BATTERY PARK CITY AUTHORITY

REQUEST FOR PROPOSALS

FOR

75 Battery Place – Geothermal Well Decommissioning

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I. SUMMARY

Battery Park City Authority d/b/a Hugh L. Carey Battery Park City Authority ("BPCA") requests proposals (each individually, a "Proposal" or collectively, the "Proposals") from contractors (each individually, a "Proposer" or collectively, the "Proposers") to decommission two (2) geothermal wells located at the headquarters of the Battery Park City Parks Conservancy Corporation ("BPCPC") at 75 Battery Place in Battery Park City (the "Project").

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

This request for proposals, the attachments and any additional information submitted herewith, (collectively, the "RFP") does not obligate BPCA to complete the selection and contract award process. BPCA reserves the right to: 1) accept or reject any and all Proposals; 2) request additional information from any or all Proposers to assist BPCA in its evaluation process; 3) amend or withdraw this RFP prior to the announcement of the selected Proposer; and 4) award the proposed services, in whole or in part, to one or more Proposer(s). In case of an amendment to the RFP, all Proposers will be provided with a copy of any such amendment(s) and will be afforded the opportunity to revise their Proposals in response to the RFP amendment.

II. DESCRIPTION OF BPCA

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

Under the Battery Park City Authority Act (the "Act"), BPCA has the following powers, among others: to borrow money and to issue negotiable bonds, notes or other obligations and to provide for the rights of the holders thereof; to acquire, lease, hold, mortgage and dispose of real property and personal property or any interest therein for its corporate purposes; to construct, improve, enlarge, operate and maintain Battery Park City; to make bylaws for the management and regulation of its affairs, and, subject to agreements with bondholders, for the regulation of Battery Park City; to make contracts and to execute all necessary or convenient instruments, including leases and subleases; to accept grants, loans and contributions from the United States, or the State of New York or the City of New York (the "City"), or any agency or instrumentality of any of them, or from any other source and to expend the proceeds for any corporate purpose; to fix, establish and collect rates, rentals, fees and other charges; and to do all things necessary or convenient to carry out the powers expressly granted by the Act. BPCA has no taxing power.

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

One of BPCA's key responsibilities under the Act is to operate, maintain and repair the parks and open spaces in and around Battery Park City's residential and commercial areas. This function has been delegated by BPCA to BPCPC

through a written Management Agreement. BPCPC carries out its mission by maintaining 36 acres of parks, playgrounds and open spaces, including the waterfront esplanade. BPCPC also develops programs and manages public events for the Battery Park City community. BPCA owns and has built out a commercial condominium unit in a residential building in Battery Park City, which serves as the BPCPC headquarters.

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

III. SERVICES REQUIRED

A. The selected Proposer will be responsible for the services delineated in Exhibit A (the "Scope of Work"), attached hereto.

B. All work to be performed by the selected Proposer shall be performed under the supervision of a Project Manager in charge of this engagement (the "Lead PM") who must ensure that the work completed for BPCA is performed competently and in a timely manner.

IV. KEY DATES, CONTRACT TERM AND MINIMUM QUALIFICATIONS

A. Key Dates

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

- Request for Proposals issued: May 14, 2015
- Pre-proposal meeting: May 20, 2015 at 10:30 am. Meeting Location: BPPC Offices, 75 Battery Place, 4th Floor, New York, NY 10280 (attendance is highly recommended).
- Deadline to submit questions to BPCA: May 22, 2015 by 5:00 p.m. (by email only).

  All questions regarding this RFP should be submitted in writing via email to the "Designated Contact": Michael LaMancusa, Battery Park City Authority, at michael.lamancusa@bpca.ny.gov .
- Deadline for BPCA's response to substantive questions: June 1, 2015 (via BPCA Website).
- **DUE DATE FOR RESPONSES TO RFP: June 8, 2015 by 5:00 p.m. (the "Due Date").**
- Selection and notification of successful Proposer: To be determined.
- Anticipated contract start date: July 2015.

B. Anticipated Contract Term

It is anticipated that the term of the contract awarded pursuant to this RFP (the "Contract") will be for a period of twelve (12) months (the "Term"). BPCA reserves the right to terminate the Contract at any time, with or without cause.

C. Minimum Qualification Requirements

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

1) Proposer must be licensed to do business in the State of New York.
2) The Proposer must have at least five (5) years' experience in providing well services in New York City.

V. GENERAL REQUIREMENTS

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

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

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

B. Restricted Period

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

C. Submission of Proposals

Proposals are due no later than 5:00 p.m. on June 8, 2015.

Proposers must submit six (6) paper copies of their Proposals and one (1) electronic CD-Rom copy in a sealed package clearly marked "**75 Battery Place – Geothermal Well Decommissioning**" to the Designated Contact by messenger, overnight courier or certified mail to the following address:

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

BPCA is not responsible for any internal or external delivery delays which may cause any Proposal to arrive beyond the stated Due Date. To be considered, Proposals must arrive at the time and place specified herein and be time stamped by BPCA's time stamp prior to the Due Date. Please leave ample time for building security, as late Proposals will not be accepted. Proposals submitted by fax or electronic transmission will NOT be accepted. A Proposer may, after submitting a Proposal, amend its Proposal by submitting a second, amended Proposal, clearly labeled "**Amended Proposal Enclosed – 75 Battery Place – Geothermal Well Decommissioning**" as long as the amended Proposal is submitted by the Due Date.

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

D. Mandatory Forms

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

These Mandatory Forms include the following:

1) NYS Standard Vendor Responsibility Questionnaire – **Submit with the Cost Proposal (as described below), one (1) original unbound set of a completed NYS Standard Vendor Responsibility Questionnaire with original ink signatures.** Do not include the Standard Vendor Responsibility Questionnaire in the bound copies of the Cost Proposal. The NYS Standard Vendor Responsibility Questionnaire must be notarized and signed by the individual(s) authorized to bind the firm contractually. Indicate the title or position that the signer holds within the firm.

2) State Finance Law § 139 Form 1 – **one original unbound completed SFL 139 Form 1: Professional's Certifications Pursuant to SFL § 139-j and § 139-k with original signature**. State Finance Law § 139 Forms 1 must be signed by the individual(s) authorized to bind the firm contractually.

3) W-9 form.

4) Statement of Non-Collusion.

5) Diversity Forms.

VI. PROPOSAL FORMAT AND CONTENTS

A. Proposal Format

The Proposal must be 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) Transmittal Letter, as follows:

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

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

2) Executive Summary.
3) Proposer's discussion of its understanding of the Services Required (see Section III).
4) Proposer's Responses to the RFP Questions and RFP Additional Information Request, set forth below.
5) Proposer's Cost Proposal, including the Technical Salary Form, as described below.

C. RFP Questions

1. Describe your firm's background, staff, and history as they may be relevant to the Services Required, with an emphasis on installation and decommissioning of wells in New York City.

2. Describe the relevant special services your firm provides, particularly those that may not be offered by other firms.
3. Within the past three years, have there been any significant developments in your firm, such as changes in ownership or restructuring? Do you anticipate any significant changes in the near future? If so, please describe.
4. Has your firm or any of the firm's partners/employees been disciplined or censured by any regulatory body within the last five years? If so, please describe the relevant facts.
5. Within the last five years, has your firm, or a partner or employee in your firm, been involved in litigation or other legal proceedings relating to the provision of engineering and design services? If so, please provide an explanation and the current status or disposition of the matter.
6. Has your firm filed for bankruptcy or reorganization, or had bankruptcy proceedings initiated against it, within the last five years? If so, please describe the relevant facts.
7. In the past five years, have any public sector clients terminated their working relationship with your firm? If so, please provide a brief statement of the reasons. Provide the client's name and its in-house counsel's name, address and telephone number.
8. Are there any potential conflict of interest issues in performing the Services Required for BPCA?
9. If selected, will your firm assign any person to this Project who was previously an employee of BPCA? If so, please i) identify when (month and year) that person's employment at BPCA terminated, and ii) describe that person's involvement, if any, with matters related to the Project during his/her employment at BPCA.
10. List any professional or personal relationships your firm's employees may have with BPCA's Board and/or staff members of BPCA (list of Board Members and staff attached as Exhibit G attached hereto).
11. Identify the Lead PM who will be the primary contact and lead person in providing services to BPCA, and identify who will be listed as a "key person" in any contract with BPCA.
12. Describe your firm's "backup plan" in the event that the Lead PM, or one or more of the key persons, assigned to the Project leaves your firm.
13. 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, and Federal government, agencies and authorities. Include contract dates, the nature of the work performed, the contracting agency, the contract number (if known) and the supervisor for each.
14. Discuss your approach to the Project, briefly addressing your conceptual step-by-step approach towards completion of the work and outline the proposed procedures for executing the work.
15. Submit a bar chart schedule for performance of the work, showing the sequencing of the work with durations for each element, staffing levels, work shifts, all project milestones and successful overall completion.
16. 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 sub-consultants.
17. Provide a list of all proposed sub-consultants for the completion of the work.

18. 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.
19. Please provide any additional information which would distinguish your firm from other firms, and which you believe may be relevant to this RFP and your capability to perform the Required Services.

D. RFP Additional Information Request

1) Insurance:

a. Do you impose any limitations on liability through your contracts?

b. Describe the levels of coverage for any insurance your firm carries. List the insurance carrier(s) or provide an insurance certificate showing your firm's coverage in accordance with the following

- Commercial General Liability Insurance limits shall not be less than **$1,000,000** per each occurrence and **$2,000,000** in the aggregate with Products/Completed Operations limits of not less than $**1,000,000**;
- Umbrella Liability limits shall not be less than **$5,000,000**;
- Automobile liability (Combined Single Injury, Bodily Injury and Property Damage) limits shall not be less than **$1,000,000**;
- Workman's Compensation shall not be less than statutory limits;
- Employers Liability shall not be less than **$1,000,000**;
- Disability Insurance as required by applicable provisions of law; and
- Professional Liability shall not be less than **$2,000,000;**
- Contractor's Pollution Liability of not less than **$5,000,000**

BPCA, BPCPC and the State of New York to be listed as Additional Insured on CG 2010 (11/85) or similar and should be included on all levels of insurance held by the provider and the provider should also Hold Harmless in favor of BPCA. Policies should contain no limitations/exclusions for Labor Law claims. Policies should provide coverage on primary and non-contributory basis and there should be waiver of subrogation against all additional insured (BPCA, BPCPC and State of New York).

The provider should provide evidence of insurance (including declaration page and appropriate endorsements) satisfactory to BPCA before commencement of work. BPCA reserves the right to request true and certified copies of any and all policies, at any time.

2) Bonding: Provide a letter from your surety stating that you are able to provide a payment and performance bond as required by the standard form of contract (Exhibit C).

3) References:

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

4) 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.

5) Financial Statements:

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

E. Cost Proposal

Each Proposer must submit three (3) copies of its Cost Proposal, which must include each of the following:

1) A not-to-exceed amount for the performance of the Services Required, in the form attached hereto as Exhibit D ("Form of Cost Proposal"),
2) Labor rates in the form attached hereto as Exhibit E ("Form of Labor Rates"), and
3) Itemized schedule of values in the form attached hereto as Exhibit F.

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

VII. THE EVALUATION PROCESS

A. Objectives

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

- Demonstrates a thorough understanding of the scope of the engagement and the specific responsibilities it entails;
- Possesses adequate resources to handle assigned responsibilities and to handle unforeseen circumstances that may arise;
- Assigns highly skilled, experienced, diligent, responsible and professional personnel to perform the required services;
- Maintains high ethical standards and has an unblemished reputation; and
- Has no conflict of interest between its performance of the Services Required and its work on behalf of other clients.

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

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

B. Interviews

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

C. Evaluation Criteria for Selection

Selection will be based upon the following criteria:

1) Technical evaluation factors:

- Experience performing geothermal well work in New York City 50%
- Approach to work and schedule 40%

- M/WBE Status and/or utilization plan 10%

2) Cost Proposal evaluation.

D. Basis for Contract Award

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

VIII. NON-COLLUSION

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

IX. IRAN DIVESTMENT ACT

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

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

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

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

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

Proposers need to be aware that all authorized users of this Contract will be strongly encouraged, to the maximum extent practical and consistent with legal requirements, to use responsible and responsive New York State businesses

in purchasing commodities that are of equal quality and functionality and in utilizing services and technology. Furthermore, Proposers are reminded that they must continue to utilize small, minority and women owned businesses, consistent with current State law.

Utilizing New York State businesses in State contracts will help create more private sector jobs, rebuild New York's infrastructure, and maximize economic activity to the mutual benefit of the contractor and its New York State business partners. New York State businesses will promote the contractor's optimal performance under the Contract, thereby fully benefiting the public sector programs that are supported by associated procurements.

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

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

Will New York State businesses be used in the performance of this contract? _____Yes _____No

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

EXHIBIT A

Scope of Work

Background

In 2010, Battery Park City Authority ("BPCA") completed a facility fit-out of approximately 42,000 square feet at 75 Battery Place (the "Facility") to serve as the headquarters of the Battery Park City Parks Conservancy ("BPCPC"). The Facility's first three floors house BPCPC operations/maintenance with the 4th floor housing the offices of BPCPC. The Facility's HVAC system was designed to operate with two (2) open column geothermal wells (the "Wells") to provide heating and cooling, with a boiler to act as a backup heat source in the winter. After completion of the Facility, the Wells failed to produce enough water to support the HVAC system's operations, and an alternate HVAC system is currently being installed within the Facility. BPCA now requires that the Wells be properly, safely and permanently decommissioned (the "Project").

Work

The selected Proposer shall provide all labor, equipment, tools and materials to perform all tasks necessary to decommission the Wells in accordance with the drawings and specifications attached at Exhibit G, and satisfy all applicable regulatory requirements and regulations, including, but not limited to:

1. Providing permanent decommissioning (plugging and abandonment) of the Wells.
2. Reviewing all applicable Federal, State and Local regulations relating to decommissioning activities.
3. Contacting the applicable agency(ies) having jurisdiction over well decommissioning and preparing all necessary documentation required of such agency(ies) in order to properly decommission the Wells.
4. Obtain any and all permits required for the decommissioning of the Wells.
5. Verifying all field data applicable to the Wells.
6. Inspecting the Well heads for integrity, measuring for correct depth, water sampling, and performing downhole inspections.
7. Removing equipment, materials, debris and any other obstructions that may interfere with the sealing of the Wells.
8. Cutting power from the disconnect to the submersible pump and removing all electrical wires from the Wells.
9. Forming plugging material and filling the Wells with plugging material, in accordance with the drawings and specifications attached at Exhibit G.
10. Sealing and capping the Wells.
11. Providing all required documents to Engineer for completion of the decommissioning of the Wells.

EXHIBIT B

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

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

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

Business Participation Opportunities for MBEs/WBEs

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

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

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

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

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

B. BPCA will review the submitted Utilization Plan and advise the Proposer of BPCA's acceptance or issue a notice of deficiency within 30 days of receipt.

C. If a notice of deficiency is issued, Proposer agrees that it shall respond to the notice of deficiency within seven (7) business days of receipt by submitting to BPCA, at the address specified in this RFP, or by facsimile at 212-417-2279 a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by BPCA to be inadequate, BPCA shall notify the Proposer and direct the Proposer to submit, within five (5) business days, a request for a partial or total waiver of MBE/WBE participation goals. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or Proposal.

D. BPCA may disqualify a Proposer as being non-responsive under the following circumstances:

1) If a Proposer fails to submit a Utilization Plan;

2) If a Proposer fails to submit a written remedy to a notice of deficiency;

3) If a Proposer fails to submit a request for waiver; or

4) If BPCA determines that the Proposer has failed to document good faith efforts.

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

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

Equal Employment Opportunity Requirements

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

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

To ensure compliance with Article 15-A, Proposer further agrees, where applicable, to submit with the Proposal, a staffing plan identifying the anticipated work force to be utilized on the Contract and if awarded a Contract, will, upon request, submit to BPCA a workforce utilization report identifying the workforce actually utilized on the

Contract, if known, through the NYSCS; provided, however, that a Proposer may arrange to provide such report via a non-electronic method by contacting BPCA.

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

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

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

NEW YORK STATE OF OPPORTUNITY | Division of Minority and Women's Business Development

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

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

GETTING STARTED

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

VENDOR RESPONSIBILITIES

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

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

For more information, contact your project manager.

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

MBE/WBE AND EEO POLICY STATEMENT

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

MBE/WBE

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

(1) Actively and affirmatively soliciting bids for contracts and subcontracts from qualified State certified MBEs or WBEs, including solicitations to MBE/WBE contractor associations.

(2) Requesting a list of State-certified MBEs/WBEs from BPCA and soliciting bids from these MBEs/WBEs directly.

(3) Ensuring that plans, specifications, request for proposals and other documents used to secure bids will be made available in sufficient time for review by prospective MBEs/WBEs.

(4) Where feasible, dividing the work into smaller portions to enhance participations by MBEs/WBEs and encourage the formation of joint venture and other partnerships among MBE/WBE contractors to enhance their participation.

(5) Documenting and maintaining records of bid solicitation, including those to MBEs/WBEs and the results thereof. The Contractor will also maintain records of actions that its subcontractors have taken toward meeting MBE/WBE contract participation goals.

(6) Ensuring that progress payments to MBEs/WBEs are made on a timely basis so that undue financial hardship is avoided, and that bonding and other credit requirements are waived or appropriate alternatives are developed to encourage MBE/WBE participation.

EEO

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

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

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

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

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

Agreed to this _____ day of _____, 2015

By _____

Print: _____ Title: _____

_____is designated as the Conractor'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: _____

EXHIBIT C

BPCA's standard form of contract

(attached)

CONSTRUCTION AGREEMENT

between

HUGH L. CAREY BATTERY PARK CITY AUTHORITY

and

[NAME OF COMPANY, INC. CORP, CO.]

Dated as of **[DATE]**
Contract No. **[ENTER CONTRACT NUMBER]**

(PROJECT NAME)

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EXHIBIT F - INCIDENT REPORT FORM

CONSTRUCTION AGREEMENT

AGREEMENT (the "**Agreement**") made as of **[DATE]** between BATTERY PARK CITY AUTHORITY, d/b/a HUGH L. CAREY BATTERY PARK CITY AUTHORITY, ("**BPCA"**), a body corporate and politic, constituting a public benefit corporation and having a place of business at 200 Liberty Street, 24th Floor, New York, New York 10281, and **[NAME OF COMPANY]**, incorporated in the state of **[STATE]**, having an office at **[Street Address, City, Zip Code]** ("**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]**, consisting of the Work, as hereinafter defined, for the **[structure]** upon which work will be performed (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, upon the terms and conditions hereinafter provided; and

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

ARTICLE 1 - DEFINITIONS

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

(a) Agreement - as defined in Section 2.2(a).

(b) Agreement Termination Date - as defined in Section 3.1(a).

(c) Architect - **[include Name, Address, etc., as applicable]**.

(d) Artist - **[include Name, Address, etc., as applicable]**.

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

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

(g) Change Order - as defined in Section 9.1(b).

(h) Construction Manager - **[include Name, Address, etc., as applicable]**.

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

(j) Contract Price - as defined in Article 4.

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

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

(m) Drawings - Project drawings comprising part of Exhibit [x].

(n) Engineer **[include Name, Address, etc., as applicable]**.

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

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

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

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

(s) Guarantor - as defined in Section 27.3.

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

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

(v) Materialman - supplier of Materials.

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

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

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

(z) Notice to Proceed - a written directive from BPCA to Contractor signed by a duly authorized BPCA representative directing Contractor to begin performance of the Work set forth in this Agreement on a particular date.

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

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

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

(dd) 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.

(ee) Progress Schedule for the Work - as defined in Section 3.1(a).

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

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

(hh) Requisitions - as defined in Section 5.2.

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

(jj) Site - as defined in the third Recital of this Agreement.

(kk) Specifications - the specifications comprising part of Exhibit [x].

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

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

(nn) Term - as defined in Section 3.1(i).

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

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

(qq) Work - as defined in Section 2.1.

(rr) 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 (the "**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 - SCOPE OF WORK (as applicable)
(2) EXHIBIT B – DRAWINGS (as applicable)
(3) EXHIBIT C – SPECIFICATIONS (as applicable)
(4) EXHIBIT D - MONTHLY UTILIZATION COMPLIANCE REPORTS (as applicable)
(5) EXHIBIT E - PROMPT PAYMENT POLICY (as applicable)
(6) EXHIBIT F - INCIDENT REPORT FORM (as applicable)

(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. Architect 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 Architect and Construction Manager 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 Agreement.

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

(g) Drawings and Specifications 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 Materials 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 Architect. 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 Architect 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/or specification were originally included in the Contract Documents.

2.5 Title to Materials

Title to all Materials shall immediately vest in BPCA upon payment in respect of such Materials, whether or not then incorporated or installed into the Project. The Materials shall then become the sole property of BPCA subject to the right of BPCA, Construction Manager or Architect 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 that may result from failure or improper construction, maintenance or operation of such plant, appliances and methods. Contractor shall comply with all terms of the Contract Documents, and shall do, carry on and complete the entire Work 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. Contractor has been advised and is aware that the Project is located in a congested metropolitan area, and there may not be sufficient space to store Materials on Site. If storage space is unavailable on Site, Contractor shall make arrangements to store Materials off Site at Contractor's own cost. Contractor shall not be entitled to additional compensation for moving Materials from one storage area to another, whether such storage areas are on or off Site. No Materials shall be removed from the Site 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 Architect, 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 Architect 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 Architect 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 Architect; however, Materials of manufacturers, other than those specified, may be used if equivalent and approved by Architect, 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) Architect will initially judge the equivalency of proposed substitute Materials. Architect will make written recommendation of acceptance or rejection to Construction Manager and/or BPCA. Construction Manager and/or BPCA will then authorize Architect to issue to Contractor written approval or rejection of the substitution.

(d) If Contractor desires to use a substitute item, Contractor shall make application to Architect 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 Architect's review) stating and fully identifying the proposed substitute, cost changes (if any), and submitting substantiating data, samples, brochures of the item proposed. It is Contractor's responsibility to provide at its sole expense sufficient evidence by tests or other means to support any request for approval of substitutions.

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

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

(g) Acceptance of substitutions shall not relieve Contractor from responsibility for compliance with all the requirements of the Contract Documents. If, notwithstanding the provisions of subsection (e) above, changes in other parts of the Work or the work of other contractors are required by its substitutions, Contractor shall be responsible for the costs of any

such changes including the cost of all design and redesign services related thereto incurred by the Architect and its consultants.

(h) The 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 shall prepare and submit a progress schedule for the Work ("**Progress Schedule for the Work**") and agrees to be bound by and comply with the Work Completion Date and the Progress Schedule for the Project (as the Progress Schedule for the Project shall be updated pursuant to subsection (b)) and waives any right to charge or claim damages or any increased cost, charges or expenses against BPCA, Construction Manager, or Architect, for delays or disruptions from any cause whatsoever. Contractor's sole remedy as against BPCA, Construction Manager, or Architect 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**") (the period between the date of commencement of the Work and the Agreement Termination Date, the "**Term**").

(b) The Progress Schedule for the Work shall be formatted in a detailed precedence-style critical path method, or such other format satisfactory to BPCA and Construction Manager and shall also (a) provide a graphic representation of all activities and events including float values that will affect the critical path of the Work, (b) incorporate and coordinate all pertinent information involving each phase of Work, and (c) identify dates that are critical to ensuring the timely and orderly completion of the work in accordance with the requirements of the Contract Documents, including the dates for Substantial Completion of each respective phase of the Work. The Progress Schedule for the Work 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. The Contractor shall promptly give written notice of any actual or potential delays to BPCA and Construction Manager. After submission of the Progress Schedule for the Work, Construction Manager shall coordinate the Progress Schedule for the Work with the Progress Schedule for the 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 (the "**Notice to Proceed**"), 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 for the Work, and to the satisfaction of BPCA, Architect, and Construction Manager.

(d) If, in the opinion of Construction Manager, Contractor falls behind the Progress Schedule for the Project 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 for the Project 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 on or before the Work Completion Date or any changes thereto in accordance with, or upon the expiration of, any proper extension granted by BPCA, Contractor agrees to pay to BPCA **($$$$$)**, not as a penalty, **but as liquidated** damages for loss of beneficial use of the Project, for each and every calendar day that the Contractor is in default. Default shall include abandonment of the Work by Contractor.] **[delete if no liquidated damages]**

(g) [Said amount of liquidated damages is agreed upon by and between Contractor and BPCA because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages which BPCA would sustain for loss of beneficial use of the Project in the event of delay in completion, and said amount is agreed to be the amount of damages sustained by BPCA and said amount may be retained from time to time by BPCA. The foregoing liquidated damages are intended to compensate BPCA only for the loss of beneficial use of the Project. In addition,] **[delete if no liquidated damages]** Contractor shall be liable to BPCA, to the fullest extent permitted by law, for whatever actual damages (other than actual loss of beneficial use) BPCA may incur as a result of any actions or inactions of Contractor or its Subcontractors including, without limitation, interest expense and carrying costs, liabilities to other Contractors working on the Project or other third parties, job extension costs, and other losses incurred by BPCA. The provisions of this paragraph are exclusive to BPCA, and shall not accrue to other contractors or third parties.

(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] **[delete if no liquidated damages]** any excess cost if BPCA determines that Contractor is without fault and that the delay in completion of the Work is due to:

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

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

(3) 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.

(j) Notwithstanding anything to the contrary, a schedule submitted by Contractor showing a time of completion earlier than that specified in the Contract shall not entitle Contractor to any additional compensation in the event the earlier time of completion is not realized.

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

Should any other contractor having or who shall hereafter have a contract with BPCA for the performance of work upon the Project sustain any damage through any act or omission of Contractor hereunder, Contractor shall reimburse such other contractor for all such damages and to indemnify and hold BPCA, Construction Manager and Architect 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 that is causing or is threatening to cause such delay or disruption notify Construction Manager in writing of the effect of such condition upon the Progress Schedule for the Project, 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 to strictly comply with this notice requirement shall be sufficient cause to deny Contractor a change in schedule and to require it to conform to the Progress Schedule for the Project then in effect established by Construction Manager.

3.4 Extension of Time

(a) An extension of time under the Progress Schedule for the Project 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 for the Project 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 for the Project then in effect for delays in the performance of the Work, if caused:

(1) solely by uncontemplated acts or omissions of BPCA, Construction Manager or Architect; or

(2) by the uncontemplated acts or omissions of other contractors or uncontemplated 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 **($$$$$)**, (such sum is herein sometimes referred to as the "**Contract Price**"), which amount shall include any monies earned by or paid to Contractor prior to the execution of this Agreement, 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 [x].

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 that have not been incorporated in the Work to date, but delivered and suitably stored at the Site or at some other offsite location agreed upon in writing by BPCA and 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 Architect 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 (pursuant to BPCA's Prompt Payment Policy, a copy of which is attached hereto and made part hereof as Exhibit E) 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 five percent

(5%) of the total contract amount (including all approved Change Orders and pending Change Order proposals), 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 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 Architect for fines on account of non-compliance with applicable laws, rules and regulations, including rules promulgated by the Office of Safety & Health Administration;

(3) to protect BPCA from loss due to death or injury to persons or damage to the Work or property of BPCA, other contractors or others caused by the act or neglect of the Contractor;

(4) in the event that there is reasonable evidence that the Work will not be completed for the unpaid balance of the Contract Price;

(5) in the event that there is reasonable evidence that the Work will not be completed within the time provided; or

(6) in the event that Contractor persistently fails to perform the Work in accordance with the Contract Documents.

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

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

ARTICLE 6 – CONTRACTOR

6.1 Superintendence by Contractor, Discipline and Employee Skills

Contractor shall provide a competent construction superintendent to be in charge of the Work. The construction superintendent shall 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 this 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 that 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, BPCA 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 BPCA or Construction Manager and such other reports as may be required by BPCA or Construction Manager. BPCA, Construction Manager and Architect 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

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

ARTICLE 7 - CONTRACT ADMINISTRATION

7.1 Architect's Responsibilities and Functions

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

Architect'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 Architect and Construction Manager

In no event shall any act or omission on the part of the Construction Manager or Architect relieve Contractor of its obligation to perform the Work in full compliance with the Contract Documents. Neither Architect nor Construction Manager will be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, and neither will be responsible for Contractor's failure to carry out the Work in accordance with the 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, Architect 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 Architect at least five days prior written 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 Architect, it is desirable to require inspection or testing of the Work or its individual components in addition to any such testing that 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 Architect'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, Architect 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,

Architect or Construction Manager, such Work shall, if required by BPCA, Architect 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, Architect 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, Architect 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 Materials 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, Architect and/or Construction Manager shall perform an inspection for the purposes of determining whether the Work has been so performed, commencing such inspection within ten (10) days of receipt of such notice and completing it with all due diligence. When Architect and/or Construction Manager find upon inspection that, to the best of their knowledge and belief, the Work is so performed, they shall prepare and deliver to 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.

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

8.7 Completion of Work and Acceptance

Upon their receipt of written notice from Contractor stating its belief that the Work 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 Architect and Construction Manager as not having been acceptably completed in any punch list or otherwise, Architect and Construction Manager shall perform an inspection for purposes of determining whether the Work has been so performed. Architect 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**").

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

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 this Agreement, 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 for the Project, the Progress Schedule for the Work or to coordinate the Work with the work of other contractors. Contractor shall be obligated to perform changed Work promptly in conformity with any Change Order or Field Order issued in accordance herewith and may not suspend or otherwise refuse to perform the Work contained therein or any other aspect of the Work required under this Agreement because a Change Order has yet to be fully executed.

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

(i) Extra Work,

(ii) items that were erroneously deleted or omitted from the Work,

(iii) items that were included in the Work but were subsequently deleted,

(iv) an extension or decrease 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) accepting an amount agreed upon by BPCA and Contractor;

(2) applying the applicable unit prices and alternates where the Work involved is covered by unit prices in this Agreement;

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

(4) receiving from Contractor a true copy of its bid work sheets to determine

the contract price for the elimination of any contract Work. 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) adding to the Contract Price only the amount of the premium portion of overtime pay resulting from an acceleration of the Work; or

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

(b) Contractor shall promptly, and before such conditions are disturbed, notify Construction Manager of: (1) subsurface or latent physical conditions differing materially from those indicated in the Contract Documents, or (2) unknown physical conditions of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in 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.

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

ARTICLE 10 - SUBCONTRACTS AND PURCHASE ORDERS

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

(a) Contractor shall submit to Construction Manager, within 21 calendar days of the issuance of the 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 nor may BPCA be held responsible in any way for the performance of a Subcontractor or Materialman to whom BPCA gave its consent.

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

(d) Upon the request of BPCA, Contractor shall cause any Subcontractor or Materialman employed by the Contractor in connection with 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 and identifying the invoice(s) for which payment is being made. Contractor shall include a provision in all Subcontracts and Purchase Orders that will enable representatives of the State of New York, 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 Architect. 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 New York Lien Law Article 3-A (the "**Lien Law**"), all funds advanced by assignee to Contractor;

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

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

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

(e) the assignee shall agree with BPCA in writing that the assignee shall require and cause Contractor to keep his books and records in the form and manner described in New York

Consolidated Laws Service Lien Law Article 3-A Section 75; and

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

11.3 Assignment by BPCA

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

ARTICLE 12 - MECHANICS' LIENS AND CLAIMS

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

ARTICLE 13 – INSURANCE AND CONTRACT SECURITY

13.1 Insurance

(a) Contractor shall procure and maintain all of the insurance required under this Article 13 until Final Acceptance of the Work, 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: [name], 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 certificates shall also include riders providing that violation of any of the terms of any policy shall not by itself invalidate such policy. Such policies and certificates should name as additional insureds BPCA, Battery Park City Parks Conservancy Corporation ("**BPCPC**"), the State of New York, Construction Manager, and Architect.

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

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

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

(1) Worker's Compensation and Employer's Liability Insurance (including United States Longshoreman & Harbor Workers and Jones Act Coverages) during the Term for the benefit of such employees as are required to be insured by the applicable provisions of law and voluntary compensation for employees excluded from statutory benefits. Employer's Liability

Insurance and benefits resulting from disease shall not be less than an annual aggregate amount of **($$$$$)** for each consecutive 12-month period.

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

(3) Commercial General Liability Insurance as follows:

Standard commercial general liability insurance policy with contractual, products and completed operations and explosion, blasting, collapse, excavation and underground damage liability coverages, under the occurrence policy format, issued to and covering the liability of Contractor for all the Work and operations relating thereto and all obligations assumed by Contractor under this Agreement including, but not limited to indemnity obligations in an amount which shall not be less than the following limits:

Combined Single Limits, Bodily Injury
and Property Damage Liability

($$$$$) per each occurrence and **($$$$$)** in the aggregate.

Product and Completed Operations

($$$$$)

(i) 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 license plates, or under the circumstances that such vehicles are being used they are required by the Motor Vehicle Laws of the State of New York to bear license plates. The coverage under such policy shall not be less than the following limits:

Combined Single Limits,
Bodily Injury and Property Damage Liability

($$$$$) per each occurrence.

(5) Marine Protection and Indemnity insurance of not less than [amount] 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 [amount] 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 [amount] per occurrence and in the aggregate. The policy shall include coverage for environmental clean-up on land, in air and on water.

(8) Contractor shall secure, pay for, and maintain Property Insurance necessary for protection against the loss of owned, borrowed or rented equipment, tools and materials used in Contractor's performance of the Work. The requirement to secure and maintain such insurance is solely for the benefit of Contractor. Contractor's failure to secure such insurance or to maintain adequate levels of coverage shall not render BPCA or any other Additional Insureds, or their agents and employees, responsible for any such losses, and Owner, the other Additional Insureds, and their agents and employees shall have no such liability.

(9) Valuable Papers Insurance insuring, for the benefit of Contractor and BPCA all plans, designs, drawings, specifications, and documents used under this Agreement by Contractor in a total amount of not less than [$$$$$$] Contractor may furnish full coverage under one policy, or may submit separate policies from any Subcontractor(s) for their proportionate shares of such coverage.

(10) Comprehensive Crime/Employee Dishonesty Insurance in a reasonable amount or an amount which is customary in the applicable industry, trade or profession.

(11) If the Work involves the removal, repair, installation or testing of underground petroleum storage tanks, or petroleum remediation operations, or the performance of work or services related to excavation, loading, transporting or unloading of hazardous or contaminated materials, Contractor shall provide Contractors Professional Liability Insurance with a limit of **[$$$$$]**. Coverage shall provide and encompass the following:

(i) Contractor's negligent acts, errors or omissions in rendering or failing to render services of an engineering or consulting nature arising out of their environmental engineering or consulting.

(ii) Maximum self-insured retention of **[$$$$$]**, or an amount acceptable to BPCA.

(12) Umbrella Liability Insurance [excess of general liability, automobile liability, Marine protection and indemnity, pollution liability, vessel pollution liability and Employer's Liability] in an amount of not less than [amount].

(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, BPCPC, the State of New York, Construction Manager and Architect as additional insureds as respects this location and shall, where applicable, be written on an occurrence basis and shall contain a provision that it is primary and that any similar insurance which BPCA, BPCPC, the State of New York, Construction Manager, Architect, Contractor or Subcontractor elect to carry for their own benefit is secondary or excess and not contributing insurance.

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

(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 TEN THOUSAND DOLLARS ($10,000) and a deductible provision for flood and earthquake in the amount of TEN THOUSAND DOLLARS ($10,000). BPCA recognizes that the deductible applicable to flood and earthquake may be greater than TEN THOUSAND DOLLARS ($10,000) due to insurance market conditions and shall notify Contractor if such deductible is greater than TEN THOUSAND DOLLARS ($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 polices. 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 has not already done so, furnish to BPCA, with the execution of this Agreement, to BPCA, a bond in the form acceptable to BPCA in an amount at least equal to one hundred percent (100%) of the Contract Price for performance of the Work (the "**Performance Bond**"), and a labor and material payment bond in the form acceptable to BPCA in an amount at least equal to one hundred percent (100%) of the Contract Price for the payment of all persons performing labor or providing Materials in connection with the Work (the "Payment Bond"). The surety on said bond shall be a surety company authorized to do business in the State of New York and shall be rated at last B+ by A.M. Best and Company, or meet such other requirements as are acceptable to BPCA.

13.4 Additional or Substitute Bond

If at any time BPCA shall be or shall become dissatisfied with any surety or sureties then obligated upon the Performance Bond or the Payment Bond, or if for any other reason such bonds shall cease to be adequate security to BPCA, Contractor shall within five (5) days after notice from BPCA to do so, substitute an acceptable bond or bonds in such form and sum and signed by such other surety or sureties as may be satisfactory to BPCA, except that the penal sum of said bond shall not exceed the 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 that it has been ordered to perform is Extra Work and not Work as set forth in the Contract Documents, (ii) any action or omission of BPCA, Construction Manager or Architect is contrary to the terms and provisions of the Contract Documents and will require the performance of Extra Work or will cause additional expense to Contractor or (iii) any determination, order or directive of BPCA, Construction Manager or Architect is contrary to the terms of the Contract Documents and will require the performance of Extra Work or will cause additional expense to Contractor, Contractor shall:

(1) promptly comply with each determination, order or directive and proceed diligently with the performance of the Work in accordance with BPCA's instructions,

(2) notify BPCA, Construction Manager and Architect in writing within 72 hours of such determination, order, act or omission that Contractor believes such will require it to perform Extra Work or incur additional expense and the basis for Contractor's conclusion and request a final determination thereon by BPCA; and

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

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

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

(1) shall constitute a conclusive and binding determination on the part of Contractor that such action, omission, determination, order or directive does not involve Extra Work, has not caused extra expense or damages to Contractor, and is not contrary to the terms and provisions of the Contract Documents; and

(2) shall constitute an irrevocable waiver by Contractor of any claim for compensation for or damages resulting from the performance of such work

or the compliance with such determination, order or directive.

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

ARTICLE 15 - TERMINATION

15.1 Termination for Cause

(a) If any of the following events shall occur (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 for the Project or Progress Schedule for the Work then in effect in accordance with, or failing to discharge any of its responsibilities under, Section 3.1(d) hereof, including abandonment of the Work by Contractor, or by failing to indemnify and hold harmless BPCA (as required by Sections 3.1(e), 3.2, 17.5, 21.1, 21.2, 22(c) or any other provision of this Agreement) from and against any and all claims, liabilities, losses, costs or damages arising out of Contractor's performance of, or failure to perform, its obligations under this Agreement in accordance with its terms, or if the Contractor fails to maintain the insurance required by the provisions of Section 13; or

(2) any material adverse change shall take place in the financial condition of the Contractor;

(3) Contractor takes any action which would result in it becoming the subject of any insolvency proceeding. The term "insolvency proceeding" as used herein shall include the filing of a petition for relief under Title 11 of the United States Code by Contractor or the consent, acquiescence or taking of any action by Contractor, or the filing by or against Contractor of petition or action, looking to or seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any other regulation; or the appointment, with or without the consent of Contractor, of any trustee, custodian, receiver or liquidator of Contractor or of any property or assets of Contractor; or Contractor's making of an assignment for the benefit of creditors or its inability to pay its debts as they become due;

(4) Contractor misrepresented or omitted information in its submission of the Statement of Qualifications of Contractor submitted by Contractor to BPCA in connection with this Agreement; or

(5) any partner, principal, director, officer or shareholder owning in excess of five percent (5%) of the stock of Contractor shall have been convicted of a felony.

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

(1) the direct costs of Contractor for such Materials and Work in progress, and

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

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

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

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

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

15.2 Termination for Convenience of BPCA

(a) BPCA, at any time, may terminate this Agreement for its own convenience. Any such termination shall be effected by delivering to Contractor a notice of termination specifying the extent to which performance of Contractor's Work under 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 Subcontractors 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, work product, information and other property, which if this Agreement had been completed, would have been required to be furnished to BPCA; and

(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 specifications 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 the Work in a manner that causes interference with the work of other contractors, or Subcontractors, Contractor shall make the changes necessary to correct the condition as directed by 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 Architect drawings and calculations prepared by, and bearing the seal of a professional engineer, showing the proposed method for supporting such loads, for Architect's review and approval. No loading of any kind in excess of design loads shall be placed on any part of the Project prior to Architect's approval of such submitted drawings and calculations. The costs of the Architect's review 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 Architect'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 Architect 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 of such Materials or removal of such Materials from the Site following a determination that they will no longer be needed for the

Project and delivery to the location at which they are to be subsequently stored or disposed of, whichever event occurs last. 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 the: (i) jurisdiction of any court in which BPCA brings an action arising under this Agreement, (ii) the governmental nature of BPCA, or (iii) the provisions of any statutes respecting suits against BPCA.

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

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

(e) The Contractor is advised that the Work under this Agreement 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 that is completed or partly completed, or to place or install therein or thereon equipment, BPCA shall have the right to do so, and Contractor shall in no way interfere with or object to such use by BPCA.

(b) Such use shall not (1) constitute acceptance of space, systems, Materials or elements of the Work, (2) affect the start of any guaranty period, nor (3) affect the obligations of Contractor to complete the Work 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 that shall not unreasonably interfere with such use by BPCA.

ARTICLE 19 - EXEMPTION FROM SALES AND COMPENSATING USE TAXES

19.1 BPCA Exempt

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

19.2 Certificates

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

ARTICLE 20 - WARRANTIES AND GUARANTIES

20.1 In General

(a) Contractor guarantees that all Work performed and all Materials furnished will conform to the 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 any and all damage to any Work affected by or from such defects and all expenses necessary to remove, replace and repair such Work that may be damaged in removing, replacing or repairing such defects.

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

(c) The rights and remedies afforded BPCA under this 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 that 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 that BPCA expends for such removal, replacement and repair.

ARTICLE 21 - INDEMNITY

21.1 Delay or Failure

Contractor and its sureties shall be responsible for and pay to BPCA, all loss, damage and additional cost incurred by reasons or on account of (i) the unexcused delays of

Contractor (determined as set forth in Section 3.1 hereof) or (ii) Contractor's failure to fully and completely carry out the terms of this Agreement.

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, BPCPC, the State of New York, Construction Manager and Architect 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 Contractors employees or employees of its Subcontractors or Materialmen for injuries or death or by reason of claims of any other person or persons, including BPCA, BPCPC, the State of New York, Construction Manager, and Architect and their servants, agents or employees, for injuries to person or property or for death occasioned in whole or in part by any act or omission of Contractor, its Subcontractors and Materialmen and their servants, agents and employees whether or not it is contended that BPCA contributed thereto or was responsible therefor by reason of nondelegable duty. If, however, this indemnification is limited by applicable law, then the said indemnification hereby shall be similarly limited to conform with such law, it being the intention that this indemnification shall be as permitted by applicable law. BPCA may retain any monies due or to become due hereunder sufficient to indemnify BPCA, BPCPC, the State of New York, Construction Manager, and Architect and their servants, agents and employees against such injuries, claims, suits, actions, costs or damages should any such claim arise. Contractor shall, at the sole option of BPCA and upon written demand of BPCA, assume the defense in behalf of BPCA, BPCPC, the State of New York, Construction Manager, and Architect 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 Architect shall be construed merely as an approval of their adequacy for the Work.

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

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

(1) United States patents and patents registered in any other foreign country;

(2) proprietary knowledge, data and trade secrets; and

(3) Engineering data and information necessary in connection with and solely in connection with, all work performed by BPCA or other contractors hired by BPCA to complete the work after termination of this Agreement pursuant

to Section 15.1.

Each Purchase Order and Subcontract shall contain a similar clause with respect to the rights of Subcontractor and Materialman in and to the foregoing, in form and substance acceptable to BPCA, granting BPCA the aforesaid license. BPCA shall not be obligated to pay any royalties, license fees or any other consideration to Contractor or any Subcontractor or Materialman for this license. Contractor and each Subcontractor and Materialman shall execute a separate license agreement, in form and substance satisfactory to BPCA, concurrently with the execution of this Agreement, or any 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 Architect.

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

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 Architect, each of such items shall be returned in accordance with the procedures established therefor.

24.2 Contractor's Responsibility

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

ARTICLE 25 – NOTICES

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

(a) if to BPCA:

[NAME], **[TITLE]** 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], **[COMPANY]** located at **[ADDRESS]**

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]** located at **[ADDRESS]**

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

(d) if to Architect/Engineer/etc.

[NAME], **[COMPANY]** located at **[ADDRESS]**

or to such other addresses as Architect or 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 BPCA shall monitor Contractor's compliance with the requirements set forth in (i) the MBE/WBE Required Participation Plan and (ii) the Utilization Plan.

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

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

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

(f) "**MBE/WBE Required Participation Plan**." The plan previously submitted by Contractor to BPCA listing the certified MBEs and/or WBEs which the Contractor intends to use

in the performance of this agreement in order to ensure that MBEs and WBEs are awarded a fair share of the total dollar value that is to be paid for the Work.

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

(1) Black persons having origins in any of the Black African racial groups;

(2) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American descent of either Indian or Hispanic origin, regardless of race;

(3) Native American or Alaskan native persons having origins in any of the original peoples of North America; or

(4) Asian and Pacific Islander persons having origins in any of the Far East countries, South East Asia, the Indian subcontinent or the Pacific Islands.

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

(1) at least 51 percent owned by one or more Minority Group Members;

(2) an enterprise in which such Minority ownership is real, substantial and continuing;

(3) an enterprise in which such Minority ownership has and exercises the authority to control and operate, independently, the day-to-day business decisions of the enterprise; and

(4) an enterprise authorized to do business in the State of New of New York and is independently owned and operated.

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

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

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

(1) at least 51 percent owned by one or more United States citizens or permanent resident aliens who are women;

(2) an enterprise in which the ownership interest of such women is real, substantial and continuing;

(3) an enterprise in which such women ownership has and exercises the authority to control and operate, independently, the day-to-day business decisions of the enterprise; and

(4) an enterprise authorized to do business in the State of New York and which is independently owned and operated.

26.2 Equal Employment Opportunities for Minority Group Members and Women

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

(1) Contractor shall not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status; shall undertake or continue existing programs to ensure that Minority Group Members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status; and shall make and document its good faith effort to achieve prompt and full utilization of Minority Group Members and women at all levels and in all segments of its work force where deficiencies exist.

(2) At the request of BPCA, Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of Contractor's obligations herein.

(3) Contractor shall state in all solicitations or advertisements for employees that in the performance of the Work, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

(4) Contractor and any Subcontractor shall be required to submit compliance reports in accordance with this Section 26 relating to their operations and the implementation of the Diversity Program in effect as of the date of execution of this Agreement.

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

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

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

(d) Miscellaneous

(1) The provisions of this Section shall not be binding upon Contractor or its Subcontractors in the performance of Work or the providing of services, or any other activities that are unrelated, separate or distinct from this Agreement 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 _____ % Minority Group Members and _____ % women in the workforce for each trade or services utilized by Contractor in the Work as set forth in the Utilization Plan.

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

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

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

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

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

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

(1) BPCA may require that Contractor submit Utilization Compliance Reports for the duration of this contract to BPCA regarding Contractor's operation and implementation of the Utilization Plan portion of the Diversity Program in effect as of the date of execution of this Agreement.

(2) The Utilization Compliance Reports shall include information on any Subcontractor involved in the performance of the contract with regard to the Subcontractor's compliance with the Diversity Program.

(3) The Utilization Compliance Reports shall include, but are not limited to the following:

(i) a breakdown of the Subcontractors by ethnic background, gender or such other categories as may be required by BPCA;

(ii) the actions the Contractor and Subcontractors have taken to meet the

components of the Diversity Program;

(iii) how Contractor and Subcontractors intend to utilize participation of Minority Group Members and women in their workforce in connection with the performance of the Work and timetables therefor during the remainder of their performance of the Work.

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

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

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

(a) Contractor shall make good faith efforts to attain the participation of twenty percent (20%) MBEs and/or WBEs in the total dollar value of the Work.

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

(1) if an MBE and WBE is not the Contractor -- the dollar value of the Work subcontracted to MBEs and WBEs; provided, however, that where materials are purchased from an MBE or WBE that acts merely as a conduit for goods manufactured or produced by a non-MBE or non-WBE, only that portion of the price paid for such materials that will accrue as profit to the MBE or WBE and/or the Fee received by the MBE or WBE shall be included;

(2) if Contractor is a joint venture including one or more MBEs or WBEs as joint venturers -- the Contract Price multiplied by the percentage of the joint venture's profits (or losses) that are to accrue to the MBE and WBE joint venturer(s) under the joint venture agreement; and

(3) if an MBE or WBE is Contractor or where Contractor is a joint venture consisting entirely of MBEs or WBEs -- the Contract Price.

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

(1) MBE/WBE Compliance Reports shall be submitted to BPCA on a monthly basis and shall include information with respect to:

(i) dividing the Work to be subcontracted into smaller portions, where economically and technically feasible;

(ii) actively and affirmatively making a good faith effort to solicit bids for subcontracts from qualified MBEs and WBEs identified in the directory of certified businesses available at the office of the BPCA's Diversity Officer, including the circulation of solicitations to Minority contractor associations. Contractor shall maintain records detailing the efforts made to provide for meaningful MBE and WBE participation in the Work, including the names and addresses of all MBEs and WBEs contacted and, if any such MBE or WBE is not selected as a joint venture or subcontractor, the reasons for such decision;

(iii) making plans and specifications for prospective work available to MBEs and WBEs in sufficient time for review;

(iv) utilizing the services and cooperating with those organizations providing technical assistance to BPCA in connection with the participation of MBEs and WBEs in the project to which the Work relates;

(v) encouraging the formation of joint ventures, partnerships or other similar arrangements among subcontractors where appropriate;

(vi) ensuring that provision is made to provide progress payments to MBEs and WBEs on a timely basis; and

(vii) not requiring bonds from and/or providing bonds and insurance for MBEs and WBEs where appropriate, and/or assisting in obtaining bonds and insurance for MBEs and WBEs where feasible.

(2) MBE/WBE Compliance Reports that shall be submitted to the Diversity Department on a monthly basis.

(3) MBE/WBE Compliance Reports shall also include, but not be limited to, the following information:

(i) the name, address and telephone number of each certified MBE and WBE which Contractor is using or intends to use to comply with the MBE/WBE Required Participation Plan.

(ii) a brief description of the contract scope of work to be performed for the Contractor by each certified MBE and WBE and the scheduled dates for performance;

(iii) a statement of whether the Contractor has a written agreement with each certified MBE and WBE which Contractor is using or intends to use, and if requested, copies of such agreements;

(iv) the actual total cost of the contract scope of work to be performed by each certified MBE and WBE for this Agreement; and

(v) the actual amounts of any payments made by Contractor to each certified MBE and WBE as of the date the MBE/WBE Compliance Report was submitted.

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

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

26.5 Failure to Comply

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

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

ARTICLE 27 - STANDARD PROVISIONS

27.1 Provision Required by Law Deemed Inserted

Each and every provision of law and governmental regulation required by law to be inserted in the Contract Documents shall be deemed to be inserted therein and this Agreement shall read and shall be enforced as though so included therein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party, this Agreement shall be deemed to be amended to make such insertion or correction. If this Agreement contains any unlawful provision, the same shall be deemed of no effect and shall, upon the application of either party, be deemed stricken from this Agreement without affecting the binding force of the remainder.

27.2 Compliance with Laws, Rules and Regulations

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

27.3 Applicable Law, Forum and Jurisdiction

This Agreement 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 Architect beyond such as may legally exist irrespective of this Agreement.

27.5 Exculpation; Limitation of Liability

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

27.6 Protection of Lives and Health

(a) Contractor's, Subcontractor's and Materialman's attention is specifically called to the rules and regulations, codes and bulletins of the New York State Department of Labor. Attention is also directed to the standards imposed under the Federal Occupational Safety and Health Act of 1970, as amended.

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

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

and methods.

27.7 Waiver of Immunity Clause

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

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

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

27.8 Prohibited Interests

No official of BPCA who is authorized in such capacity and on behalf of BPCA to negotiate, make, accept, or approve, or take part in negotiating, making, accepting, or approving any Architectural, Engineering, inspection, 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 New York Labor Law Sections 220 and 220-d as amended, that:

(1) no laborer, workman or mechanic, in the employ of Contractor, Subcontractor, Materialman or other person doing or contracting to do the whole or any part of the Work contemplated by the Contract Documents shall be permitted or required to work more than eight (8) hours in any one calendar day or more than five (5) days in any one week, except in the emergencies set forth in the Labor Law.

(2) the wages paid for a legal day's work shall be not less than the prevailing rate of wages as defined by law;

(3) the minimum hourly rate of wage to be paid shall be not less than that stated in the Contract Documents and as shall be designated by the Industrial

Commissioner of the State of New York; and

(4) Contractor shall post at appropriate conspicuous points at the Site, a schedule showing all determined minimum wage rates for the various classes of laborers and mechanics to be engaged in the Work and all deductions, if any, required by law to be made from unpaid wages actually earned by the laborers and mechanics so engaged.

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

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

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

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

(1) the stipulated wage scale as set forth in New York Labor Law Section 220, subdivision 3, as amended, or

(2) less than the stipulated minimum hourly wage scale as specified in Labor Law, Section 220-d, as amended.

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

(1) in the hiring of employees for the performance of Work under this Agreement or any Subcontract or Purchase Order hereunder, or for the manufacture, sale or distribution of Materials, equipment or supplies hereunder, but limited to operations performed within the territorial limits of the State of New York, no Contractor, Subcontractor, Materialman or any person acting on behalf of such Contractor or Subcontractor, or Materialman, shall by reason of race, creed, color, sex or national origin discriminate against any citizen of the State of New York who is qualified and available to perform the work to which the employment relates;

(2) no Contractor, Subcontractor, Materialman, or any person on behalf of such Contractor, Subcontractor or Materialman shall, in any manner, discriminate against or intimidate any employee hired for the performance of work under this Agreement on account of race, creed, color, sex or national origin;

(3) there may be deducted from the amount payable to Contractor, by BPCA under this Agreement, a penalty of $50.00 for each person for each calendar day during which such person was discriminated against or intimidated in violation of the terms of this Agreement; and

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

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

27.10 Disputes Resolution Procedure

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

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

(c) All Disputes shall be initiated through a written submission by either party (such submission to be hereinafter referred to as the "**Dispute Notice**") to the Arbiter within ten (10) days of the determination, order or other act or omission which is the subject of the Dispute. Within ten (10) days after the submission of such Dispute Notice, the party initiating the Dispute shall provide the Arbiter with all evidence and other pertinent information in support of the party's position and/or claim. Within thirty (30) days from the date of the Dispute Notice, the party against whom the Dispute Notice was filed shall submit any and all materials which it deems pertinent to the Arbiter. Upon submission of a Dispute Notice to the Arbiter, the Arbiter shall render its decision in writing and deliver a copy of same to the parties within a reasonable time not to exceed sixty (60) days after the receipt of all materials. In rendering such decision, the Arbiter may seek such technical or other expertise as it shall deem necessary or appropriate (notifying both parties to the Dispute when he/she so seeks such other information or expertise) and seek any such additional oral and/or written argument or materials from either or both parties to the Dispute as he/she deems fit. The Arbiter shall have the discretion to extend the time for submittals required hereunder. The Arbiter's ability to render and the effect of a decision hereunder shall not be impaired or waived by any negotiations or settlement offers in connection with the matter presented, whether or not the Arbiter participated therein, or by any prior decision of others, or by any termination or cancellation of this Agreement. The decision of the Arbiter shall be final and binding on both parties to this Agreement.

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

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

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

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

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

(d) Any final determination of the Arbiter with respect to a Dispute initiated pursuant to this Article 27 shall be subject to review solely in the form of a challenge following the decision by the Arbiter in a Court of competent jurisdiction of the State of New York, County of New York, under Article 78 of the New York Civil Practice Law and Rules or a United States Court located in New York City under the procedures and laws applicable in that court, it being understood the review of such Court shall be limited to the question of whether or not the 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 Architect 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 monies 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 Architect 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 Architect.

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 Architect. Contractor agrees that no default, act or omission of BPCA, Construction Manager, or Architect 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. 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 Architect except as provided in this Section 27.13 and Contractor's right to money damages.

27.14 Modification of Agreement

No change in or modification, termination or discharge of this Agreement 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 Architect 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 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 New York State Finance Law Article XI Section 165(5), and shall permit independent monitoring of their compliance with such Principles.

27.22 Iran Divestment Act

By signing this Agreement, each person and each person signing on behalf of any other party certifies, and in the case of a joint bid or partnership each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each person is not on the list created pursuant to paragraph (b) of subdivision 3 of Section 165-a of the State Finance Law.

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

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

27.24 Labor Peace

The Contractor and its Subcontractors and Materialmen shall not employ on the Work any labor, materials or means whose employment, or utilization during the course of this Agreement, 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.

27.25 Comptroller's Approval

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

27.26 Key Person/Personnel

The parties understand that in entering into this Agreement, BPCA has relied upon Contractor's representation that [name(s) and title(s)] (hereinafter the "**Key Personnel**") will be directly and consistently involved in supervising the Work and actively engaged in the day-to-day management of the Work, which shall include attending mandatory Project meetings. If the Key Personnel is/are not available as described herein, or if the Key Personnel depart from the firm or severs his/her/their relationship with the Contractor, or for whatever other reason is/are not available to work on the 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.

27.27 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 Agreement.

27.28 General Responsibility

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

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

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

27.29. Counterparts

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

27.30. Section Headings

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

27.31. Subordination of Terms in the Exhibits

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

SIGNATURE PAGE FOLLOWS

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

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

By: _____

Name: _____

Title: _____

[CONTRACTOR NAME]

By: _____

Name: _____

Title: _____

FEIN # **[???]**

EXHIBIT D

COST PROPOSAL
(Proposer to submit executed Cost Proposal on its letterhead)

Date:

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

Attention: Mr. Michael LaMancusa
Contract Administrator

Dear Mr. LaMancusa:

The undersigned (the "Proposer") hereby proposes to perform the work set forth in the Exhibit A (Scope of Work) attached to the Request for Proposal for **75 Battery Place – Geothermal Well Decommissioning** (the "RFP"). The Proposer agrees to commence the Work immediately upon execution of the Contract in accordance with the terms stipulated in the following pages, for the not-to-exceed amount written below.

A. Base Proposal
A total not-to-exceed amount of $_____ (_____ Dollars and _____ Cents) to perform all work as described in Exhibit A of the RFP.

B. Schedule of Values and Labor Rates

1. The Proposer has submitted with its Cost Proposal an itemized cot for the Work, according to the attached Schedule of Values.

2. Enclosed with its Cost Proposal, Proposer has submitted a completed Form of Technical Salaries, showing labor rates for all trades, including all costs except overhead and profit. Prices shown include base hourly rates, overtime rates, insurance and benefits.

Name of Proposer:

_____

By: _____

Title: _____

EXHIBIT E

Form of Labor Rates

(Attached)

LABOR RATES

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

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

<Name of Company>
<Name of Proposer>

Signed Date

By: <Printed Name>

EXHIBIT F

Form of Schedule of Values

(Attached)

BATTERY PARK CITY AUTHORITY - TASK 17

PROJECT: GEOTHERMAL WELL PLUGGING & ABANDONMENT

CONTRACTOR: _____

DATE: _____

UNIT PRICE SCHEDULE

DESCRIPTION OF WORK	QTY	UNIT	COST	TOTAL
Mobilization	1	LS	$ -	$ -
Contractor work permits	1	LS	$ -	$ -
			Total	**$ -**
VERIFICATION OF FIELD DATA				
Inspect well head for integrity	1	LS	$ -	$ -
Water quality sampling and analysis	1	LS	$ -	$ -
			Total	**$ -**
DOWNHOLE INSPECTIONS				
Measure current depth of wells	1	LS	$ -	$ -
Caliper logs to measure inside diameter at varying depths	1	LS	$ -	$ -
Video log to assess in-well conditions	1	LS	$ -	$ -
- casing breaks, screen size, etc.				
Cement bond logs to determine if casing firmly attached to grout	1	LS	$ -	$ -
Flow logs to determine if any vertical flow in casing	1	LS	$ -	$ -
Hydraulic integrity test of well casing	1	LS	$ -	$ -
			Total	**$ -**
REMOVAL OF EXISTING PIPING/EQUIPMENT IN WELL				
Removal of well construction materials	1	LS	$ -	$ -
- shroud pipe, bridges, screen, filter pack, seal, grout, etc.				
Removal of pump equipment and piping	1	LS	$ -	$ -
Removal of debris and foreign matter	1	LS	$ -	$ -
- excessive mud filtercake, gelled mud, sand, gravel, etc.				
Removal of all electrical wiring inside well	1	LS	$ -	$ -
Disposal of all removed equipment, materials, wiring, debris, etc.	1	LS	$ -	$ -
			Total	**$ -**

FORM PLUGGING MATERIAL & PLUGGING ACTIVITY				
Provide necessary quantity of well plugging materials		CU FT	$ -	$ -
Mix and prepare plugging material	1	LS	$ -	$ -
Provide plugging material delivery system	1	LS	$ -	$ -
Pump plugging material into well to fully plug		CU FT	$ -	$ -
Provide dicharge of well groundwater and any other displaced fluids discharge to nearest city sewer drain / catch basin	1	LS	$ -	$ -
- pumps, temporary hoses, etc.				
Seal and cap associated piping in well transition chamber	1	LS	$ -	$ -
Seal well with weld-on / bolt-on steel cap	1	LS	$ -	$ -
			Total	**$ -**
SITE PROTECTION & RESTORATION				
Provide adequate bracing and site protection	1	LS	$ -	$ -
Restore planter bed area as required	1	LS	$ -	$ -
- trees, shrubs, other vegetation, etc.			$ -	$ -
Removal and disposal	1	LS	$ -	$ -
- materials, debris, tools, machinery, sealing material, grease, etc.			$ -	$ -
			Total	**$ -**
DOCUMENTATION				
Inspection records	1	LS	$ -	$ -
Narrative report	1	LS	$ -	$ -
- plugging procedure, type of plugging material, personnel, etc.			$ -	$ -
Formal report	1	LS	$ -	$ -
- documentation of entire procedure			$ -	$ -
			Total	**$ -**
			Total	**$ -**

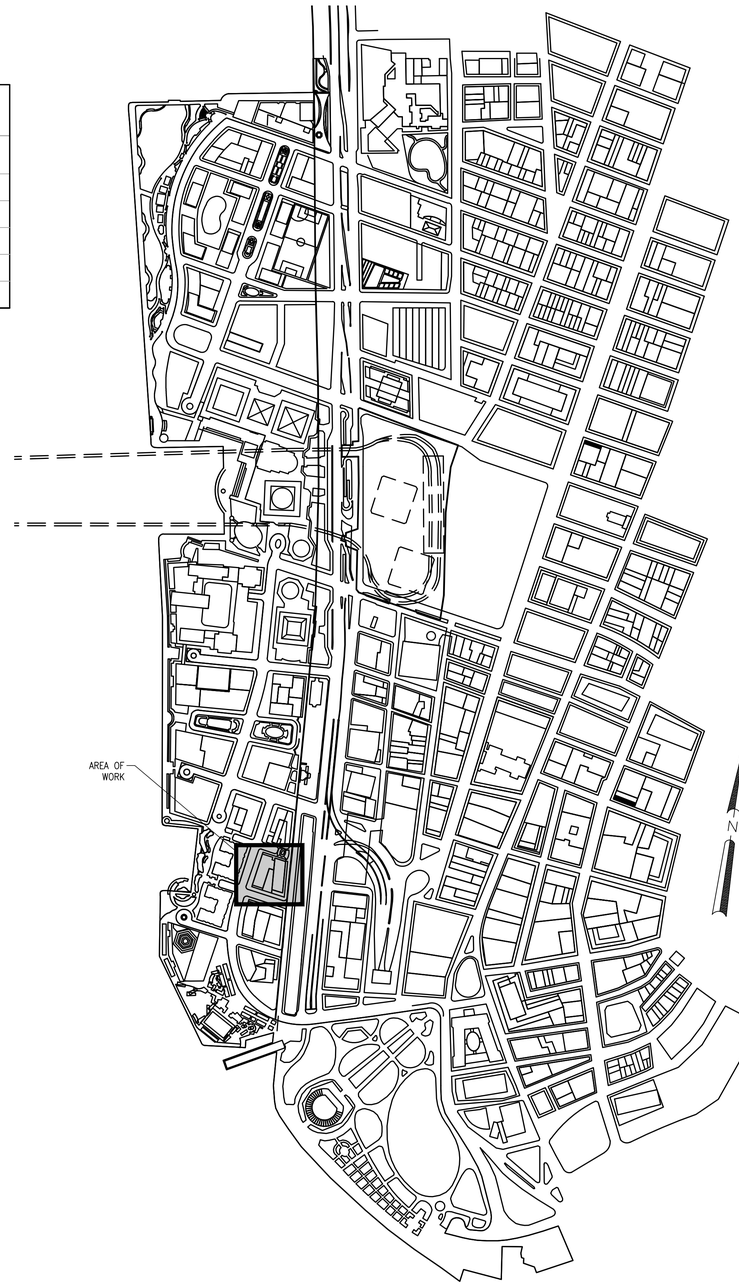
EXHIBIT G

DRAWINGS

2015 GEOTHERMAL WELL DECOMMISSIONING

HUGH L. CAREY BATTERY PARK CITY AUTHORITY

LIST OF DRAWINGS	
DRAWING #	DESCRIPTION
T001.00	TITLE SHEET
T002.00	NOTES, SCOPE OF WORK, & SPECIFICATIONS
C001.00	GEOTHERMAL WELLS SITE PLAN
M001.00	WELL EQUIPMENT & PIPING DEMO
M002.00	WELL PLUGGING & CAPPING DETAIL



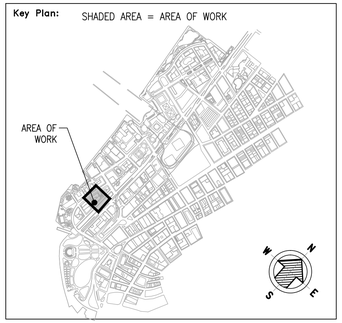
HUGH L CAREY BATTERY PARK CITY AUTHORITY

Consultants:
ENSIGN ENGINEERING, P.C.
1111 Calhoun Ave.
Bronx, N.Y. 10465
TEL. 718-863-5590 FAX. 718-863-6178
WWW.ENSIGNENGINEERING.COM

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

No.	Date	Revision
	03/17/15	REVIEW SET FOR COMMENT
No.	Date	Submittal

Key Plan: SHADED AREA = AREA OF WORK



Project Engineer:	CARL J. CANNIZZARO, P.E.
Designer:	
Drawn by:	VISHAL D. PRAJAPATI
Checked by:	CARL J. CANNIZZARO, P.E.

Design No. or LLW No.:	Facility Code:	Date:
–	N/A	03/17/15

Project:
2015 GEOTHERMAL WELL DECOMISSIONING
Battery Park City Authority
Address: 75 BATTERY PLACE NEW YORK, NY

Drawing Title:
TITLE SHEET

Drawing No.:
T001.00

Sheets in Contract:
01 of 05

GENERAL NOTES

1. PROVIDE EFFECTIVE PERMANENT CLOSURE OF WELLS SO THAT THE PHYSICAL STRUCTURE OF THE WELL DOES NOT PROVIDE A MEANS OF HYDRAULIC COMMUNICATION BETWEEN AQUIFERS OR REACT CHEMICALLY IN A DETRIMENTAL WAY WITH THE ENVIRONMENT.

2. THE PRIMARY PURPOSE OF DECOMMISSIONING ACTIVITIES IS TO PERMANENTLY DECOMMISSION THE BOREHOLE SO THAT THE NATURAL MIGRATION OF GROUND WATER OR SOIL VAPOR IS NOT SIGNIFICANTLY INFLUENCED. DECOMMISSIONED BOREHOLES AND WELLS SHOULD HAVE NO ADVERSE INFLUENCE ON THE LOCAL ENVIRONMENT THAN THE ORIGINAL GEOLOGIC SETTING.

3. CONTRACTOR SHALL SUBMIT ALL APPLICATIONS AND OBTAIN ALL APPROVALS AND PERMITS FROM THE APPROPRIATE REGULATORY AUTHORITIES DURING THE DECOMMISSIONING PROCESS AND TO PROCEED WITH THE WORK.

4. CONTRACTOR SHALL COMPLETE ALL FILINGS AND OBTAIN PERMITS WITH ALL AUTHORITIES HAVING JURISDICTION WHICH INCLUDE BUT MAY NOT BE LIMITED TO, NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION, NEW YORK CITY DEPARTMENT OF ENVIRONMENTAL PROTECTION, AND NEW YORK CITY DEPARTMENT OF TRANSPORTATION.

NYS DEC NOTES

1. THE PLUGGING OF A WELL SHALL BE CONDUCTED IN ACCORDANCE WITH THE FOLLOWING SEQUENCE OF OPERATIONS:

   1.1. THE WELL BORE SHALL BE FILLED COMPLETELY WITH CEMENT FROM TOTAL DEPTH TO TOP OF STEEL CASING AT SURFACE LEVEL.
   1.2. WELL'S STEEL CASING SHALL REMAIN IN PLACE AND SHALL BE CAPPED IN ANY SUCH MANNER AS WILL PREVENT THE MIGRATION OF FLUIDS AND NOT INTERFERE WITH NORMAL SOIL CULTIVATION.
   1.3. THE OPERATOR SHALL HAVE THE OPTION AS TO THE METHOD OF PLACING ANY CEMENT IN THE HOLE BY EITHER (I) DUMP BAILER, (II) PUMPING OR SIPHONING THROUGH TUBING OR DRILL PIPE, (III) PUMP AND PLUG, OR (IV) SUCH OTHER METHOD AS SHALL BE APPROVED BY THE DEPARTMENT.

2. IN THE EVENT MECHANICAL OR OTHER UNUSUAL CONDITIONS IN THE WELL ARE SUCH AS TO MAKE PLUGGING FOLLOWING THE SEQUENCE OUTLINED IN SECTION (1) ABOVE IMPRACTICAL, THE OWNER OR OPERATOR MAY BE GRANTED PERMISSION BY THE DEPARTMENT TO USE SOME ALTERNATIVE OR EQUIVALENT PLUGGING PROCEDURE.

3. AS A PART OF THE PLUGGING AND ABANDONMENT OPERATION, THE OWNER OR OPERATOR SHALL FILL WITH EARTH ANY PIT OR OTHER EXCAVATION, INCLUDING ANY RAT HOLE OR MOUSE HOLE, WHICH HAS BEEN CREATED TO FACILITATE THE DRILLING OR PRODUCTION OF THE WELL. IN ADDITION, A REASONABLE EFFORT TO SMOOTH THE SURFACE ADJACENT TO THE WELL AND FILLED PIT OR EXCAVATION SO AS TO PLACE THE SURFACE IN A CONDITION SIMILAR TO THE ADJACENT TERRAIN AND WITHOUT UNDUE ELEVATION SHALL BE MADE. IF IT CAN BE DEMONSTRATED TO THE SATISFACTION OF THE DEPARTMENT THAT NO HAZARD WILL RESULT AND THE LANDOWNER HAS SIGNED AN APPROPRIATE RELEASE, THESE SURFACE RESTORATION REQUIREMENTS WILL BE WAIVED.

4. WITHIN 30 DAYS AFTER THE PLUGGING OF ANY WELL, A PLUGGING REPORT ON FORM OG13 SHALL BE FILED WITH THE DEPARTMENT BY THE OWNER OR OPERATOR OR PERSON RESPONSIBLE FOR THE PLUGGING OPERATION.

SCOPE OF WORK

1.1. CONTRACTOR SHALL PROVIDE PERMANENT DECOMMISSIONING (PLUGGING AND ABANDONMENT) OF TWO GEOTHERMAL WELLS.

1.2. CONTRACTOR SHALL REVIEW APPLICABLE FEDERAL, STATE, AND LOCAL REGULATIONS RELATING TO DECOMMISSIONING ACTIVITIES. CONTACT THE APPLICABLE STATE OR LOCAL AGENCY HAVING JURISDICTION OVER WELL DECOMMISSIONING ACTIVITIES AND PREPARE NECESSARY DOCUMENTATION.

1.2.1. PRIOR TO CONDUCTING WELL DECOMMISSIONING, MUNICIPAL AUTHORITIES SHALL BE CONTACTED TO DETERMINE IF THERE ARE ANY LOCAL REGULATIONS REGARDING THE ACTIVITY.
1.2.2. OBTAIN PERMIT FOR DECOMMISSIONING ACTIVITIES FROM NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION FOR BOTH WELLS.

1.3. CONTRACTOR SHALL CONDUCT VERIFICATION OF FIELD DATA

1.3.1. INSPECTION OF WELL HEAD INSTALLATION FOR INTEGRITY.
1.3.2. CURRENT DEPTH MEASUREMENT OF THE CASING AND WELL (THE ORIGINAL DEPTH OF THE WELL MAY BE DIFFERENT THAN EXISTING DEPTH).
1.3.3. WATER QUALITY SAMPLING AND ANALYSIS. CONTRACTOR SHALL PROVIDE A FINAL WATER QUALITY SAMPLE TAKEN FROM THE WELL.
1.3.4. DOWNHOLE INSPECTIONS
1.3.4.1. CALIPER LOGS TO MEASURE INSIDE DIAMETER.
1.3.4.2. TELEVISION LOGS TO DETERMINE IN-WELL CONDITIONS SUCH AS CASING BREAKS, SCREEN SIZE, ETC.
1.3.4.3. CEMENT BOND LOGS (SONIC) TO DETERMINE IF THE CASING IS FIRMLY ATTACHED TO GROUT.
1.3.4.4. FLOW LOGS (FLOW METER OR SPINNERS) TO DETERMINE IF VERTICAL FLOW OCCURS WITHIN THE CASING.
1.3.4.5. HYDRAULIC INTEGRITY TEST TO DETERMINE IF THE WELL CASING IS INTACT.

1.4. REMOVE EQUIPMENT, MATERIALS, DEBRIS, AND ANY OTHER OBSTRUCTIONS THAT MAY INTERFERE WITH SEALING OF THE WELL. THIS INCLUDES PUMPING EQUIPMENT, DROP PIPE, PACKERS, ETC.

1.4.1. REMOVE ALL DEBRIS AND FOREIGN MATTER THAT MAY RESTRICT ADHESION OF THE PLUGGING MATERIALS TO THE BOREHOLE WALLS.
1.4.2. REMOVE ALL EXISTING WELL CONSTRUCTION MATERIALS SUCH AS SCREEN, FILTER PACK, SEAL, AND GROUT FROM THE HOLE TO REDUCE THE POTENTIAL FOR THE FORMATION OF A VERTICAL CONDUIT TO OCCUR AT THE CONTACT BETWEEN CASING AND ANNULAR SEAL.
1.4.3. CLEAR BOREHOLES OF EXCESSIVE MUD FILTERCAKE, OR GELLED MUD (IF USED) AND ANY BRIDGES RESULTING FROM THE REMOVAL OF TEMPORARY CASING, OR WHEN NONCOHESIVE MATERIALS (SUCH AS SAND AND GRAVEL) ARE ENCOUNTERED THAT CAN LEAD TO A COLLAPSED BOREHOLE DURING DECOMMISSIONING ACTIVITIES.
1.4.4. PROVIDE PROPER DISPOSAL OF DISPLACED FLUIDS, EQUIPMENT, AND MATERIALS.
1.4.5. CONDUCT A REVIEW OF FEDERAL, STATE, OR LOCAL REGULATIONS AND APPROPRIATE ANALYTICAL DOCUMENTATION PRIOR TO CLASSIFYING A MATERIAL AS A HAZARDOUS WASTE.
1.4.6. IF ANY MATERIALS ARE CLASSIFIED AS A HAZARDOUS WASTE UNDER FEDERAL, STATE, OR LOCAL REGULATIONS, PROVIDE PROPER DISPOSAL OF HAZARDOUS WASTES.

1.5. CONTRACTOR SHALL CUT POWER CABLE FROM DISCONNECT (LOCATED INSIDE WELL TRANSITION CHAMBER) TO SUBMERSIBLE PUMP AND REMOVE ALL ELECTRICAL WIRING INSIDE WELLS.

1.6. FORM PLUGGING MATERIAL AND FILL WELL WITH PLUGGING MATERIAL.

1.6.1. THE ENTIRE CASING, INCLUDING RISER ANNULAR SPACES BETWEEN CASINGS SHALL BE FILLED. SEALING MATERIALS SHOULD HAVE BEARING STRENGTH SUFFICIENT TO PREVENT SUBSIDENCE AND SUPPORT TRAFFIC OR BUILDING LOADS. NOTE THAT THE USE OF TOO MUCH BENTONITE IN THE GROUT MIX CAN LEAD TO EXCESSIVE SHRINKAGE AND CRACKING.

1.7. GEOTHERMAL WELLS' GROUNDWATER DISCHARGE TO CITY SEWER SYSTEM.

1.7.1. CONTRACTOR SHALL PROVIDE TEMPORARY HOSES/PIPING, PUMPS, AND ANY OTHER EQUIPMENT NECESSARY TO PUMP AND DRAIN GROUNDWATER DISCHARGED FROM GEOTHERMAL WELLS UPON COMMENCEMENT OF PLUGGING OPERATION.
1.7.2. CONTRACTOR SHALL DRAIN GROUNDWATER TO NEAREST CATCH BASIN AS SHOWN ON SITE PLAN.
1.7.3. CONTRACTOR SHALL SUBMIT ALL APPLICATIONS AND OBTAIN PERMITS REQUIRED TO DISCHARGE GROUNDWATER TO CITY SEWER SYSTEM.

1.8. SEAL AND CAP WELLS.
1.8.1. UPON COMPLETION OF WELL PLUGGING, CONTRACTOR SHALL SEAL AND CAP OF WELL WITH WELD-ON OR BOLT-ON STEEL CAP.

1.9. SITE PROTECTION & RESTORATION.

1.9.1. THE CONTRACTOR SHALL BE RESPONSIBLE FOR ADEQUATELY BRACING AND PROTECTING ALL WORK DURING CONSTRUCTION AGAINST DAMAGE, BREAKAGE, COLLAPSE, DISTORTIONS AND OFF ALIGNMENTS ACCORDING TO CODES AND STANDARDS OF GOOD PRACTICE.
1.9.2. THE CONTRACTOR SHALL KEEP WORK SITE FREE FROM DEBRIS AND ACCUMULATED REFUSE, AND SHALL HAVE SOLE RESPONSIBILITY FOR PROTECTING ALL AREAS FROM ENTRY UNAUTHORIZED PARTIES. SITE SHALL BE LEFT BROOM CLEAN AT THE END OF EACH WORKING DAY.
1.9.3. UPON COMPLETION, THE SITE SHALL BE RESTORED TO A CONDITION THAT REASONABLY APPROACHES THE ORIGINAL CONDITION OF THE PROPERTY PRIOR TO THE START OF WORK.
1.9.4. THE WORK AREA SHALL BE GRADED TO CONFORM TO EXISTING PLANTER BED AREA.
1.9.3. ALL REMOVED ITEMS FROM PLANTER AREA (TREES, SHRUBS AND OTHER VEGETATION) SHALL BE RE-INSTALLED TO CONDITIONS PRIOR TO BEGINNING OF WORK. CONTRACTOR SHALL PROVIDE TRANSMITTAL TO BPCA OF ALL REMOVED ITEMS AND ASSUMES RESPONSIBILITY FOR ALL DAMAGES TO MENTIONED MATERIAL.
1.9.4. ALL MATERIALS, DEBRIS, TOOLS, MACHINERY, SEALING MATERIAL, GREASE, OR OTHER MATERIALS WHICH HAVE ACCUMULATED AT THE SITE SHOULD BE REMOVED AND DISPOSED OF PROPERLY IN ACCORDANCE WITH THE LAW.

1.10. CONTRACTOR SHALL PROVIDE DOCUMENTATION OF DECOMMISSIONING AS FOLLOWS:

1.10.1. PROVIDE INSPECTION RECORDS WHICH PROVIDE THAT APPROPRIATE MEASURES HAVE BEEN TAKEN SUCH THAT THE TWO GEOTHERMAL WELLS HAVE BEEN PERMANENTLY DECOMMISSIONED IN A MANNER THAT MINIMIZES IT FROM BEING A CONDUIT FOR FLUID, WATER, OR VAPOR MIGRATION. PROPERLY DECOMMISSIONED BOREHOLES AND WELLS SHOULD HAVE NO ADVERSE INFLUENCE ON THE LOCAL ENVIRONMENT THAN THE ORIGINAL GEOLOGICAL SETTING.
1.10.2. PROVIDE A COMPLETE AND ACCURATE NARRATIVE REPORT AS A PERMANENT RECORD OF THE DECOMMISSIONING ACTIVITIES AND INCLUDE THE FULL SET OF FIELD ACTIVITIES INCLUDING:
1.10.2.1. ORIGINAL WELL LOG AND/OR CONSTRUCTION RECORD.
1.10.2.2. DECOMMISSIONING DATE.
1.10.2.3. PERSONNEL (WITH LISTING OF COMPANY REPRESENTATION, INCLUDING PHONE NUMBER AND ADDRESS).
1.10.2.4. SOURCE OF DECOMMISSIONING METHOD.
1.10.2.5. STEP-BY-STEP PROCEDURES USED IN THE FIELD.
1.10.2.6. RECORD OF ALL MEASUREMENTS MADE, DEPTHS ENCOUNTERED, TYPES AND VOLUME OF FLUIDS PUMPED AND PHOTOGRAPHS BEFORE AND AFTER.
1.10.2.7. TYPE OF GROUTING MATERIAL USED, VOLUME OF MATERIAL USED, AND METHOD OF PLACING GROUTING MATERIAL INTO THE WELL.
1.10.2.8. ANY OTHER PERTINENT INFORMATION THAT IS REQUIRED BASED ON SITE CONDITIONS OR REGULATORY REQUIREMENTS.
1.10.2.9. ANY PROBLEMS ENCOUNTERED SHALL ALSO BE DOCUMENTED IN DETAIL.
1.10.3. AT THE COMPLETION OF FIELD WORK, PRESENT A FORMAL REPORT TO DOCUMENT THE ENTIRE PROCEDURE USED IN THE DECOMMISSIONING PROCESS FOR THE BOREHOLE OR WELL. ADDITIONAL INFORMATION OR REQUIREMENTS MAY BE SPECIFIED IN GOVERNMENT REGULATIONS AND SHOULD ALSO BE INCLUDED IN THIS REPORT. REPORT IN DETAIL THE FOLLOWING ITEMS AS A MINIMUM:
1.10.3.1. BACKGROUND INFORMATION:
1.10.3.1.1. LOCATION OF THE BOREHOLE/WELL.
1.10.3.1.2. PURPOSE OF THE BOREHOLE/WELL.
1.10.3.1.3. HISTORY OF THE BOREHOLE/WELL.
1.10.3.1.4. CHEMICAL PARAMETERS AND CONCENTRATIONS PRESENT DURING THE ACTIVE LIFE OF THE WELL AND AT THE TIME OF PLUGGING.
1.10.3.1.5. INFORMATION COLLECTED PRIOR TO THE INSPECTION RECORD.
1.10.3.2. TESTING PRIOR TO DECOMMISSIONING:
1.10.3.2.1. SITE CHARACTERIZATION (IF APPLICABLE).
1.10.3.2.2. PHYSICAL TESTING (DEPTH, STRUCTURAL CONDITION, ETC.).
1.10.3.2.3. CHEMICAL TESTING RESULTS (LAST CHEMICAL ANALYSIS FOR RECORD).
1.10.3.2.4. GEOPHYSICAL LOGGING RESULTS (IF ANY).
1.10.3.3. DECOMMISSIONING DESIGN PROCEDURE:
1.10.3.3.1. RATIONALE FOR SELECTION OF METHOD USED.
1.10.3.3.2. PRESENTATION OF A DECOMMISSIONING PLAN.
1.10.3.4. FIELD IMPLEMENTATION:
1.10.3.4.1. DESCRIPTION OF ACTIVITIES.
1.10.3.4.2. VARIANCE FROM PLAN.
1.10.3.4.3. RESULT OF TESTING AND MEASUREMENTS.
1.10.3.5. CONFIRMATION-STATEMENT OF REGULATORY COMPLIANCE.

SPECIFICATIONS

1. CASING MATERIAL:

   1.1. THE MATERIAL USED FOR CASING ARE CARBON STEEL. HOWEVER, IN SOME INSTANCES DIFFERENT MATERIALS MAY BE USED IN A WELL TO ACHIEVE A PARTICULAR PURPOSE SUCH AS CORROSION PROTECTION, REDUCTION OF MATERIAL COSTS, OR IMPROVING THE INTEGRITY OF GROUND WATER OR SOIL VAPOR SAMPLES.
   1.2. WELLS CONSTRUCTED OF CARBON STEEL, STAINLESS STEEL, AND HEAVY WALLED ALUMINUM CAN BE DECOMMISSIONED USING SIMILAR METHODS AS THESE MATERIALS TEND TO HAVE A HIGHER TENSILE STRENGTH.

2. PLUGGING MATERIALS:

   2.1. PLUGGING MATERIAL SHALL BE NEAT CEMENT, ASTM C-50 PORTLAND CEMENT, TYPE I AS LISTED IN TABLE 1 OF ASTM D 5299 AND REFERENCED IN ASTM D 5299 SECTION 6.4.2 AND SECTION 6.5.
   2.2. THE VOLUME OF PLUGGING REQUIRED SHALL BE CALCULATED AS PER ASTM D 5299 SECTION 7.3.2. TO ACCOUNT FOR POTENTIAL LOSS OF PLUGGING MATERIAL INTO WELL FORMATIONS, THE VOLUME OF PLUGGING MATERIAL REQUIRED TO FILL ONE BOREHOLE VOLUME SHALL BE 25% – 50% IN EXCESS OF CALCULATED BOREHOLE VOLUME.
   2.3. ADDITIONAL PLUGGING MATERIAL SHALL BE READILY AVAILABLE TO SITE PERSONNEL UNDER SHORT NOTICE.
   2.4. PLUGGING MATERIALS SHALL BE CHOSEN AND FORMED FOR WELL CLOSURE TO BE PERMANENT. BASIC MATERIAL CHARACTERISTICS ARE LISTED AS FOLLOWS:
   2.4.1. PLUGGING MATERIALS SHALL NOT REACT WITH CONTAMINANTS OR ADVERSELY REACT WITH GROUND WATER OR GEOLOGIC MATERIALS.
   2.4.2. PLUGGING MATERIALS USED IN DECOMMISSIONING WELLS, BORINGS, ETC. SHALL HAVE HYDRAULIC CONDUCTIVITY (SATURATED CONDITION) THAT IS COMPARABLE TO OR LOWER THAN THAT OF THE LOWEST HYDRAULIC CONDUCTIVITY OF THE GEOLOGIC MATERIAL BEING SEALED.
   2.4.3. PLUGGING MATERIALS SHALL HAVE SUFFICIENT STRUCTURAL STRENGTH TO WITHSTAND PRESSURES EXPECTED FROM NATIVE CONDITIONS.
   2.4.4. PLUGGING MATERIALS SHALL MAINTAIN SEALING CAPABILITIES AND NOT DEGRADE DUE TO CHEMICAL INTERACTION, CORROSION, DEHYDRATION, OR OTHER PHYSICAL OR CHEMICAL PROCESSES. MATERIALS SHALL MAINTAIN THEIR DESIGN CHARACTERISTICS FOR THE LENGTH OF TIME CONTAMINATION IS PRESENT AT THE SITE.
   2.4.5. PLUGGING MATERIALS SHALL NOT BE READILY SUSCEPTIBLE TO CRACKING OR SHRINKAGE, OR BOTH.
   2.4.6. PLUGGING MATERIALS SHALL BE CAPABLE OF BEING PLACED AT THE POSITION IN THE WELL OR BOREHOLE IN WHICH THEY ARE NEEDED AND MUST HAVE PROPERTIES THAT REDUCE THEIR UNINTENDED MOVEMENT VERTICALLY AND HORIZONTALLY.
   2.4.7. PLUGGING MATERIALS SHALL BE CAPABLE OF FORMING A TIGHT BOND AND SEAL WITH WELL CASING AND THE FORMATION.
   2.4.8. PLUGGING MATERIALS SHALL HAVE PROPERTIES THAT ELIMINATE LEACHING OR EROSION OF THE MATERIAL, UNDER THE CONDITIONS THE MATERIAL WILL BE SUBJECTED. THESE INCLUDE VERTICAL OR HORIZONTAL MOVEMENT, OR BOTH, OR CONTACT WITH GROUND WATER OR OTHER EXISTING CONDITIONS.

2. THE GRAIN SIZE OF PLUGGING MATERIAL USED IN DECOMMISSIONING OPERATIONS CONDUCTED IN AREAS WHERE THICK VADOSE ZONES OCCUR SHOULD BE COARSER THAN MATERIALS USED IN AREAS WHERE THIN VADOSE ZONES OR SHALLOW SATURATED CONDITIONS OCCUR. THIS IS NECESSARY AS WATER IS NOT TRANSPORTED EFFECTIVELY IN COARSE-GRAINED MATERIALS UNDER NEGATIVE PORE PRESSURES. COARSE-GRAINED MATERIALS SHOULD NOT BE USED WHERE SATURATED CONDITIONS ARE LIKELY TO EXIST DURING THE PERIOD OF TIME THAT HAZARDOUS MATERIALS CAN BE EXPECTED TO OCCUR AT THE SITE. IT IS IMPORTANT TO DETERMINE THE LITHOLOGY AND GRAIN SIZE DISTRIBUTION OF MATERIALS ADJACENT TO THE BOREHOLE OR WELL PRIOR TO SELECTION OF PLUGGING MATERIALS.

3. IF COARSE-GRAINED MATERIALS ARE USED TO DECOMMISSION THE BOREHOLE OR WELL, A LAYER OF FINE-GRAINED MATERIAL (SUCH AS CEMENT OR BENTONITE, OR BOTH) 1 OR 2 FT (.3 OR .61 M) THICK SHOULD BE PLACED AT 10 FT (3 M) INTERVALS IN THE BOREHOLE IN THE SATURATED ZONE. THIS LAYER SHOULD EXTEND 2 TO 3 FT (.61 TO .91 M) ABOVE THE HIGHEST EXPECTED LEVEL SATURATION IS EXPECTED BASED ON HISTORICAL INFORMATION ON THE WATER TABLE FOR UNCONFINED AQUIFERS. A SIMILAR THICKNESS OF THESE MATERIALS SHOULD BE USED FOR CONFINED AQUIFERS. A SIMILAR 5-FT (1.5-M) SEAL OF A LOW-PERMEABILITY MATERIAL SHOULD BE PLACED NEAR THE GROUND SURFACE TO REDUCE THE POTENTIAL FOR ENTRANCE OF FLUIDS AT THE GROUND SURFACE.

ABBREVIATIONS

BPCA	BATTERY PARK CITY AUTHORITY
BPCPC	BATTERY PARK CITY PARK CONSERVANCY
NIC	NOT IN CONTRACT
NYS DEC	NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
N.T.S.	NOT TO SCALE
S&R	SUPPLY AND RETURN
V.I.F.	VERIFY IN FIELD

HUGH L CAREY BATTERY PARK CITY AUTHORITY

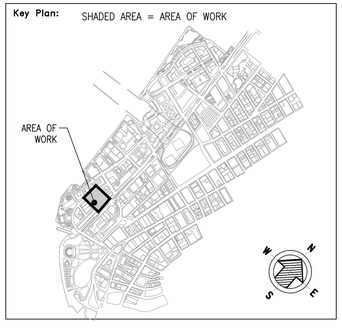
Consultants:
ENSIGN ENGINEERING, P.C.
1111 Calhoun Ave.
Bronx, N.Y. 10465
TEL. 718-863-5590 FAX. 718-863-6178
WWW.ENSIGNENGINEERING.COM

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

No.	Date	Revision
	03/17/15	REVIEW SET FOR COMMENT

No.	Date	Submittal

Key Plan: SHADED AREA = AREA OF WORK



Project Engineer:	CARL J. CANNIZZARO, P.E.
Designer:	
Drawn by:	VISHAL D. PRAJAPATI
Checked by:	CARL J. CANNIZZARO, P.E.

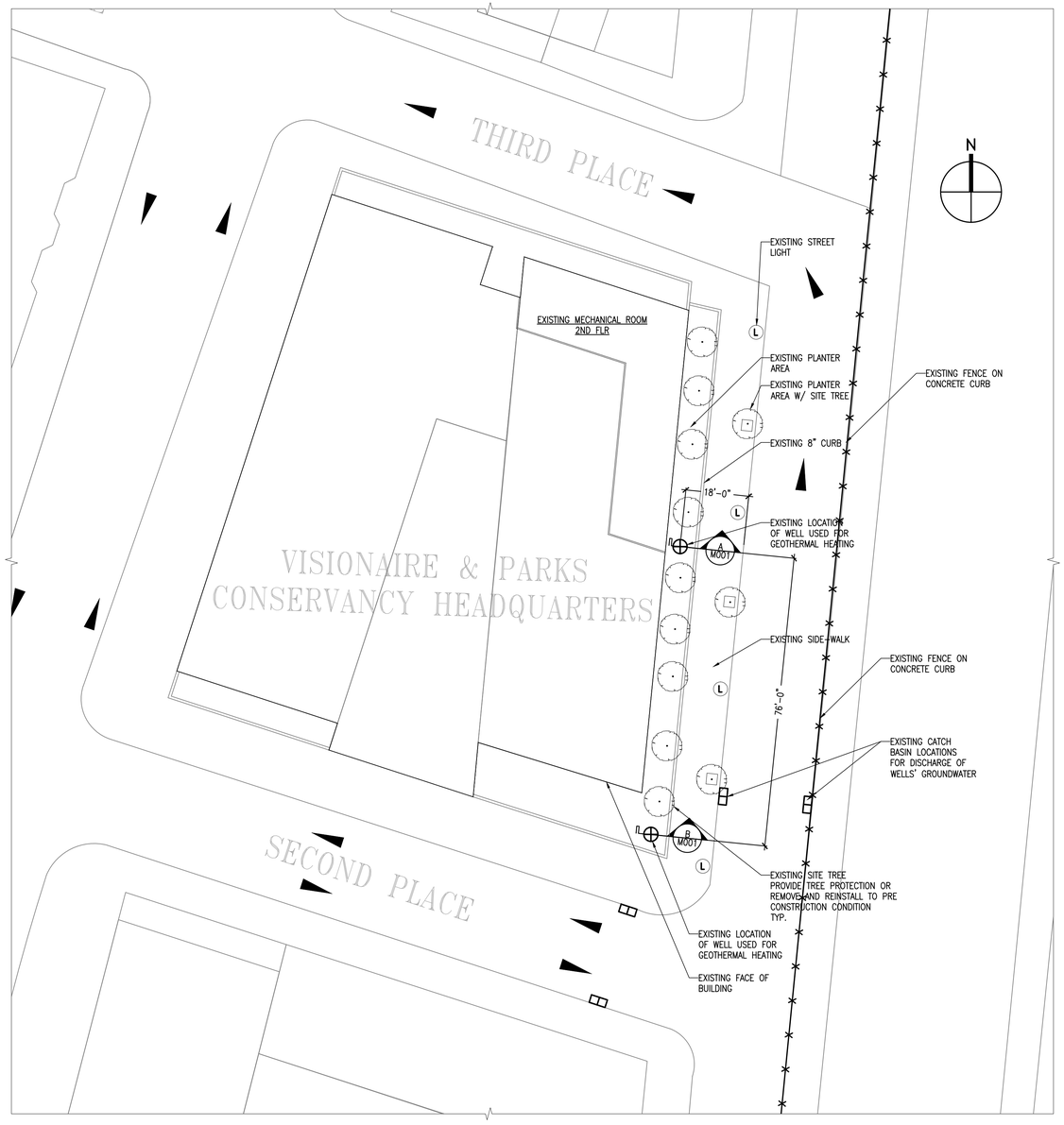
Design No. or LLW No.:	Facility Code:	Date:
–	N/A	03/17/15

Project:
2015 GEOTHERMAL WELL DECOMMISSIONING
Battery Park City Authority
Address: 75 BATTERY PLACE NEW YORK, NY

Drawing Title:
NOTES, SCOPE OF WORK, & SPECIFICATIONS

Drawing No.:
T002.00

Sheets in Contract:
02 of 05



1 SITE PLAN
SCALE: AS INDICATED

LEGEND:

- LOCATION OF EXISTING WELL
- DIRECTION OF TRAFFIC
- EXISTING FENCE
- EXISTING CATCH BASIN
- EXISTING SITE TREE
- EXISTING STREET LIGHTING

NOTES:

1. CONTRACTOR SHALL VERIFY ALL DIMENSIONS AND LOCATIONS SHOWN WITH CM PRIOR TO START OF WORK.
2. CONTRACTOR SHALL PROVIDE BARRIERS, RAMPS AND FLAGGERS TO MAINTAIN SITE TRAFFIC FLOW.
3. CONTRACTOR IS TO PROVIDE PROPER SITE PROTECTION AS TO NOT DAMAGE EXISTING TREES AND VEGETATION IN AREA OF WORK
4. CONTRACTOR SHALL DRAIN ALL GROUNDWATER DISCHARGE FROM WELLS TO EXISTING CATCH BASINS SHOWN ON SITE PLAN.

HUGH L CAREY BATTERY PARK CITY AUTHORITY

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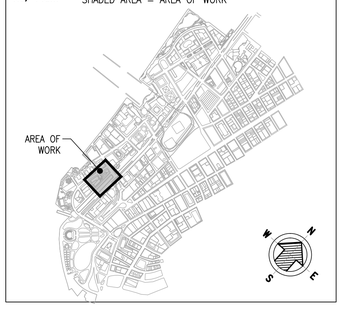
Key Plan: SHADED AREA = AREA OF WORK



Project Engineer:	CARL J. CANNIZZARO, P.E.
Designer:	ADRIAN S. WILLIAMS
Drawn by:	ADRIAN S. WILLIAMS
Checked by:	CARL J. CANNIZZARO, P.E.

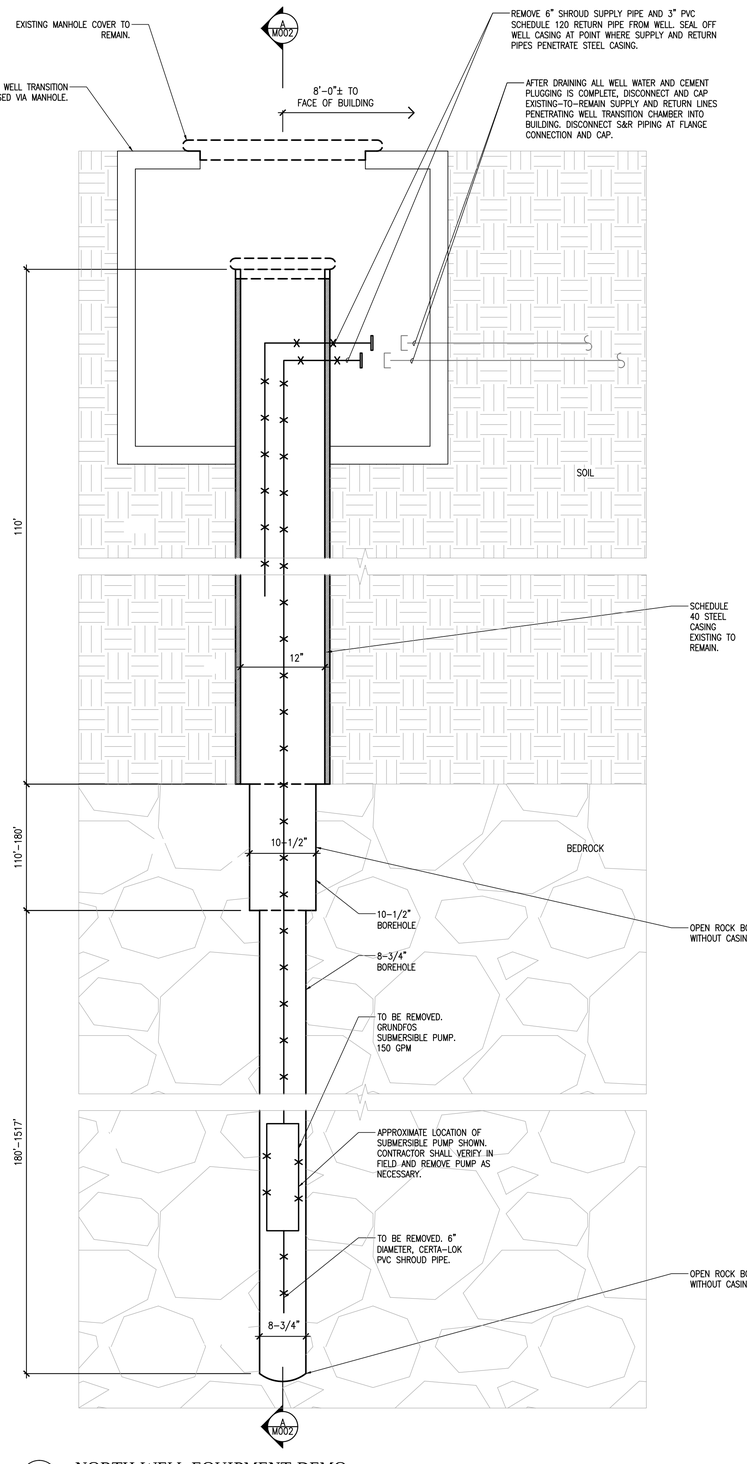
Design No. or LLW No.:	Facility Code:	Date:
–	N/A	03/17/15

Project:
2015 GEOTHERMAL WELL DECOMISSIONING
Battery Park City Authority
Address: 75 BATTERY PLACE
NEW YORK, NY

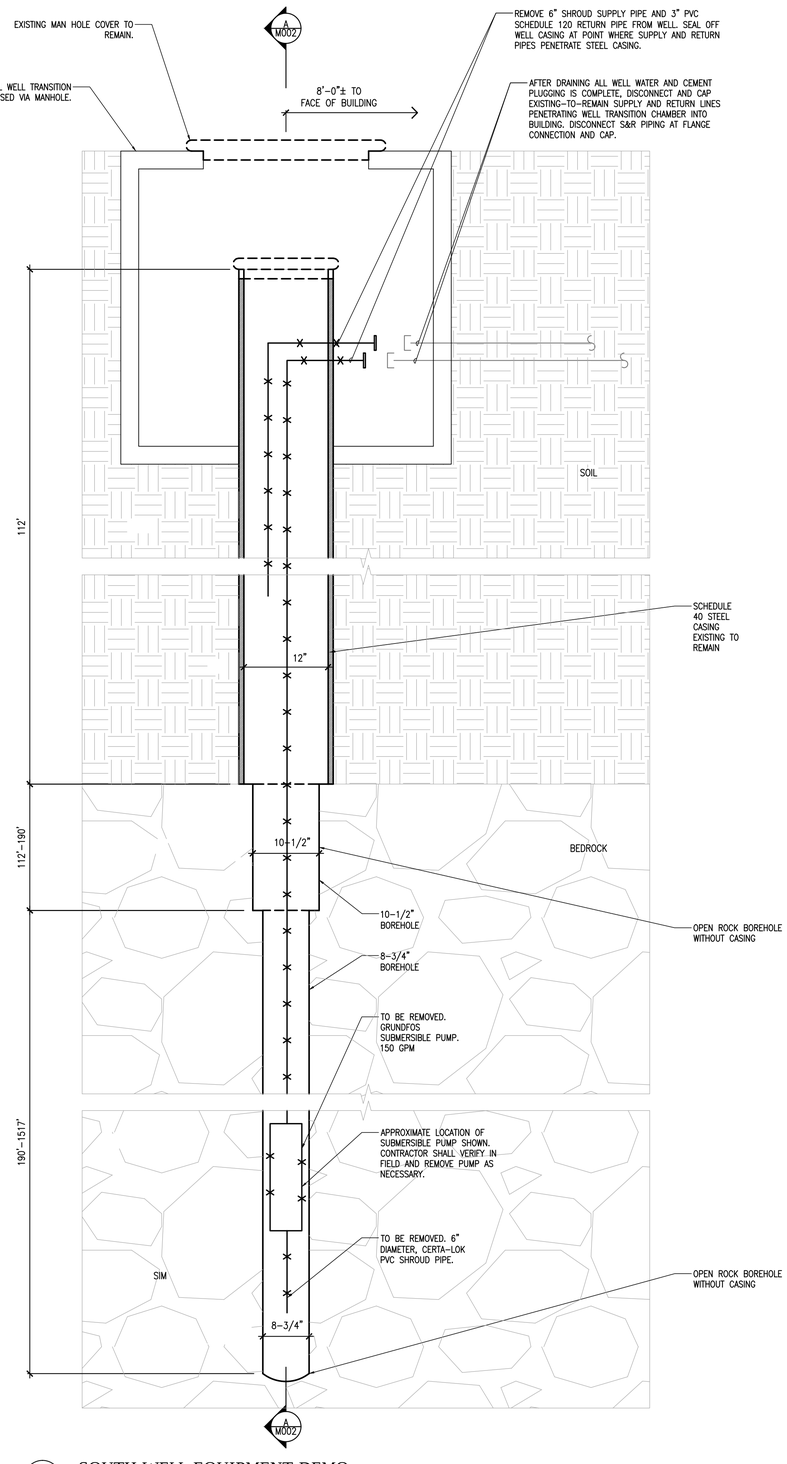
Drawing Title:
GEOTHERMAL WELLS SITE PLAN

Drawing No.:
C001.00

Sheets in Contract:
03 of 05



A NORTH WELL EQUIPMENT DEMO
NOT TO SCALE



B SOUTH WELL EQUIPMENT DEMO
NOT TO SCALE

HUGH L CAREY BATTERY PARK CITY AUTHORITY

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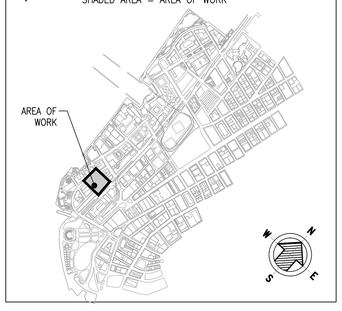
No.	Date	Revision
	03/17/15	REVIEW SET FOR COMMENT

No.	Date	Submittal

Key Plan: SHADED AREA = AREA OF WORK



Project Engineer:	CARL J. CANNIZZARO, P.E.
Designer:	
Drawn by:	VISHAL D. PRAJAPATI
Checked by:	CARL J. CANNIZZARO, P.E.

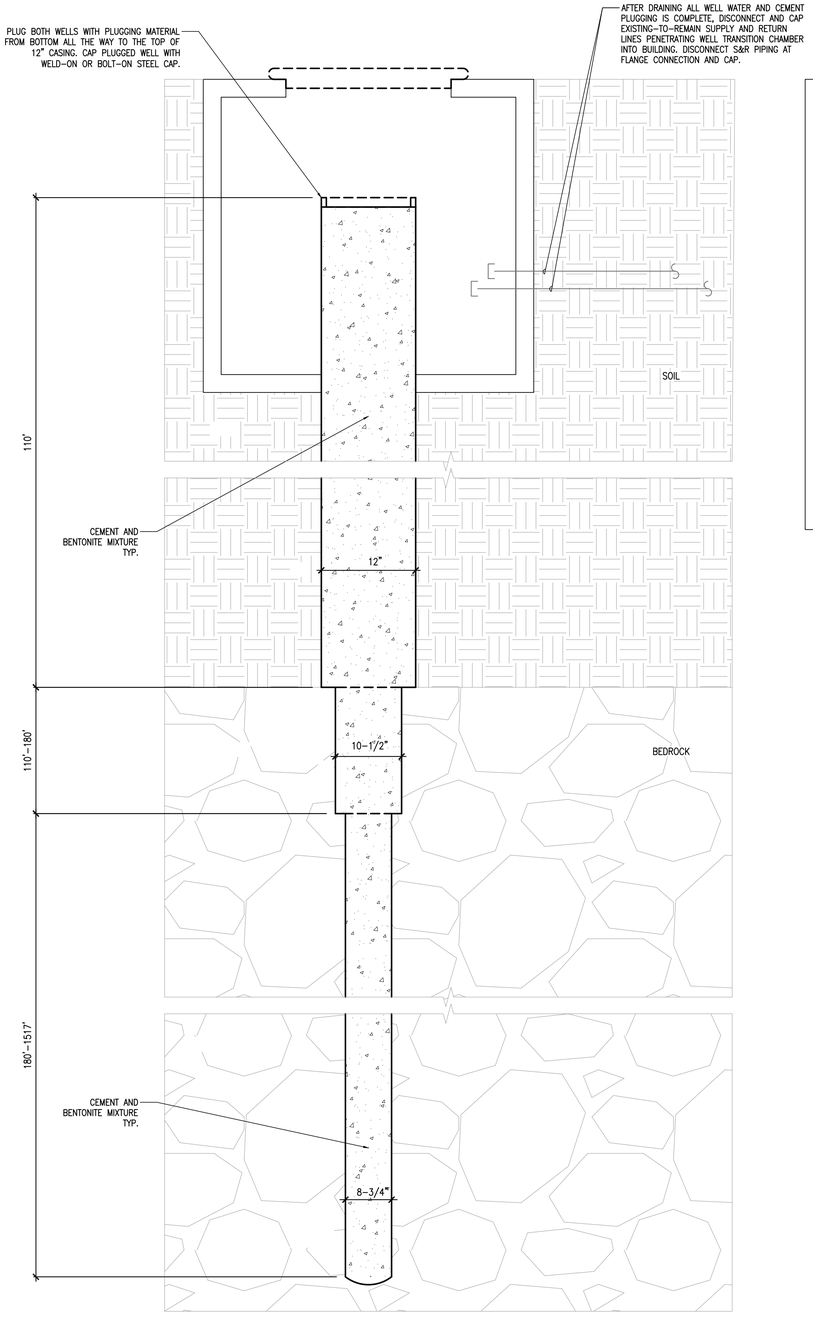
Design No. or LLW No.:	Facility Code:	Date:
–	N/A	03/17/15

Project:
2015 GEOTHERMAL WELL DECOMISSIONING
Battery Park City Authority
Address: 75 BATTERY PLACE NEW YORK, NY

Drawing Title:
WELL EQUIPMENT & PIPING DEMO

Drawing No.:
M001.00

Sheets in Contract:
04 of 05



A WELL PLUGGING DETAIL FOR NORTH & SOUTH WELLS
NOT TO SCALE

VOLUME OF PLUGGING MATERIAL

NORTH WELL — 900 CUBIC FEET (APPROXIMATE AMOUNT. SEE NOTES 1 THROUGH 4)

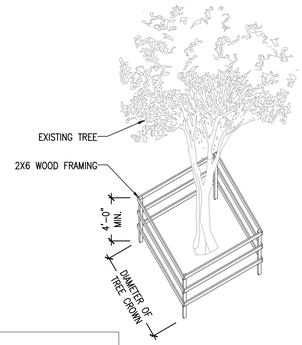
SOUTH WELL — 900 CUBIC FEET (APPROXIMATE AMOUNT. SEE NOTES 1 THROUGH 4)

PLUGGING MATERIAL TYPE & COMPOSITION

NORTH & SOUTH WELL — NEAT CEMENT
PORTLAND CEMENT TYPE I
3% BENTONITE CLAY POWDER (BY WEIGHT)

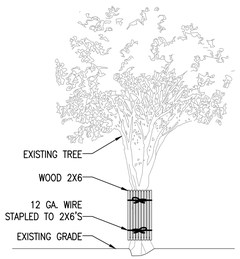
NOTES:

1. THE VOLUME OF PLUGGING MATERIAL GIVEN IS AN APPROXIMATE AMOUNT BASED ON VOLUME OF GEOTHERMAL WELLS. ACTUAL AMOUNT OF PLUGGING MATERIAL AMOUNT REQUIRED MAY BE GREATER THAN LISTED.
2. CONTRACTOR SHALL DETERMINE AND PROVIDE AMOUNT OF PLUGGING MATERIAL REQUIRED FOR COMPLETE SEAL OF THE WELL FROM BOTTOM OF WELL TO TOP OF CASING AT SURFACE LEVEL.
3. CONTRACTOR SHALL PROVIDE AN EXCESS OF PLUGGING MATERIAL ON-SITE IN CASE OF LOSS OF PLUGGING MATERIAL INTO ANY GEOLOGIC FORMATIONS POSSIBLY PRESENT INSIDE THE WELLS.
4. WELL DEPTHS AND DIMENSIONS SHOWN IN ELEVATION DIFFER FOR NORTH AND SOUTH WELLS. PROVIDE PLUGGING MATERIAL AS REQUIRED TO COMPLETELY SEAL OFF WELLS.



NOTE:
BARRIER PREVENTS COMPACTION OF SOIL AROUND ROOTS BY CONSTRUCTION EQUIPMENT

B SITE TREE & SOIL PROTECTION
SCALE=1/4"=1'-0"



NOTE:
BARRIER PREVENTS DAMAGE FROM CONSTRUCTION EQUIPMENT.

IF PROTECTION OF EXISTING TREES CANNOT BE ATTAINED CONTRACTOR TO REMOVE TREE AND REINSTALL AFTER COMPLETION OF WORK

C SITE TREE PROTECTION
SCALE=1/4"=1'-0"

HUGH L CAREY BATTERY PARK CITY AUTHORITY

Consultants:
ENSIGN ENGINEERING, P.C.
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Bronx, N.Y. 10465
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No.	Date	Revision
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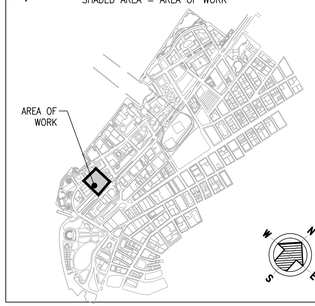
Key Plan: SHADED AREA = AREA OF WORK



Project Engineer:	CARL J. CANNIZZARO, P.E.
Designer:	
Drawn by:	ADRIAN S. WILLIAMS
Checked by:	CARL J. CANNIZZARO, P.E.

Design No. or LLW No.:	Facility Code:	Date:
–	N/A	03/17/15

Project:
2015 GEOTHERMAL WELL DECOMISSIONING
Battery Park City Authority
Address: 75 BATTERY PLACE
NEW YORK, NY

Drawing Title:
WELL PLUGGING & CAPPING DETAIL

Drawing No.:
M002.00

Sheets in Contract:
05 of 05

EXHIBIT H

LIST OF BPCA BOARD MEMBERS AND EMPLOYEES

Battery Park City Authority

Employee List

NAME	EMPLOYEE ID	TITLE	DEPARTMENT, LOCATION
Alvarez, Elsa	98446	Financial Analyst	FINANCE, WFC
Anderson, Davina	983562	Intern - Human Resources	HR, WFC
Bailey, Kathleen	98386	Admin. Asst.	FINANCE, WFC
Blake-Reeder, Nidia	013615	Permits Coordinator	AFFIRM, WFC
Brotman, Marc	983581	Assoc. General Counsel	LEGAL, WFC
Brugess, Lauren	98348	Admin. Asst.	LEGAL, WFC
Buquicchio, Anthony	983580	Dir.,Site Mgmt & Security	REAL PRPTY, WFC
Connor, Eric	983582	Intern - Finance	AFFIRM, WFC
Crabb, Deshay	98346	Facility Asst./Sfty Insp.	REAL PRPTY, REGATTA
Curiale, Daniel J	983567	Dir, Financial Reporting	FINANCE, WFC
Dawson, Gwen	98857	Snr, V.P. Real Prop Mgt.	REAL PRPTY, WFC
Dopson, Tonasia	983596	Intern - External Affairs	AFFIRM, WFC
Ellison, AnnMaria	98389	Special Assistant	LEGAL, WFC
Forst, Robin	983594	V P External Affairs	AFFIRM, WFC
Ganci, Joseph	983605	Director, Design	REAL PRPTY, WFC
Garcia, Julissa	983607	Admin. /Asst. Permit Cord	PUBLIC INFOM, WFC
Garcia, Luis	047340	Assistant Treasurer	FINANCE, WFC
Gordon, Neresa M.	049535	Network Administrator	MIS, WFC
Henry, Sonia A.	053531	Dir.,Human Resources	HR, WFC
Howard, Angela	983571	Snr. Dir., Project Mgmnt.	REAL PRPTY, WFC
Hurley, Cherish	983586	Intern - Human Resources	[None], [None]
Hyman, Shari	983597	President & COO	EXEC, WFC
Jones, Benjamin	983609	VP, Administration	[None], [None]
Kim, Susie	983608	Assoc. General Counsel	[None], [None]
Koenig, Karl	98858	Controller	FINANCE, WFC
LaMancusa, Michael	983595	Contracts Admin.	REAL PRPTY, WFC
Lee, Della	053655	Admin. Asst.	REAL PRPTY, WFC
Maisonet, Evelin	983560	Accounts Payable Coord.	FINANCE, WFC
McCabe, Kevin	983565	Special Assistant	EXEC, WFC
McIntyre, Brenda	983569	Snr. ,V.P. Human Resource	HR, WFC
McNeill, Shinay	983577	Intern - Diversity	HR, WFC
Narcisse, Bertha L.	080426	Payroll Accountant	FINANCE, WFC
Nesmith, Robert	983573	Chief Contracting Officer	ADMIN, WFC
Ng, SiuMay	983599	Sr. Programmer Analyst	MIS, WFC
Pena, Dahlia	085228	Senior Accountant	FINANCE, WFC
Peterson, Anthony J.	085756	Dep. Chief Cont. Officer	ADMIN, WFC
Pustilnik, Alix	983601	General Counsel	LEGAL, WFC
Quon, Robert	983590	IT Manager	MIS, WFC
Robinson, Anthony M.	089312	Office Manager	ADMIN, WFC
Rodriguez, Andrea	983574	Human Resources Assistant	HR, WFC
Rowe, Decorey	983553	Part-time Facilities Asst	SITEOPS, REGATTA
Serpico, Robert M.	092053	Exec. V.P. Fin. /CFO	REAL PRPTY, WFC
Sewraj-Kumar, Rekha	98575	Manager, Accounting	FINANCE, WFC

BPCPC Employees (2/15)		
1	Dana	Anders
2	Anthony	Andriano
3	Stephen	Arciold
4	Scott	Birdseye
5	Nancy	Buivid
6	Monica	Centeno
7	Betty	Chin
8	Adam	Choper
9	Carlton	Chotalal
10	Marie	Corneille
11	Gilbert	DePadua
12	Paul	Diaz-Larui
13	Abigail	Ehrlich
14	Richard L.	Faraino
15	Eric	Fleisher
16	Lenron	Goode
17	Patrick	Greene
18	Ned	Greenberg
19	Evelyn	Gregg
20	Kelly	Grogan
21	Robert	Hansen
22	Nicole	Heater
23	Sankar	Heerah
24	Craig	Hudon
25	Tessa	Huxley
26	Amy	Jogie
27	Roland	Kemp
28	Kurtis	King
29	Betzayda	Laboy
30	Tony	Lee
31	Marianna	Lerner
32	Triny	Lima
33	Luis	Lopez
34	Robert	Maggi
35	Evonne	Marche
36	Rickeshia	Martin
37	Phillip	Mason
38	Ellen	McCarthy
39	Princess	McNeill
40	Vanessa	Mesine
41	Ronnie	Mohammed
42	Yoshihiro	Nishida
43	Kevin	O'Toole
44	Hector	Oyola
45	Willem	Paillant
46	Gladys	Pearlman
47	Churaman	Persaud
48	Bruno	Pomponio
49	Sandra	Power
50	Madelin	Ramirez
51	Manuel	Rivera
52	Nelson	Rogers
53	Jose	Rosado
54	Holly	Ross
55	Sebastian	Rozalski
56	Carlos	Santiago
57	Jean	Schwartz
58	Lindsey	Senn
59	Sean	Simon
60	Kemnarine	Singh
61	Timothy	Skipper
62	Kareem	Starks
63	Jerome	Sturiano
64	Douglas	Van Horn
65	Noe	Velasquez
66	Antonio	Velez
67	Evangelio	Villalobos
68	Peter	Wheelwright
69	Arthur	White
70	Eric	White
71	Al	Wright
72	Jouli B.	Yohannes

Battery Park City Authority

Employee List

NAME	EMPLOYEE ID	TITLE	DEPARTMENT, LOCATION
Singh, Seema	983558	Deputy General Counsel	LEGAL, WFC
Soriero, Linda M.	093690	Financial Assistant	FINANCE, WFC
Stewart, Jessica	983611	Intern - Human Resources	HR, WFC
Tam, John	983587	MIS Director	MIS, WFC
Torres, Alexis	983598	Spcl Advisor to the Pres	EXEC, WFC
Wade, Sharon B.	096151	Executive Assistant	REAL PRPTY, WFC
Whitehead, Angela	983578	Employee Relations Coord.	HR, WFC
Windman, Kenneth	097450	Director, Facilities	REAL PRPTY, WFC
Zheng, Bingxin	983593	Junior Accountant	FINANCE, WFC

Total Employees 52