

BATTERY PARK CITY AUTHORITY

REQUEST FOR PROPOSALS

FOR

Asphalt and Granite Remediation

I.SUMMARY	2
II. GENERAL PROVISIONS	3
III. TIMETABLE & DESIGNATED CONTACT	3
A. Key Dates.....	3
B. Anticipated Contract Term	4
IV. GENERAL REQUIREMENTS	
A. Minimum Qualification Requirements	4
B. MBE/WBE/SDVOB Participation, Joint Ventures and Sub-contracting Goals	4
C. Restricted Period.....	4
D. Submission of Proposals.....	5
E. Mandatory Forms	5
V. PROPOSAL FORMAT AND CONTENTS.....	5
A. Proposal Format.....	5
B. Proposal Content.....	5
C. RFP Questions / Information Requested.....	6
D.RFP Additional Information Request	7
E. Cost Proposal	8
VI. THE EVALUATION PROCESS	8
A. Objectives	8
B. Interviews.....	9
C. Evalutaion Criteria for Selection	9
D. Basis for Contract Award	9
VII. NON-COLLUSION	9
VIII. IRAN DIVESTMENT ACT	10
IX. ENCOURAGING USE OF NEW YORK STATE BUSINESSES IN CONTRACT PERFORMANCE.....	10

EXHIBIT A - SCOPE OF WORK
 EXHIBIT B - DIVERSITY REQUIREMENTS
 EXHIBIT C - BPCA STANDARD CONTRACT FORM
 EXHIBIT D - FORM OF COST PROPOSAL
 EXHIBIT E - FORM OF LABOR RATES
 EXHIBIT F – DRAWINGS & SPECIFICATIONS
 EXHIBIT G - BPCA & BPCPC STAFF LIST

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 contractors (each individually, a “Proposer” or collectively, the “Proposers”) to provide BPCA with asphalt and granite remediation services (the “Project”). The Project shall include, but not be limited to, performing asphalt and granite repairs, in accordance with the Scope of Work attached hereto at Exhibit A (the “Work”). Minority-Owned Business Enterprises (“MBE”), Women-Owned Business Enterprises (“WBE”) and Service-Disabled Veteran-Owned Business Enterprises (“SDVOB”) are encouraged to submit Proposals.

Created in 1968, BPCA is a New York State public benefit corporation responsible for financing, developing, constructing, maintaining, and operating Battery Park City as a richly diversified mixed use community providing residential and commercial space, with related amenities such as parks, plazas, recreational areas, and a waterfront esplanade. A summary of BPCA’s structure, mission, and history, as well as the Battery Park City project area, may be viewed at: <http://bpca.ny.gov/>. Public information regarding BPCA’s finances, budget, internal controls, guidelines, and policies may be viewed at: <http://bpca.ny.gov/public-information/>. Information relating to the Battery Park City Parks Conservancy Corporation (“BPCPC”), BPCA’s affiliate, may be viewed at: <http://bpcparks.org/>.

II. GENERAL PROVISIONS

This request for proposals, including attachments, exhibits, and any amendments or addenda (collectively, the “RFP”) is subject to the rights reserved by BPCA, including, but not limited to BPCA’s right to:

1. withdraw and/or cancel this RFP at any time before final award of the contract;
2. request clarification and/or additional information from any or all Proposers;
3. amend any term or requirement of this RFP at any time before award of a contract (Proposers may amend their Proposals, as directed by BPCA, if BPCA materially alters or amends the RFP after submission of Proposals);
4. alter any key dates or deadlines related to this RFP;
5. award the Work, in whole or in part, to one or more Proposers;
6. reject any Proposal that does not strictly conform to the requirements of this RFP;
7. conduct an interview with any or all of the Proposers to aid the evaluation process;
8. negotiate potential contract terms with any Proposer;

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 Proposals considered to be confidential and exempt from FOIL.

III. TIMETABLE & DESIGNATED CONTACT

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: May 5, 2016
- Pre-proposal meeting: May 12, 2016 at 9:30 a.m. Meeting Location: BPCA Offices, 200 Liberty Street, 24th Floor, New York, NY 10281 (attendance is highly recommended).
- Deadline to submit questions to BPCA May 19, 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.

- BPCA’s response to substantive questions: June 1, 2016. (by BPCA website)
- **DUE DATE FOR RESPONSES TO RFP: June 16, 2016 by 5:00 p.m. (the “Due Date”).**
- Selection and notification of successful Proposer: To be determined.
- Anticipated contract start date: July 2016.

B. Anticipated Contract Term

The anticipated term of the contract awarded pursuant to this RFP (the “Contract”) is twelve (12) months, however, performance of the Work should require no more than (6) months (the “Term”). BPCA reserves the right to terminate the Contract at any time, with or without cause, in accordance with the terms of the Contract. BPCA’s sample form of Contract is attached as Exhibit C.

IV. GENERAL REQUIREMENTS

A. Minimum Qualification Requirements

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

- 1) The Proposer must be lawfully authorized to do business in the City of New York.
- 2) The Proposer must have at least five (5) years’ experience in granite and stone work.

B. MBE/WBE/SDVOB Participation, Joint Ventures and Sub-contracting Goals

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 are attached as Exhibit B. 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 anthony.peterson@bpca.ny.gov or 212.417.2337.

C. Restricted Period

State Finance Law sections 139-J and 139-K apply to this RFP, restricting Proposers’ contacts with BPCA. Proposers are restricted from making any contact relating to this RFP with anyone other than the Designated Contact, as specified in Section III.A., or MBE/WBE/SDVOB Designated Contact, as specified in Section IV.B., from Proposer’s receipt of notice of this RFP through approval of the Contract by BPCA (the “Restricted Period”). BPCA employees must record certain contacts during the Restricted Period, including, but not limited to, any oral or written communications that could reasonably be seen as intended to influence BPCA’s conduct or award of this RFP. Upon notice of an improper contact, BPCA must make a determination regarding the Proposer’s responsibility.

D. Submission of Proposals

Proposals are due no later than 5:00 p.m. on June 16, 2016.

Each Proposer must submit six (6) paper copies of its Proposal and a PDF version (via CD-ROM or flash drive) in a sealed package clearly marked “**Proposal Enclosed-Asphalt and Granite Remediation**” 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 late Proposals, no matter the cause. Proposals must arrive at the time and place specified herein and be time stamped by BPCA by the Due Date. Please leave ample time for building security. 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 an amended Proposal, clearly labeled “**Amended Proposal Enclosed – Asphalt and Granite Remediation**” as long as the amended Proposal is submitted by the Due Date.

E. Mandatory Forms

Each Proposal must include a completed copy of all “Mandatory Forms” found at: :
<http://bpca.ny.gov/wp-content/uploads/2015/03/Vendor-ResponsibilityQuestionnaire.pdf>.
The Mandatory Forms include the following:

- A) NYS Standard Vendor Responsibility Questionnaire, notarized and signed by the individual(s) authorized to contractually bind the Proposer, indicating the signer’s title/position within the firm.*
- B) State Finance Law § 139 Form 1, signed by the individual(s) authorized to contractually bind the Proposer.*
- C) W-9 form.
- D) Statement of Non-Collusion.
- E) Diversity Forms.

***In addition to the copy that must be included in each bound Proposal, attach to the Proposal one (1) unbound, completed original, with ink signatures, of the NYS Standard Vendor Responsibility Questionnaire and SFL 139 Form 1.**

V. 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

A Proposal in response to this RFP must include the following sections in the order listed:

- 1) Cover Letter, as follows:

The Proposal must include a signed Cover Letter from a person who is authorized to bind the Proposer.

Cover Letters must be signed. Proposals with unsigned Cover Letters will be rejected.

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

- 2) Executive Summary.
- 3) Proposer's Responses to the RFP Questions/Information Requested and RFP Additional Information Request, set forth below.
- 4) Proposer's Cost Proposal, including the Form of Technical Salaries, as described below.

C. RFP Questions / Information Requested

- 1) Describe your firm's background, size, and history as it may be relevant to the Services Required, with an emphasis on stone installation and repair projects performed in New York City.
- 2) Describe your firm's experience working within public spaces and park land.
- 3) Describe your proposed team's experience (including both direct contract work and work performed under subcontracts) with similar work 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 work performed, the contracting agency, the contract number (if known) and the agency's project manager or supervisor for each.
- 4) Submit a discussion of your approach to the Services Required which shall address your conceptual step-by-step approach towards completion of the Services Required and outline the proposed procedures for executing the Services Required.
- 5) List any professional or personal relationships your firm's employees may have with BPCA's Board and/or staff members of BPCA. A current list of BPCA Board and staff members is attached hereto as Exhibit G.
- 6) Identify the person who will be the Lead PM and primary contact in providing services to BPCA, and who will be listed as a "key person" in any contract with BPCA. Itemize the work you intend to perform with your firm's resources and/or workforce as well as the work for which you propose to utilize subcontractors.
- 7) Provide a list of all proposed subcontractors for the completion of the work.
- 8) Provide a list of all proposed suppliers of materials for the completion of the Services Required.
- 9) Submit a **bar chart schedule** for completion of the Services Required. This should include sequencing of the associated work, manpower staffing level, work shifts, and specific indications of all project milestones and successful overall completion.
- 10) 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 non-conformance with the standard form of contract.
- 11) Please provide any additional information which would serve to distinguish your firm from other firms and that you believe may be relevant to this RFP and your capability to perform the services requested.
- 12) Has your firm or any of the firm's partners/employees been disciplined or censured by any regulatory body within the last 5 years? If so, please describe the relevant facts.
- 13) Has your firm filed for bankruptcy or reorganization or had bankruptcy proceedings initiated within the last 5 years? If so, please describe the relevant facts.
- 14) Are there any potential conflict of interest issues associated with your firm's performing work for BPCA?

- 15) Are any of your employees or principals former employees of BPCA? If so, please list their names, current titles, and dates of employment with BPCA.
- 16) Proposer's Responses to the RFP Questions/Information Requested and RFP Additional Information Request, set forth below.
- 17) Proposer's Cost Proposal, including the Form of Technical Salaries, as described below.

D. RFP Additional Information Request

1) Insurance/Bonding:

A. Insurance: The selected Proposer will be required to provide the types and amounts of insurance listed below for the duration of its performance of the Work. The insurance policies listed below must also conform to the applicable terms of BPCA's form of Contract, attached as Exhibit C.

- **Commercial General Liability Insurance**, written on ISO Form CG 00 001 or its equivalent and with no modification to the contractual liability coverage provided therein, shall be provided on an occurrence basis and limits shall not be less than:
 - \$1,000,000 per occurrence
 - \$2,000,000 General Aggregate
 - \$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 and must be included as such on all subcontracts. 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.
- **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 insureds.
- **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.
- **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 and must be included as such on all subcontracts.
- BPCA, BPCPC, and the State of New York must be protected as additional insureds and must be included as such on all subcontracts.

The policy shall include coverage for third party fidelity including cyber theft and protect BPCA, BPCPC, and the State of New York as additional insureds.

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

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

- B. **Bonding:** Provide a letter from your surety(ies) stating that you are able to provide a payment and performance bond as required by the standard form of contract (Exhibit C).
- 2) 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's project manager.
- 3) 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 addenda submitted by BPCA with regard to this Proposal (if applicable) and a signed acknowledgment of receipt of each addenda.
- 4) Financial Statements:

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

E. Cost Proposal

The Cost Proposal must state a not-to-exceed amount for the completion of the Work, with an itemized Schedule of Values for all services contemplated to be provided. To submit a complete Cost Proposal, Proposer must complete each of the following:

- 1) Cost Proposal in the form attached hereto as Exhibit D ("Form of Cost Proposal"), and
- 2) Technical Salaries in the form attached hereto as Exhibit E ("Form of labor rates").
- 3) Schedule of value for each location, supplied by contractor.

The Cost Proposal, regardless of whether it is bound, must be submitted in its own separate sealed 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.

VI. 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 Work 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 Work;
- Maintains high ethical standards and has an unblemished reputation; and
- Has no conflict of interest between its representation of BPCA and that of other clients.

The selection process will begin with the review and evaluation of each of the written Proposals. The purpose of this evaluation process is twofold: (1) to examine the responses for compliance with this RFP and (2) to identify the complying firms that have the highest probability of satisfactorily performing the Work. 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 criteria for selection set forth below.**

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

B. Interviews

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

C. Evaluation Criteria for Selection

Selection will be based upon the following criteria:

Expertise and experience with stone and masonry projects in park/ public space settings	40%
Staffing and approach to work (including schedule)	40%
Diversity Practices Questionnaire	10%
Proposed MBE/WBE utilization plan (the "Utilization Plan") or firm MBE/WBE status	8%
Proposed SDVOB utilization plan 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 and in the best interests of BPCA.

VII. 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.

VIII. 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 subconsultant 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.

IX. 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. Project Summary

The selected Proposer will provide asphalt and granite repairs at fourteen (14) locations along the Battery Park City Esplanade (the “Work” or the “Project”), and shall provide BPCA with all labor, equipment, tools, and materials necessary to inspect and repair each area (the “Work Sites”), identified by and in accordance with the requirements of the drawings and specifications attached hereto as Exhibit F (the “Construction Documents”). The selected Proposer shall perform all services necessary for the completion of the Project, including but not limited to the items set forth below.

II. General Requirements

With respect to each Work Site, the selected Proposer shall:

- a) Investigate all areas along the Battery Park City Esplanade that pursuant to the Construction Documents require asphalt and/or granite repairs to confirm the locations and field measurements of the areas of Work, and submit this information to BPCA and the design engineer hired by BPCA for review.
- b) Submit a schedule for the Work to be performed at the Work Site.
- c) Submit a schedule of values for each Work Site.

III. Specific Work Site Requirements

- Location #1 – Wagner Park Pavilion – South Side
 - a) Remove damaged brick.
 - b) Repair or replace base sand to form a true level subbase to allow replacement stones to match grade and level of existing stones to remain.
 - c) Install new concrete masonry units (“CMU’s”) to match existing.
 - d) Point all new joints and repair deteriorated joints.
 - e) Reset loose granite steps, repairs and sub-base as necessary.
 - f) Clean entire stair surface.
 - g) Seal entire stair surface.
- Location #2 – Robert Wagner Park
 - a) Removed settled and/or heaved pavers.
 - b) Replace or repair the sub-base to form a true and level surface.
 - c) Reset pavers.
- Location #3 – First Place Esplanade Railing Repair
 - a) Remove Railings.
 - b) Install temporary protective barrier.
 - c) Repair railing bases.
 - d) Paint all steel to match existing.
 - e) Reset rails.
- Location #4 – Entrance to Rector Gate

- a) Review inventory of stone slabs to be replaced.
 - b) Remove damaged stone slabs.
 - c) Replace or repair the base sand to match grade and level of existing slabs.
 - d) Install new stone slabs.
- Locations #5, #10, #11 & #12 – Esplanade Sea Wall
 - a) Reseal/caulk all areas as shown on Construction Documents.
 - b) For areas that require stone resetting:
 - 1. Remove rail (where required).
 - 2. Remove stone.
 - 3. Repair substrate to form a true and level surface.
 - 4. Reset stone to match existing.
 - 5. Install rail (where required).
 - 6. Reseal/caulk area.
- Location #6 – Police Memorial
 - a) Remove granite slabs.
 - b) Restore subbase material.
 - c) Reset the removed stones.
 - d) Replacement of one granite slab.
- Location #7 – Liberty Street Ramp
 - a) Prior to commencement of work, prepare a staging plan as this area is an active driveway and walkway.
 - b) Remove stone slabs that are loose and misaligned.
 - c) Remove concrete in areas shown on Drawing S-8 of Construction Documents.
 - d) Restore sub-base material.
 - e) Reset the removed stone slabs to meet line and grades of existing.
 - f) Pour new concrete slab to transition from stone slab to remaining sidewalk.
- Location #8 – Belvedere Park
 - a) Remove pavers.
 - b) Restore asphalt sub-base as necessary to establish proper subgrade.
 - c) Reset the removed pavers to meet lines and grades of existing.
 - d) Supply replacement stones in case of breakage.
- Location #9 – North Cove Marina Ramps

Replace cracked stone slab in two areas.
- Location #13 – North Esplanade Asphalt Pavers
 - a) Remove asphalt pavers.
 - b) Restore asphalt subbase as necessary to establish proper subgrade elevation.
 - c) Reset removed pavers to meet lines and grades.

- Location #14 – North Esplanade Railings
 - a) Cut and remove rail as necessary.
 - b) Install temporary protective barrier.
 - c) Remove stones slabs and restore subgrade mortar.
 - d) Reset stones.
 - e) Repair rail system.

EXHIBIT B

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

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. Pursuant to New York State Executive Law Article 17-B and 9 NYCRR §252, BPCA recognizes its obligation under the law to promote opportunities for maximum feasible participation of certified SDVOBs.

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 SDBVOB 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.

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

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

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

For questions on MBE/WBE/SDVOB participation, joint ventures and sub-contracting goals ONLY, please contact Ms. Shinay McNeill at 212.417.3109.



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

EEO

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.

(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 _____, 2016

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-venturers, 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.

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.

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.

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

Agreed to this _____ day of _____, 2016

By _____
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

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)

TABLE OF CONTENTS

Contents

ARTICLE 1 - DEFINITIONS	7
ARTICLE 2 - SCOPE OF WORK, MATERIALS AND LABOR	9
2.1 Definition of Work	9
2.2 Contract Documents	9
2.3 Intent of Contract Documents	10
2.4 Completion of Drawings and Specifications	11
2.5 Title to Materials	11
2.6 Contractor's Obligations	12
2.7 "Or Equal" Clause	13
2.8 Quality and Labeling	14
ARTICLE 3 - COMMENCEMENT AND COMPLETION OF THE WORK	14
3.1 Commencement, Completion and Progress Schedule	14
3.2 Coordination with Other Contractors	16
3.3 Notice of Delay	17
3.4 Extension of Time	17
ARTICLE 4 - CONTRACT PRICE	18
ARTICLE 5 - METHOD, SCHEDULE AND TERMS OF PAYMENTS	18
5.1 Partial Payment	18
5.2 Requisitions	18
5.3 Trade Payment Breakdown	19
5.4 Payment for Stored Materials	19
5.5 Receipts and Releases of Liens	19
5.6 Time of Payment	20
5.7 Reduction of Retainage	20
5.8 Final Payment	20
5.9 Release and Consent of Surety	21
5.10 BPCA's Right to Audit and Inspect Records	21
5.11 Withholding of Payments	21
ARTICLE 6 – CONTRACTOR	22
6.1 Superintendence by Contractor	22
6.2 Representations and Warranties	22
6.3 Verifying Dimensions and Site Conditions	23
6.4 Copies of Contract Documents for Contractor	23
6.5 Meetings	23
6.6 Related Work	24
6.7 Surveys and Layout	24
6.8 Reports and Access	24
6.9 Financial Information	24

ARTICLE 7 - CONTRACT ADMINISTRATION	24
7.1 Engineer's Responsibilities and Functions.....	24
7.2 Construction Manager's Responsibilities and Functions	25
7.3 Scope of Responsibility of Engineer and Construction Manager.....	25
ARTICLE 8 - INSPECTION AND ACCEPTANCE	25
8.1 Access to the Work	25
8.2 Notice of Required Inspections and Tests	25
8.3 Additional Inspections and Tests	25
8.4 Uncovering of Work.....	26
8.5 Correction of Work	26
8.6 Certificate of Substantial Completion	26
8.7 Completion of Work and Acceptance	27
ARTICLE 9 - CHANGES IN THE WORK	27
9.1 Change Orders.....	27
9.2 Change in Contract Price and Time.....	28
9.3 Field Orders.....	29
9.4 Changed Conditions	29
ARTICLE 10 - SUBCONTRACTS AND PURCHASE ORDERS	30
10.1 Selection of Subcontractors and Materialmen and Approval of Subcontracts and Purchase Orders	30
10.2 Access by BPCA and Others	31
10.3 Retainage.....	31
10.4 Miscellaneous.....	31
ARTICLE 11 - ASSIGNMENT.....	32
11.1 No Assignment of Duties	32
11.2 No Assignment of Monies.....	32
11.3 Assignment by BPCA	33
ARTICLE 12 - MECHANICS' LIENS AND CLAIMS.....	33
ARTICLE 13 – INSURANCE AND CONTRACT SECURITY	33
13.1 Insurance	33
13.2 Effect of Procurement of Insurance.....	37
13.3 Contract Security.....	37
13.4 Additional or Substitute Bond.....	37
ARTICLE 14 - CLAIMS FOR EXTRA WORK.....	37
ARTICLE 15 - TERMINATION.....	39
15.1 Termination for Cause.....	39
15.2 Termination for Convenience of BPCA	41
15.3 Suspension of Work	42
ARTICLE 16 - COMPOSITE DRAWINGS AND COOPERATION.....	42

ARTICLE 17 - PROTECTION OF RIGHTS, PERSONS AND PROPERTY.....	43
17.1 Accident Prevention	43
17.2 Safety Programs	43
17.3 Protection of Work and Property.....	43
17.4 Adjoining Property.....	43
17.5 Risks Assumed by Contractor	44
ARTICLE 18 - USE PRIOR TO ACCEPTANCE BY BPCA.....	45
ARTICLE 19 - EXEMPTION FROM SALES AND COMPENSATING USE TAXES.	45
19.1 BPCA Exempt.....	45
19.2 Certificates	45
ARTICLE 20 - WARRANTIES AND GUARANTIES.....	45
20.1 In General.....	46
20.2 Additional Guaranties	46
20.3 Repair by Another	46
ARTICLE 21 - INDEMNITY.....	47
21.1 Delay or Failure.....	47
21.2 Inventions.....	47
21.3 Liability	47
ARTICLE 22 - PATENTS AND ROYALTIES.....	48
ARTICLE 23 - AS-BUILT DRAWINGS.....	48
ARTICLE 24 - SHOP DRAWINGS AND SAMPLES	49
24.1 Contractor Submittal	49
24.2 Contractor's Responsibility	49
ARTICLE 25 – NOTICES.....	49
ARTICLE 26 - EMPLOYMENT AND DIVERSITY.....	51
26.1 Definitions.....	51
26.2 Equal Employment Opportunities for Minority Group Members and Women	52
26.3 Workforce Participation	54
26.4 Minority Business Enterprise (MBE) Participation and Women's Business Enterprise Participation	56
ARTICLE 27 - STANDARD PROVISIONS	58
27.1 Provision Required by Law Deemed Inserted	58
27.2 Compliance with Laws, Rules and Regulations	58
27.3 Applicable Law, Forum and Jurisdiction	58
27.4 No Third Party Rights	59
27.5 Exculpation; Limitation of Liability.....	59
27.6 Protection of Lives and Health	59
27.7 Waiver of Immunity Clause	59
27.8 Prohibited Interests.....	60

27.9	Labor Provisions	60
27.10	Disputes Resolution Procedure	62
27.11	Additional Provisions Relating to the Prosecution of Claims for Money Damages	63
27.12	Limitation on Actions	64
27.13	Waiver of Remedies	65
27.14	Modification of Agreement.....	65
27.15	Signs and Parking	65
27.16	Entire Agreement	65
27.17	Rights and Remedies.....	66
27.18	Participation in International Boycott Prohibited.....	66
27.19	Compliance with “Buy-American” Statutes	66
27.20	Permitted Successors	66
27.21	MacBride Fair Employment Principles.....	66
27.22	Termination for Failure to Disclose Under NYS Finance Law §139k.....	67
27.23	Labor Peace.....	67
27.24	Comptroller’s Approval	67
27.25	Key Person/Personnel	67
27.26	Form of Agreement Not an Offer.....	68

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 or 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
Contracts Administrator

Dear Mr. LaMancusa,

The undersigned (the "Proposer") hereby proposes to provide all specified work necessary to perform the work for the **Asphalt and Granite Remediation** in accordance with the terms stipulated in the following pages, for the sum written below.

A. Base Proposal

A total Lump Sum Total amount of \$_____ (_____ Dollars and _____ Cents) to perform all Work as described in the Scope of Work in Exhibit A of BPCA's Request for Proposals for Asphalt and Granite Remediation.

B. Itemized Proposal and Labor Rates

1. The Proposer has submitted with its proposal an itemized cost for the Work, according to the attached schedule of items, for the Scope of Work in Exhibit A of BPCA's Request for Proposals for Asphalt and Granite Remediation.
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

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 SUPERVISOR</u>	_____	_____	_____
<u>FOREMAN</u>	_____	_____	_____
<u>TEAMSTER</u>	_____	_____	_____
<u>ELECTRICIAN</u>	_____	_____	_____
<u>PLUMBER</u>	_____	_____	_____

<Name of Company>
<Name of Proposer>

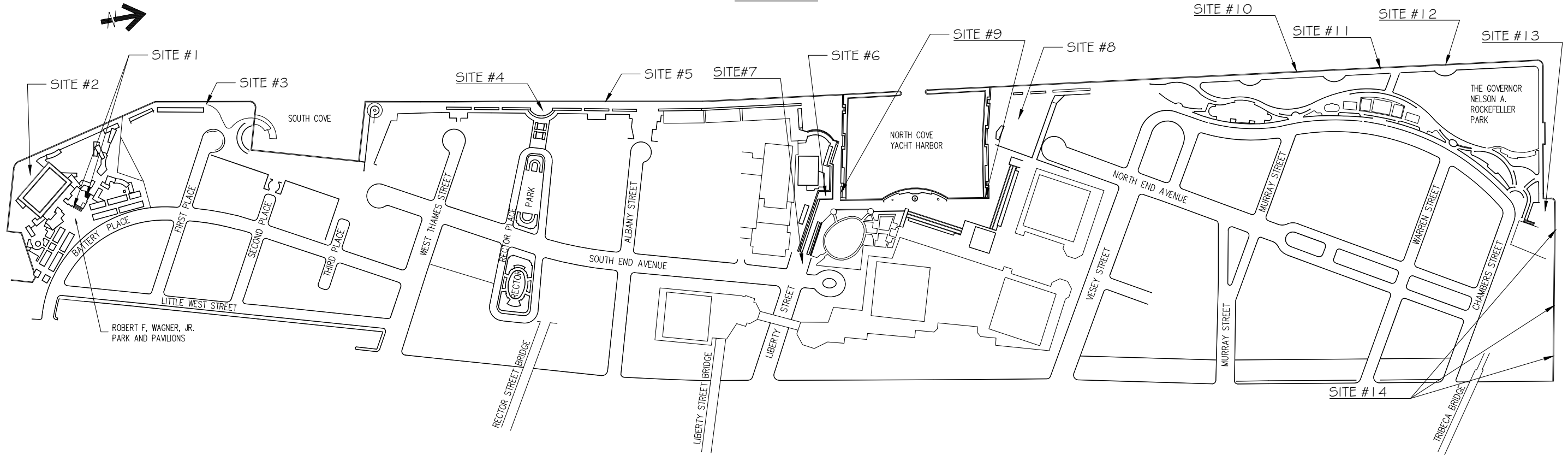
Signed Date

By: <Printed Name>

EXHIBIT F

Drawings & Specifications

SITE MAP



SITE DETAILS		LATITUDE	LONGITUDE
SITE #	DESCRIPTION		
1	STAIRCASE LOCATED AT NORTH SIDE OF THE PAVILION HAS CRACKED AND BROKEN CMU'S ON THE WEST SIDE OF THE STAIRCASE. THE EAST SIDE HAS SEVERAL GRANITE STEPS THAT ARE LOOSE	40.705308	-74.018304
2	AT THE ENTRANCE OF THE ROBERT E. WAGNER PARK THERE IS A DISCONTINUITY BETWEEN THE EDGE OF THE GRANITE STONE STEPS AND THE STONE PAVERS	40.704879	-74.018699
3	THE BASE OF ROUGHLY 30 FEET OF HANDRAIL HAS BEGUN TO CORRODE CREATING SECTION LOSS	40.706554	-74.019216
4	THE ENTRANCE AT THE RECTOR'S PLACE GATE HAS CRACKED GRANITE ON GRADE	40.709581	-74.018292
5	GRANITE ALONG THE TOP CHORD OF THE SEA-WALL HAS HEAVED ALONG WITH A BROKEN BLOCK AT THE DRAINAGE SCUPPER	40.710123	-74.018363
6	THE GRANITE LEDGE OF THE POOL AT THE POLICE MEMORIAL HAS BECOME PITCHED INWARD TOWARDS THE POOL CREATING A LIP AROUND THE POOL	40.711977	-74.016715
7	THE LIBERTY STREET CUL-DE-SAC AND THE WALKWAY HEADING TOWARDS THE ESPLANADE HAS UNEVEN BLOCKS AND A SECTION OF UNEVEN CONCRETE	40.711752	-74.015975
8	THE ESPLANADE HAS AN AREA NORTH OF THE NORTH COVE MARINA WHERE THE PAVERS HAVE SETTLED LEAVING THEM UNEVEN AND SOME BROKEN	40.713853	-74.017127
9	TWO CRACKED GRANITE STONES, ONE ON THE LEFT SIDEWALK TO THE NORTH COVE YACHT HARBOR AND ONE ON THE RIGHT		
10	APPROXIMATELY 136' OF THE GRANITE STONES NEED RESEALING BETWEEN THE TOP AND BOTTOM LAYERS, ALONG WITH 2 RAILING POSTS THAT WERE PRIED LOOSE WHEN FLIGHT 1549 WAS TIED UP	40.716425	-74.017127
11	SEAL STRIP NEEDS TO BE REPLACED BETWEEN THE TOP AND BOTTOM LAYERS OF GRANITE STONE FOR APPROXIMATELY 136' ALONG WITH A STRETCH OF BROKEN GRANITE STONES AT THE DRAINAGE HOLES	40.717332	-74.016955
12	REPLACE SEAL STRIP AND RESET TOP GRANITE STONES	40.717897	-74.016853
13	PAVERS HAVE SETTLED ON THE ESPLANADE LEAVING THE WALKWAY UNEVEN	40.718466	-74.014868
14	THE GRANITE HAS BEEN HEAVED IN THREE LOCATIONS WHICH CAUSED THE RAILING TO FORM PEAKS AT THESE LOCATIONS	40.718426	-74.014049

TABLE OF QUANTITIES

ITEM NUMBER	NAME	QUANTITY	UNITS	
01 50 01	TEMPORARY PROTECTIVE BARRIER	2	EA	SITE 14; SITE 3
02 50 01	ASPHALT PAVER RESET	443	SF	SITE 13
02 50 03	STONE SLABS RESET	70	EA	SITE 1 (2) SITE 5(2) SITE 6 (5) SITE 7 (35) SITE 8 (10) SITE 10-12 (10) SITE 14 (6)
02 50 04	STONE SLABS REPLACEMENT	50	EA	SITE 4 (36) SITE 5 (2) SITE 6 (1) SITE 8 (3) SITE 9 (2) SITE 10-12 (6)
02 57 60	SIDEWALK	125	SF	SITE 7 (105)
04 20 01	UNIT MASONRY RESET	1068	SF	SITE 2 (48) SITE 8 (1020)
04 20 02	UNIT MASONRY REPLACEMENT	380	SF	SITE 1 (350) SITE 8 (30)
05 52 13	RAIL POST REPLACEMENT AND RESET	12	EA	SITE 3 (5) SITE 10-12 (4) SITE 14 (3)
07 92 00	JOINT SEALANTS	185	LF	SITE 6 (50) SITE 5 (25) SITE 10-12 (90)
09 90 01	PAINT	10	SF	SITE 3
09 97 26	WATER PROOFING SEALER	1350	SF	SITE 1

LIST OF DRAWINGS

SHEET	DESIGNATION	NAME
1 OF 14	S-1	TITLE SHEET (THIS SHEET)
2 OF 14	S-2	SITE 1
3 OF 14	S-3	SITE 2
4 OF 14	S-4	SITE 3
5 OF 14	S-5	SITE 4
6 OF 14	S-6	SITE 5
7 OF 14	S-7	SITE 6
8 OF 14	S-8	SITE 7
9 OF 14	S-9	SITE 8
10 OF 14	S-10	SITE 9
11 OF 14	S-10	SITE 10, 11, AND 12
12 OF 14	S-11	SITE 13
13 OF 14	S-12	SITE 14
14 OF 14	S-13	SITE 14

revisions

9-24-15 made
revisions to site 7
10-13-15 rev site 7

Prepared for:
BATTERY PARK

SITE LOCATION MAP

BATTERY PARK
2015 ESPLANADE REPAIRS

Prepared by:
Hudson River Valley
Engineers, PLLC
45 Cary Road
Mechanicville, NY 12118
(518) 664-5354



SCALE: 1"=175'

job 15046

Date 12/17/2015

Designed by:
Ndemos

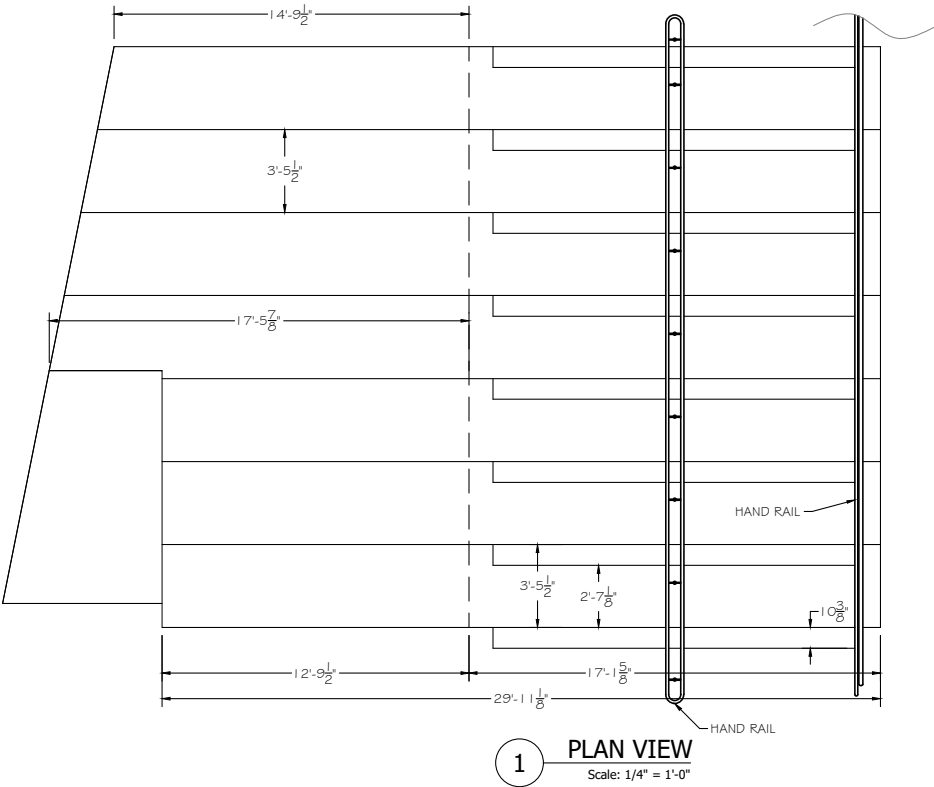


S-1
of-14

- SEQUENCE OF WORK:
1. REVIEW INVENTORY OF STONES TO BE REPLACED WITH THE ENGINEER. THE SQUARE FOOTAGE OF STONE REPLACEMENT MAY INCREASE OR DECREASE FROM THE PROPOSED AREA DUE TO CHANGES SINCE THE FIELD INSPECTION.
 2. REMOVE DAMAGED CMU'S AND REPLACE OR REPAIR THE BASE SAND TO FORM A TRUE AND LEVEL SUBBASE TO ALLOW THE REPLACEMENT STONES TO MATCH GRADE AND LEVEL OF EXISTING STONES TO REMAIN.
 3. INSTALL NEW CMU'S TO MATCH THE EXISTING CMU TO REMAIN.
 4. POINT ALL NEW JOINTS AND REPOINT DETERIORATED JOINTS WITH CEMENT GROUT MATCHING EXISTING GROUT.
 5. RESET LOOSE GRANITE STEPS, REPAIR SAND SUBBASE AS NECESSARY.
 6. CLEAN ENTIRE STAIR SURFACE.
 7. SEAL ENTIRE STAIR SURFACE.



LOCATION #1 EAST SIDE



LOCATION #1 WEST SIDE

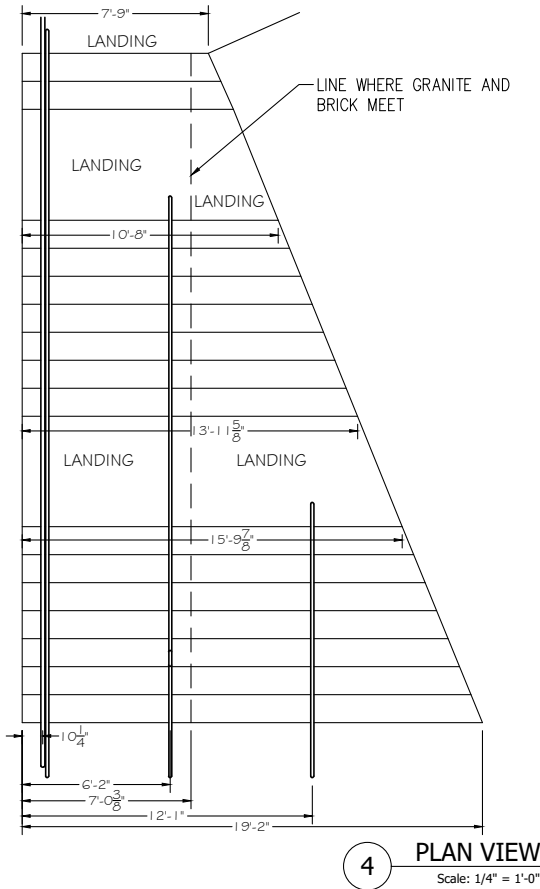
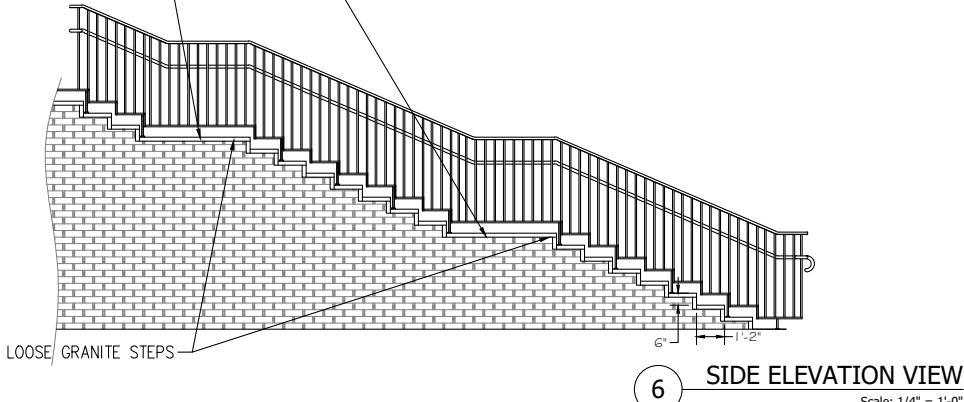
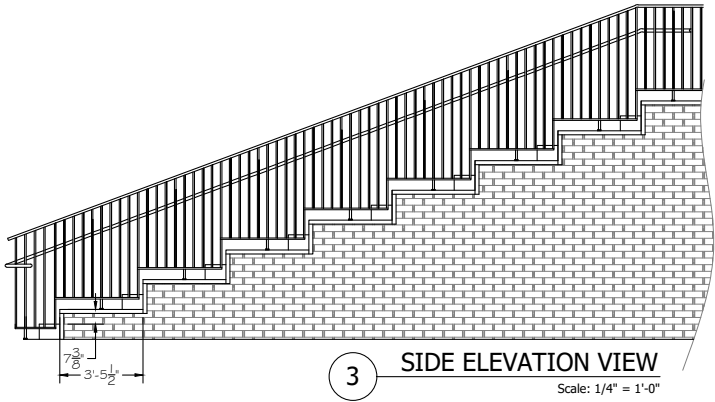
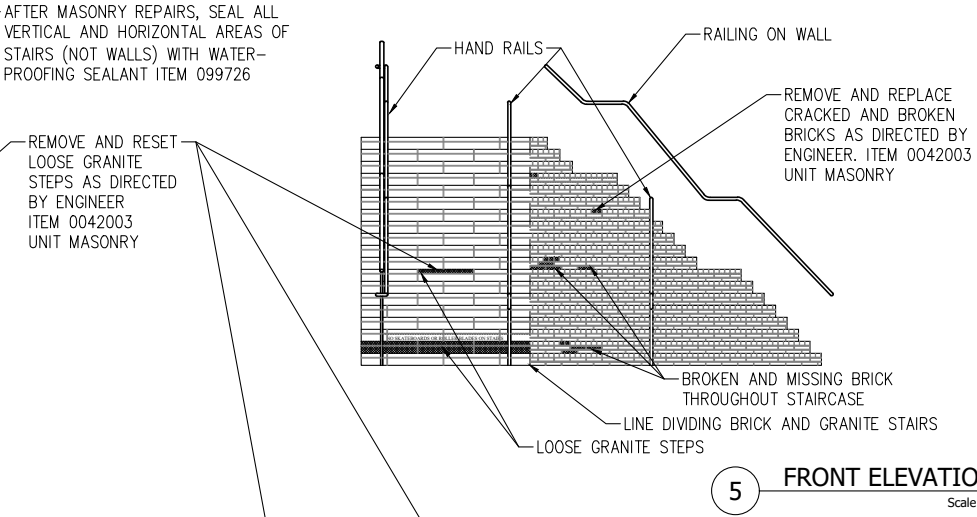
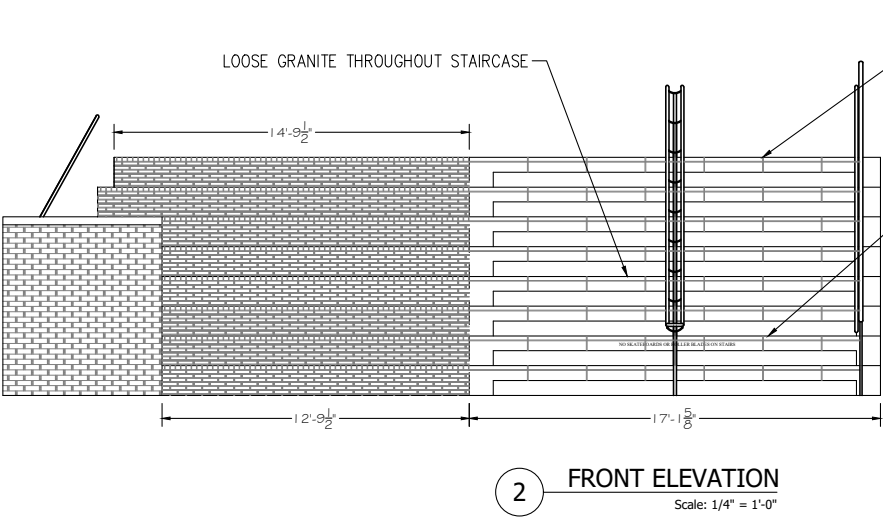


TABLE OF QUANTITIES			
ITEM NUMBER	NAME	QUANTITY	UNITS
04 20 02	UNIT MASONRY REPLACEMENT	350	SF
02 50 03	STONE SLABS RESET	2	EA
09 97 26	WATERPROOFING SEALER	1350	SF



REVISIONS

Prepared for:
BATTERY PARK

LOCATION #1
BATTERY PARK
2015 ESPLANADE REPAIRS

Prepared by:
CV Associates
148 Rte 17M Suite 2
Hamman, NY 10926

SCALE 1/4"=1'-0"

job BATTERY PARK

Date 12/17/2015

Designed by:
Ndemos

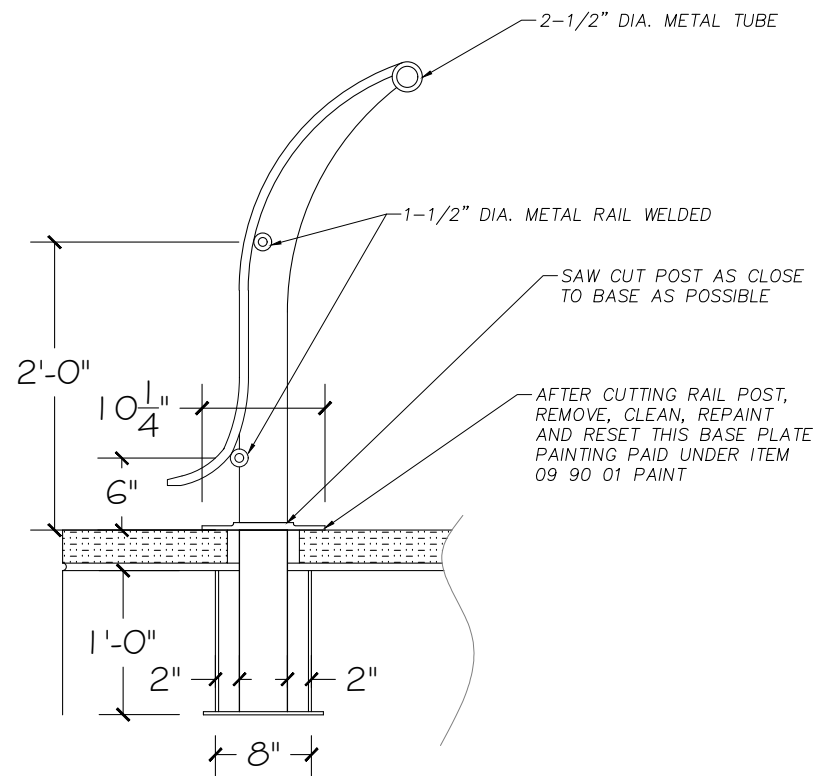
S-2
of-14



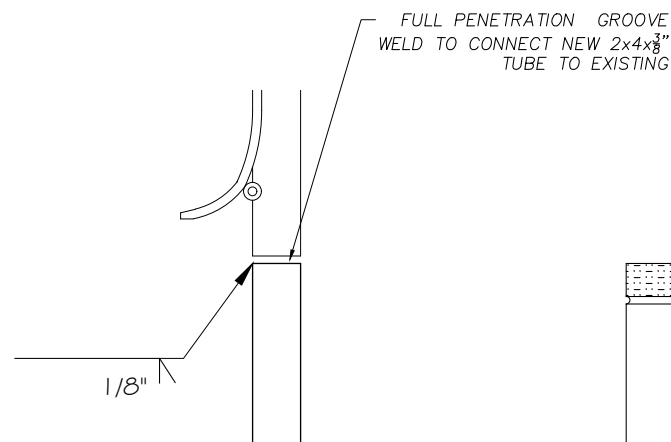
TABLE OF QUANTITIES			
ITEM NUMBER	NAME	QUANTITY	UNITS
04 20 01	UNIT MASONRY RESET	48	SF

1. REVIEW INVENTORY OF PAVERS TO BE RESET WITH THE ENGINEER. THE SQUARE FOOTAGE OF PAVEMENT RESETTING MAY INCREASE OR DECREASE FROM THE PROPOSED AREA DUE TO CHANGES SINCE THE FIELD INSPECTION.
2. REMOVE SETTLED AND HEAVED PAVERS AND SET IN PROTECTED AREA.
3. REPLACE OR REPAIR THE SUB-BASE SAND TO FORM A TRUE AND LEVEL SUB-BASE TO ALLOW THE REPLACEMENT PAVERS TO MATCH GRADE AND LEVEL OF EXISTING PAVERS TO REMAIN.
4. RESET THE REMOVED PAVERS BACK TO THEIR ORIGINAL POSITIONS

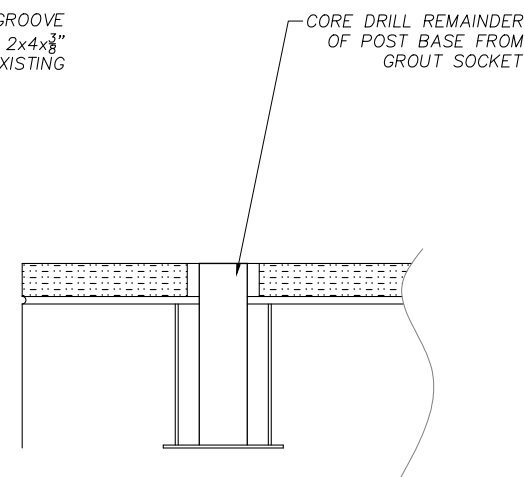




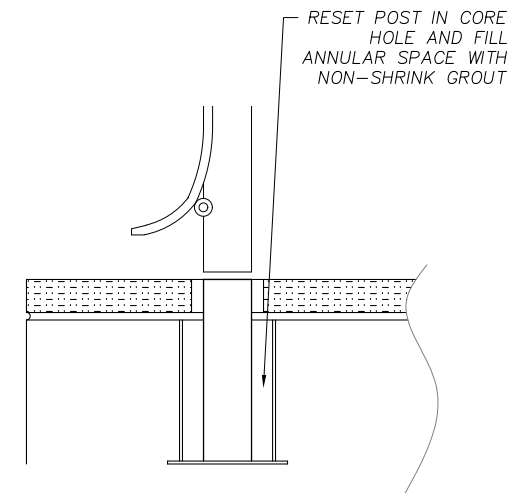
1 CROSS-SECTION OF RAILING
Scale: 1 1/2" = 1'-0"



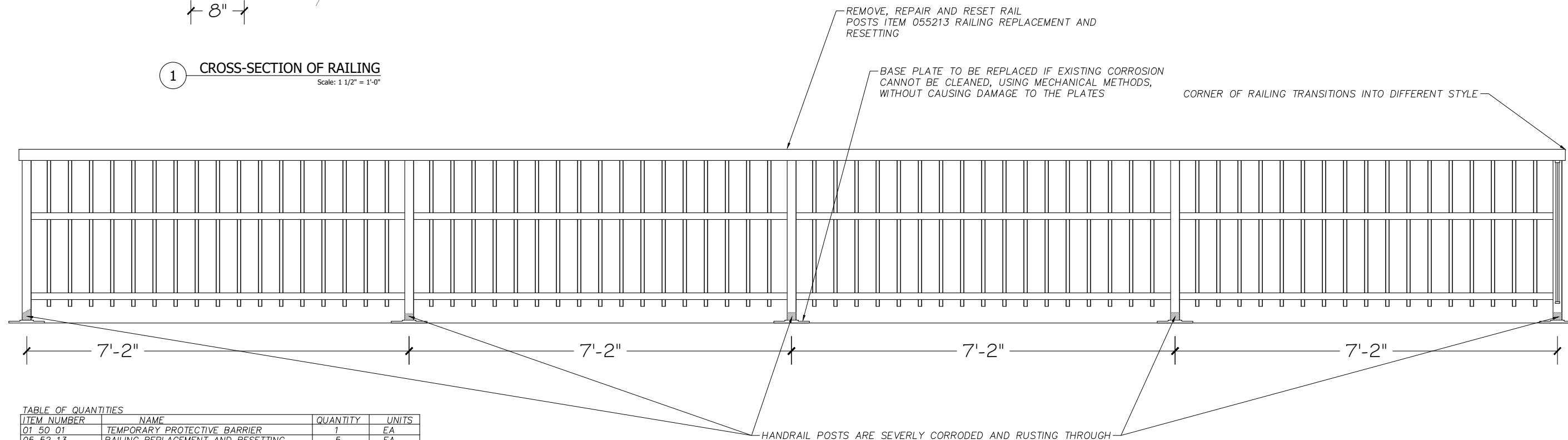
3 POST REPAIR
Scale: 1 1/2" = 1'-0"



4 BASE DEMOLITION
Scale: 1 1/2" = 1'-0"



5 RESET POST
Scale: 1 1/2" = 1'-0"



2 FRONT ELEVATION OF RAILING
Scale: 1 1/2" = 1'-0"

TABLE OF QUANTITIES			
ITEM NUMBER	NAME	QUANTITY	UNITS
01 50 01	TEMPORARY PROTECTIVE BARRIER	1	EA
05 52 13	RAILING REPLACEMENT AND RESETTNG	5	EA
09 90 01	PAINT	10	SF

SEQUENCE OF WORK:

1. REMOVE RAILING SECTIONS AND INSTALL TEMPORARY PROTECTIVE BARRIER. SUBMIT TO ENGINEER FOR APPROVAL OF METHOD OF TEMPORARY PROTECTIVE BARRIER PRIOR TO INSTALLATION
2. REPAIR RAILING BASES AS SHOWN
3. PAINT ALL STEEL TO MATCH EXISTING
4. RESET THE RAILING AS SHOWN

REVISIONS

Prepared for:
BATTERY PARK

LOCATION #3

BATTERY PARK
2015 ESPLANADE REPAIRS

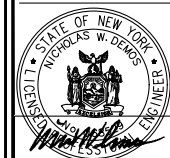
Prepared by:
CV Associates
148 Rte 17M Suite 2
Hamman, NY 10926

SCALE: VARIES

Job BATTERY PARK

Date 12/17/2015

Designed by:
Ndemos



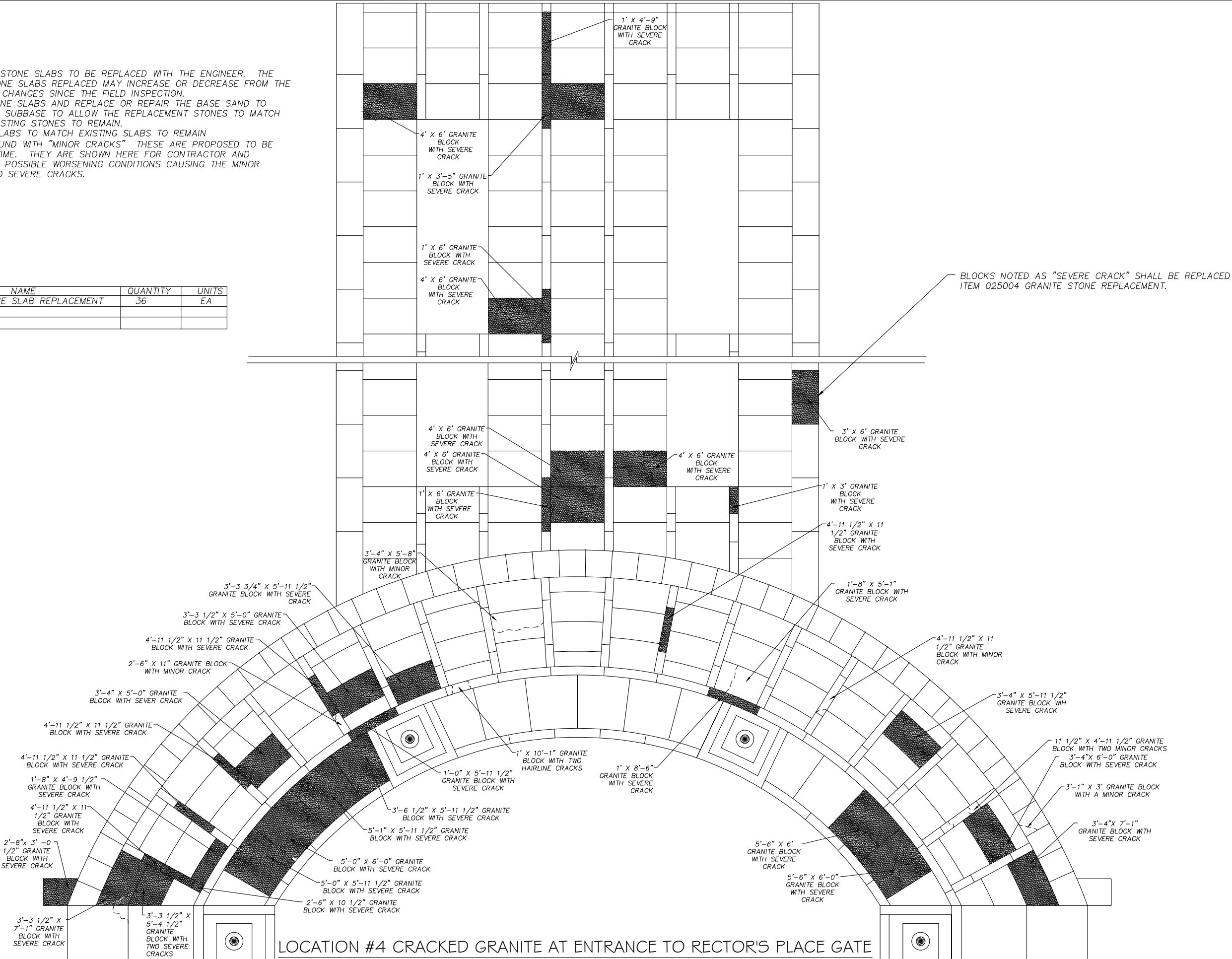
S-4

of-14

SEQUENCE OF WORK:
1. REVIEW INVENTORY OF STONE SLABS TO BE REPLACED WITH THE ENGINEER. THE SQUARE FOOTAGE OF STONE SLABS REPLACED MAY INCREASE OR DECREASE FROM THE PROPOSED AREA DUE TO CHANGES SINCE THE FIELD INSPECTION.
2. REMOVE DAMAGED STONE SLABS AND REPLACE OR REPAIR THE BASE SAND TO FORM A TRUE AND LEVEL SUBBASE TO ALLOW THE REPLACEMENT STONES TO MATCH GRADE AND LEVEL OF EXISTING STONES TO REMAIN.
3. INSTALL NEW STONE SLABS TO MATCH EXISTING SLABS TO REMAIN
4. MANY SLABS WERE FOUND WITH "MINOR CRACKS" THESE ARE PROPOSED TO BE LEFT IN PLACE AT THIS TIME. THEY ARE SHOWN HERE FOR CONTRACTOR AND ENGINEER TO REVIEW FOR POSSIBLE WORSENING CONDITIONS CAUSING THE MINOR CRACKS TO DEVELOP INTO SEVERE CRACKS.

TABLE OF QUANTITIES

ITEM NUMBER	NAME	QUANTITY	UNITS
02 50 04	STONE SLAB REPLACEMENT	36	EA



LOCATION #4 CRACKED GRANITE AT ENTRANCE TO RECTOR'S PLACE GATE

revisions

Prepared for:
BATTERY PARK

LOCATION #4

BATTERY PARK
2015 ESPLANADE REPAIRS

Prepared by:
CV Associates
148 Rte 17M Suite 2
Hamman, NY 10926

SCALE 3/16"=1'-0"

Job BATTERY PARK

Date 12/17/2015

Designed by:
Ndemos



S-5

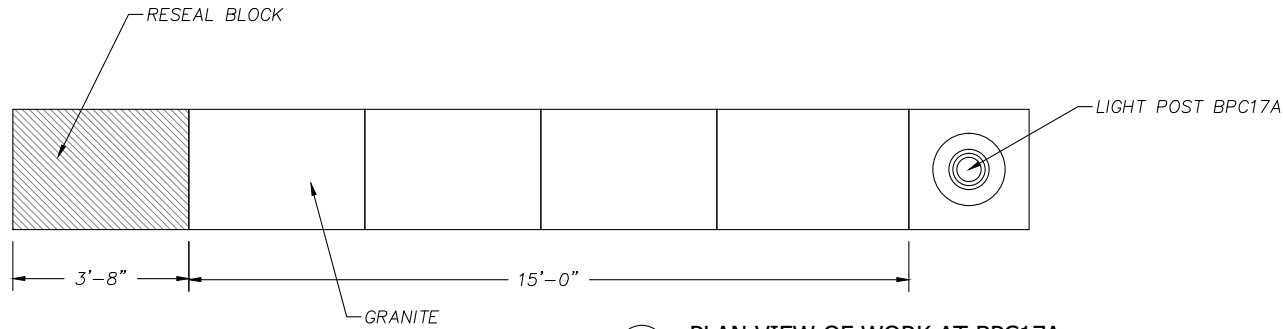
of-14

- SEQUENCE OF WORK:
1. SLATE STONework ALONG SEA WALL HAS SHIFTED.
 2. AREAS MARKED AS "RESEAL BLOCK" SHALL HAVE ALL ELASTOMERIC JOINT SEALANT SCRAPPED AWAY AND SUBSTRATE THOROUGHLY CLEANED. RESEAL JOINTS AS SPECIFIED IN ITEM 07 92 00 JOINT SEALANT.
 3. AREAS MARKED AS "REMOVE AND RESET" WILL REQUIRE:
 - A. THE RAILING SHALL BE REMOVED AS SHOWN ON DRAWING S-3.
 - B. REMOVE SHIFTED STONE SLAB AND REPAIR THE SUBSTRATE TO FORM A TRUE AND LEVEL SURFACE TO MATCH THE LEVEL OF EXISTING STONES TO REMAIN.
 - C. RESET THE STONE SLAB TO MATCH EXISTING SLABS TO REMAIN
 - D. INSTALL SEALANT AS DESCRIBED UNDER ITEM 07 92 00 JOINT SEALANT
 4. REINSTALL RAILING AS SHOWN ON DRAWING S-3

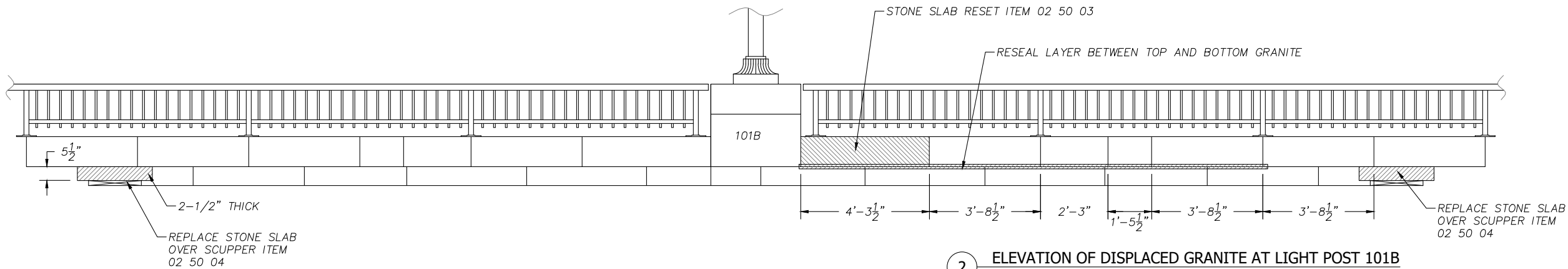
TABLE OF QUANTITIES

ITEM NUMBER	NAME	QUANTITY	UNITS
02 50 03	STONE SLAB RESET	2	EA
02 50 04	STONE REPLACEMENT	2	EA
07 92 00	JOINT SEALANTS	25	LF

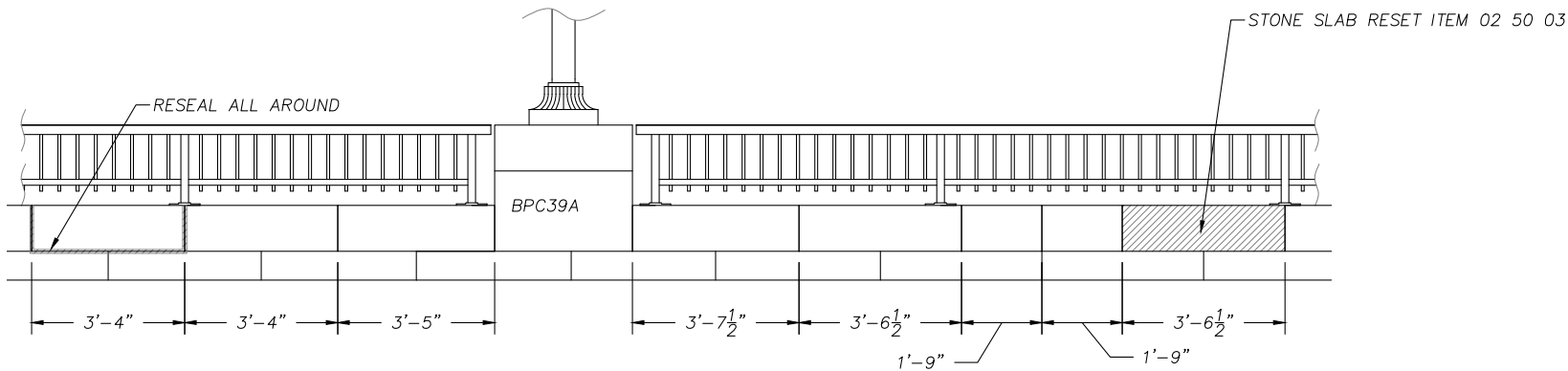
LOCATION #5 SHIFTED BLOCK AND LOOSE SEALANT



1 PLAN VIEW OF WORK AT BPC17A
Scale: 1/2"=1'-0"



2 ELEVATION OF DISPLACED GRANITE AT LIGHT POST 101B
Scale: 1/2"=1'-0"



3 ELEVATION OF DISPLACED GRANITE AT BPC39A
Scale: 1/2" = 1'-0"

revisions

Prepared for:
BATTERY PARK

LOCATION #5

BATTERY PARK
2015 ESPLANADE REPAIRS

Prepared by:
Hudson River Valley
Engineers, PLLC
45 Cary Road
Mechanicville, NY 12118
(518) 664-5354



SCALE: VARIES

Job BATTERY PARK

Date 12/17/2015

Designed by:
Ndemos



S-6

of-14

LOCATION #6 POLICE MEMORIAL GRANITE LEDGES

revisions

Prepared for:
BATTERY PARK

LOCATION #6
BATTERY PARK
2015 ESPLANADE REPAIRS

Prepared by:
CV Associates
148 Rte 17M Suite 2
Hamman, NY 10926

SCALE: VARIES

Job BATTERY PARK

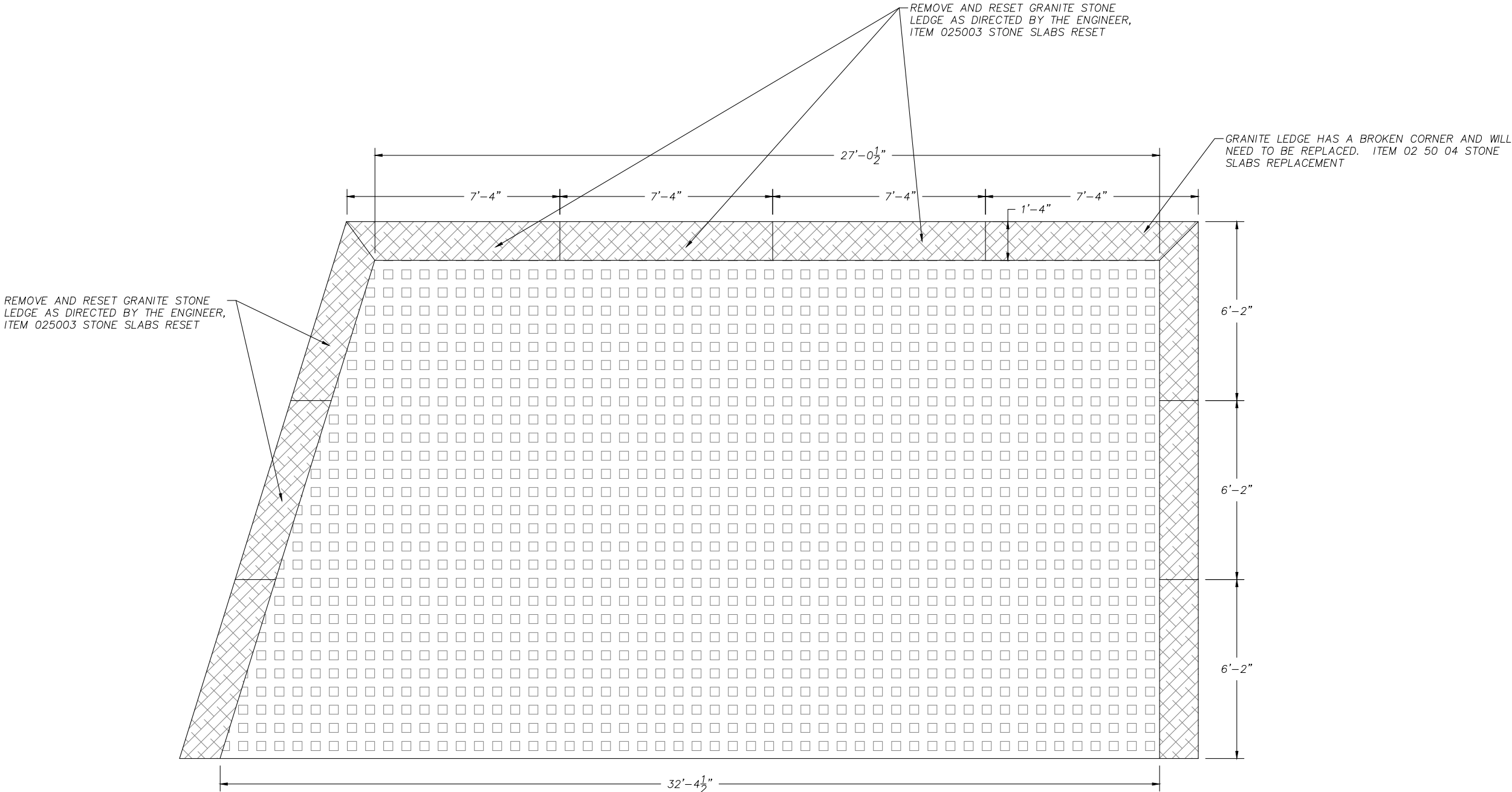
Date 12/17/2015

Designed by:
Ndemos



S-7

of-14



REMOVE AND RESET GRANITE STONE
LEDGE AS DIRECTED BY THE ENGINEER,
ITEM 025003 STONE SLABS RESET

REMOVE AND RESET GRANITE STONE
LEDGE AS DIRECTED BY THE ENGINEER,
ITEM 025003 STONE SLABS RESET

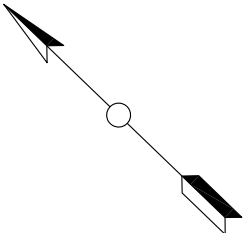
GRANITE LEDGE HAS A BROKEN CORNER AND WILL
NEED TO BE REPLACED. ITEM 02 50 04 STONE
SLABS REPLACEMENT

1 PLAN VIEW
Scale: 1/2" = 1'-0"

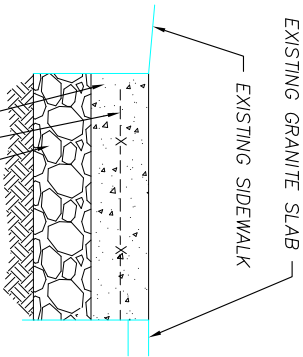
SEQUENCE OF WORK:
1. CAREFULLY REMOVE THE GRANITE SLAB STONES WHICH ARE LOOSE AND MISALIGNED.
2. RESTORE THE SUBBASE MATERIAL TO PROVIDE A FLAT SMOOTH SUBGRADE ELEVATION.
3. RESET THE REMOVED GRANITE STONE SLABS TO MEET THE LINES AND GRADES OF THE
EXISTING STONE SLABS IN THE AREA.

NOTES:
1. CONTRACTOR SHALL CAULK JOISTS TO MATCH OTHER JOINTS AT THIS LOCATION. TO BE PAID
FOR UNDER ITEM 07 92 00 JOINT SEALANTS

TABLE OF QUANTITIES			
ITEM NUMBER	NAME	QUANTITY	UNITS
02 50 03	STONE SLABS RESET	5	EA
02 50 04	STONE SLABS REPLACEMENT	1	EA
07 92 00	JOINT SEALANTS	52	LF



REMOVE AND RESET THE
30" x 48" STONE SLABS ITEM
02 50 03 STONE SLAB RESET

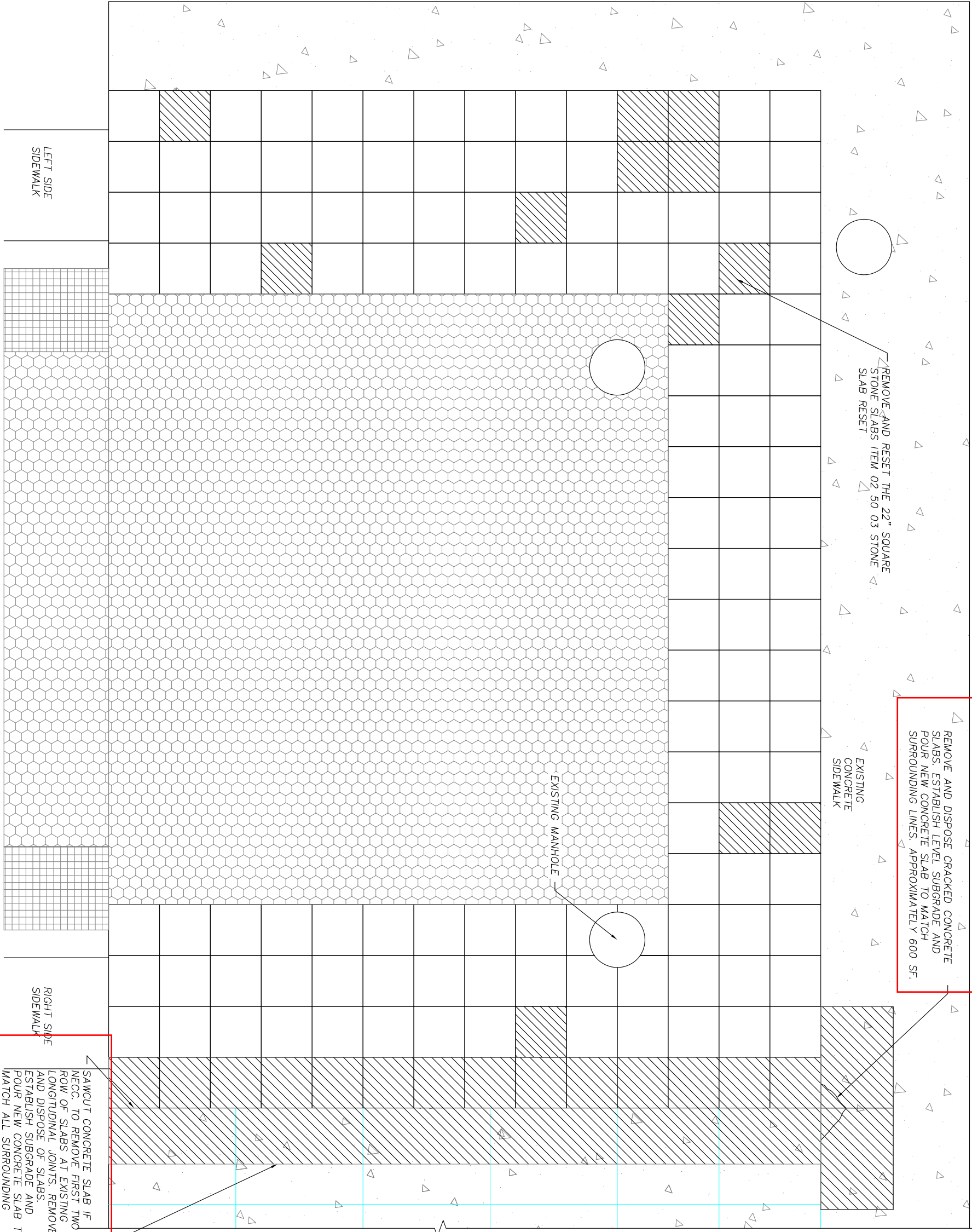


3 SIDEWALK SLAB SECTION
Not to Scale

2 PLAN LEFT SIDE WALKWAY
Scale: 1/4" = 1'-0"

TABLE OF QUANTITIES			
ITEM NUMBER	NAME	QUANTITY	UNITS
02 50 03	STONE SLAB RESET	35	EA
02 57 60	SIDEWALK	900	SF

1 PLAN VIEW
Scale: 1/2" = 1'-0"



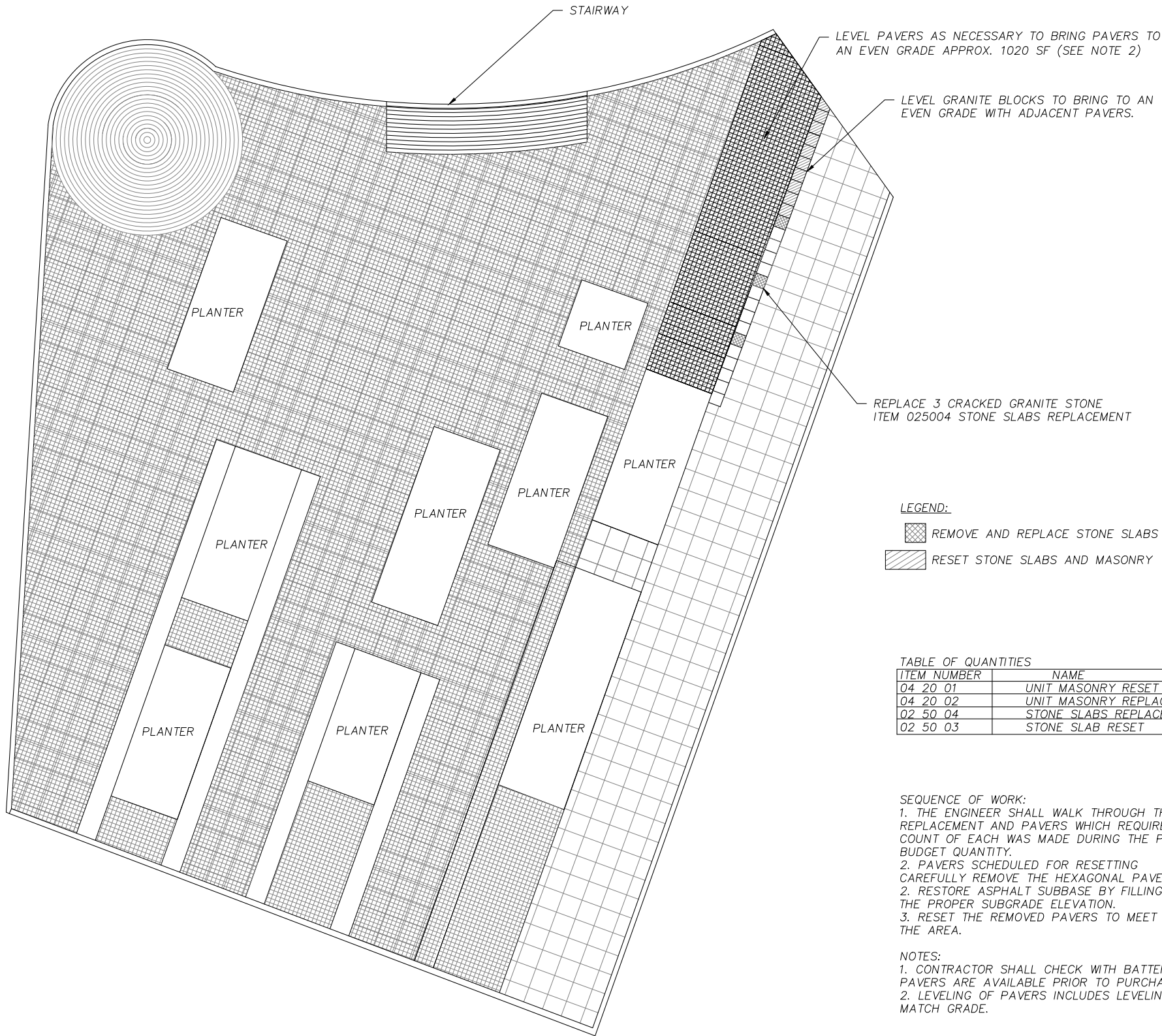
REMOVE AND DISPOSE CRACKED CONCRETE
SLABS. ESTABLISH LEVEL SUBGRADE AND
POUR NEW CONCRETE SLAB TO MATCH
SURROUNDING LINES. APPROXIMATELY 600 SF.

SAWCUT CONCRETE SLAB IF
NECC. TO REMOVE FIRST TWO
ROW OF SLABS AT EXISTING
LONGITUDINAL JOINTS. REMOVE
AND DISPOSE OF SLABS.
ESTABLISH SUBGRADE AND
POUR NEW CONCRETE SLAB TO
MATCH ALL SURROUNDING
LINES. APPROXIMATELY 300 SF.

- SEQUENCE OF WORK:
- CAREFULLY REMOVE THE SLAB STONES WHICH ARE LOOSE AND MISALIGNED.
 - SAWCUT AND REMOVE CONCRETE SLAB RIGHT SIDE AS SHOWN.
 - RESTORE THE SUBBASE MATERIAL TO PROVIDE A FLAT SMOOTH SUBGRADE ELEVATION.
 - RESET THE REMOVED STONE SLABS TO MEET THE LINES AND GRADES OF THE EXISTING STONE SLABS IN THE AREA.
 - POUR NEW CONCRETE SLAB TO TRANSITION SMOOTHLY FROM STONE SLABS TO REMAINING SIDEWALKS

LOCATION #8 SQUARE GREY PAVERS CRACKED AND SETTLED

NORTH COVE



LEGEND:

REMOVE AND REPLACE STONE SLABS

RESET STONE SLABS AND MASONRY

TABLE OF QUANTITIES			
ITEM NUMBER	NAME	QUANTITY	UNITS
04 20 01	UNIT MASONRY RESET	1020	SF
04 20 02	UNIT MASONRY REPLACEMENT	30	SF
02 50 04	STONE SLABS REPLACEMENT	3	EA
02 50 03	STONE SLAB RESET	10	EA

- SEQUENCE OF WORK:
1. THE ENGINEER SHALL WALK THROUGH THE PATIO AND MARK ALL PAVERS WHICH REQUIRE REPLACEMENT AND PAVERS WHICH REQUIRE REMOVAL AND RESETTNG. A PRELIMINARY COUNT OF EACH WAS MADE DURING THE PRELIMINARY INSPECTION AND USED AS THE BUDGET QUANTITY.
 2. PAVERS SCHEDULED FOR RESETTNG CAREFULLY REMOVE THE HEXAGONAL PAVERS WHICH HAVE HEAVED OR SETTLED. RESTORE ASPHALT SUBBASE BY FILLING OR GRINDING AS NECESSARY TO ESTABLISH THE PROPER SUBGRADE ELEVATION.
 3. RESET THE REMOVED PAVERS TO MEET THE LINES AND GRADES OF THE EXISTING PAVERS IN THE AREA.
- NOTES:
1. CONTRACTOR SHALL CHECK WITH BATTERY PARK CITY PARK SERVICES TO SEE IF EXTRA PAVERS ARE AVAILABLE PRIOR TO PURCHASING ANY REPLACEMENT PAVERS.
 2. LEVELING OF PAVERS INCLUDES LEVELING OF 2 STORM DRAWINS AND 1 ELECTRICAL BOX TO MATCH GRADE.

1 PLAN VIEW OF AREA WITH UNEVEN PAVERS

Scale: 1" = 150'

revisions

Prepared for:
BATTERY PARK

LOCATION #8

BATTERY PARK
ESPLANADE REPAIRS

Prepared by:
Hudson River Valley
Engineers, PLLC
45 Gary Road
Mechanicville, NY 12118
(518) 664-5354



SCALE: 1"= 150'

Job BATTERY PARK

Date 12/17/2015

Designed by:
Ndemos



S-9
of-14

LOCATION #9 RAMPS TO NORTH COVE YACHT HARBOR

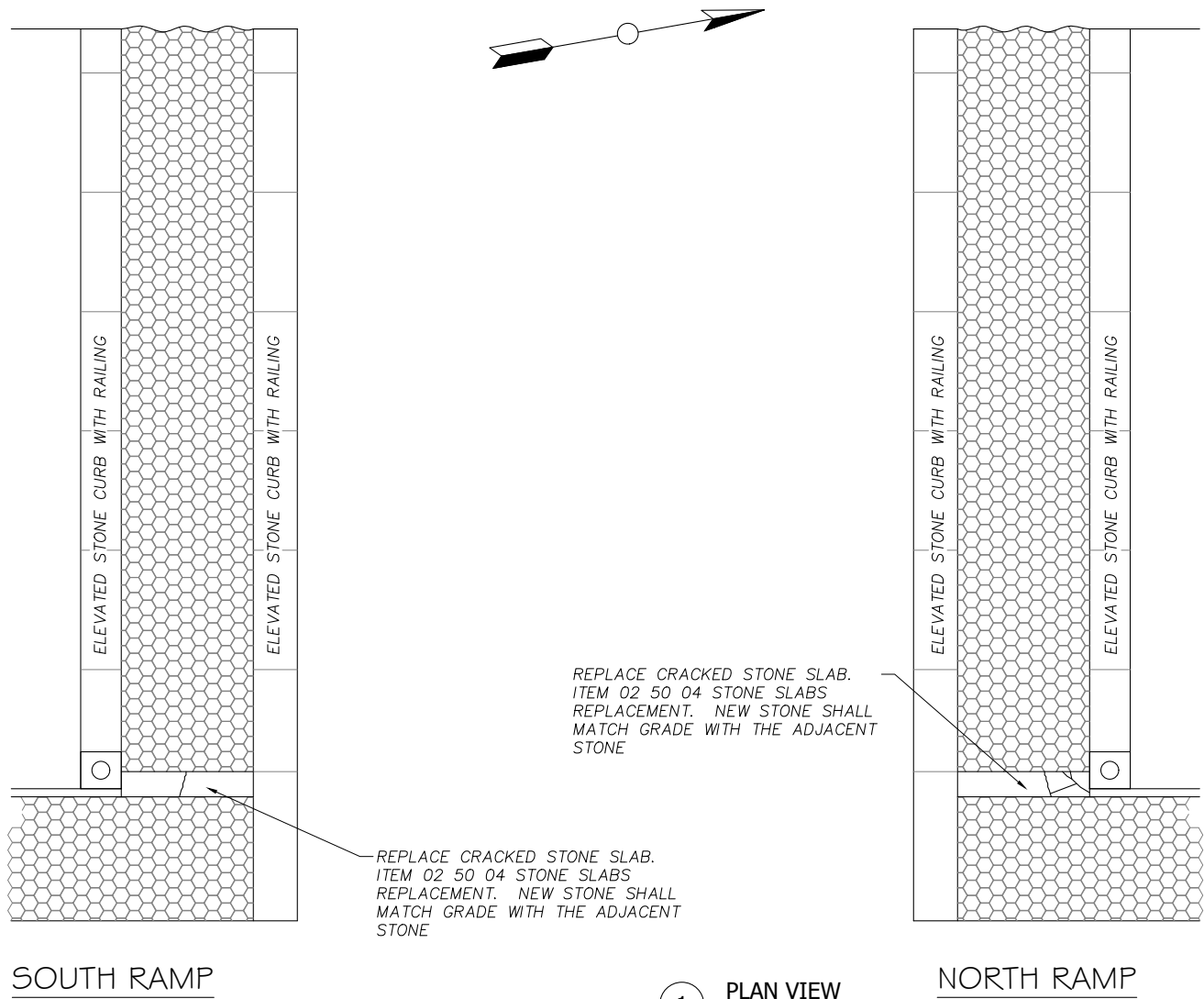


TABLE OF QUANTITIES

ITEM NUMBER	NAME	QUANTITY	UNITS
02 50 04	STONE SLABS REPLACEMENT	2	EA

revisions

Prepared for:
BATTERY PARK

LOCATION #9
BATTERY PARK
2015 ESPLANADE REPAIRS

Prepared by:
CV Associates
148 Rte 17M Suite 2
Harriman, NY 10926

SCALE 1/4"= 1'-0"

Job BATTERY PARK

Date 12/17/2015

Designed by:
Ndemos

S-10

of-14

RESET BLOCK AND RESEAL

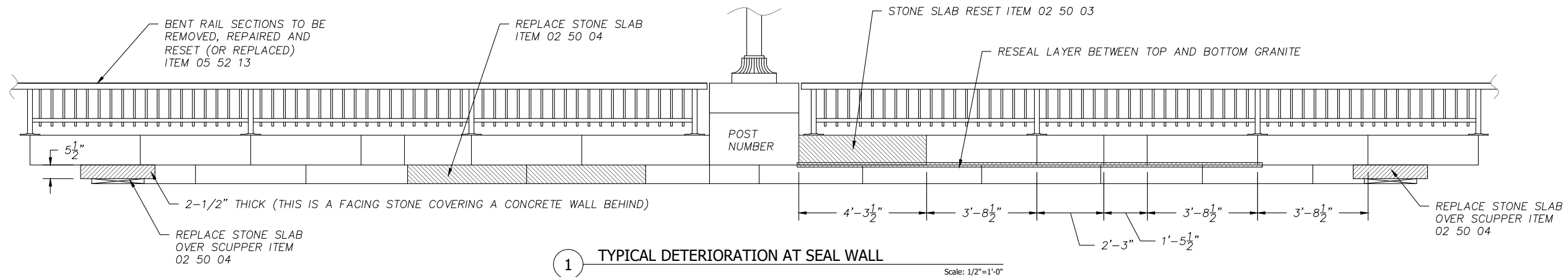


LOCATION #10, #11 AND #12 SEA WALL REPAIRS



REPLACE BROKEN SCUPPER STONE

REPLACE LOWER FACING STONE



SEQUENCE OF WORK:

- SLATE STONEWORK ALONG SEA WALL HAS SHIFTED.
- AREAS MARKED AS "RESEAL BLOCK" SHALL HAVE ALL ELASTOMERIC JOINT SEALANT SCRAPED AWAY AND SUBSTRATE THOROUGHLY CLEANED. RESEAL JOINTS AS SPECIFIED IN ITEM 07 92 00 JOINT SEALANT.
- AREAS MARKED AS "REMOVE AND RESET" WILL REQUIRE:
 - THE RAILING SHALL BE REMOVED AS SHOWN ON DRAWING S-3.
 - REMOVE SHIFTED STONE SLAB AND REPAIR THE SUBSTRATE TO FORM A TRUE AND LEVEL SURFACE TO MATCH THE LEVEL OF EXISTING STONES TO REMAIN.
 - RESET THE STONE SLAB TO MATCH EXISTING SLABS TO REMAIN
 - INSTALL SEALANT AS DESCRIBED UNDER ITEM 07 92 00 JOINT SEALANT
 - REINSTALL RAILING AS SHOWN ON DRAWING S-3
- SEVERAL OF THE RAIL POSTS MAY NEED STRAIGHTENING OR RE-ALIGNING AS A PART OF THE REMOVAL AND REINSTALLATION. THE COST OF THIS SHALL BE INCLUDED IN THE ITEM 05 52 13 RAIL POST REPAIRS.

CHART OF DAMAGED AREAS:

No	LOCATION	LENGTH OF JOINT SEAL 07 92 00	NUMBER OF SLABS RESET 20 50 03	NUMBER OF SLABS REPLACED 20 50 04	LENGTH OF RAIL TO REPLACE/RESET 07 92 00
1.	16- FEET NORTH OF POLE 38G	10- FEET			
2.	NEAR POLE 31G	30- FEET	3- BLOCKS		
3.	BETWEEN POLES 28G AND 29G				18- FT (3 SECTIONS)
4.	BETWEEN POLES 22G AND 25G			2 STONE SLABS OVER SCUPPERS	
5.	BETWEEN POLES 21G AND 22G	50- FEET	7 BLOCKS	1 LOWER FACING STONES	
6.	BETWEEN POLES 15G AND 17G	30- FEET		2 LOWER FACING STONE	
				1 STONE SLAB OVER SCUPPER	

TABLE OF QUANTITIES

ITEM NUMBER	NAME	QUANTITY	UNITS
02 50 03	STONE SLAB RESET	10	EA
02 50 04	STONE REPLACEMENT	6	EA
05 52 13	RAIL REPLACEMENT AND RESETTING	4	EA
07 92 00	JOINT SEALANTS	90	LF

revisions

LOCATION #10, #11 AND #12

Prepared for:
BATTERY PARK

BATTERY PARK
2015 ESPLANADE REPAIRS

Prepared by:
Hudson River Valley
Engineers, PLLC
45 Cary Road
Mechanicville, NY 12118
(518) 664-5354



SCALE: VARIES

Job BATTERY PARK

Date 12/17/2015

Designed by:
Ndemos



S-11

of-14

LOCATION #13 PAVERS HAVE SETTLED AND LIFTED, CREATING TRIPPING HAZARDS

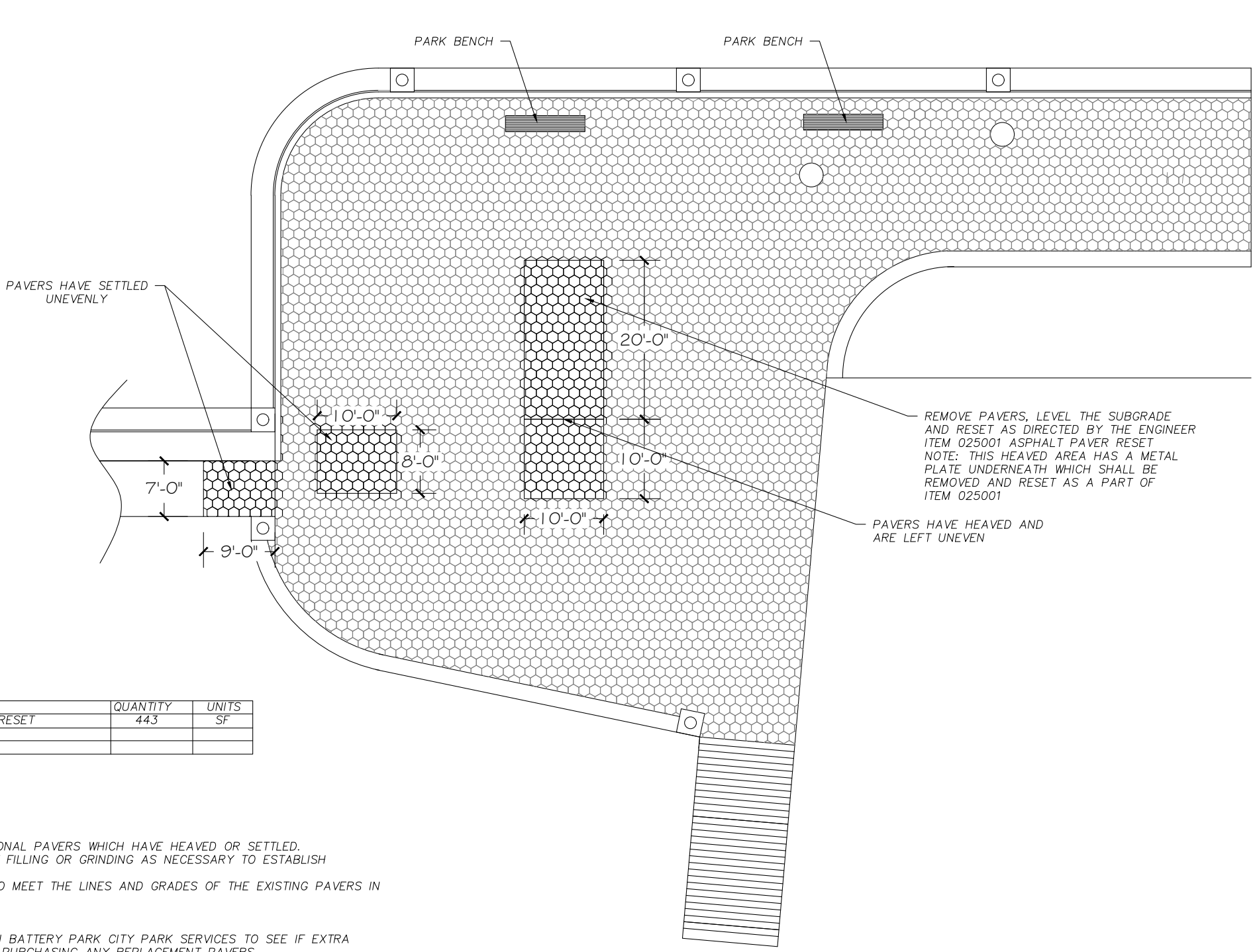


TABLE OF QUANTITIES

ITEM NUMBER	NAME	QUANTITY	UNITS
02 50 01	ASPHALT PAVER RESET	443	SF

SEQUENCE OF WORK:

- CAREFULLY REMOVE THE HEXAGONAL PAVERS WHICH HAVE HEAVED OR SETTLED.
- RESTORE ASPHALT SUBBASE BY FILLING OR GRINDING AS NECESSARY TO ESTABLISH THE PROPER SUBGRADE ELEVATION.
- RESET THE REMOVED PAVERS TO MEET THE LINES AND GRADES OF THE EXISTING PAVERS IN THE AREA.

NOTES:

- CONTRACTOR SHALL CHECK WITH BATTERY PARK CITY PARK SERVICES TO SEE IF EXTRA PAVERS ARE AVAILABLE PRIOR TO PURCHASING ANY REPLACEMENT PAVERS.
- EXISTING PAVERS ARE 3" HANOVER HEX PAVERS SET ON AN ASPHALT SUBBASE WITH ADHESIVE TACK COAT UNDER PAVERS.

1 PLAN VIEW OF UNEVEN PAVERS
Scale: 1/8" = 1'-0"

revisions

Prepared for:
BATTERY PARK

LOCATION #13
BATTERY PARK
2015 ESPLANADE REPAIRS

Prepared by:
CV Associates
148 Rte 17M Suite 2
Hamman, NY 10926

SCALE: VARIES

Job BATTERY PARK

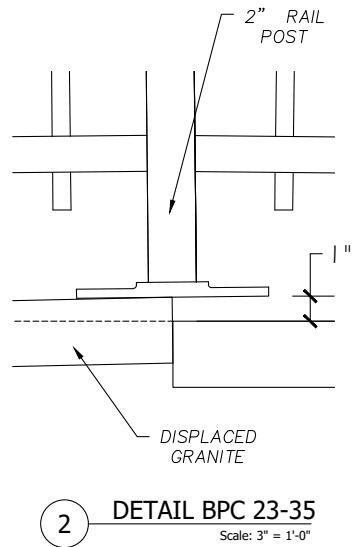
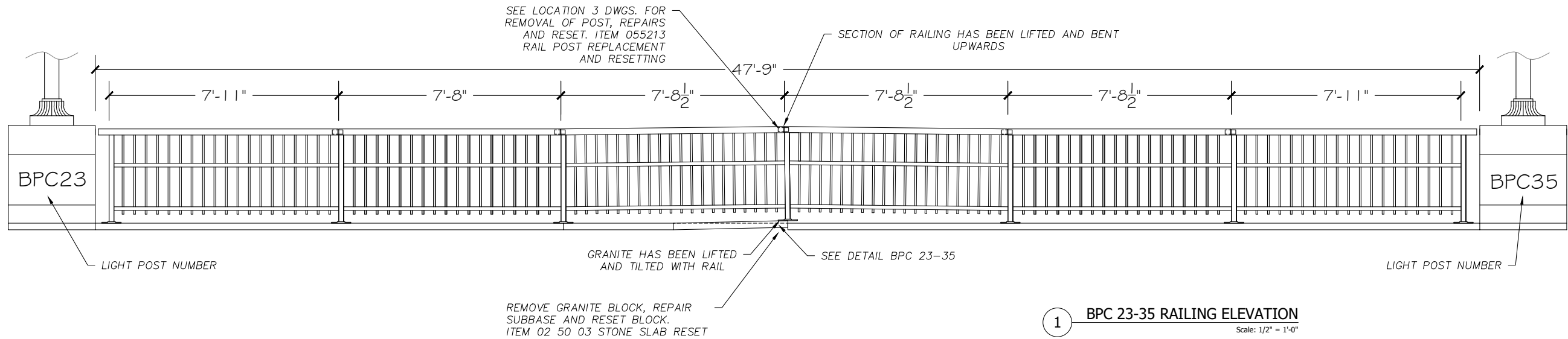
Date 12/17/2015

Designed by:
Ndemos

S-12

of-14

LOCATION #14 LIFTED AND BENT HANDRAIL SECTIONS



- SEQUENCE OF WORK:
1. CUT AND REMOVE RAIL AS NECESSARY FOR REPAIRS. SEE LOCATION 3 DWGS.
 2. SET TEMPORARY PROTECTIVE BARRIER IN ANY OPEN SPACES. ITEM 01 50 01 TEMP PROTECTIVE BARRIER.
 3. CAREFULLY REMOVE STONE SLABS AND RESTORE SUBGRADE MORTAR.
 4. RESET STONE AND RESET THE REPAIRED RAILING SYSTEM.

TABLE OF QUANTITIES			
ITEM NUMBER	NAME	QUANTITY	UNITS
01 50 01	TEMPORARY PROTECTIVE BARRIER	1	EA
02 50 03	STONE SLAB RESET	6	EA
05 52 13	RAIL POST REPLACEMENT AND RESET	3	EA

revisions

Prepared for:
BATTERY PARK

LOCATION #14
BATTERY PARK
2015 ESPLANADE REPAIRS


Prepared by:
CV Associates
148 Rte 17M Suite 2
Harriman, NY 10926

SCALE: VARIES

Job BATTERY PARK

Date 12/17/2015

Designed by:
Ndemos



S-13

of-14

LOCATION #14 LIFTED AND BENT HANDRAIL SECTIONS

revisions

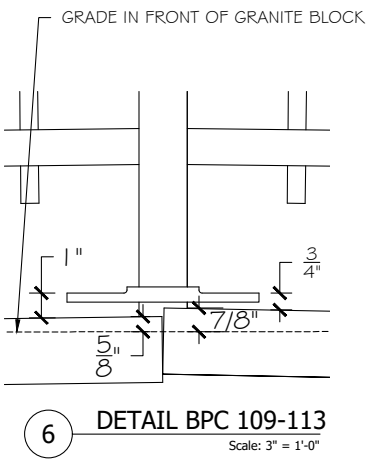
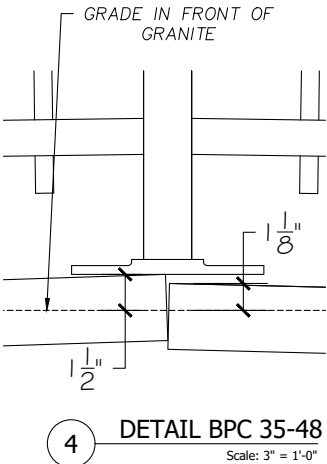
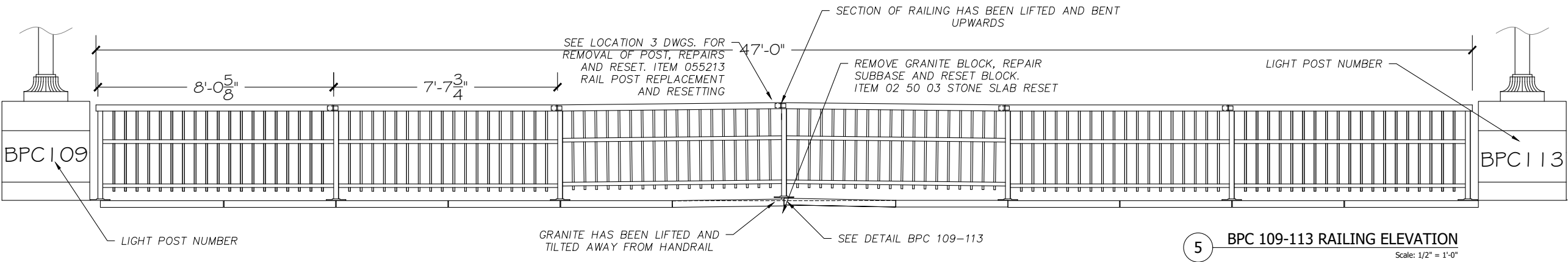
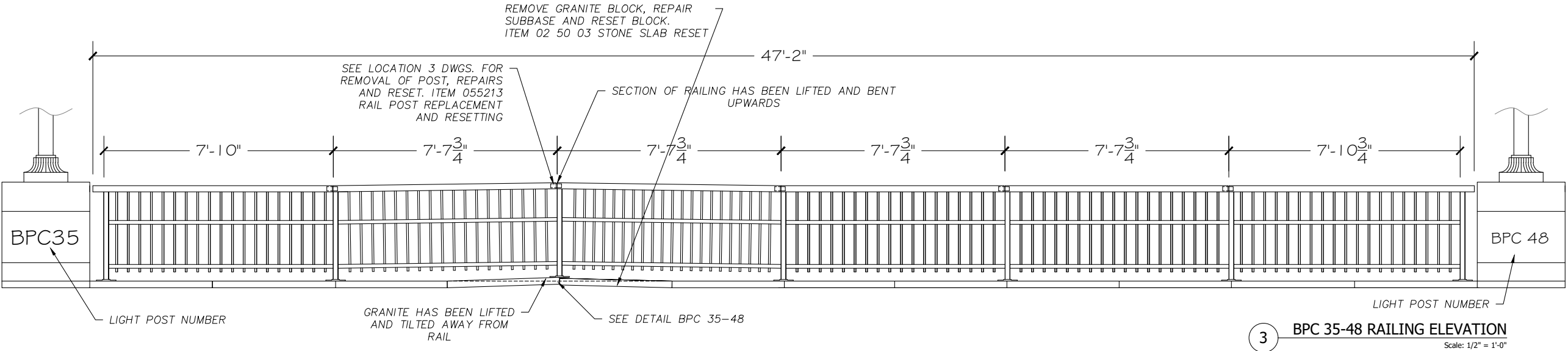
Prepared for:
BATTERY PARK

LOCATION #14
BATTERY PARK
2015 ESPLANADE REPAIRS

Prepared by:
CV Associates
148 Rte 17M Suite 2
Hamman, NY 10926

SCALE: VARIES
Job BATTERY PARK
Date 06/15/2015
Designed by:
Ndemos

S-14
of-14



SECTION 01 50 01
TEMPORARY PROTECTIVE BARRIER

PART 1 GENERAL

1.1 SUMMARY

- A. Temporary Protective Barrier: Provide protection for pedestrians during reconstruction of rail sections along the Esplanade at Battery Park. This work includes providing, installing, maintaining and removal of the appurtenances.

PART 2 PRODUCTS

2.1 TEMPORARY PROTECTIVE BARRIER

- A. The Contractor shall propose a protective barrier system, provide shop drawings for review and approval and then procure and install the approved system.

PART 3 EXECUTION

- 3.1 Provide Barrier system and install as shown on the approved shop drawings. Wherever work is adjacent to the river or would cause Esplanade users to be exposed to drop-off hazards, positive protection is required. A rigid barrier system with sufficient temporary anchorage is to be used at these locations.

PART 4 METHOD OF MEASUREMENT AND BASIS OF PAYMENT

- 4.1 This item shall be measured as EACH for each work location so protected.
- 4.2 Payment shall be made for EACH work location protected by temporary protective Barrier.

END OF SECTION

02 50 01
Asphalt Paver Reset

PART 1 – GENERAL

1.1 DESCRIPTION

A. Work Included

1. Under this Section the Contractor shall provide all labor, equipment and material necessary to reset walkway pavers, complete in place, and as shown on the drawings, specified herein and approved by the Engineer.
2. In general, work to be included under this section shall include, but not be limited to, the following:
 - a. Existing asphalt concrete pavers reset.

1.2 QUALITY ASSURANCE

A. Standards

1. All equipment and labor furnished under this Section shall:
 - a. Comply with ASTM, AA, NEC, ANSI and all other applicable Federal, State and Municipal codes and regulations including revisions to date of contract.
 - b. In all cases where a device or part of the equipment is referred to in this Section in the singular, it is intended that such references shall apply to as many such devices as are required to complete the installation.
 - c. Referenced specifications: The New York State Department of Transportation Standard Specifications (NYS-DOT Specifications) for construction and materials, 2008, plus addenda when referred to, shall become a part of this specification for material and construction requirements. A referenced New York State (NYS) Pay Item Number shall serve to describe the required work for this project providing materials and construction conforming to all applicable requirements under the NYS-DOT Specifications for that New York State Item, except for measurement and payment. The measurement and payment section of the NYS-DOT Specification shall not apply as all work under this section shall be included in the Contractor's price bid for this Contract. Where the New York State DOT Specifications site requirements differing from those included in these specifications, the more stringent, highest quality requirement shall apply.

B. Qualifications of Installers

1. Use adequate number of skilled workmen who are thoroughly trained and experienced in the specified requirements and the methods needed for proper performance of the work of this Section.

1.3 PRODUCT HANDLING

A. Protection

1. Use all means necessary to protect materials of this Section before, during and after installation and to protect installed work and materials of all other trades.

B. Replacements

1. In the event of damage, immediately make all repairs and replacements necessary to the approval of the Engineer and at no additional cost to the Owner.

PART 3 – EXECUTION

3.1 RESET

- A. Examine the areas and conditions under which work of this Section will be performed.
- B. Protect the area where work will be performed with temporary construction fencing.
- C. Carefully remove the damaged pavers so as to not disturb or damage pavers to remain.
- D. Correct subgrade conditions by infilling, restoring, re-grading and compacting the sand subgrade material such that the final installed pavers will match the existing paver lines and grades.
- E. Reset pavers to match existing paver lines and grades.
- F. Contractor shall check that all reset asphalt pavers have been accurately positioned and set to the proper slope and elevation. No depressions or mounds will be permitted greater than 1/8" tolerance.

PART 3 – PAYMENT

4.1 METHOD OF MEASUREMENT:

- A. An Asphalt Paver reset shall be measured as square feet of pavers reset.

4.2 BASIS OF PAYMENT:

- A. Asphalt Pavers reset shall be paid as a unit price of the number of square feet of pavers reset.

END OF SECTION

02 50 02
Asphalt Paver Replacement

PART 1 – GENERAL

1.1 DESCRIPTION

A. Work Included

1. Under this Section the Contractor shall provide all labor, equipment and material necessary to furnish and install asphalt walkway pavers, complete in place, and as shown on the drawings, specified herein and approved by the Engineer.
2. In general, work to be included under this section shall include, but not be limited to, the following:
 - a. Asphalt concrete pavers replaced.

1.2 QUALITY ASSURANCE

A. Standards

1. All equipment and labor furnished under this Section shall:
 - a. Comply with ASTM, AA, NEC, ANSI and all other applicable Federal, State and Municipal codes and regulations including revisions to date of contract.
 - b. In all cases where a device or part of the equipment is referred to in this Section in the singular, it is intended that such references shall apply to as many such devices as are required to complete the installation.
 - c. Referenced specifications: The New York State Department of Transportation Standard Specifications (NYS-DOT Specifications) for construction and materials, 2008, plus addenda when referred to, shall become a part of this specification for material and construction requirements. A referenced New York State (NYS) Pay Item Number shall serve to describe the required work for this project providing materials and construction conforming to all applicable requirements under the NYS-DOT Specifications for that New York State Item, except for measurement and payment. The measurement and payment section of the NYS-DOT Specification shall not apply as all work under this section shall be included in the Contractor's price bid for this Contract. Where the New York State DOT Specifications site requirements differing from those included in these specifications, the more stringent, highest quality requirement shall apply.

B. Qualifications of Suppliers

1. Products used in the work of this section shall be produced by those who are regularly engaged in the production and/or supply of similar items for at least five (5) years and which have a history of successful production, acceptable to the Engineer.

C. Qualifications of Installers

1. Use adequate number of skilled workmen who are thoroughly trained and experienced in the specified requirements and the methods needed for proper performance of the work of this Section.

1.3 SUBMITTALS

A. General

1. Submit shop drawings in accordance with Section 01 33 00 – “Submittals”.

B. Product Data

1. Manufacturer’s specification and other data required to demonstrate compliance with specific requirements.
2. Complete shop drawings of all work of this Section, showing dimensions and locations of all items including supporting structures and clearance requirements.

1.4 PRODUCT HANDLING

A. Protection

1. Use all means necessary to protect materials of this Section before, during and after installation and to protect installed work and materials of all other trades.

B. Replacements

1. In the event of damage, immediately make all repairs and replacements necessary to the approval of the Engineer and at no additional cost to the Owner.

PART 2 – PRODUCTS

2.1 REPLACEMENT PAVERS

A. Asphalt Concrete replacement pavers:

1. Concrete grid paver units: Comply with ASTM C1319.
2. Interlocking concrete paver units: Comply with ASTM C 936.
3. Maximum 1 percent loss in dry mass per unit in minimum 50 freeze-thaw cycles when tested according to ASTM C 67.

PART 3 – EXECUTION

3.1 REPLACEMENT

- A. Examine the areas and conditions under which work of this Section will be installed.
- B. Protect the area where work will be performed with temporary construction fencing.
- C. Carefully remove the damaged pavers so as to not disturb or damage pavers to remain.
- D. Correct subgrade conditions by infilling, restoring, re-grading and compacting the sand subgrade material such that the final installed pavers will match the existing paver lines and grades.
- E. Install replacement pavers to match existing paver lines and grades.
- F. Contractor shall check that all replaced asphalt pavers have been accurately positioned and set to the proper slope and elevation. No depressions or mounds will be permitted greater than 1/8" tolerance.

PART 4 – PAYMENT

4.1 METHOD OF MEASUREMENT:

- A. An Asphalt Paver replaced shall be measured as each paver replaced.

4.2 BASIS OF PAYMENT:

- A. An Asphalt Paver replaced shall be paid as a unit price of each paver replaced.

END OF SECTION

02 50 03
Stone Slabs Reset

PART 1 – GENERAL

1.1 DESCRIPTION

A. Work Included

1. Under this Section the Contractor shall provide all labor, equipment and material necessary to reset stone slabs in walkway areas and on top of walls, complete in place, and as shown on the drawings, and specified by the Engineer.
2. In general, work to be included under this section shall include, but not be limited to, the following:
 - a. Existing stone slabs in walkways and wall tops removed.
 - b. Stone slabs stored.
 - c. Subgrade repaired, infilled, regraded and compacted.
 - d. Stone slabs reset.

1.2 QUALITY ASSURANCE

A. Standards

1. All equipment and labor furnished under this Section shall:
 - a. Comply with ASTM, AA, NEC, ANSI and all other applicable Federal, State and Municipal codes and regulations including revisions to date of contract.
 - b. In all cases where a device or part of the equipment is referred to in this Section in the singular, it is intended that such references shall apply to as many such devices as are required to complete the installation.
 - c. Referenced specifications: The New York State Department of Transportation Standard Specifications (NYS-DOT Specifications) for construction and materials, 2008, plus addenda when referred to, shall become a part of this specification for material and construction requirements. A referenced New York State (NYS) Pay Item Number shall serve to describe the required work for this project providing materials and construction conforming to all applicable requirements under the NYS-DOT Specifications for that New York State Item, except for measurement and payment. The measurement and payment section of the NYS-DOT Specification shall not apply as all work under this section shall be included in the Contractor's price bid for this Contract. Where the New York State DOT Specifications site requirements differing from those included in these specifications, the more stringent, highest quality requirement shall apply.

B. Qualifications of Installers

1. Use adequate number of skilled workmen who are thoroughly trained and experienced in the specified requirements and the methods needed for proper performance of the work of this Section.

1.3 PRODUCT HANDLING

A. Protection

1. Use all means necessary to protect materials of this Section before, during and after installation and to protect installed work and materials of all other trades.

B. Replacements

1. In the event of damage, immediately make all repairs and replacements necessary to the approval of the Engineer and at no additional cost to the Owner.

PART 2 – EXECUTION

3.1 INSPECTION

- A. Examine the areas and conditions under which work of this Section will be installed. Correct conditions detrimental to proper and timely completion of the work. Do not proceed until unsatisfactory conditions have been corrected.
- B. Protect the area where work will be performed with temporary construction fencing.
- C. The Contractor shall check that all reset granite stone slabs have been accurately positioned and set to the proper slope and elevation. No depressions or mounds will be permitted to accommodate inaccuracies in the setting of these slab units.

3.2 REMOVAL AND RESETTING

- A. Granite stone slabs shall be lifted as a unit using means and methods of the contractor to lift and set aside slabs without cracking, chipping or breaking these slabs or adjacent slabs.
- B. Subgrade sand shall be regraded, infilled, or restored to create a subgrade surface such that when the slab is reset it will be at the grades and lines to match existing slabs to remain. Slabs on wall tops will have mortar bed rather than sand bed. Mortar bed shall be removed to a minimum replacement depth of 1", cleaned and prepared for new mortar, new mortar bed installed just prior to setting slab.
- C. Granite stone slabs shall be reset in their original positions, final lines and grades shall be approved by the engineer, contractor shall remove and reset again if in the opinion of the engineer the final reset slab does not match the existing to a tolerance of 1/8" or less.

PART 4 – PAYMENT

4.1 METHOD OF MEASUREMENT:

- A. A granite stone reset shall be measured as each reset.

4.2 BASIS OF PAYMENT:

- A. Granite stones reset shall be paid as a unit price of each stone reset.

END OF SECTION

02 50 04
Stone Slab Replacement

PART 1 – GENERAL

1.1 DESCRIPTION

A. Work Included

1. Under this Section the Contractor shall provide all labor, equipment and material necessary to remove, furnish replacement stone, and install stone slabs, complete in place, as shown on the drawings, specified herein and approved by the Engineer.
2. In general, work to be included under this section shall include, but not be limited to, the following:
 - a. Cracked and broken stone slabs shall be carefully removed as to not disturb or damage adjacent stones.
 - b. Subgrade sand shall be restored, infilled, regraded and compacted as necessary to provide a surface for the new stones that when the new stones are set, they will match lines and grades of existing stones.
 - c. Supply stone slabs that match material, color, size and shape of the existing surrounding stone slabs.
 - d. Install the new stone slabs to recreate the lines and grades of the originally constructed stone slabs.

1.2 QUALITY ASSURANCE

A. Standards

1. All equipment and labor furnished under this Section shall:
 - a. Comply with ASTM, AA, NEC, ANSI and all other applicable Federal, State and Municipal codes and regulations including revisions to date of contract.
 - b. In all cases where a device or part of the equipment is referred to in this Section in the singular, it is intended that such references shall apply to as many such devices as are required to complete the installation.
 - c. Referenced specifications: The New York State Department of Transportation Standard Specifications (NYS-DOT Specifications) for construction and materials, 2008, plus addenda when referred to, shall become a part of this specification for material and construction requirements. A referenced New York State (NYS) Pay Item Number shall serve to describe the required work for this project providing materials and construction conforming to all applicable requirements under the NYS-DOT Specifications for that New York State Item, except for measurement and payment. The measurement and payment section of the NYS-DOT Specification shall not apply as all work under this section shall be included in the Contractor's price bid for this Contract. Where the New York State DOT Specifications site requirements differing from those included in these specifications, the more stringent, highest quality requirement shall apply.

B. Qualifications of Suppliers

1. Products used in the work of this section shall be produced by those who are regularly engaged in the production and/or supply of similar items for at least five (5) years and which have a history of successful production, acceptable to the Engineer.

C. Qualifications of Installers

1. Use adequate number of skilled workmen who are thoroughly trained and experienced in the specified requirements and the methods needed for proper performance of the work of this Section.

1.3 SUBMITTALS

A. General

1. Submit shop drawings in accordance with Section 01 33 00 – “Submittals”.
2. Submit granite sample for the owner and engineer to approve the material, color, finish texture, and workmanship of the proposed replacement granite stone slabs.

B. Product Data

1. Manufacturer’s specification and other data required to demonstrate compliance with specific requirements.
2. Complete shop drawings of all work of this Section, showing dimensions and locations of all items including supporting structures and clearance requirements.

1.4 PRODUCT HANDLING

A. Protection

1. Use all means necessary to protect materials of this Section before, during and after installation and to protect installed work and materials of all other trades.

B. Replacements

1. In the event of damage, immediately make all repairs and replacements necessary to the approval of the Engineer and at no additional cost to the Owner.

PART 2 – PRODUCTS

2.1 GRANITE STONES

1. ASTM C-615: “Standard Specification for Granite Dimension Stone.” Includes material characteristics, physical requirements, and sampling appropriate to the selection of granite

for general building and structural purposes. Below is the required test values for granite; the necessary tests are prescribed by and located in the ASTM standards.

a.	Density, min lb/ft ³ (kg/m ³)	160 (2560)
b.	Absorption by weight, max, %	0.40
c.	Compressive strength, min, psi (MPa)	19,000 (131)
d.	Modulus of rupture, min, psi (MPa)	1500 (10.34)
e.	Abrasion resistance, min, hardness	25
f.	Flexural strength, min, psi (MPa)	1200 (8.27)

PART 3 – EXECUTION

3.1 INSPECTION

- A. Examine the areas and conditions under which work of this Section will be installed. Verify conditions shown on the drawings and notify the Engineer of any discrepancies between the drawings and the conditions encountered in the inspection.
- B. Protect the area where work will be performed with temporary construction fencing.
- C. The Contractor shall check that all replaced granite stones have been accurately positioned and set to the proper slope and elevation. No depressions or mounds will be permitted in the pavement to accommodate inaccuracies in the setting of these appurtenances.

3.2 REMOVAL AND REPLACEMENT

- A. Stone slabs shall be lifted as a unit using means and methods of the contractor to lift and set aside slabs without cracking, chipping or breaking the slabs to be removed or the adjacent slabs.
- B. Subgrade sand shall be regraded, infilled, or restored to create a subgrade surface such that when the slab is replaced it will be at the grades and lines to match existing slabs to remain.
- C. New Stone Slabs shall be supplied once the sample has been approved by the engineer. New slabs shall be stored on site and carefully set into place without damaging any adjacent slabs or the new slab. The final lines and grades shall be approved by the engineer. Contractor shall remove and reset again if in the opinion of the engineer the final set slab does not match the existing to a tolerance of 1/8" or less.

PART 4 – PAYMENT

4.1 METHOD OF MEASUREMENT:

- A. A Stone Slab replaced shall be measured as each replaced.

4.2 BASIS OF PAYMENT:

- A. A Stone Slab replaced shall be paid as a unit price of each slab replaced and approved by the Engineer.

END OF SECTION

04 20 01
Unit Masonry Reset

PART 1 – GENERAL

1.1 DESCRIPTION

A. Work Included

1. Under this Section the Contractor shall provide all labor, equipment and material necessary to reset walkway CMU pavers, complete in place, and as shown on the drawings, specified herein and approved by the Engineer.
2. In general, work to be included under this section shall include, but not be limited to, the following:
 - a. Remove existing CMU pavers
 - b. Restore subgrade
 - c. Reset CMU pavers

1.2 QUALITY ASSURANCE

A. Standards

1. All equipment and labor furnished under this Section shall:
 - a. Comply with ASTM, AA, NEC, ANSI and all other applicable Federal, State and Municipal codes and regulations including revisions to date of contract.
 - b. In all cases where a device or part of the equipment is referred to in this Section in the singular, it is intended that such references shall apply to as many such devices as are required to complete the installation.
 - c. Referenced specifications: The New York State Department of Transportation Standard Specifications (NYS-DOT Specifications) for construction and materials, 2008, plus addenda when referred to, shall become a part of this specification for material and construction requirements. A referenced New York State (NYS) Pay Item Number shall serve to describe the required work for this project providing materials and construction conforming to all applicable requirements under the NYS-DOT Specifications for that New York State Item, except for measurement and payment. The measurement and payment section of the NYS-DOT Specification shall not apply as all work under this section shall be included in the Contractor's price bid for this Contract. Where the New York State DOT Specifications site requirements differing from those included in these specifications, the more stringent, highest quality requirement shall apply.

B. Qualifications of Installers

1. Use adequate number of skilled workmen who are thoroughly trained and experienced in the specified requirements and the methods needed for proper performance of the work of this Section.

1.3 PRODUCT HANDLING

A. Protection

1. Use all means necessary to protect materials of this Section before, during and after installation and to protect installed work and materials of all other trades.

B. Replacements

1. In the event of damage, immediately make all repairs and replacements necessary to the approval of the Engineer and at no additional cost to the Owner.

PART 3 – EXECUTION

3.1 RESET

- A. Examine the areas and conditions under which work of this Section will be installed.
- B. Protect the area where work will be performed with temporary construction fencing.
- C. Carefully remove the CMU pavers to be reset so as to not disturb or damage pavers to remain.
- D. Correct subgrade conditions using ASTM A-33 concrete sand by infilling, restoring, re-grading and compacting the subgrade material such that the final installed pavers will match the existing paver lines and grades.
- E. Reset pavers to match existing paver lines and grades.
- F. Contractor shall check that all reset or replaced stone or asphalt pavers have been accurately positioned and set to the proper slope and elevation. No depressions or mounds will be permitted greater than 1/8" tolerance.

PART 4 – PAYMENT

4.1 METHOD OF MEASUREMENT:

- A. Unit Masonry Reset shall be measured as square feet of pavers reset.

4.2 BASIS OF PAYMENT:

- B. Unit Masonry Reset shall be paid as a unit price of the number of square feet of pavers reset.

END OF SECTION

04 20 02
Unit Masonry Replacement

PART 1 – GENERAL

1.1 DESCRIPTION

A. Work Included

1. Under this Section the Contractor shall provide all labor, equipment and material necessary to furnish and install CMU walkway pavers, complete in place, and as shown on the drawings, specified herein and approved by the Engineer.
2. In general, work to be included under this section shall include, but not be limited to, the following:
 - a. Remove Existing CMU Pavers
 - b. Restore Subgrade
 - c. Furnish and Install new CMU pavers

1.2 QUALITY ASSURANCE

A. Standards

1. All equipment and labor furnished under this Section shall:
 - a. Comply with ASTM, AA, NEC, ANSI and all other applicable Federal, State and Municipal codes and regulations including revisions to date of contract.
 - b. In all cases where a device or part of the equipment is referred to in this Section in the singular, it is intended that such references shall apply to as many such devices as are required to complete the installation.
 - c. Referenced specifications: The New York State Department of Transportation Standard Specifications (NYS-DOT Specifications) for construction and materials, 2008, plus addenda when referred to, shall become a part of this specification for material and construction requirements. A referenced New York State (NYS) Pay Item Number shall serve to describe the required work for this project providing materials and construction conforming to all applicable requirements under the NYS-DOT Specifications for that New York State Item, except for measurement and payment. The measurement and payment section of the NYS-DOT Specification shall not apply. All work under this section shall be included in the Contractor's price bid for this Contract. Where the New York State DOT Specifications site requirements differing from those included in these specifications, the more stringent, highest quality requirement shall apply.

B. Qualifications of Suppliers

1. Products used in the work of this section shall be produced by those who are regularly engaged in the production and/or supply of similar items for at least five (5) years and which have a history of successful production, acceptable to the Engineer.

C. Qualifications of Installers

1. Use adequate number of skilled workmen who are thoroughly trained and experienced in the specified requirements and the methods needed for proper performance of the work of this Section.

1.3 SUBMITTALS

A. General

1. Manufacturer's specification and other data required to demonstrate compliance with specific requirements.
2. Sample of masonry unit to be replaced for approval by the Engineer and the Owner.

1.4 PRODUCT HANDLING

A. Protection

1. Use all means necessary to protect materials of this Section before, during and after installation and to protect installed work and materials of all other trades.

B. Replacements

1. In the event of damage, immediately make all repairs and replacements necessary to the approval of the Engineer and at no additional cost to the Owner.

PART 2 – PRODUCTS

2.1 REPLACEMENT PAVERS

A. Concrete Masonry Unit replacement pavers:

1. Concrete grid paver units: Comply with ASTM C1319.
2. Interlocking concrete paver units: Comply with ASTM C 936.
3. Average compressive strength of 8,000 psi (55 MPa) with no individual unit under 7,200,psi (50 MPa).
4. Maximum 1 percent loss in dry mass per unit in minimum 50 freeze-thaw cycles when tested according to ASTM C 67.

B. Stone Masonry Unit replacement pavers:

1. Stone matching in color and material to the existing pavers to remain. Prior to purchasing masonry units, the Contractor shall check with the Battery Park City Park Conservancy to see if stones are available for use.

PART 3 – EXECUTION

3.1 REPLACEMENT

- A. Examine the areas and conditions under which work of this Section will be installed.
- B. Protect the area where work will be performed with temporary construction fencing.
- C. Carefully remove the damaged pavers so as to not disturb or damage pavers to remain.
- D. Correct subgrade conditions by infilling, restoring, re-grading and compacting the sand subgrade material such that the final installed pavers will match the existing paver lines and grades.
- E. Install replacement pavers to match existing paver lines and grades.
- F. CMU may require pointing with cement mortar (shown on plans if required); in these cases:
 1. During the tooling of joints, enlarge voids and holes, except weep holes, and completely fill with mortar. Point up joints, including corners, openings, and adjacent construction, to provide a neat, uniform appearance. Prepare joints for sealant application, where indicated.
 2. In-Progress Cleaning: Clean unit masonry as work progresses by dry brushing to remove mortar fins and smears before tooling joints.
 3. Final Cleaning – After mortar is fully set and cured, clean exposed masonry by removing large particles by hand with non-metallic tools, clean masonry in accordance with the mortar manufacturers recommendations.
- G. Contractor shall check that all replaced masonry stones or CMU pavers have been accurately positioned and set to the proper slope and elevation. No depressions or mounds will be permitted greater than 1/8" tolerance.

PART 4 – PAYMENT

4.1 METHOD OF MEASUREMENT:

- A. Unit Masonry Replacement shall be measured as each paver replaced.

4.2 BASIS OF PAYMENT:

- B. Unit Masonry Replacement shall be paid as a unit price of each of paver replaced.

END OF SECTION

05 52 13
Railing Replacement and Resetting

PART 1 – GENERAL

1.1 DESCRIPTION

A. Work Included

1. Under this Section the Contractor shall provide all labor, equipment and material necessary to furnish, install, and reset railings on the Esplanade Seawall, complete in place, and as shown on the drawings, specified herein and approved by the Engineer.
2. In general, work to be included under this section shall include, but not be limited to, the following:
 - a. Resetting and replacing railings on the Esplanade Seawall.

1.2 QUALITY ASSURANCE

A. Standards

1. All equipment and labor furnished under this Section shall:
 - a. Comply with ASTM, AA, NEC, ANSI and all other applicable Federal, State and Municipal codes and regulations including revisions to date of contract.
 - b. In all cases where a device or part of the equipment is referred to in this Section in the singular, it is intended that such references shall apply to as many such devices as are required to complete the installation.
 - c. Referenced specifications: The New York State Department of Transportation Standard Specifications (NYS-DOT Specifications) for construction and materials, 2008, plus addenda when referred to, shall become a part of this specification for material and construction requirements. A referenced New York State (NYS) Pay Item Number shall serve to describe the required work for this project providing materials and construction conforming to all applicable requirements under the NYS-DOT Specifications for that New York State Item, except for measurement and payment. The measurement and payment section of the NYS-DOT Specification shall not apply as all work under this section shall be included in the Contractor's price bid for this Contract. Where the New York State DOT Specifications site requirements differing from those included in these specifications, the more stringent, highest quality requirement shall apply.

B. Qualifications of Suppliers

1. Products used in the work of this section shall be produced by those who are regularly engaged in the production and/or supply of similar items for at least five (5) years and which have a history of successful production, acceptable to the Engineer.

C. Qualifications of Installers

1. Use adequate number of skilled workmen who are thoroughly trained and experienced in the specified requirements and the methods needed for proper performance of the work of this Section.

1.3 SUBMITTALS

A. General

1. Submit shop drawings in accordance with Section 01 33 00 – “Submittals”.

B. Product Data

1. Manufacturer’s specification of railings, grout, paint, and other data required to demonstrate compliance with specific requirements.
2. Complete shop drawings of all work of this Section, showing dimensions and locations of all items including supporting structures and clearance requirements.
3. Samples for Verification. Sections of each distinctly different linear railing member, fitting, and bracket.
4. Prior to purchasing railing, the Contractor shall check with the Battery Park City Park Conservancy to see if railing is available for use.

1.4 PRODUCT HANDLING

A. Protection

1. Use all means necessary to protect materials of this Section before, during and after installation and to protect installed work and materials of all other trades.

B. Replacements

1. In the event of damage, immediately make all repairs and replacements necessary to the approval of the Engineer and at no additional cost to the Owner.

1.5 FIELD CONDITIONS

A. Field Measurements

1. Verify actual locations of walls and other construction contiguous with railings by field measurements before fabrication and indicate measurements on Shop Drawings.

PART 2 – PRODUCTS

2.1 RAILING

- A.
 - 1. In general, railing and all of its components including its connections, fasteners, joints, flanges, anchors, and all its components must match existing railing and comply with ASTM.

PART 3 – EXECUTION

3.1 INSPECTION

- A. Examine the areas and conditions under which work of this Section will be installed. Verify conditions shown on the drawings and notify the Engineer of any discrepancies between the drawings and the conditions encountered in the inspection.
- B. Protect the area where work will be performed as specified under 01 50 01 Temporary Protective Railing of these specifications.
- C. The Contractor shall check that all railings installed and reset have been accurately positioned and set to the proper slope and elevation.

3.2 REMOVAL AND RESETTING

- A. Provide rail system and install as shown on the approved shop drawings.
- B. Rail shall be installed or reset in their original positions, final lines and grades shall be approved by the engineer, contractor shall remove and reset again if in the opinion of the engineer the final reset slab does not match the existing to a tolerance of 1/8" or less.

PART 4 – PAYMENT

4.1 Method of Measurement:

- A. Railing reset and replaced shall be measured by lineal feet of railing reset and replaced.

4.2 Basis of Payment:

- A. Railing reset and replaced shall be paid as a unit price of lineal feet of railing reset and replaced.

END OF SECTION

SECTION 07 92 00 – Joint Sealants

PART 1 - GENERAL

1.1 SUMMARY

- A. Section includes exterior elastomeric weatherproofing sealants.

1.2 SUBMITTALS

- A. Product Data: For each type of joint sealant product specified.
- B. Samples for Verification: For each exterior joint sealant product. Contractor shall supply bead charts for each of the two sealant types and allow the Engineer and Battery Park Authority to select the color that matches best.
- C. Qualification Data: For qualified applicator.
- D. Sealant, Waterproofing, and Restoration Institute (SWRI) Validation Certificate: For each sealant specified to be validated by SWRI's Sealant Validation Program.
- E. Preconstruction field-adhesion test reports.
- F. Warranty: Sample of unexecuted manufacturer and installer special warranties.

1.3 QUALITY ASSURANCE

- A. Installer Qualifications: Experienced Installer equipped and trained for application of joint sealants required for this Project with record of successful completion of projects of similar scope.
- B. Single Source Responsibility: Provide exterior joint sealants by a single manufacturer.
- C. Preconstruction Field-Adhesion Testing: Prior to installing joint sealants, field test adhesion to joint substrates using ASTM C 1193 Method A or method recommended by manufacturer. Verify adhesion is adequate. Modify joint preparation recommendations for failed joints and re-test. Submit written report to Architect.

1.4 WARRANTY

- A. Special Installer's Warranty: Original statement on Installer's letterhead in which Installer agrees to repair or replace joint sealants that demonstrate deterioration or failure within warranty period specified.
 - 1. Warranty Period: [Two] years from date of Substantial Completion.
- B. Special Manufacturer's Warranty: Manufacturer's standard form in which joint sealant manufacturer agrees to furnish joint sealants to repair or replace those that demonstrate deterioration or failure under normal use within warranty period specified.
 - 1. Warranty Period for Silicone Sealants: [20] years following date of Substantial Completion.

- C. Warranty Conditions: Special warranties exclude deterioration or failure of joint sealants in normal use due to structural movement resulting in stresses on joint sealants exceeding sealant manufacturer's written specifications, joint substrate deterioration, mechanical damage, or normal accumulation of dirt or other contaminants.

PART 2 - PRODUCTS

2.1 MANUFACTURERS

Basis-of-Design Product: Provide joint sealant products manufactured by Dow Corning Corporation, Midland MI; (877) SEALANT, (877) 732-5268; email: construction@dowcorning.com; website: www.dowcorning.com/construction.

2.2 MATERIALS, GENERAL

Compatibility: Provide joint sealants and accessory materials that are compatible with one another, with joint substrates, and with materials in close proximity under use conditions, as demonstrated by sealant manufacturer by testing and related experience.

2.3 WEATHERPROOFING LIQUID SILICONE JOINT SEALANTS

- A. Single-Component, Nonsag, Neutral-Curing Silicone Joint Sealant: ASTM C 920, Type S, Grade NS, Class 50, for Use NT; SWRI validation.
 - 1. Basis of Design Product: **DOW CORNING® 756 SMS Building Sealant and DOW CORNING 795 Building Sealant..**
 - 2. Color: Match existing color or appear clear when applied. Contractor shall supply bead charts for each of the two sealant types and allow the Engineer and Battery Park Authority to select the color that matches best.

2.4 ACCESSORIES

- A. Joint Substrate Primers: Substrate primer recommended by sealant manufacturer for application.
- B. Cylindrical Sealant Backing: ASTM C 1330, Type B non-absorbent, bi-cellular material with surface skin, or Type O open-cell polyurethane, as recommended by sealant manufacturer for application.
- C. Bond Breaker Tape: Polymer tape compatible with joint sealant materials and recommended by sealant manufacturer.

PART 3 - EXECUTION

3.1 EXAMINATION

- A. Examine joint profiles and surfaces to determine if work is ready to receive joint sealants. Verify joint dimensions are adequate for development of sealant movement capability. Proceed with joint sealant work once conditions meet sealant manufacturer's recommendations.

3.2 PREPARATION

- A. Joint Surface Cleaning: Clean joints prior to installing joint sealants using materials and methods recommended by sealant manufacturer.

3.3 APPLICATION

- A. Masking: Mask adjacent surfaces to prevent staining or damage by contact with sealant or primer.
- B. Joint Priming: Prime joint substrates when recommended by sealant manufacturer or when indicated by preconstruction testing or experience. Apply recommended primer using sealant manufacturer's recommended application techniques.
- C. Joint Backing: Select joint backing materials recommended by sealant manufacturer to be compatible with sealant material. Install backing material at depth required to produce profile of joint sealant allowing optimal sealant movement.
- D. Sealant Application: Install sealants using methods recommended by sealant manufacturer, in depths recommended for application. Apply in continuous operation from bottom to top of joint vertically and horizontally in a single direction. Apply using adequate pressure to fill and seal joint width.
- E. Cleaning: Remove excess sealant using materials and methods approved by sealant manufacturer that will not damage joint substrate materials.

END OF SECTION

SECTION 09 90 01

Painting

PART 1 - GENERAL

1.1 DESCRIPTION OF WORK

A. Work Included: This Section specifies the following items.

1. Field painting of exposed interior items and surfaces.
2. Field painting of exposed exterior items and surfaces.
3. Surface preparation for painting.

1.2 DEFINITIONS AND EXTENT

A. General: Standard coating terms defined in ASTM D 16 apply to this Section.

1. Flat refers to a lusterless or matte finish with a gloss range below 15 when measured at an 85-degree meter.
2. Eggshell refers to low-sheen finish with a gloss range between 20 and 35 when measured at a 60-degree meter.
3. Semi-gloss refers to medium-sheen finish with a gloss range between 35 and 70 when measured at a 60-degree meter.
4. Full gloss refers to high-sheen finish with a gloss range more than 70 when measured at a 60-degree meter.

B. This Section includes surface preparation and field painting of exposed exterior and interior items and surfaces.

1. Surface preparation, priming, and finish coats specified in this Section are in addition to shop priming and surface treatment specified in other Sections.

C. Paint exposed surfaces, except where these Specifications indicate that the surface or material is not to be painted or is to remain natural. If an item or a surface is not specifically mentioned, paint the item or surface the same as similar adjacent materials or surfaces. If a color of finish is not indicated, Engineer will select from standard colors and finishes available to match existing finish.

1. Painting includes field painting of exposed bare and covered pipes and ducts (including color coding), hangers, exposed steel and iron supports, and surfaces of mechanical and electrical equipment that do not have a factory-applied final finish.

D. Do not paint prefinished items, concealed surfaces, finished metal surfaces, operating parts, and labels.

1. Labels: Do not paint over UL, FMG, or other code-required labels or equipment name, identification, performance rating, or nomenclature plates.

1.3 SUBMITTALS

- A. Product Data: For each paint system indicated, include block fillers and primers.
 - 1. Material List: An inclusive list of required coating materials. Indicate each material and cross-reference specific coating, finish system, and application. Identify each material by manufacturer's catalog number and general classification.
 - 2. Manufacturer's Information: Manufacturer's technical information, including label analysis and instructions for handling, storing, and applying each coating material.
- B. Samples for Verification: For each color and material to be applied, with texture to simulate actual conditions, on representative Samples of the actual substrate.
 - 1. Provide stepped Samples, defining each separate coat, including block fillers and primers. Use representative colors when preparing Samples for review. Resubmit until required sheen, color, and texture are achieved.
 - 2. Provide a list of materials and applications for each coat of each Sample. Label each Sample for location and application.
 - 3. Submit two eight inch by 12 inch Samples for each type of finish coating for Engineer's review of color and texture only.
- C. Qualification Data: For Applicator.

1.4 QUALITY ASSURANCE

- A. Applicator Qualifications: A firm or individual experienced in applying paints and coatings similar in material, design, and extent to those indicated for this Project, whose work has resulted in applications with a record of successful in-service performance.
- B. Source Limitations: Obtain block fillers and primers for each coating system from the same manufacturer as the finish coats.
- C. Mockups: Provide a full-coat benchmark finish sample for each type of coating and substrate required. Comply with procedures specified in Painting and Decorating Contractors of America PDCA P5. Duplicate finish of approved sample Submittals.
 - 1. Final approval of colors will be from benchmark samples.

1.5 DELIVERY, STORAGE, AND HANDLING

- A. Deliver materials to Project site in manufacturer's original, unopened packages and containers bearing manufacturer's name and label and the following information:
 - 1. Product name or title of material.
 - 2. Product description (generic classification or binder type).
 - 3. Manufacturer's stock number and date of manufacture.
 - 4. Contents by volume, for pigment and vehicle constituents.
 - 5. Thinning instructions.
 - 6. Application instructions.

7. Color name and number.
8. VOC content.
9. Any applicable Manufacturer's Safety Data Sheets

B. Store materials not in use in tightly covered containers in a well-ventilated area at a minimum ambient temperature of 45 deg F and a maximum ambient temperature of 95 deg F. Maintain storage containers in a clean condition, free of foreign materials and residue.

1. Protect from freezing. Keep storage area neat and orderly. Remove oily rags and waste daily.

1.6 PROJECT CONDITIONS

- A. Apply waterborne paints only when temperatures of surfaces to be painted and surrounding air are between 50 and 90 deg F.
- B. Apply solvent-thinned paints only when temperatures of surfaces to be painted and surrounding air are between 45 and 95 deg F.
- C. Do not apply paint in snow, rain, fog, or mist; or when relative humidity exceeds 85 percent; or at temperatures less than 5 deg F above the dew point; or to damp or wet surfaces.

PART 2 - PRODUCTS

2.1 PAINT MATERIALS, GENERAL

- A. Material Compatibility: Provide block fillers, primers, and finish-coat materials that are compatible with one another and with the substrates indicated under conditions of service and application, as demonstrated by manufacturer based on testing and field experience.
- B. Material Quality: Provide manufacturer's best-quality paint material of the various coating types specified that are factory formulated and recommended by manufacturer for application indicated. Paint-material containers not displaying manufacturer's product identification will not be acceptable.

PART 3 - EXECUTION

3.1 EXAMINATION

- A. Examine substrates, areas, and conditions, with Applicator present, for compliance with requirements for paint application.
 1. Proceed with paint application only after unsatisfactory conditions have been corrected and surfaces receiving paint are thoroughly dry.
 2. Start of painting will be construed as Applicator's acceptance of surfaces and conditions within a particular area.

3.2 PREPARATION

- A. General: Remove hardware and hardware accessories, plates, machined surfaces, lighting fixtures, and similar items already installed that are not to be painted. If removal is impractical or impossible because of size or weight of the item, provide surface-applied protection before surface preparation and painting.
 - 1. After completing painting operations in each space or area, reinstall items removed using workers skilled in the trades involved.
- B. Cleaning: Before applying paint or other surface treatments, clean substrates of substances that could impair bond of the various coatings. Remove oil and grease before cleaning.
 - 1. Schedule cleaning and painting so dust and other contaminants from the cleaning process will not fall on wet, newly painted surfaces.
- C. Surface Preparation: Clean and prepare surfaces to be painted according to manufacturer's written instructions for each particular substrate condition and as specified.
 - 1. Provide barrier coats or tie-coats over incompatible primers or remove and reprime.
 - 2. Ferrous Metals: Clean ungalvanized ferrous-metal surfaces that have not been shop coated; remove oil, grease, dirt, loose mill scale, and other foreign substances. Use solvent or mechanical cleaning methods that comply with The Society for Protective Coatings (SSPC) recommendations.
 - a. Blast steel surfaces clean as recommended by paint system manufacturer and according to SSPC-SP 6/NACE No. 3, SSPC-SP 10/NACE No. 2, or SSPC-SSPC-SP3, Water Jetting at 5,000 psi as specified in the Paint Schedule in this Section.
 - b. Treat bare and sandblasted or pickled clean metal with a metal treatment wash coat before priming.
 - c. Treat existing painted surfaces with surface preparation methods recommended by coating manufacturer and in accordance with the coating schedule.
- D. Material Preparation: Mix and prepare paint materials according to manufacturer's written instructions.
 - 1. Maintain containers used in mixing and applying paint in a clean condition, free of foreign materials and residue.
 - 2. Stir material before application to produce a mixture of uniform density. Stir as required during application. Do not stir surface film into material. If necessary, remove surface film and strain material before using.
 - 3. Use only thinners approved by paint manufacturer and only within recommended limits.
- E. Tinting: Tint each undercoat a lighter shade to simplify identification of each coat when multiple coats of same material are applied. Tint undercoats to match the color of the finish coat, but provide sufficient differences in shade of undercoats to distinguish each separate coat.

3.3 APPLICATION

- A. General: Apply paint according to manufacturer's written instructions. Use applicators and techniques best suited for substrate and type of material being applied.

1. Paint colors, surface treatments, and finishes are indicated in the paint schedules.
 2. Do not paint over dirt, rust, scale, grease, moisture, scuffed surfaces, or conditions detrimental to formation of a durable paint film.
 3. Provide finish coats that are compatible with primers used.
 4. The term "exposed surfaces" includes areas visible when permanent or built-in fixtures, grilles, convector covers, covers for finned-tube radiation, and similar components are in place. Extend coatings in these areas, as required, to maintain system integrity and provide desired protection.
 5. Sand lightly between each succeeding enamel or varnish coat.
- B. Scheduling Painting: Apply first coat to surfaces that have been cleaned, pretreated, or otherwise prepared for painting as soon as practicable after preparation and before subsequent surface deterioration.
1. The number of coats and film thickness required are the same regardless of application method. Do not apply succeeding coats until previous coat has cured as recommended by manufacturer. If sanding is required to produce a smooth, even surface according to manufacturer's written instructions, sand between applications.
 2. Omit primer over metal surfaces that have been shop primed and touchup painted.
 3. If undercoats, stains, or other conditions show through final coat of paint, apply additional coats until paint film is of uniform finish, color, and appearance. Give special attention to ensure that edges, corners, crevices, welds, and exposed fasteners receive a dry film thickness equivalent to that of flat surfaces.
 4. Allow sufficient time between successive coats to permit proper drying. Do not recoat surfaces until paint has dried to where it feels firm, and does not deform or feel sticky under moderate thumb pressure, and until application of another coat of paint does not cause undercoat to lift or lose adhesion.
- C. Application Procedures: Apply paints and coatings by brush, roller, spray, or other applicators according to manufacturer's written instructions.
1. Brushes: Use brushes best suited for type of material applied. Use brush of appropriate size for surface or item being painted.
 2. Rollers: Use rollers of carpet, velvet-back, or high-pile sheep's wool as recommended by manufacturer for material and texture required.
 3. Spray Equipment: Use airless spray equipment with orifice size as recommended by manufacturer for material and texture required.
- D. Minimum Coating Thickness: Apply paint materials no thinner than manufacturer's recommended spreading rate to achieve dry film thickness indicated. Provide total dry film thickness of the entire system as recommended by manufacturer.
- E. Prime Coats: Before applying finish coats, apply a prime coat, as recommended by manufacturer, to material that is required to be painted or finished and that has not been prime coated by others. Recoat primed and sealed surfaces where evidence of suction spots or unsealed areas in first coat appears, to ensure a finish coat with no burn-through or other defects due to insufficient sealing.
- F. Pigmented (Opaque) Finishes: Completely cover surfaces as necessary to provide a smooth, opaque surface of uniform finish, color, appearance, and coverage. Cloudiness, spotting, holidays, laps, brush marks, runs, sags, ropiness, or other surface imperfections will not be acceptable.

- G. Completed Work: Match approved samples for color, texture, and coverage. Remove, refinish, or repaint work not complying with requirements.

3.4 CLEANING

- A. Cleanup: At the end of each workday, remove empty cans, rags, rubbish, and other discarded paint materials from Project site.
 - 1. After completing painting, clean glass and paint-spattered surfaces. Remove spattered paint by washing and scraping without scratching or damaging adjacent finished surfaces.

3.5 PROTECTION

- A. Protect work of other trades, whether being painted or not, against damage from painting. Correct damage by cleaning, repairing or replacing, and repainting, as approved by Engineer.
- B. Provide "Wet Paint" signs to protect newly painted finishes. After completing painting operations, remove temporary protective wrappings provided by others to protect their work.
 - 1. After work of other trades is complete, touch up and restore damaged or defaced painted surfaces. Comply with procedures specified in Painting and Decorating Contractors of America PDCA P1.

3.6 PAINT SCHEDULE

- A. Schedule: Provide products and number of coats specified. Use of manufacturer's proprietary product names to designate colors, materials, generic class, standard of quality and performance criteria and is not intended to imply that products named are required to be used to the exclusion of equivalent performing products of other manufacturers.
- B. Exterior Paint Schedule:
 - 1. Exterior Ferrous Metal, Urethane System: (Surface Preparation: SSPC-SP6)

One Coat	<ul style="list-style-type: none">1. Tnemec Series 90-1K97 at 3 mils DFT; shop applied under other Sections; use for touch up2. Ameron Series 68 at 3 mils DFT; shop applied under other Sections; use for touch up3. Dupont Urethane Ganicin Zinc Rich Primer 80% zinc load at 3.0 mils DFT
One Coat	<ul style="list-style-type: none">1. Tnemec Series N69 Hi-Build Epoxoline II at 3.0 mils DFT2. Ameron Amerlock 400 Hi-Build Epoxy at 3.0 to 5.0 mils DFT.3. Dupont 25P High Solids Epoxy at 4.0 –6.0 mils DFT
One Coat	<ul style="list-style-type: none">1. Tnemec Series V73 Endura-Shield at 3.0 mils DFT2. Ameron Amerlock 450H Polyurethane Topcoat at 3.0 mils DFT3. Dupont High Solids Imron Urethane at 4.0 mils DFT

2. Exterior Ferrous Metal, Engineered Siloxane/ Polyester Urethane System: (Surface Preparation: SSPC-SP6)
 - One Coat
 1. Tnemec 901K97 at 3.0 mils DFT
 2. Ameron Series 68HS at 3.0 mils DFT
 3. Dupont Urethane Zinc Rich Primer 80% zinc load at 3.0 mils DFT
 - One Coat
 1. Tnemec V27 Typoxy at 3.0- 4.0 mils DFT
 2. Ameron Amerlock 400 High Build Epoxy at 3.0 mils DFT
 3. Dupont 25P High Solids Epoxy at 4.0 mils DFT
 - One Coat
 1. Tnemec 290/291 Endurashield at 2.0-3.0 mils DFT
 2. Ameron PSX-700 Engineered Siloxane Topcoat at 5.0 mils DFT
 3. Dupont Imron High Solids Polyester Urethane at 3.0 mils DFT
3. Existing Exterior Painted Steel for Sandblasting and Finish: (Surface Preparation- SSPC-SP 10 Near White Metal Blast)
 - One Coat
 1. Tnemec 90-97 or 901K97 at 3 to 3.5 mils DFT
 2. Ameron Series 68 HS at 3.0 mils DFT
 3. Dupont Ganicin 80% Zinc load Zinc Rich Primer at 3.0 to 3.5 mils DFT
 - One Coat
 1. Tnemec V73 Endurashield at 3.0 to 4.0 mils DFT
 2. Ameron Amerlock 400 at 4.0 DFT
 3. Dupont Imron 2.8 at 4.0-5.0 mils DFT
 - One Coat
 1. Tnemec 1070 Fluoronar at 2.5 to 3.5 mils DFT
 2. Ameron PSX-700 Coating at 5.0 mils DFT
 3. Dupont Fluoropolymer at 3.0 mils DFT
4. Existing Exterior Painted Steel for Overcoat Finish: (Surface Preparation : Water Blast 5000 psi/ SSPC-SP3 Power Tool Clean)
 - One Coat
 1. Tnemec 394 Omnithane at 2.5 to 3.0 mils DFT
 2. Ameron Amerlock 400 Hi-Build Epoxy at 3.0 to 4.0 mils DFT
 3. Dupont 25P at 4.0 mils DFT
 - One Coat
 1. Tnemec V27 Typoxy at 3.0 to 5.0 mils DFT
 2. Ameron Amerlock 400 at 3.0 to 4.0 mils DFT
 3. Dupont 25P at 4.0 mils DFT
 - One Coat
 1. Tnemec V73 Endurashield at 3.0 to 5.0 mils DFT
 2. Ameron Amercoat 450H at 3.0 mils DFT
 3. Dupont 2.8 Imron at 4.0 to 6.0 mils DFT

PART 4 - MEASUREMENT AND PAYMENT

4.1 MEASUREMENT

- A. Painting will be measured as per square foot complete in place, including all preparation, accessories and incidentals.

4.2 PAYMENT

- A. Payment for painting will be made at the Contract unit price for the quantities as specified above.

4.3 PAYMENT

ITEM NO.	DESCRIPTION	UNIT
09 90 01	PAINTING	SF

END OF SECTION

09 97 26 WATERPROOFING SEALERS

PART 1 GENERAL

1.1 SUMMARY

- A. This Section specifies an applied sealer for horizontal and vertical masonry surfaces.
- B. Related Sections: Refer to the following specification sections for coordination.
 - 1. Section 04 02 01 Unit Masonry Reset.
 - 2. Section 04 02 02 Unit Masonry Replacement.

1.2 SUBMITTALS

- A. Product Data: Submit manufacturer's product data and installation instructions.
- B. Mock-Up: Prepare a test area minimum 2 by 2 feet in size to verify suitability of the sealer and final appearance.

1.3 QUALITY ASSURANCE

- A. Installer: Licensed installers experienced and trained in the use of specified products.
- B. Suitability of Substrate: Concrete surface must be clean and dry with all stains, oil, grease, dust and dirt removed prior to application. A thorough pressure washing is highly recommended.
- C. Regulatory Requirements: Comply with requirements of authorities having jurisdiction and applicable codes at the location of the project.

1.4 DELIVERY, STORAGE AND HANDLING

- A. Deliver materials and products in unopened factory labeled packages. Protect from damage.
- B. Store in a safe place, out of direct sunlight. Keep containers tightly sealed. Do not allow product to freeze. Use within manufacturer's recommended shelf life, approximately 12 months.

PART 2 – PRODUCTS

2.1 MATERIALS

- A. Waterproofing Sealer: H&C concrete and masonry waterproofing sealer.

PART 3 – EXECUTION

3.1 PREPARATION

- A. Inspection: Prior to start of application, inspect existing conditions to ensure surfaces are suitable for application including the following:
 - 1. Mortar has cured for a minimum of 28 days prior to application of sealer.
 - 2. Clean so that surface is completely free of sealers, oils, dirt, paint, alkali, penetrating sealers and foreign materials that would prevent the sealer from penetrating the concrete surface.
 - 3. Surfaces have been swept clean.
 - 4. Test area has been approved.

3.2 APPLICATION

- A. Waterproofing Sealer: Strictly comply with manufacturer's installation recommendations.

3.3 CLEANING AND PROTECTION

- A. Protection: Do not cover, but protect floor area from paint and other contaminants that could inhibit the sealer.

PART 4 – PAYMENT

4.0 METHOD OF MEASUREMENT

- A. Waterproofing Sealer shall be measured as Square Feet of sealant applied and approved.

B. BASIS OF PAYMENT

Waterproofing Sealer shall be paid as a unit price of Square Feet of CMU replaced and repointed.

END OF SECTION

EXHIBIT G

BPCA & BPCPC Staff List
(Attached)

LIST OF BOARD MEMBERS

Dennis Mehiel
Donald Cappocia
Frank Branchini
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

