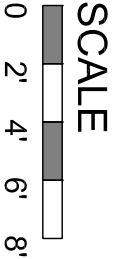


DESIGNED BY: M. GHALY, P.E.	DRAWN BY: M. GHALY, P.E.	CHECKED BY: DA	BATTERY PARK CITY AUTHORITY
		REVISIONS	MURRAY STREET BALL FIELD
			EXISTING PLAN & SECTION
			CITY OF NEW YORK, BOROUGH OF MANHATTAN
			KSE KS ENGINEERS, P.C.
			Engineers • Surveyors • Construction Managers 65 Broadway, Suite 401, New York, N.Y., 10006 Phone: (212) 616-2657, Fax: (212) 616-3060
SCALE: AS SHOWN		DATE: 07/06/2015	PROJECT NO.: 1637 - TASK 4
SHEET NO.: 3 of 5			

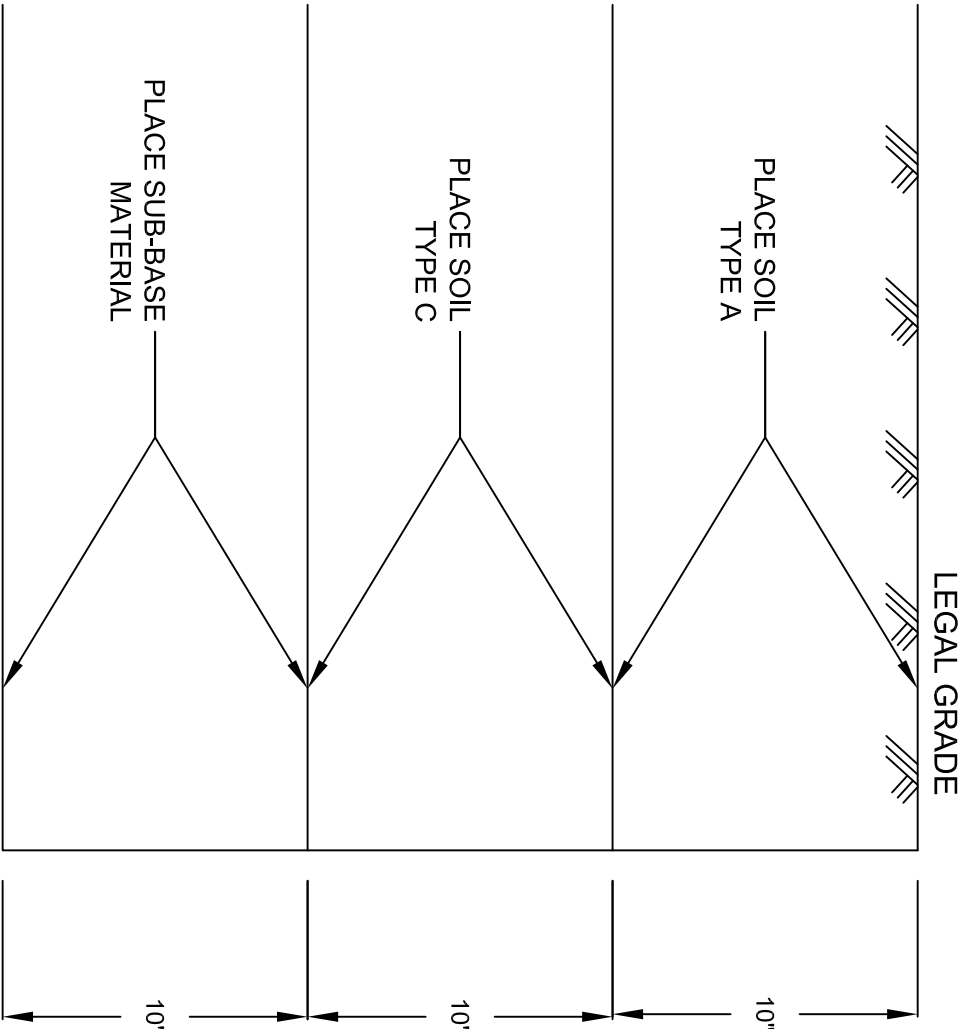
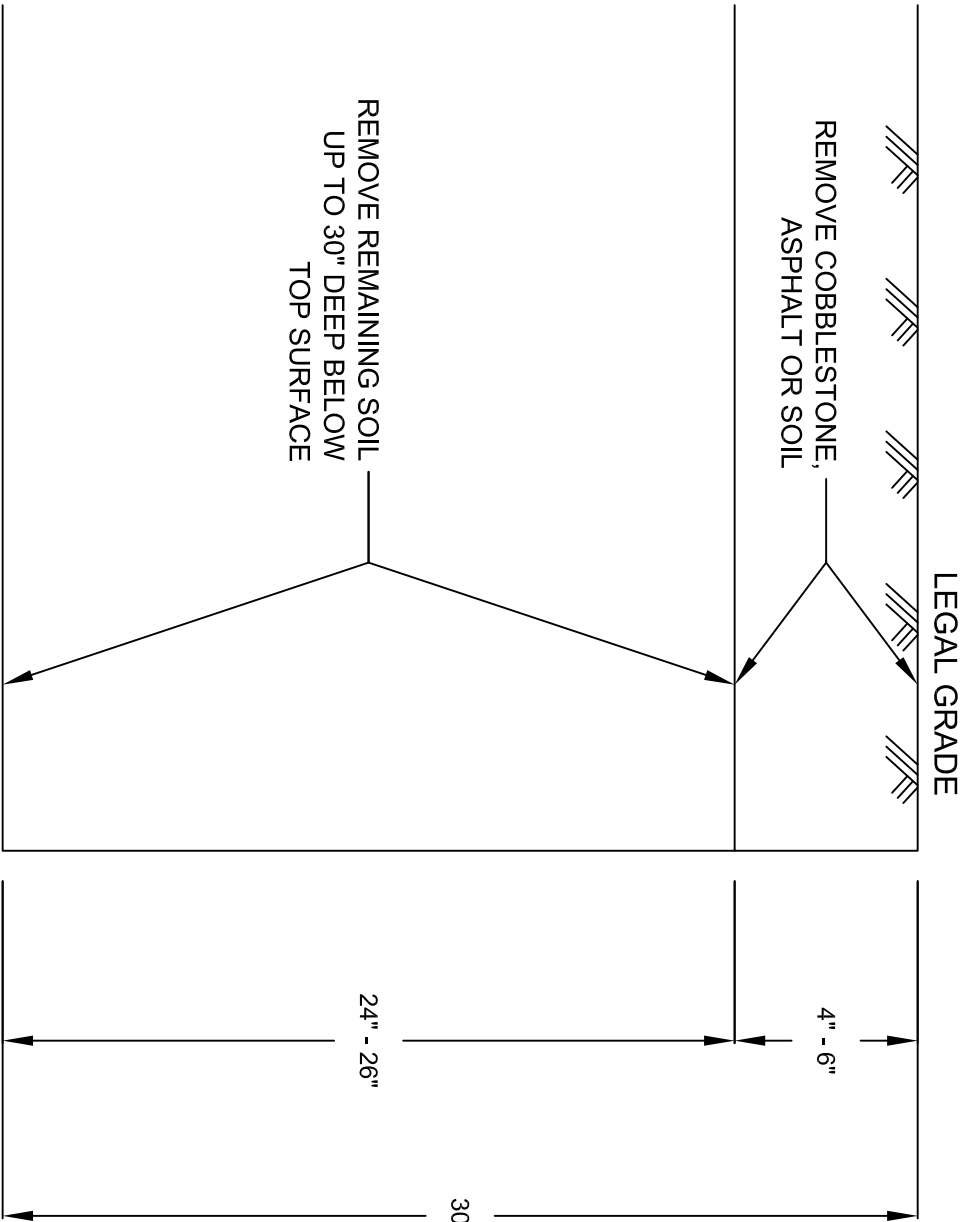
DIEGO ALAIMO
PROFESSIONAL ENGINEER
N.Y. LICENSE NO. 063085-1



LIMITS OF WORK AREA

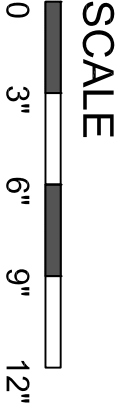


DESIGNED BY: M. GHALY, P.E.	DRAWN BY: M. GHALY, P.E.	CHECKED BY: DA	BATTERY PARK CITY AUTHORITY		
REVISIONS			MURRAY STREET BALL FIELD		
			PROJECT LIMITS		
			CITY OF NEW YORK, BOROUGH OF MANHATTAN		
			KSE		
			KS ENGINEERS, P.C.		
			Engineers • Surveyors • Construction Managers 66 Broadway, Suite 401, New York, N.Y. 10006 Phone: (212) 616-2667, Fax: (212) 616-3060		
SCALE: AS SHOWN			DATE: 07/06/2015	PROJECT NO.: 1637 - TASK 4	SHEET NO.: 4 of 5
DIEGO ALAIMO PROFESSIONAL ENGINEER N.Y. LICENSE NO. 053085-1					



EXISTING CONDITION CROSS SECTION

PROPOSED CROSS SECTION



DESIGNED BY: M. GHALY, P.E.		DRAWN BY: M. GHALY, P.E.		CHECKED BY: DA		BATTERY PARK CITY AUTHORITY					
<div>DIEGO ALAIMO</div> <div>PROFESSIONAL ENGINEER</div> <div>N.Y. LICENSE NO. 053085-1</div>		<div>REVISIONS</div>		<div>SCALE: AS SHOWN</div>		<div>DATE: 07/06/2015</div>		<div>PROJECT NO.: 1637 - TASK 4</div>		<div>SHEET NO.: 5 of 5</div>	
<div>EXISTING AND PROPOSED CROSS SECTIONS</div>						<div>CITY OF NEW YORK, BOROUGH OF MANHATTAN</div>					
<div>KSE</div> <div>KS ENGINEERS, P.C.</div>						<div>Engineers • Surveyors • Construction Managers</div> <div>65 Broadway, Suite 401, New York, N.Y., 10006</div> <div>Phone: (212) 616-2657, Fax: (212) 616-3060</div>					

Task # 4

BALLFIELD GARDEN ALONG MURRAY STREET

1.05 QUALITY ASSURANCE

A. Qualifications:

1. Agricultural Chemist/Soil Scientist: Experienced person or persons employed by public or private soils testing laboratory, qualified and capable of performing tests, making soil recommendations, and issuing reports as specified. The Testing Laboratory shall be as approved by the Battery Park City Parks Conservancy.

B. References:

1. Association of Official Agricultural Chemists.
2. American Society for Testing and Materials (ASTM) using test criteria as specified or required by other references.
3. Soil Science Society of America, Methods of Soil Analysis.

C. Pre-Installation Conferences: Person(s) responsible for soil preparation and mixes of this Section shall attend Pre-Installation Conference(s) to coordinate with work of other sections.

D. Inspections and Testing

1. Soil, leaf mold, mulch and other material testing and soil mix testing required in this Section or additionally required by Battery Park City Parks Conservancy, shall be furnished and paid for by Contractor.
2. BPCA/BPCPC reserves the right to take and analyze at any time such additional samples of materials as deemed necessary for verification of conformance to specification requirements. Contractor shall furnish samples for this purpose upon request and shall perform testing as requested.

1.06 REGULATORY REQUIREMENTS

A. Comply with all rules, regulations, laws and ordinances of local, state and federal authorities having jurisdiction. Provide labor, materials, equipment and services necessary to produce soil as per specification. Work shall comply with such requirements without additional cost to Owner.

B. Procure and pay for permits and licenses required for work of this section.

1.07 PROJECT/SITE CONDITIONS

- A. The Contractor shall be responsible for pedestrian and vehicular safety and control within the work site. He/she shall provide the necessary warning devices and ground personnel needed to give safety, warning and protection to persons and vehicular traffic within the area.
- B. During site preparation, soil installation and protection, the Contractor shall be responsible for all damage to existing features above and below ground (benches, utility lines, irrigation pipes, lampposts, path surfaces, existing vegetation) incurred as a result of work operations. Repairs and/or replacements shall be made to the satisfaction of the BPCA/BPCPC.
- C. Investigate the conditions of public thoroughfares and roads as to availability, clearances, loads, limits, restrictions, and other limitations affecting transportation to, ingress and egress of this work site. Conform to all government regulations in regard to the transportation of materials to, from, and at the job site, and secure in advance such permits as may be necessary.
- D. Should the Contractor, in the course of Work, find any discrepancies between Contract Drawings and physical conditions or any omissions or errors in Drawings, or in layout as furnished by the Owner, it will be Contractor's duty to inform the BPCA/BPCPC immediately in writing for clarification. Work done after such discover, unless authorized by BPCA/BPCPC, shall be done at the Contractor's risk.
- E. Environmental Requirements for Soils:
 - 1. Perform both off-site mixing and on-site soil work only during suitable weather conditions. Do not work soil when frozen, excessively wet (maximum 18% moisture) or in otherwise unsatisfactory condition.
 - 2. Soil mixes shall not be handled, hauled or placed during rain or wet weather or when near or above the point where maximum compaction will occur (as defined by BPCA/BPCPC).
- F. Environmental Requirements for Soil: Sequencing and Scheduling: Adjust, relate together and otherwise coordinate work of this Section with work or Project and all other Sections of Project Specifications.

1.08 PRODUCT DELIVERY, STORAGE AND HANDLING

- A. Packaged Materials: Deliver packaged materials to the location where soils are to be mixed, in unopened bags or containers, each clearly bearing the name, guarantee, and trademark of the producer, material composition, manufacturers' certified analysis, and the weight of the material. Retain packages for BPCA/BPCPC.
- B. Soil or amendment materials stored on site temporarily in stockpiles prior to placement shall be protected from intrusion of contaminants and erosion. All temporary storage means and methods shall be approved by BPCA/BPCPC.

- C. Store and handle packaged materials in strict compliance with manufacturer's instructions and recommendations. Protect all materials from weather, damage, injury and theft.
- D. In addition, the following provision is established: Material should not be handled or hauled, placed or compacted when it is wet as after a heavy rainfall or is frozen. Soil should be handled only when the moisture content is less than the point where maximum compaction will occur (as defined by BPCA/BPCPC).
- E. After mixing, soil materials shall be covered with a tarpaulin until time of actual use and protected from contamination or erosion.

2.02 SOIL MIX MATERIALS

A. General

- 1. All soil mix material shall fulfill the requirements for new soil mixes as specified.
- 2. Samples of individual components of soil mixes and also blended soil mixes shall be submitted by the Contractor for testing and analysis to the approved testing laboratory. Include verification testing of on-site sub soils. Comply with specific materials requirements specified.
 - a. No base component or soil components for soil mixes shall be used until certified test reports by an approved agricultural chemist have been received and approved by the BPCA/BPCPC.
 - b. As necessary, make any and all soil mix amendments and resubmit tests reports indicating amendments until approved.
- 3. The BPCA/BPCPC may request additional testing by Contractor for confirmation of mix quality and/or soil mix amendments at any time until completion.
- 4. Base Component Material shall be a sand that meets the requirements outlined below mixed by volume with loam material that meets the requirements outlined below. Base component materials shall not be site salvaged and must be off-site borrow material.
- 5. Test Base Component Materials, both individual components and mixed materials, for compliance with material specifications. These test criteria and results, when approved, shall establish the standard to which all subsequent Base Component Material tests must conform.
- 6. Prior to mixing Base Component Material with organic matter (leaf mold or yard waste compost), have one (1) composite sample tested from each 50 c.y. of material intended for use in soil mixes of planting work.

7. Sand for Base Component Material shall meet the following requirements:

a. Texture:

<u>Sand Fraction</u>	<u>Size (mm)</u>	<u>Sieve Size</u>	<u>% Passing</u>
Gravel	> 2.0	#10	95 – 100%
Very coarse sand	1.0 – 2.0	#18	90 – 100%
Coarse sand	0.5 – 1.0	#35	65 – 75%
Medium sand	0.25 – 0.5	#60	15 – 20%
Fine sand	0.1 – 0.25	#140	0 – 4%
Very fine sand	0.05 – 0.1	#270	0 – 2%

b. Chemical Analysis:

- 1) Soil reaction (pH) - $5.0 - 6.5 \pm 0.5$
- 2) Soluble salt content (Conductivity) - $< 1.5 \text{ dSm}^{-1}$

c. Material shall have a saturated hydraulic conductivity rate of no less than 30 inches per hour, per ASTM 1815.

8. Loam for Base Component Material shall meet the following requirements:

a. Soil Texture per ASTM D422 or ASTM F1632, as determined on material passing a 2 mm screen:

<u>Main Fractions</u>	<u>Size (mm)</u>	<u>Percent</u>
Sand	0.05-2.0	83 - 87
Silt	0.002-0.05	7 - 10
Clay	<0.002	4 – 8

In addition, maximum size shall be $\frac{1}{2}$ ", the total gravel ($> 2 \text{ mm}$) shall be less than 10% of the total material, and the sand passing the 2 mm screen shall have the following particle size distribution:

<u>Sand Fraction</u>	<u>Size (mm)</u>	<u>Sieve Size</u>	<u>% Passing</u>
Very coarse	1.0 – 2.0	#18	87-90
Coarse	0.5 – 1.0	#35	65-71
Medium	0.25 – 0.5	#60	34-42
Fine	0.10 – 0.25	#140	17-23
Very fine	0.05 – 0.10	#270	14-18

b. Chemical Analysis:

- 1) Organic matter content (%) oven dry weight of soil shall be within the range of 4 to 10%.
- 2) Soil reaction (pH) - 6.0 ± 0.5

3) Soluble salt content (Conductivity) - $< 1.5 \text{ dSm}^{-1}$

9. Before base sand-loam mix (base component) is used for mixing with organic amendments, handle and pile the mix in the following manner:

- a. Mix the base sand with base loam in a ratio of 3 parts sand to 1 part loam. Adjustments to the ratio may have to be made to meet the specifications for the base component. Homogenize to make a uniform mix, free of subsoil lenses and other irregularities.
- b. Aerate the base component to make a friable planting medium.
- c. Screen out all clay lumps, stones, roots, and other debris.

10. Material Requirements, Base Component Mix: The final mix of sand and loam materials shall substantially conform to the following:

- a. Soil Texture per ASTM D422 or ASTM F1632, as determined on material passing a 2 mm screen:

<u>Main Fractions</u>	<u>Size (mm)</u>	<u>Percent</u>
Sand	0.05-2.0	95.0
Silt	0.002-0.05	3.0
Clay	<0.002	<u>2.0</u>

In addition, maximum size shall be $\frac{1}{2}$ ", the total gravel ($> 2 \text{ mm}$) shall be less than 5% of the total material, and the sand passing the 2 mm screen shall have the following particle size distribution:

<u>Sand Fraction</u>	<u>Size (mm)</u>	<u>Sieve Size</u>	<u>% Passing</u>
Very coarse sand	1.00	#18	92-95
Coarse sand	0.50	#35	67-73
Medium sand	0.25	#60	20-26
Fine sand	0.10	#140	5-9
Very fine sand	0.05	#270	5

b. Chemical Analysis:

- 1) Organic matter content (%) oven dry weight of soil: 1- 4%
- 2) Soil reaction (pH): 6 - 7
- 3) Soluble salt content (Conductivity) - $< 1.5 \text{ dSm}^{-1}$

c. Saturated hydraulic conductivity of no less than 15 inches per hour per ASTM 1815.

B. Organic Matter: Organic matter for amending planting media shall be a stable, material produced from the aerobic decomposition and curing of yard wastes. The compost shall meet the following criteria

1) Organic matter content of no less than 40% as determined by ASTM 2974

2) Moisture content of 35 to 70% as determined by ASTM D2974.

3) Carbon to nitrogen ratio of 15:1 to 30:1

4) Soluble salts not exceeding 4 dSm⁻¹

5) Solvita Maturity Index 6 to 8

6) 95 – 100% passing a 3/8" screen

7) pH 6 to 7.5

8) Biological Organisms: The compost shall have the following levels of organisms (direct microscopy). Refer to Article 1.04 E.15 for testing and sampling requirements.

· 15 to 25 or more µg active bacteria /g dry weight (dw) compost

· 100 µg (fungal compost) to 300 or more µg (bacterial compost) total bacteria /g dw compost

· 15 to 25 µg or more active fungi /g dw compost

· 100 to 300 µg total fungal biomass /g dw compost

· 10,000 or more flagellates

· 10,000 or more amoebae

· 50 - 100 ciliates.

· 20 – 30 Total nematodes (No root feeding nematodes)

C. Nutrient Analysis:

1. Ammonium(NH₄) and Nitrate (NO₃): below 100 ppm

2. Phosphorous

3. Potassium

4. Calcium (Ca), Magnesium (Mg): ratio of 7 part Ca to 1 part Mg

5. Iron (Fe) 1 to 4 ppm

6. Manganese (Mn) 3 to 20 ppm

7. Zinc (Zn) 0.1 to 70 ppm

8. Copper (Cu) 0.3 to 8 ppm

2.03 PLANTING SOIL MIXES

A. Adequate quantities of mixed planting soil materials shall be provided to attain, after compaction and natural settlement, all design finish grades.

B. Uniformly mix ingredients using a mechanical soil blender designed for such purpose as specified for each Mix Type (Base Component Material, compost, and other ingredients deemed to be necessary as a result of testing). Wind rowing/tilling on an

approved hard surface area may also be used as an alternative. Organic matter shall be maintained moist, not wet during mixing.

1. **Mixing of Amendments:** Add organic amendment in proportions as specified and as confirmed by testing. Other amendments shall not be added unless approved to extent and quantity by Battery Park City Parks Conservancy and additional tests have been conducted to verify type and quantity of amendment is acceptable.

C. Testing of Plant Mixes:

1. Perform initial tests to confirm compliance with base material and mix specifications. These test results, when approved, will establish the standard to which all other test results must conform.
2. **Follow-up Testing:** Have one (1) composite sample delivery and upon arrival to the site from each 500 c.y. or as required by BPCA/BPCPC for use in each type plant mix to include the following:
 - a. **Particle size analysis:** Use sieve sizes as specified for Base Component Material.
 - b. **Organic matter content** as per mix specified.
 - c. **Nutrient Analysis:**
 - 1) Have nutrient levels (pH, Cation Exchange Capacity, ammonium nitrogen, nitrate nitrogen, nitrite nitrogen, phosphorus, potassium, magnesium, calcium, magnesium, zinc, iron, copper, and manganese) tested,. Soluble salts shall also be tested.
 - 2) Contractor shall not use amendments to correct nutrient deficiencies.
 - d. **Biological Organisms:** The mixes shall have the following levels of organisms (direct microscopy). Refer to Article 1.04 E.15 for testing and sampling requirements. Mix shall have microbiological populations as listed below. Acceptance or rejection of mixes based on these test values will be determined by Battery Park City Parks Conservancy.

Plant Material	Active Bacterial Biomass (ug/g)	Total Bacterial Biomass (ug/g)	Active Fungal Biomass (ug/g)	Total Fungal Biomass (ug/g)	Hyphal Diameter (ug/g)	Protozoa Numbers/g			Total Beneficia Nematod Numbers (#/g)
						Flagellates	Amoebae	Ciliates	
Plants	15-25	100-300	15-25	100-300	3.0	10,000	10,000	50-100	20-30

- D. Soil Mix Types: Provide the following planting soil mix types at the locations indicated on plan. Percentages of components, unless otherwise noted, will be established upon completion of individual test results for components of the various mixes. The controlling factor will be the percent (%) organic matter as specified for each mix. Note that percent (%) by volume of components will be, in large part, determined by the compost. Specifically the bulk density of the compost will directly impact the organic matter readings that have been specified for each mix.
1. Soil A (Upper Root Zone): Organic Component shall be mixed with the Base Component (sand-loam) mix at a rate necessary to provide an organic matter content of 4-6% by weight, as determined by ASTM F1647. pH shall be 6.5 to 7.0, Cation Exchange Capacity will be 10 or above, and there will be 100 to 150 lbs available Nitrogen per acre natural nutrient cycling capacity from microbial activity.
 2. Soil C (Lower Root Zone): Organic Component shall be mixed with the Base Component (sand-loam) mix at a rate necessary to provide an organic matter content of 2-4% by weight, as determined by ASTM F1647. pH shall be 6.5 to 7.0

EXHIBIT I
BELVEDERE RAIL
DRAWINGS & SPECIFICATIONS

BATTERY PARK CITY AUTHORITY

BELVEDERE PARK RAILING

BATTERY PARK CITY NORTH COVE

NEW YORK, NEW YORK



Consultants:

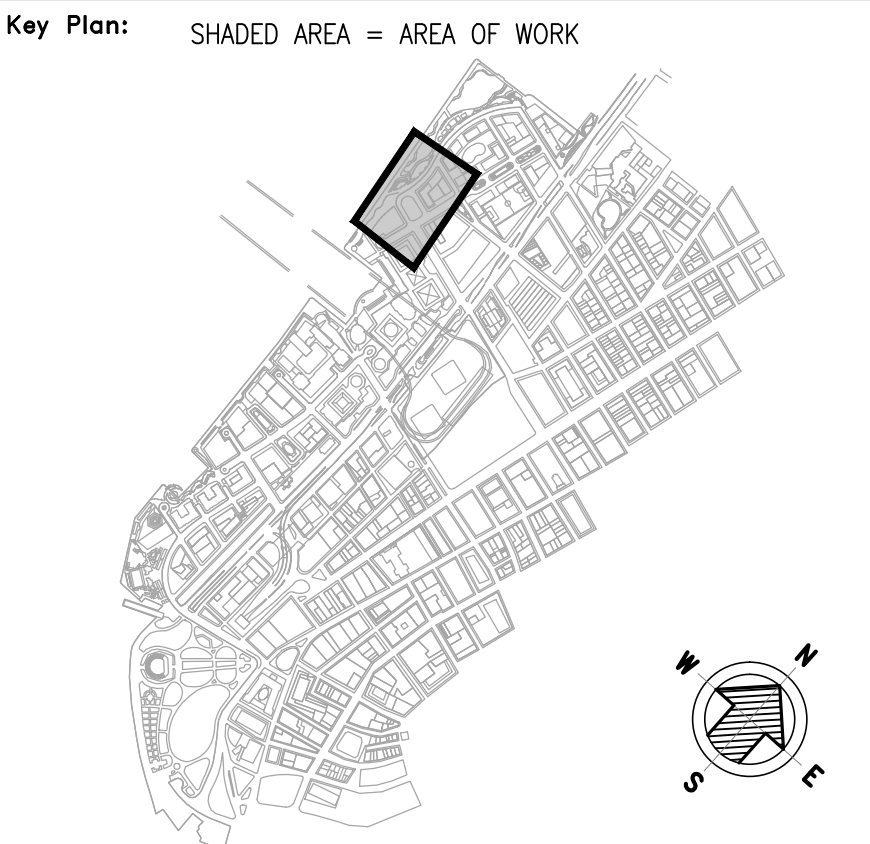
 ENSIGN ENGINEERING, P.C.
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WWW.ENSIGNENGINEERING.COM

NOTE: Drawing may be
printed at reduced scale.
Refer to graphic scale.

No.	Date	Revision

No.	Date	Submittal
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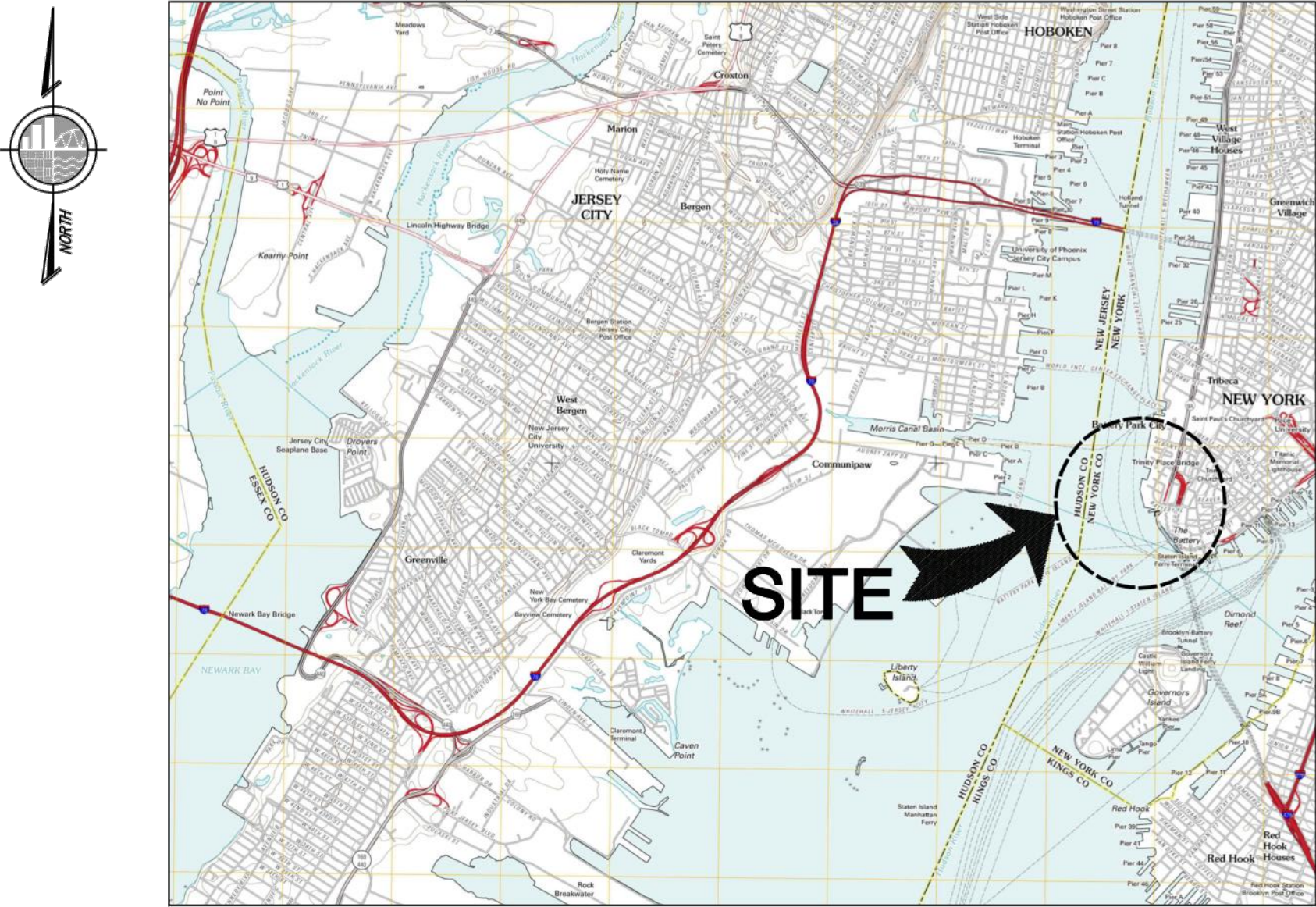
Project Engineer:	CARL J. CANNIZZARO, P.E.	
Designer:	FRANCO MARCIANO	
Drawn by:	RALPH LIZ	
Checked by:	CARL J. CANNIZZARO, P.E.	
Design No. or LLW No.:	Facility Code:	Date:
—	N/A	09/28/15

Project: Planter Hoop Installation
Belvedere Park
Battery Park City Authority
Address: MANHATTAN
NEW YORK, NY

Drawing Title:
TITLE SHEET

Drawing No.:
C001.00

Sheets in Contract:
01 of 04



LOCATION PLAN
N.T.S.

LIST OF DRAWINGS	
DRAWING #	DESCRIPTION
C001.00	TITLE SHEET
C002.00	GENERAL NOTES AND SPECIFICATIONS
C003.00	PLANTER RAILING LAYOUT PLAN
C004.00	STANDARD HOOP RAIL DETAILS



VICINITY MAP
N.T.S.

GENERAL CONSTRUCTION NOTES:

1. ALL WORK SHALL CONFORM WITH ALL FEDERAL, STATE COUNTY, OR LOCAL CODES HAVING JURISDICTION OVER SUCH WORK. ANY DISCREPANCY SHALL BE BROUGHT TO THE ATTENTION OF THE ENGINEER BEFORE PROCEEDING WITH THAT PORTION OF THE WORK.
2. CONTRACTOR IS SOLELY RESPONSIBLE FOR MEANS, METHODS AND SAFETY OF WORK.
3. DIMENSIONS SHOWN ON THESE CONTRACT PLANS HAVE BEEN OBTAINED FROM LIMITED FIELD SURVEY AND MAY NOT ACCURATELY REFLECT PRESENT FIELD CONDITIONS. ACCORDINGLY, THE CONTRACTOR WILL BE RESPONSIBLE FOR MAKING FIELD MEASUREMENTS OF ALL EXISTING STRUCTURES IMPACTED BY THE PROJECT TO ASSURE CONSISTENCY WITH THE PROPOSED CONSTRUCTION PLANS; THAT IS, THE CONTRACTOR SHALL FIELD VERIFY ACTUAL CONDITIONS, DIMENSIONS, CLEARANCES, ELEVATIONS AND OTHER INFORMATION INDICATED IN THE DOCUMENTS PRIOR TO ORDERING ANY MATERIALS, COMMENCING ANY FABRICATIONS OR PERFORMING ANY WORK. THE CONTRACTOR SHALL NOTIFY THE OWNERS REPRESENTATIVE OF ANY FIELD CONDITIONS WHICH MAY DIFFER FROM THAT REPRESENTED PRIOR TO COMMENCING WORK.
4. PRIOR TO COMMENCING ANY WORK, THE CONTRACTOR SHALL SCHEDULE AND COORDINATE ALL WORK THROUGH THE OWNER'S REPRESENTATIVE AND ANY OTHER OCCUPYING TENANT WHO WILL BE AFFECTED BY CONSTRUCTION OPERATIONS. THE CONTRACTOR SHALL COORDINATE THE WORK SO AS TO MINIMIZE INTERRUPTIONS IN FACILITY OPERATIONS. (ACCESS AND EGRESS)
5. THE CONTRACTOR SHALL COMPLY WITH ALL APPLICABLE OSHA REGULATIONS AND SAFETY PROCEDURES TO ENSURE PERSONNEL HEALTH AND SAFETY. THE CONTRACTOR MUST MAINTAIN A SAFE AND CLEAN WORKING ENVIRONMENT AND SHALL ASSURE PROPER PERSONAL PROTECTIVE EQUIPMENT AT ALL TIMES. IN AREAS WHERE PEDESTRIAN AND/OR VEHICULAR TRAFFIC MAY BE AFFECTED BY THE WORK, THE CONTRACTOR SHALL CORDON OFF THE WORK AREA.
6. THE CONTRACTOR SHALL EXERCISE EXTREME CARE TO PREVENT DAMAGE TO EXISTING STRUCTURES BY OR AS A RESULT OF HIS OPERATIONS. ANY DAMAGE RESULTING FROM THE CONTRACTOR'S OPERATIONS SHALL BE REPAIRED AS DIRECTED BY THE OWNER'S REPRESENTATIVE AT NO ADDITIONAL COST.
7. ALL DEBRIS AS A RESULT OF OR IN THE IMMEDIATE VICINITY OF THE WORK SHALL BE RECOVERED AND PROPERLY DISPOSED OF BY THE CONTRACTOR AT NO ADDITIONAL COST.
8. ALL WORK SHALL BE COORDINATED WITH ARCHITECTURAL AND ENGINEERING DRAWINGS. CONFLICTS IN DIMENSIONS AND INTERFERENCES SHALL BE DIRECTED TO ENGINEER OF RECORD PRIOR TO CONSTRUCTION OF WORK.

SUBMITTALS:

THE CONTRACTOR SHALL SUPPLY ALL SUBMITTALS STATED BELOW:

1. SHOP DRAWINGS/ERECTION DRAWINGS.
2. PRODUCT DATA.
3. THREE (3) 6" SAMPLES OF PAINTED HOOP RAILING FOR OWNER'S APPROVAL.
4. ALL NECESSARY CERTIFICATES.
5. CONSTRUCTION SCHEDULE SHALL BE SUBMITTED WITHIN 5 DAYS OF THE CONTRACT BEING AWARDED.
6. ONE (1) SAMPLE CONNECTION FOR OWNER'S APPROVAL.
7. WELDING CERTIFICATES & PROCEDURES

SCOPE OF WORK:

THE SCOPE OF WORK OF THIS PACKAGE SHALL INCLUDE FURNISHING ALL LABOR, MATERIALS, EQUIPMENT AND SERVICE NECESSARY TO COMPLETELY FURNISH, FABRICATE, TRANSPORT AND INSTALL THE ITEMS SHOWN ON THE CONTRACT DRAWINGS AND SPECIFIED HEREIN. THE BASIC SCOPE OF WORK INCLUDES, BUT IS NOT LIMITED TO, THE FOLLOWING ITEMS:

1. MOBILIZATION TO THE SITE.
2. FURNISH AND INSTALL HOOP RAILS AROUND PLANTER BEDS IN PROJECT LOCATION ACCORDING TO CONTRACT DRAWINGS.
3. DEMOLITION AND AUTHORIZED DISPOSAL OF COMPONENTS ASSOCIATED WITH INSTALLATION.

QUALITY ASSURANCE:

1. THE CONTRACTOR SHALL QUALIFY WELDING PROCESSES AND WELDING OPERATORS IN ACCORDANCE WITH THE APPLICABLE AWS WELDING CODE AND SHALL PROVIDE CERTIFICATION THAT WELDERS TO BE EMPLOYED IN THE WORK HAVE SATISFACTORILY PASSED AWS QUALIFICATION TESTS. WRITTEN WELDING PROCEDURES DEMONSTRATING COMPLIANCE WITH THE AWS REQUIREMENTS SHALL BE SUBMITTED TO THE ENGINEER.
2. THE CONTRACTOR SHALL HAVE SOLE RESPONSIBILITY FOR COORDINATING THE WORK TO ASSURE THAT ALL TESTING AND INSPECTION PROCEDURES REQUIRED BY THE ENGINEER ARE PROPERLY PROVIDED.
3. MATERIALS WILL NOT BE ACCEPTED WHICH CANNOT BE IDENTIFIED WITH APPROPRIATE CERTIFICATES OF CONFORMANCE AND CERTIFIED TEST REPORTS. TEST REPORTS FOR MATERIAL TESTS AND ANALYSES SHALL BE IDENTIFIED WITH SPECIFIC LOTS AND ITEMS PRIOR TO INSTALLATION.
4. THE CONTRACTOR GUARANTEES THE OWNER ALL MATERIALS & WORKMANSHIP AGAINST ORIGINAL DEFECTS OR INJURY FROM PROPER USE FOR 12 MONTHS AFTER COMPLETION.

SURFACE PREPARATIONS & PAINTING:

1. SURFACE PREPARATION AND PAINTING OF STEEL SURFACES AND WELDS SHALL BE ACCOMPLISHED PER THE REQUIREMENTS OF SSPC AND FOLLOWING NOTES.
2. THE ENTITY(S) PERFORMING SURFACE PREPARATION AND PAINTING, WHETHER THE LOCATION OF THE WORK IS IN THE SHOP OR FIELD, SHALL MEET THE REQUIREMENTS OF SSPC AND NOTES.
3. PREPARE ALL STEEL SURFACES TO BE PAINTED BY ABRASIVE BLASTING IN ACCORDANCE WITH SSPC-SP10 USING EXPENDABLE BLAST MEDIA.
4. PAINT COLOR WILL MATCH THAT USED ON PLANTER RAILINGS IN NEARBY TEAR DROP PARK IN BATTERY PARK CITY.
5. PROTECTIVE PAINTING SHALL BE MACROPOXY 646 FAST CURE EPOXY OR APPROVED EQUAL COLOR TO MATCH RAILINGS IN TEARDROP PARK. CONTRACTOR SHALL SUBMIT THREE (3) 6" SAMPLES OF PAINTED RAILINGS FOR OWNER'S APPROVAL.

SHOP DRAWINGS:

1. THE SHOP DRAWINGS SHALL CONTAIN ALL DIMENSIONAL AND GEOMETRIC INFORMATION. MATERIALS SHALL NOT BE ORDERED, FABRICATED OR DELIVERED TO THE SITE BEFORE THE SHOP DRAWINGS HAVE BEEN APPROVED.
2. PRIOR TO REVIEW OF THE SHOP DRAWINGS BY THE ENGINEER, SUCH SHOP DRAWINGS SHALL HAVE BEEN REVIEWED AND APPROVED BY THE CONTRACTOR AND SHALL BE STAMPED TO INDICATE THIS BY THE CONTRACTOR. SUCH APPROVAL BY THE CONTRACTOR SHALL CONSTITUTE THE CONTRACTOR'S REPRESENTATION THAT THE CONTRACTOR HAS VERIFIED ALL QUANTITIES, DIMENSIONS, SPECIFIED PERFORMANCE CRITERIA, INSTALLATION REQUIREMENTS, MATERIALS, CATALOG NUMBERS AND SIMILAR DATA WITH RESPECT THERETO AND HAS REVIEWED OR COORDINATED EACH SHOP DRAWING WITH OTHER SHOP DRAWINGS AND SAMPLES AND WITH THE REQUIREMENTS OF THE WORK AND THE CONTRACT DRAWINGS AND SPECIFICATIONS.
3. SHOP DRAWINGS SHALL INCLUDE LAYOUTS AND DETAILS SHOWING THE TYPE OF STEEL FOR EACH MEMBER, SIZES OF MEMBERS, CONNECTIONS, CUTS, CAMBER, COPE REINFORCING, BOLTS, WELDS AND OTHER PERTINENT DATA.
4. ALL WELDS SHALL BE INDICATED BY STANDARD WELDING SYMBOLS AS DEFINED BY AWS AND ENGINEERING STRESS CALCULATIONS THAT ARE APPROVED BY THE AWS. SHOP DRAWINGS SHALL SHOW THE SIZE, LENGTH, AND TYPE OF EACH WELD.
5. SHOP DRAWINGS SHALL BE SUBMITTED IN COMPLETE PACKAGES SO THAT INDIVIDUAL PARTS AND THE ASSEMBLED UNIT MAY BE REVIEWED TOGETHER.
6. THE REVIEW OF SHOP DRAWINGS BY THE ENGINEER SHALL NOT IN ANY WAY RELIEVE THE CONTRACTOR FROM THE RESPONSIBILITY FOR THE ADEQUACY OF THE DESIGN OF THE CONNECTIONS AND ALL REQUIRED DETAILING. THE RESPONSIBILITY FOR THE PROPER FITTING OF THE WORK IN STRICT CONFORMANCE WITH THE CONTRACT REQUIREMENTS AND FROM THE NECESSITY OF FURNISHING MATERIAL AND WORKMANSHIP REQUIRED BY CONTRACT DRAWINGS AND SPECIFICATIONS IN ADDITION TO THAT INDICATED ON THE SHOP DRAWINGS.
7. THE CONTRACTOR SHALL KEEP A COMPLETE SET OF SHOP DRAWINGS BEARING THE ENGINEER'S ACCEPTANCE STAMP ON THE JOB SITE AT ALL TIMES SUBSEQUENT TO SUCH ACCEPTANCE.

DELIVERY, STORAGE & HANDLING:

1. DELIVER MATERIALS TO THE CONSTRUCTION SITE AT APPROPRIATE INTERVALS SO AS TO ENSURE UNINTERRUPTED PROGRESS OF WORK.
2. MATERIAL SHALL BE STORED OFFSITE IN AN AREA DESIGNATED OR APPROVED BY THE OWNER. ADEQUATE SHORING AND PROTECTION SHALL BE PROVIDED TO PREVENT DISTORTION AND OTHER DAMAGE. STEEL SHALL BE STORED ON TIMBER AND NOT ON MUD OR CINDERS AND OTHERWISE HANDLED SO AS NOT TO DAMAGE SHOP PAINT. ALL SECTIONS WHICH ARE TO BE PLACED IN GROUND STORAGE SHALL BE READILY ACCESSIBLE FOR INSPECTION.
3. MATERIALS WHICH FAIL TO COMPLY WITH SPECIFIED REQUIREMENTS, EITHER AT THE SHOP OR CONSTRUCTION SITE, SHALL BE PROMPTLY REMOVED FROM THE SITE AND REPLACED WITH ACCEPTABLE MATERIAL, WITHOUT ADDITIONAL COST TO THE OWNER AND WITHOUT CAUSING DELAY IN WORK.
4. CONTRACTOR SHALL CLEAN THE WORK AREA OF ALL RUBBISH AT THE END OF EACH DAY. SITE SHALL BE CLEAN OF ALL MATERIALS AND EQUIPMENT AT THE END OF EACH WORK DAY.
5. STORAGE OF ALL EQUIPMENT AND MATERIALS, AND PARKING AND SITE ACCESS TO THE WORK AREA SHALL BE DIRECTED BY THE OWNER PRIOR TO THE START OF WORK.

MISCELLANEOUS STEEL:

1. STEEL CONSTRUCTION SHALL CONFORM TO AISC "STEEL CONSTRUCTION MANUAL", THIRTEENTH EDITION, AND SHALL BE FABRICATED AND INSTALLED IN ACCORDANCE WITH AISC "CODE OF STANDARD PRACTICE FOR STEEL BUILDINGS AND BRIDGES" AS ADOPTED MARCH 18, 2005.
2. MATERIALS FOR MISCELLANEOUS STEEL SHALL CONFORM TO THE FOLLOWING ASTM SPECIFICATIONS: STRUCTURAL PIPE & TUBING: ASTM A53
3. MISCELLANEOUS STEEL FOR HOOP RAILINGS SHALL BE NON-DIRECTIONAL GALVANIZED.

EXCAVATION AND FILL:

1. WHENEVER ITEMS IN THE CONTRACT REQUIRE MATERIALS TO BE REMOVED AND DISPOSED, THE COST OF SUPPLYING A DISPOSAL AREA AND TRANSPORTATION TO THAT AREA SHALL BE INCLUDED IN THE LUMP SUM PRICE BID FOR THOSE ITEMS.
2. EXCAVATIONS SHALL BE TO ELEVATIONS REQUIRED FOR INSTALLATION OF PERMANENT CONSTRUCTION WITHOUT DISTURBANCE TO SUBGRADE BELOW SUCH ELEVATIONS. TOPSOILS EXCAVATION AND PLANT INTERFERENCES SHOULD BE COORDINATED WITH THE PARKS CONSERVANCY.
3. TREE PROTECTION SHALL BE PROVIDED AT ALL PLANTER BED LOCATIONS OF RAILINGS. TREE PROTECTION ZONE DIAMETER SHALL BE 2 TIMES TREE DIAMETER.

WELDING:

1. ALL WELDING AND FABRICATION SHALL CONFORM WITH THE AMERICAN WELDING SOCIETY (AWS) REQUIREMENTS AND GUIDELINES.
2. ALL WELDERS SHALL BE CERTIFIED BY AWS GUIDELINES.
3. UNLESS OTHERWISE INDICATED, WELDS BE PRE-QUALIFIED PER THE AISC MANUAL OF STEEL CONSTRUCTION.
4. ALL ELECTRODES USED SHALL COMPLY WITH AWS SPECIFICATIONS AND SHALL BE E70XX LOW HYDROGEN.
5. ANY DEFECTS SHALL BE CORRECTED IN ACCORDANCE WITH AWS RULES AT NO ADDITIONAL COST TO THE OWNER.

SUMMARY OF WORK FOR UNIT PRICE:

1. THE UNIT PRICE FOR RAILINGS AND POSTS WILL BE BASED ON A UNIT COST PER LINEAR FOOT OF INSTALLATION. THE UNIT PRICE SHALL INCLUDE COSTS ASSOCIATED WITH ALL DETAILS PROVIDED IN THE CONTRACT DRAWINGS FOR THIS INSTALLATION. THE COST SHALL INCLUDE, BUT IS NOT LIMITED TO:
A. FABRICATING, PAINTING/COATING, CONNECTING AND INSTALLING ALL RAILINGS AND POSTS AS REQUIRED PER PLANTER BED LAYOUT AS SPECIFIED IN THE CONTRACT DRAWINGS.
B. COATING HOOP RAILS WITH OWNER-APPROVED PAINT/COATING COLOR.

IRRIGATION:

1. CONTRACTOR SHALL BE AWARE OF SUB-GRADE IRRIGATION SYSTEM IN PLANTER BEDS AND TAKE ALL PRECAUTION WHEN EXCAVATING FOR STAKE LOCATIONS.
2. STAKE LOCATIONS ARE APPROXIMATE AND SHALL BE ADJUSTED TO AVOID CONFLICT WITH SUB-GRADE IRRIGATION NETWORK.
3. CONTRACTOR SHALL NOTIFY OWNER AND OWNER'S REPRESENTATIVE BEFORE EXCAVATION FOR STAKE LOCATION COMMENCES.

PUBLIC AREA NOTICE:

1. CONTRACTOR SHALL NOTIFY OWNER AND OWNER'S REPRESENTATIVE BEFORE WORK COMMENCES.
2. CONTRACTOR SHALL POST PUBLICLY WORK NOTICES IN SURROUNDING PROJECT LOCATION.
3. CONTRACTOR SHALL NOTE THAT THIS IS A BUSY PUBLIC AREA AND ALL WORK IS TO BE PROTECTED.

ABBREVIATIONS:

- | | |
|------------------|------------------------------------|
| 1. BPCA | BATTERY PARK CITY AUTHORITY |
| 2. BPOPC | BATTERY PARK CITY PARK CONSERVANCY |
| 3. DIA OR Ø | DIAMETER |
| 4. DWG | DRAWING |
| 5. MAX | MAXIMUM |
| 6. MIN | MINIMUM |
| 7. MISC | MISCELLANEOUS |
| 8. NFP | NO FIREPROOFING |
| 9. NIC | NOT IN CONTRACT |
| 10. NTS | NOT TO SCALE |
| 11. OC | ON CENTER |
| 12. SECT | SECTION |
| 13. SSPC | SOCIETY FOR PROTECTIVE COATING |
| 14. THK OR THKNS | THICK OR THICKNESS |
| 15. TYP | TYPICAL |
| 16. VIF | VERIFY IN FIELD |

ALLOWANCE:

THE CONTRACTOR SHALL INCLUDE A LINE ITEM IN THE BID FOR \$10,000.00 FOR UNFORESEEN REPAIR WORK.



Consultants:



ENSIGN ENGINEERING, P.C.
1111 Calhoun Ave.
Bronx, N.Y. 10465

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NOTE: Drawing may be
printed at reduced scale.
Refer to graphic scale.

No.	Date	Revision

No.	Date	Submittal
Key Plan: SHADED AREA = AREA OF WORK		

Project Engineer:		CARL J. CANNIZZARO, P.E.
Designer:		FRANCO MARCIANO
Drawn by:		RALPH LIZ
Checked by:		CARL J. CANNIZZARO, P.E.
Design No. or LLW No.:	Facility Code:	Date:
—	N/A	09/28/15

Project:	Planter Hoop Installation Belvedere Park Battery Park City Authority
Address:	MANHATTAN NEW YORK, NY

Drawing Title:
GENERAL NOTES AND SPECIFICATIONS

	Drawing No.:
	C002.00
	Sheets in Contract: 02 of 04



PLANTER BED LOCATION NUMBER

- 
- HUGH L. CAREY
BATTERY PARK
CITY AUTHORITY**

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No.	Date	Revision
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No.	Date	Submittal
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Design No. or LLW No.:	Facility Code:	Date:
—	N/A	09/28/15

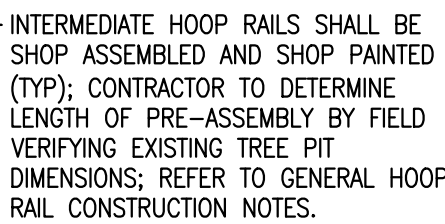
Sheets in Contract:
03 of 04



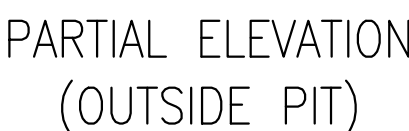
NOT TO SCALE



NOT TO SCALE



NOT TO SCALE



IN 4" THICK CONCRETE SIDEWALKS: 2 1/4" (MIN) BELOW FINISHED GRADE (WELD TO 4" STEEL PLATE)
IN 7" THICK CONCRETE SIDEWALKS: 3 1/2" (MIN) BELOW FINISHED GRADE (WELD TO 4" STEEL PLATE)
IN GRANITE OR CONCRETE CURBS: 5" (MIN) BELOW TOP OF CURB (WELD TO HOOP RAIL: SHOWN)

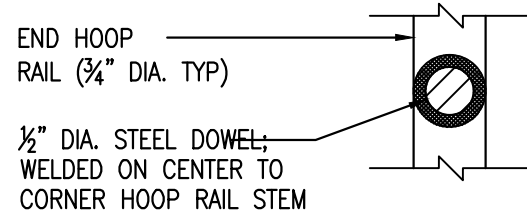
IN THE EVENT THAT HARDSCAPES SUCH AS CURBS AND SIDEWALKS DO NOT ABUT TREE PITS THE CONTRACTOR MAY FOREGO THE INSTALLATION OF STEEL DOWEL ANCHORS (HOOP RAIL STAKES SHALL BE INSTALLED IN ANY CASE).

NOT TO SCALE



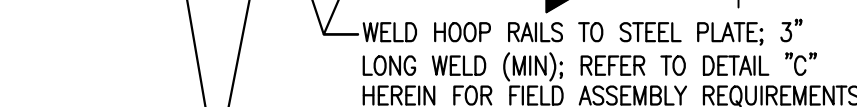
1. THIS ITEM MAY BE PREFABRICATED, SHIPPED LOOSE AND INSTALLED IN THE FIELD.
2. SEE PARTIAL PLAN AND ELEVATION VIEWS HEREIN FOR TYPICAL PLACEMENT AND CONNECTION AT CORNERS.

NOT TO SCALE



NOTE: CONTRACTOR TO FIELD VERIFY; SEE PARTIAL ELEVATION (INSIDE PIT) NOTES
HEREIN

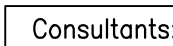
NOT TO SCALE



1. ALL WELDS SHOWN ARE TO BE PERFORMED IN THE FIELD.

2. ALL FILLET WELDS INTERCONNECTING HOOP RAILS SHALL BE 3/16 AND 1½" LONG. ALL FILLET WELDS CONNECTING HOOP RAILS TO STEEL PLATES SHALL BE SIZE 3/16 AND 3" LONG.
3. STEEL PLATES TO FORM CORNERS SHALL BE SQUARE WELDED FULL WIDTH OF PLATES.
4. CORNER STAKES SHALL BE 20" LONG 1" SQ. STEEL BARS SHALL BE FIELD WELDED TO THE STEEL PLATE AS SHOWN; FILLET WELD SHALL BE SIZE 3/16 AND 1½" (MIN) LONG.
5. NONCOMPLIANCE TO ABOVE SPECIFICATIONS WILL RESULT IN REJECTION OF THE WORK AND SHALL BE CORRECTED BY THE CONTRACTOR AT NO ADDITIONAL COST TO BPCA OR ITS AFFILIATES.

NOT TO SCALE



TEL. 718-863-5590 FAX. 718-863-6178
WWW.ENSIGNENGINEERING.COM

NOTE: Drawing may be printed at reduced scale. Refer to graphic scale.

No.	Date	Revision
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No.	Date	Submittal
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Key Plan: SHADED AREA = AREA OF WORK



Project Engineer:	CARL J. CANNIZZARO, P.E.	
Designer:	FRANCO MARCIANO	
Drawn by:	RALPH LIZ	
Checked by:	CARL J. CANNIZZARO, P.E.	
Design No. or LLW No.:	Facility Code:	Date:
—	N/A	09/28/15

Project: Planter Hoop Installation
Belvedere Park
Battery Park City Authority

Address: MANHATTAN
NEW YORK, NY

Drawing Title:
STANDARD HOOP RAIL DETAILS

Drawing No.:

C004.00

Sheets in Contract:
04 of 04

EXHIBIT J

List of BPCA Members and Employees

(attached)

LIST OF BOARD MEMBERS

Dennis Mehiel
Donald Cappocia
Martha Gallo
Lester Petracca
Hector Batista

Employee

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