

## **FOR CONSIDERATION**

January 29, 2019

To: The Members

From: Pamela Frederick, Chief Financial Officer/Treasurer

Subject: Prompt Payment Report and Prompt Payment Policy

Request For: Approval of the Prompt Payment Report and Prompt Payment Policy for Fiscal Year Ended October 31, 2018

---

### **Background:**

All contracts executed by the Authority are subject to the Prompt Payment Policy, which must be adopted annually by the Members. The Authority has prepared the attached Prompt Payment Policy, which is identical to the previous year's Prompt Payment Policy because there were no additional changes required for compliance or operational purposes. Section 2880(11) of the Public Authorities Law requires that each public authority annually prepare and approve a Prompt Payment Report, which will contain certain specified information. The Prompt Payment Report is required to describe the scope and implementation of the Authority's Prompt Payment Policy and shall include:

- 1) A listing of the types or categories of contracts which the Authority entered into during the twelve month period covered by the report;
- 2) The number and amounts of interest payments made for contracts, arranged according to each such type or category;
- 3) The number of interest chargeable days and the total number of days taken to process each late contract payment; and
- 4) A summary of the principal reasons that such late payments occurred.

Within ninety days after the completion of the fiscal year, the Authority is required to file copies of the Prompt Payment Report with the State Comptroller, the State Director of the Budget, the Chairman and ranking Minority Member of the Senate Finance Committee, and the Chairman and ranking Minority Member of the Assembly Ways and Means Committee.

### **Prompt Payment Summary:**

All types and categories of contracts are subject to the prompt payment requirements promulgated by the Authority. During the fiscal year ended October 31, 2018, the Authority incurred interest payments of \$521.45 related to the Prompt Payment Policy for the period. As reflected in the attached Prompt Payment Report, there were 7 instances in which payments of a Proper Invoice made by the Authority exceeded 30 days.

**Requested Action:**

The Members are requested to approve and authorize the filing of the attached Prompt Payment Report and Prompt Payment Policy.

**Recommendation:**

Based on the foregoing, I recommend approval of the attached resolution.

**Attachments:**

Prompt Payment Report  
Prompt Payment Policy  
Resolution

**HUGH L. CAREY BATTERY PARK CITY AUTHORITY  
PROMPT PAYMENT REPORT FOR FISCAL YEAR  
ENDED OCTOBER 31, 2018**

**Explanation of Prompt Payment Policy**

The Hugh L. Carey Battery Park City Authority (the “Authority”) Prompt Payment Policy recites the requirements for prompt payment to contractors pursuant to Section 2880 of the Public Authorities Law.

**Types of Contracts**

The following is an outline of categories of contracts the Authority has entered into during the twelve month period covered by this report. All types and categories of contracts are subject to the prompt payment policy.

- a. Legal - all legal related services performed
- b. Construction Contracts - goods and services purchased for the construction of infrastructure or Authority Projects
- c. Other Procurement Contracts - all other contracts (consultants, vendors, etc.) related to the acquisition of goods or services of any kind

**Prompt Payment Report**

For the twelve month period ending October 31, 2018, there were \$521.45 interest charges owed to vendors or contractors on 7 invoices for products and/or services provided to the Authority, as summarized below.

**Hugh L. Carey Battery Park City Authority  
Summary of Interest Charges under the Prompt Payment Policy  
Fiscal Year Ended October 31, 2018**

<b>TYPE</b>	<b>NUMBER</b>	<b>INTEREST AMOUNT</b>	<b>TOTAL INTEREST DAYS</b>
Legal	0	\$0.00	0
Construction	3	\$301.29	28
Other	4	\$220.16	133
Total	7	\$521.45	161

**HUGH L. CAREY BATTERY PARK CITY AUTHORITY**  
**PROMPT PAYMENT POLICY**

Section 9002.1

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

Section 9002.2

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

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

Office of the Chief Financial Officer  
Hugh L. Carey Battery Park City Authority  
200 Liberty St., 24th Floor  
New York, New York 10281-1097

Attention: Accounts Payable

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

#### Section 9002.3

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

#### Section 9002.4

- (a) Payment Request Procedure. Contractors' owed money by the Authority shall deliver a Proper Invoice to the Designated Payment Office. The Designated Payment Office will log the receipt date of each invoice, and send it to the department unit within the Authority that received the goods, property or services from the Contractor for review and verification of the Contractor's performance in accordance with the Contract. Contractors with Contracts which provide for payment at specific dates or intervals shall also be required to provide a Proper Invoice which certifies that the obligations required under such Contract have been performed prior to such date(s) or during such interval(s) and review and verification of the work of these Contractors will take place upon receipt of such Proper Invoice; payment shall be made in accordance with the terms of such Contracts.
- (b) Prompt Payment Schedule. The schedule of the time in which the Authority will make prompt payment under a Contract is as follows:
  - (i) For invoices received on or after July 1, 1989, payment will be made by the Authority within 30 calendar days, excluding legal holidays, after Receipt of a Proper Invoice.
  - (ii) For Contracts which provide for payment at one or more specific dates or intervals, payment will be made in accordance with the terms of such Contracts, but interest shall only be payable if payment is not made within the time provided as in (i) above.

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

- (f) Defects or Improprieties. The following facts or conditions toll the prompt payment schedule set forth in Section 9002.4(b):
  - (i) A reasonable belief by the Authority in the existence of any defects(s), including any incompleteness or failure of compliance with the terms of the Contract, in or with respect to the goods, property or services delivered;
  - (ii) A reasonable belief by the Authority in the existence of any defect(s) in the invoice; or
  - (iii) A reasonable belief by the Authority in suspected impropriety of any kind.

In order to toll the prompt payment schedule without penalty, the Authority has fifteen calendar days after receipt of an invoice to send a Contractor notification of such defects or improprieties. Authority notification shall be by letter to the Contractor, setting forth any such defect or impropriety in reasonable detail, sent to the address indicated for notices under the Contract or, if no such address is provided, sent to the address set forth in the invoice provided that, in the event that the Authority fails to so notify the Contractor within such fifteen days, the sole effect of such failure to so notify the Contractor shall be that the number of days allowed for payment shall be reduced by the number of days between such fifteenth day and the date of the Authority's transmitting such notifications. In the event that the Authority fails to provide reasonable grounds for its contention that any such defect or impropriety exists, the date by which Contract payment shall be made shall be calculated from the date of receipt of an invoice.

#### Section 9002.5

- (a) Annual Report. The Authority shall prepare an annual report on the scope and implementation of this prompt payment policy. The report shall include, but not be limited to, the following:
  - (i) A listing of the types or categories of contracts which the Authority entered into during the twelve-month fiscal year covered by the report with an indication whether each such type or category of contract was subject to this prompt payment policy, and if it was not, the reason(s) why not;
  - (ii) The number and amount of interest payments made for contracts, arranged according to each such type or category;
  - (iii) The number of interest chargeable days, and the total number of days taken to process each late contract payment; and
  - (iv) A summary of the principal reasons why such late payments occurred.
- (b) Within ninety (90) days after the completion of each such fiscal year, copies of this annual report shall be filed with the State Comptroller, the State Director of the Budget, the

Chairman of the Senate Finance Committee and the Chairman of the Assembly Ways and Means Committee.

- (c) Copies of its annual report shall be made available to the public upon reasonable request at the Authority's main office.

#### Section 9002.6

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



**APPROVAL OF THE PROMPT PAYMENT REPORT AND PROMPT PAYMENT POLICY FOR THE FISCAL YEAR ENDED OCTOBER 31, 2018**

BE IT RESOLVED, that the Prompt Payment Report of the Authority for the fiscal year ended October 31, 2018 and the Prompt Payment Policy in the form presented to this meeting, be, and hereby are approved; and be it further

RESOLVED, that the Treasurer of the Authority be, and hereby is, directed to file said Prompt Payment Report and Prompt Payment Policy with the (1) New York State Division of the Budget; (2) New York State Department of Audit and Control; the Chairman and ranking Minority Members of the (3) New York State Senate Finance Committee; and (4) New York State Assembly Ways and Means Committee, as required by Section 2880 of the Public Authorities Law; and be it further

RESOLVED, that the Assistant Corporate Secretary of the Authority be, and hereby is, directed to file the Prompt Payment Report and Prompt Payment Policy with the minutes of this meeting; and be it further

RESOLVED, that Prompt Payment Report and Prompt Payment Policy be posted to the Authority's website and the NY State Public Authorities Reporting System; and be it further

RESOLVED, that any and all actions taken by any officer of the Authority in connection with the preparation of such policies and procedures is hereby ratified, confirmed and approved.