

Project: General Contractor Services
Job Order Contract –
Request for Proposals (“RFP”)

Date: December 8, 2023

RE: Addendum #2
of Pages: 71

PROVISION OF DOCUMENTS:

The following documents associated with this RFP are hereby attached:

- BPCA’s Standard Form of Contract, constituting the RFP’s Exhibit C, is appended as Attachment #1.
- The attendee list from the Pre-Proposal Meeting for the November 20, 2023 Pre-Proposal Meeting – including the names and contact information of individual attendees as well as the respective names of their firms – is appended as Attachment #2.

By signing the line below, I am acknowledging that all pages of this Addendum #2 have been received, reviewed, and understood, and will be incorporated into the Proposal submitted. This document must be attached to the Proposal for consideration.

Print Name

Signature

Date

Number of pages received: _____ *<fill in>*

Distributed to: All prospective Proposers

ATTACHMENT #1
RFP'S EXHIBIT C –
BPCA'S STANDARD FORM OF CONTRACT

(ATTACHED)

JOB ORDER CONSTRUCTION AGREEMENT

between

HUGH L. CAREY BATTERY PARK CITY AUTHORITY

and

[CONTRACTOR]

Dated as of []
Contract No. []

(PRE-QUALIFIED GENERAL CONTRACTING SERVICES)

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EXHIBITS

EXHIBIT A – SCOPE OF WORK

EXHIBIT B – FORM OF JOB ORDER

EXHIBIT C – MONTHLY UTILIZATION COMPLIANCE REPORTS

EXHIBIT D – PROMPT PAYMENT POLICY

EXHIBIT E – INCIDENT REPORT FORM

EXHIBIT F – RATE SCHEDULE

EXHIBIT G – PREVAILING WAGE RATES

JOB ORDER CONSTRUCTION AGREEMENT

AGREEMENT (the “**Agreement**”) made as of _____, 2024 between BATTERY PARK CITY AUTHORITY, d/b/a HUGH L. CAREY BATTERY PARK CITY AUTHORITY (“**BPCA**”), a body corporate and politic, constituting a public benefit corporation and having a place of business at 200 Liberty Street, 24th Floor, New York, New York 10281, and [CONTRACTOR], incorporated in the state of [], having an office at [] (“**Contractor**”).

W I T N E S S E T H:

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

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

WHEREAS, BPCA intends to engage one or more contractors to perform general contracting services in Battery Park City on an as-needed basis, in the form of Job Orders issued from time to time as the need arises (“**Job Orders**” or “**Work**”); and

WHEREAS, Contractor has been pre-qualified to, and agrees to, perform Work upon the terms and conditions hereinafter provided; and

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

ARTICLE 1 - DEFINITIONS

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

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

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

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

(f) Construction Manager - any person designated in a Job Order to act as construction manager for a Job. A Construction Manager may not be designated by BPCA for every Job.

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

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

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

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

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

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

(m) Guarantor - as defined in Section 27.3.

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

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

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

(q) Job Notification – means a notification and request for proposal regarding a potential Job Order.

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

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

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

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

(v) Materialman - supplier of Materials.

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

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

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

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

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

- (bb) Preceding Covered Date - as defined in Section 5.5.
- (cc) Product Data - illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by Contractor to illustrate a Material, product or system for some portion of the Work.
- (dd) Project - means, if identified in a Job Order, the larger project of which the Work authorized by the Job Order is a part.
- (ee) Purchase Order - as defined in Section 10.1(e).
- (ff) Requisitions - as defined in Section 5.2.
- (gg) Samples - physical examples which illustrate Materials or workmanship and establish standards by which the Work will be judged.
- (hh) Site - as defined in the Job Order for a Job.
- (ii) Specifications - any specifications for a Job attached as an Exhibit to a Job Order
- (jj) Subcontract - an agreement between the Contractor and a Subcontractor (as defined in subsection (mm), below) for work on the Site.
- (kk) Subcontractor - a person, firm, partnership or corporation under contract with Contractor.
- (ll) Target Date - means, if applicable, the target date set forth in a Job Order by which the Contractor must use its best efforts to achieve Final Acceptance of such Job.
- (mm) Term - as defined in Section 3.1(n).
- (nn) Total Contract Price - as defined in Article 4.
- (oo) Trade Payment Breakdown - as defined in Section 5.3.
- (pp) Women's Business Enterprise or Women Owned Business Enterprise or WBE- as defined in Article 26.
- (qq) Work - as defined in Section 2.1.

ARTICLE 2 - SCOPE OF WORK, MATERIALS AND LABOR

2.1 Definition of Work

Contractor shall respond to all Job Notifications by providing a Job Proposal, and if assigned a Job Order, shall perform and complete (and shall cause all Subcontractors to perform and complete) for BPCA the work set forth therein. The process for receiving, responding to, and being assigned Job Orders is generally described in Exhibit A annexed hereto. The work required under each assigned Job Order will be specified within the Job Order (inclusive of any attachments thereto), and shall be performed in accordance with the requirements of that Job Order as well as the requirements of this Agreement. Contractor may be requested to perform several Job Orders concurrently. All materials to be furnished and labor and work to be performed and completed by Contractor and/or Subcontractors as required in the Contract Documents as described in Section 2.2 below, and in conformity with all requirements applicable with respect thereto are herein collectively referred to as the **“Work.”**

2.2 Contract Documents

The “**Contract Documents**” shall consist of the following:

- (a) This Agreement, which includes, in addition to the text comprising Articles 1 through 27, the following:
 - (1) EXHIBIT A – SCOPE OF WORK
 - (2) EXHIBIT B – FORM OF JOB ORDER
 - (3) EXHIBIT C – MONTHLY UTILIZATION COMPLIANCE REPORTS
 - (4) EXHIBIT D – PROMPT PAYMENT POLICY
 - (5) EXHIBIT E – INCIDENT REPORT FORM
 - (6) EXHIBIT F – RATE SCHEDULE
 - (7) EXHIBIT G – PREVAILING WAGE RATES
- (b) Job Orders issued pursuant to Article 3, including any exhibits attached thereto.
- (c) Any Payment and Performance Bonds (as defined in Section 13.3).
- (d) Job Order Amendments adopted pursuant to Article 9.

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

2.3 Intent of Contract Documents

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

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

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

Contract Price for such Job shall cause the total sum of the Job Contract Prices for previously authorized Jobs to exceed the Total Contract Price.

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

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

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

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

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

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

2.4 Completion of Drawings and Specifications

Contractor acknowledges that there are items of work which are not drawn or specified with complete detail in the Drawings and Specifications for a Job, if applicable, but which are required for the completion of the Work for such Job. Any such item, when identified as part of the reasonable development of the Work for such Job, shall be drawn or specified by

the designated Architect for such Job in consultation with Contractor, in a manner consistent with contemplated kind and quality and customary standards. When such drawing or specification is approved by BPCA, the drawing or specification so approved shall thereupon be part of the Contract Documents and the item of work shall be performed by Contractor as part of the Work for such Job without further action or order of the designated Construction Manager for such Job or BPCA and without any increase in the Job Contract Price as if such drawing and/or specification were originally included in the Contract Documents.

2.5 Title to Materials

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

2.6 Contractor's Obligations

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

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

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

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

moving Materials from one storage area to another, whether such storage areas are on or off Site. No Materials shall be removed from the Site of a Job without the consent of BPCA, or, if applicable for a Job, Construction Manager. Contractor shall handle and take care of all Materials used in performance of the Work whether furnished by Contractor or BPCA, as the same are delivered to the Site or to any applicable offsite storage location and shall be solely responsible for the security and condition of the same. After final completion and acceptance of the Work, or sooner if requested by Construction Manager, Contractor shall remove all surplus Materials and scaffolding furnished by it which have not been incorporated in the Work.

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

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

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

(h) Contractor shall attend meetings as directed by BPCA or the Construction Manager designated in the Job Order.

2.7 “Or Equal” Clause

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

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

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

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

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

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

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

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

2.8 Quality and Labeling

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

ARTICLE 3 - COMMENCEMENT AND COMPLETION OF THE WORK

3.1 Commencement and Completion

(a) Upon receipt of a Job Notification, Contractor shall provide the required Job Proposal and Approach Plan, if applicable. Contractor shall submit Job Proposals, and BPCA shall assign Jobs, in accordance with the process outlined in Exhibit A.

(b) Upon BPCA's approval of Contractor's Job Proposal and Approach Plan for a Job (if applicable), BPCA shall issue a Job Order substantially in the form of Exhibit B annexed hereto and Contractor shall indicate in writing its acceptance of the Job Order.

(c) Each Job authorized pursuant to the Contract Documents will be governed by this Agreement, as supplemented by the applicable Job Order. For each Job authorized pursuant to the Contract Documents, the Job Order for such Job shall include as exhibits, a detailed scope of work for such Job, and, if applicable, the Approach Plan and any Drawings or Specifications relating to such Job.

(d) Contractor shall not commence Work for any Job prior to the date set forth on the Job Order for such Job. Contractor agrees to be bound by and complete all work for each Job by the corresponding the Job Completion Date or Target Date contained in the Job Order, and, if applicable for such Job, the Approach Plan for such Job (as any such Approach Plan shall be updated pursuant to subsection (f)) and waives any right to charge or claim damages or any increased cost, charges or expenses against BPCA, or, if applicable for any Job, the Construction Manager or Architect designated in the Job Order, for delays or disruptions from any cause whatsoever. Contractor's sole remedy as against BPCA, or, if applicable for any Job, the Construction Manager or Architect designated in the Job Order, for any delays or disruptions shall be as provided in Section 3.4 hereof.

(e) Notwithstanding the foregoing, the Work for a Job shall be completed by no later than the Job Completion Date set forth in the Job Order for such Job, or, if there is no Job Completion Date set forth in the Job Order, Contractor shall use its best efforts to complete the Work for such Job no later than the Target Date set forth in the Job Order, with time being of the essence in respect of said Job Completion Date or Target Date, as more fully set forth in subsection (g) below. If BPCA issues a Job Order with a Target Date specified in such Job Order, BPCA may amend such Job Order to set forth a revised Job Completion Date if the nature of the Job changes at any time after the Job Order is issued.

(f) If there is an Approach Plan for a Job based on the criteria set forth in subsection above, Contractor shall update the Approach Plan weekly, or at any other time at the request of BPCA or (if applicable) the Construction Manager. 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 the Construction Manager. If a Job is part of an ongoing Project requiring the work of other contractors, after submission of the Approach Plan, the Construction Manager shall coordinate the Approach Plan with the schedule for the Project. The Approach Plan may be revised by BPCA, or the Construction Manager, from time to time.

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

(h) If, in the opinion of BPCA, or the Construction Manager, Contractor falls behind the Approach Plan then in effect, or, if there is no Approach Plan for a Job, Contractor falls

behind the schedule for such Job, Contractor shall take whatever steps may be necessary to improve its progress and shall, if requested by BPCA or the Construction Manager, submit operational plans to demonstrate the manner in which the lost time may be regained. It is the responsibility of Contractor to maintain its schedule so as not to delay the progress of the Job, or if applicable, the Project and the schedules of other contractors. If Contractor delays the progress of its Work for a Job or the work of other contractors, it shall be the responsibility of Contractor to increase the number of workers, the number of shifts, the days of Work for such Job and/or, to the extent permitted by law, to institute or increase overtime operations, all without additional cost to BPCA, in order to regain any time lost and, if applicable, maintain the schedule for the Project then in effect as established by Construction Manager.

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

(j) 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.

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

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

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

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

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

(m) Notwithstanding anything to the contrary, a schedule submitted by Contractor showing a time of completion earlier than that specified in the Contract Documents shall not

entitle Contractor to any additional compensation unless BPCA and Contractor agree in writing to such additional compensation.

(n) The term of this Agreement shall be three years from the execution date of this Contract (the “**Term**”). BPCA may extend the Term of the Agreement for two additional years upon written notice to Contractor. Notwithstanding the forgoing, Contractor will be responsible for completing any Job Order assigned to it, but not yet complete, at the expiration of the Term of this Agreement.

(o) At the discretion of BPCA, any Job Order commenced under a previous Job Order Construction Agreement may be transferred to this Agreement, without changing the terms or compensation set forth in the transferred Job Order.

3.2 Coordination with Other Contractors

If a Job Order provides that a Job shall be part of a Project with other contractors performing work for such Project, Contractor shall coordinate the Work for such Job to be performed hereunder with the work of other contractors performing work for the Project in such manner as Construction Manager shall direct. Contractor shall indemnify and hold BPCA, and if applicable for a Job, the Construction Manager and Architect designated in the Job Order, harmless from any and all claims or judgments for damages, costs and expenses to which BPCA, Construction Manager or Architect may be subjected or which they may suffer or incur by reason of Contractor’s failure to promptly comply with Construction Manager’s directions. BPCA, and, if applicable for a Job, the Construction Manager and Architect designated in the Job Order, shall not, however, be liable for any damages suffered by Contractor by reason of the other contractor’s failure to promptly comply with the directions so issued by Construction Manager or by reason of another contractor’s default in performance. Should Contractor sustain any damage through any act or omission of any other contractor, Contractor shall have no claim against BPCA, or the Construction Manager or Architect designated in the Job Order, for such damage but shall have a right to recover such damage from the other contractor, under a provision similar to a provision contained in the following sentence which is part of this Agreement and which has been or will be inserted in the contracts with the other contractors engaged in the Project.

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

3.3 Notice of Delay

Should Contractor be or anticipate being delayed or disrupted in performing the Work for a Job under the Contract Documents for any reason, including, without limitation, its financial condition or Contractor’s general nonpayment of its debts as such debts become due, it shall promptly and in no event more than three (3) days after the commencement of any condition that is causing or is threatening to cause such delay or disruption notify BPCA, or the Construction Manager designated in the Job Order, in writing of the effect of such condition upon the Approach Plan for any affected Job, stating why and in what respects the condition is

causing or is threatening to cause delay, provided, however, that notwithstanding the above, if such delay or disruption, or anticipated delay or disruption, should be the result of any change or anticipated change in Contractor's financial condition, Contractor shall notify BPCA, or the Construction Manager designated in the Job Order, forthwith of such cause or anticipated cause. Failure to strictly comply with this notice requirement shall be sufficient cause to deny Contractor a change in schedule and to require it to conform to the Approach Plan for any such Job(s) then in effect and approved by BPCA.

3.4 Extension of Time

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

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

- (1) solely by acts or omissions of BPCA, or the Construction Manager or Architect designated in the Job Order; or
- (2) by the acts or omissions of other contractors or by 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 Work under all issued and accepted Job Orders, BPCA shall pay Contractor in accordance with the payment terms outlined in the Job Order, including any Trade Payment Breakdown or other payment outlined in an approved Approach Plan. Where a Job Order authorizes work on a Time and Material Basis, the Contractor will be entitled to be paid in accordance with the rate schedule attached hereto as Exhibit F for any labor utilized in the performance of work, and shall be entitled to be paid the actual cost for any materials used (subject to pre-approval by BPCA and/or the Construction Manager), plus a combined 15% to account for both profit and overhead. In no event, however, will the total amount paid to Contractor under this Agreement exceed [] (\$[]),

(such sum is herein sometimes referred to as the “**Total Contract Price**”), provided, that if the Total Contract Price shall be expressly revised by an amendment to this Agreement, the Total Contract Price shall thereafter mean the Total Contract Price as so revised. Payment for the Work for any Job shall not be made unless there is an executed Job Order.

ARTICLE 5 - METHOD, SCHEDULE AND TERMS OF PAYMENTS

5.1 Partial Payment

(a) In accordance with Requisitions submitted and approved as provided below for Work performed in accordance with this Agreement, Contractor shall be entitled to partial payment on account of the Job Contract Price in an amount equal to (i) the value, as determined in accordance with the trade payment breakdown (as defined in Section 5.3) included in an Approach Plan for a Job that is ongoing at the time a Requisition is submitted, of the portions of the Work completed and acceptable to BPCA and the Construction Manager designated in the Job Order, or (ii) if there is no Approach Plan for a Job, the value of the Work completed for such Job and accepted by BPCA; provided, however, that if the Job Contract Price for a Job shall exceed \$75,000 and there shall be partial payments for such Job, BPCA shall hold a retainage equal to ten percent (10%) of the total amount of all properly requisitioned payments toward the Job Contract Price for such Job. Any such retainage shall be returned following Final Acceptance for such Job by BPCA. Partial payments shall constitute advances against the Job Contract Price until final payment is made and accepted. No partial payment made, nor approval of a portion of the Work given for purposes of making a partial payment, shall constitute an acceptance of any Work not in accordance with the Contract Documents.

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

5.2 Requisitions

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

5.3 Trade Payment Breakdown; Approach Plan

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

written consent of BPCA. The Job Contract Price or Job Completion Date or Target Date for a Job not requiring an Approach Plan shall not be changed or revised in any way without the written consent of BPCA. The Approach Plan, when approved by BPCA, shall be used only as a basis for Requisitions and shall not be considered as a basis for reducing or increasing the Job Contract Price or the Total Contract Price.

5.4 Payment for Stored Materials

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

5.5 Receipts and Releases of Liens

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

In addition to the documents required to be furnished by the preceding paragraph with the Final Requisition, Contractor shall furnish (y) its affidavit that there are no liens, claims or demands by, and that there is no indebtedness to, Subcontractors, Materialmen, laborers, other employees or third persons for which BPCA, or the Construction Manager or Architect designated in the Job Order, 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

(a) Submittal and Approval of Requisitions: Requisitions (together with the documents required pursuant to Sections 5.2 and 5.5 hereof) 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. 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 approved in writing 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.

(b) Submittal of Proper Invoice: Upon approval of the Requisition, the Contractor shall submit a Proper Invoice, together with the approved Requisition, via email to:
BPCA Finance Ops bpcafinanceops@bpca.ny.gov
Office of the Treasurer
Battery Park City Authority
d/b/a Hugh L. Carey Battery Park City Authority
200 Liberty Street, 24th Floor
New York, NY 10281-1097
Attn.: Accounts Payable

A duplicate copy is to be sent via email to the Construction Manager and to the BPCA Representative identified in Article 1(e).

(c) Time for Payment: Following BPCA's receipt of a Proper Invoice, Owner shall pay Contractor in accordance with the Prompt Payment Policy, a copy of which can be found at <http://bpca.ny.gov/wpcontent/uploads/2018/01/BPCA-Prompt-Payment-Policy-Fiscal-Year-2017.pdf>. Owner may withhold from any payment amounts pursuant to Section 5.11 herein.

5.7 [Intentionally Omitted]

5.8 Final Payment

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

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

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

5.9 Release and Consent of Surety

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

5.10 BPCA's Right to Audit and Inspect Records

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

5.11 Withholding of Payments

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

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

In any of such events, BPCA shall have the right to apply any such amounts so withheld in such manner as BPCA may deem proper to satisfy such claims, to secure such protection, to complete the Work or to compensate BPCA for any loss suffered by reason of Contractor's delay. Such application shall be deemed payment for the account of Contractor. In the event that BPCA gives Contractor notice that it intends to make such application, Contractor shall be estopped from disputing liability or the amount of liability unless, within three days

after receipt of such notice, it indicates to BPCA in writing that it is not liable or that the amount of its liability is different from that set forth in the notice.

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

ARTICLE 6 – CONTRACTOR

6.1 Superintendence by Contractor, Discipline and Employee Skills

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

6.2 Representations and Warranties

Contractor represents and warrants that:

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

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

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

6.3 Verifying Dimensions and Site Conditions

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

(b) Before proceeding with the Work for a Job, Contractor will check all previous and surrounding work and determine the correctness of the same; failure on its part to detect or report discrepancies will relieve BPCA of liability from any and all claims to recover cost, expense, loss or damage resulting therefrom. Contractor shall take, determine, investigate and verify all field measurements, dimensions, field construction criteria and Site conditions for the performance of the Work and shall check and coordinate the information contained in the

Contract Documents and the boring logs which shall be available for inspection with the requirements of the Work. Contractor shall be responsible for determining the exact location of and to verify the spatial relationships of all Work. If any conflicts or discrepancies are found in the Contract Documents or if Contractor has any questions concerning the foregoing, it shall immediately notify BPCA, or if applicable for a Job, the Construction Manager designated in the Job Order, and shall thereafter perform the Work in accordance with the directions of BPCA, or the Construction Manager designated in the Job Order.

6.4 Copies of Contract Documents for Contractor

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

6.5 Meetings

Contractor shall attend all meetings as directed by BPCA or the Construction Manager designated in the Job Order, 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 the Construction Manager set forth in the Job Order, Contractor shall, if requested by BPCA, be represented by another person satisfactory to BPCA, having knowledge of the Work and authorized to act for Contractor at all times.

6.6 Related Work

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

6.7 Surveys and Layout

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

6.8 Reports and Access

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

6.9 Financial Information

During the Term, Contractor agrees to notify BPCA forthwith in writing of any event which has caused or is reasonably anticipated to cause a material adverse change in Contractor's business or financial condition from that shown in the then most recent financial statements furnished by Contractor to BPCA. Contractor has furnished to BPCA financial statements for the year ended December 31, 2013. Contractor agrees to furnish to BPCA, at BPCA's request from time to time hereafter, quarterly, or annual financial statements (which shall be audited, if such is the practice of Contractor for financial statements covering the

applicable period) and such additional information as BPCA shall deem necessary or desirable to satisfy itself of Contractor's continuing ability to complete the Work.

ARTICLE 7 - CONTRACT ADMINISTRATION

7.1 Architect's Responsibilities and Functions

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

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

7.2 Construction Manager's Responsibilities and Functions

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

(b) If a Construction Manager is designated in the Job Order for a Job, Construction Manager shall call for meetings of Contractor, other contractors, Subcontractors and Materialmen as necessary for the proper coordination of the Work for such Job. Such meetings shall be held at the Site for the Job on regular working days, during regular working hours, unless otherwise directed by BPCA. Attendance shall be mandatory for all parties notified to attend.

7.3 Scope of Responsibility of Architect and Construction Manager

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

ARTICLE 8 - INSPECTION AND ACCEPTANCE

8.1 Access to the Work

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

8.2 Notice of Required Inspections and Tests

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

8.3 Additional Inspections and Tests

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

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

8.4 Uncovering of Work

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

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

8.5 Correction of Work

Any Work for a Job not approved by BPCA, and, if applicable for a Job, the Architect and Construction Manager designated in the Job Order, shall immediately be reconstructed, made good, replaced or corrected by Contractor, including all Work of other contractors destroyed or damaged by such removal or replacement. Rejected material shall be removed immediately from the Site. Acceptance of Materials and workmanship by BPCA, and,

if applicable for a Job, the Architect or Construction Manager designated in the Job Order, shall not relieve Contractor from Contractor's obligation to replace all Work which is not in full compliance with the Contract Documents.

8.6 Certificate of Substantial Completion

If requested by BPCA for a Job, Contractor shall provide written notice to BPCA, and the Construction Manager and/or Architect designated in the Job Order, stating that in Contractor's estimation the Work for such Job has been substantially performed in conformity with the Contract Documents. BPCA, or, if applicable for a Job, the Architect and/or Construction Manager shall perform an inspection for the purposes of determining whether the Work has been so performed, commencing such inspection within ten (10) days of receipt of such notice and completing it with all due diligence. When BPCA, or, if applicable, Architect and/or Construction Manager find upon inspection that, to the best of their knowledge and belief, the Work is so performed, they shall prepare and deliver to Contractor, or if applicable, BPCA for delivery to Contractor a certificate specifying the date of substantial completion of the Work for such Job for purposes of this Agreement ("**Certificate of Substantial Completion**") and a punch list of items of Work for such Job remaining to be completed.

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

8.7 Completion of Work and Acceptance

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

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

[NO FURTHER TEXT ON THIS PAGE]

ARTICLE 9 - CHANGES IN THE WORK

9.1 Job Order Amendments

(a) BPCA may, at any time, in any quantity or amount, without notice to the sureties and without invalidating or abandoning this Agreement, order Extra Work pursuant to an amendment to this Agreement or a Job Order Amendment (as defined in Section 9.1(b) below); provided that any change in the Total Contract Price must be made pursuant to an amendment to this Agreement. Notwithstanding the terms of Section 3.1 hereof, BPCA may, but shall be under no obligation to, change the manner, sequence or method of performance of the Work for a Job or direct acceleration of the Work and Contractor shall, therefor, be entitled to a Job Order Amendment (as defined in Section 9.1(b)) provided that such change or acceleration was not ordered to maintain the Approach Plan for a Job or to coordinate the Work for such Job with the work of other contractors. Contractor shall be obligated to perform changed Work for a Job promptly in conformity with any written scope of work and directive from BPCA or Construction Manager to perform Extra Work that is issued in advance of or in conjunctions with a Job Order Amendment and may not suspend or otherwise refuse to perform the Extra Work for a Job contained therein or any other aspect of the Work for a Job required under the Contract Documents because a Job Order Amendment has yet to be fully executed.

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

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

(c) All Job Order Amendments shall be prepared, signed and issued by BPCA and are valid upon issuance. In order to be paid for work performed in accordance with a Job Order Amendment, the Job Order Amendment must be countersigned by Contractor..

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

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

- (1) accepting an amount agreed upon by BPCA and Contractor;

- (2) applying the applicable unit prices and alternates where the Work for such Job involved is covered by unit prices in this Agreement;
 - (3) receiving from Contractor a detailed breakdown satisfactory to BPCA and the Construction Manager designated in the Job Order, including actual time slips and invoices, itemizing the direct cost of labor and Materials to perform the changed Work and adding thereto fifteen percent (15%) to cover profit and all indirect and overhead costs, except that where the changed Work is performed by a Subcontractor or Materialman, the direct cost of labor and Materials to perform the changed Work plus fifteen percent (15%) for profit and all indirect and overhead costs to Subcontractor or Materialman and an additional sum for profit and all indirect and overhead costs of Contractor equal to ten percent (10%) of the first \$100,000, five percent (5%) of the second \$100,000 and three percent (3%) of any cost in excess of \$200,000 to Contractor. No allowance shall be paid on the premium portion of overtime pay. Where the changed Work involves both an increase and a reduction in any contract Work, the above percentage override shall be applied only on the amount, if any, by which the cost of the increase exceeds the cost of the reduction.
 - (4) receiving from Contractor a true copy of its bid work sheets to determine the contract price for the elimination of any contract Work for such Job. The amount of reduction shall not include the overhead or profit of Contractor for the eliminated Work. Should Contractor fail to furnish BPCA with such bid work sheets, BPCA, or the Construction Manager designated in the Job Order, shall determine the amount of the reduction. The determination of BPCA or Construction Manager shall be final and binding unless erroneously or fraudulently arrived at, or arbitrary and capricious;
 - (5) adding to the Job Contract Price only the amount of the premium portion of overtime pay resulting from an acceleration of the Work; or
 - (6) adding to the Job Contract Price, the actual incremental labor and equipment costs incurred by the Contractor resulting from a change in the manner, sequence or method of performing the Work for such Job.
- (b) The compensation specified in a Job Order Amendment shall constitute a release and full payment for the Extra Work covered thereby and for any delay and disruption cost or expense occasioned by reason of said change in the Work for any Job.
- (c) No time extension shall be granted Contractor by reason of the issuance of any Job Order Amendment unless it is expressly stated therein.
- (d) A Job Order Amendment shall not be valid if it shall cause the total sum of all previously authorized Job Contract Prices to exceed the Total Contract Price.

9.3 [Intentionally Omitted]

9.4 Changed Conditions

- (a) BPCA assumes no responsibility for the correctness of any boring or other subsurface information and makes no representation of any kind regarding subsurface

conditions and test borings, reports, rock cores, foundation investigation and topographical maps which may be made available to Contractor.

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

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

ARTICLE 10 - SUBCONTRACTS AND PURCHASE ORDERS

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

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

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

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

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

(e) Contractor shall submit to BPCA promptly following execution, three copies of every revision, amendment, modification or cancellation executed or issued by Contractor with

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

10.2 Access by BPCA and Others

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

10.3 Retainage

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

10.4 Miscellaneous

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

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

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

(d) Contractor shall include a provision in all Subcontracts and Purchase Orders exceeding \$50,000, requiring the Subcontractor or Materialman, if requested by BPCA, until the Subcontractor or Materialman finishes its portion of the Work, to deliver to Contractor unaudited and, if available, audited financial statements of the Subcontractor or Materialman

similar to the obligation of Contractor under Section 6.8 and promptly upon receipt thereof Contractor shall deliver copies thereof to BPCA.

ARTICLE 11 - ASSIGNMENT

11.1 No Assignment of Duties

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

11.2 No Assignment of Monies

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

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

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

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

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

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

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

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

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

11.3 Assignment by BPCA

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

ARTICLE 12 - MECHANICS' LIENS AND CLAIMS

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

ARTICLE 13 – INSURANCE AND CONTRACT SECURITY

13.1 Insurance

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

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

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

(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 if applicable to a Job Order) 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.
- (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:

 - o \$6,000,000 per occurrence
 - o \$7,000,000 general aggregate which must apply on a per location / per project basis
 - o \$7,000,000 products/completed operations aggregate

Securing the required limits via a combination of primary and umbrella/excess liability policies is allowed. The General Aggregate limit must apply on a per project basis on the primary General Liability policy should a combination of primary and Umbrella/Excess liability policies be utilized to secure the required total limits of coverage.

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

- (4) Automobile Liability Insurance as follows:

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

Combined Single Limits: \$1,000,000
- (5) As may be applicable to the risk characteristics of specific projects to be performed under this Agreement, BPCA may require the use of additional coverage for specific Job Orders, including without limitation Builder's Risk

policies, Pollution Liability Insurance, Comprehensive Marine Liability Insurance, Professional Liability Insurance, or increased limits for Commercial General Liability insurance. In such cases, the additional coverage required shall be specified in the Job Notification, so that the coverage may be priced into Contractor's Job Proposal.

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

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

13.2 Effect of Procurement of Insurance

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

13.3 Contract Security

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

shall be rated at last B+ by A.M. Best and Company, or meet such other requirements as are acceptable to BPCA.

13.4 Additional or Substitute Bond

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

ARTICLE 14 - CLAIMS FOR EXTRA WORK

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

- (1) promptly comply with each determination, order or directive and proceed diligently with the performance of the Work in accordance with BPCA's instructions,
- (2) notify BPCA, and the Construction Manager and Architect designated in the Job Order, in writing within seventy-two (72) hours of such determination, order, act or omission that Contractor believes such Work will require it to perform Extra Work or incur additional expense and the basis for Contractor's conclusion and request a final determination thereon by BPCA; and
- (3) present to BPCA, and the Construction Manager designated in the Job Order, 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 (a) such work is Work required to be performed hereunder and not Extra Work, (b) such action or omission is proper, or (c) 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. This notification requirement is in addition to, and not in lieu of, the notice requirements contained in Section 27.10 of the Agreement.

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

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

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

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

ARTICLE 15 - TERMINATION

15.1 Termination for Cause

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

- (1) Contractor shall violate any substantial provision of this Agreement or the other Contract Documents, including, without limitation, by failing to maintain the schedule for the work in the Approach Plan for a Job or, for a Job that does not require an Approach Plan, by the Job Completion Date then in effect in accordance with, or failing to discharge any of its responsibilities under, Section 3.1(d) hereof, including abandonment of the Work by Contractor, or by failing to indemnify and hold harmless BPCA (as required by Sections 3.1(e), 3.2, 17.5, 21.1, 21.2, 22(c) or any other provision of this Agreement) from and against any and all claims, liabilities, losses, costs or damages arising out of Contractor's performance of, or failure to perform, its obligations under this Agreement or the Contract Documents in accordance with its terms, or if the Contractor fails to maintain the insurance required by the provisions of Article 13; provided that it shall not be an Event of Default if Contractor fails to complete the Job by the Target Date, if any, set forth in a Job Order; or

- (2) Any material adverse change shall take place in the financial condition of the Contractor; or
- (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; or
- (4) Contractor fails to provide a Job Proposal upon receipt of a Job Notification, on five or more separate occasions during the term of the Agreement; or
- (5) BPCA discovers that 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
- (6) Any partner, principal, director, officer or shareholder owning in excess of five percent (5%) of the stock of Contractor shall have been convicted of a felony.

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

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

to give public notice of the potential ownership interest of BPCA as set forth herein) required by BPCA to confirm the terms of this subsection 15.1(b).

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

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

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

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

15.2 Termination for Convenience of BPCA

(a) BPCA, at any time, may terminate this Agreement for its own convenience. Any such termination shall be effected by delivering to Contractor a notice of termination specifying the extent to which performance of Contractor's Work under this Agreement and the other Contract Documents is terminated and the date upon which such termination becomes effective. Upon receipt of the notice of termination, Contractor shall:

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

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

15.3 Suspension of Work

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

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

ARTICLE 16 - COMPOSITE DRAWINGS AND COOPERATION

Where Contractor shall perform Work for a Job in close proximity to work of other contractors or subcontractors, or where there is evidence that Contractor's Work may interfere with work of other contractors, or subcontractors, Contractor shall assist in arranging

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

ARTICLE 17 - PROTECTION OF RIGHTS, PERSONS AND PROPERTY

17.1 Accident Prevention

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

17.2 Safety Programs

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

17.3 Protection of Work and Property

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

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

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

(d) Contractor shall be responsible for all cutting, fitting or patching that may be required to complete the Work for a Job, to make its several parts fit together properly and to make the Work for such Job fit together properly with previous and surrounding work. The

requirement to cut, fit or patch shall be determined by BPCA, or the Construction Manager designated in the Job Order; provided, that structural elements of the Job, or if applicable, the Project, shall not be cut, patched, or otherwise altered or repaired without prior authorization by BPCA. Authorization to proceed with remedial operation on any damaged or defective element or portion of the Job, or, if applicable, the Project shall not constitute a limitation or a waiver of BPCA's, or, if applicable to a Job, Construction Manager's or Architect's right to require the removal and replacement of any Work for such Job which fails to fulfill the requirements of the Contract Documents.

17.4 Adjoining Property

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

17.5 Risks Assumed by Contractor

(a) Contractor solely assumes the following risk whether such risk arises from acts or omissions (whether negligent or not and whether supervisory or otherwise) of BPCA, or the Construction Manager, and/or Architect designated in the Job Order, or Contractor, of any Subcontractor, of any Materialman, of third persons or from any other cause, including unforeseen obstacles and difficulties which may be encountered in the performance of the Work, whether such risk is within or beyond the control of Contractor and whether such risk involves any legal duty, primary or otherwise, imposed upon BPCA: the risk of loss or damage, direct or indirect, of whatever nature, to the Work or to any Materials furnished, used, installed or received by BPCA, Contractor or any Subcontractor, Materialmen or workmen performing services or furnishing Materials for the Work, whether such Work or Materials are stored at the Site or at an offsite location in accordance with Section 5.4 hereof. Contractor shall bear such risk of loss or damage until Final Acceptance of the Work for a Job, by BPCA or until completion of such Materials or removal of such Materials from the Site following a determination that they will no longer be needed for the Project and delivery to the location at which they are to be subsequently stored or disposed of, whichever event occurs last.

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

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

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

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

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

ARTICLE 18 - USE PRIOR TO ACCEPTANCE BY BPCA

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

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

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

ARTICLE 19 - EXEMPTION FROM SALES AND COMPENSATING USE TAXES

19.1 BPCA Exempt

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

19.2 Certificates

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

ARTICLE 20 - WARRANTIES AND GUARANTIES

20.1 In General

(a) Contractor guarantees that all Work performed and all Materials furnished will conform to the applicable Contract Documents as to kind, quality, functions, design and characteristics of material and workmanship. Contractor shall remove, replace and repair, at its sole cost and expense, all defects in workmanship, Materials, ratings, capacities, or design characteristics occurring in or to the Work including, without limitation, any portion of the Work furnished or performed by any Subcontractor or Materialman, within one year from the date of Final Acceptance for a Job. Contractor guarantees that all Work performed and all Materials furnished will conform to the applicable Contract Documents as to kind, quality,

functions, design and characteristics of material and workmanship. Contractor hereby acknowledges that BPCA may be required to incur substantial expense if correction of the Work is required particularly if such correction involves the uncovering, removal or replacement of concrete, wiring and piping installed at the Site. If Contractor shall fail to reimburse BPCA for any such expense which may become payable as provided in this paragraph, BPCA shall be entitled to deduct such expense from any payments required to be made by BPCA to Contractor pursuant to this Agreement and the other applicable Contract Documents. Contractor, upon demand, shall pay for any and all damage to any Work affected by or from such defects and all expenses necessary to remove, replace and repair such Work that may be damaged in removing, replacing or repairing such defects.

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

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

20.2 Additional Guaranties

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

20.3 Repair by Another

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

ARTICLE 21 - INDEMNITY

21.1 Delay or Failure

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

21.2 Inventions

In addition to the indemnity set forth in Section 17.5(a), Contractor shall indemnify and hold BPCA harmless from all claims, demands or liabilities of any kind or

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

21.3 Liability

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

ARTICLE 22 - PATENTS AND ROYALTIES

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

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

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

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

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

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

ARTICLE 23 - AS-BUILT DRAWINGS

(a) If BPCA determines that as-built drawings are required for a Job, BPCA shall furnish to Contractor, at BPCA's expense, one physical set and two electronic copies (on disk) of 48" x 36" Drawings, on which Contractor, where applicable, shall record the installation of underground utilities, concealed piping, concealed valves and control equipment and record changes in the Work. Such recording shall be kept current and include final and actual sizes as well as the location and elevation of the above figures and offset distances in feet and inches to permanent surface improvements such as buildings, retaining walls or curbs. During the progress of the Work for such Job, at the request of Construction Manager and prior to the approval of any Requisition of Contractor, Contractor shall provide a 48" x 36" PDF to BPCA of the up to-date Drawings showing the Work as installed. At completion of the Work, Contractor shall complete, sign and date the 48" x 36" physical set of Drawings and deliver it to Architect.

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

ARTICLE 24 - SHOP DRAWINGS AND SAMPLES

24.1 Contractor Submittal

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

24.2 Contractor's Responsibility

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

ARTICLE 25 – NOTICES

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

(a) if to BPCA:

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

with a copy to: Abigail Goldenberg, General Counsel, at the same address
or to such other address as BPCA may from time to time designate in the
manner set forth above.

(b) if to Contractor:

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

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

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

ARTICLE 26 - EMPLOYMENT AND DIVERSITY

26.1 Definitions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26.2 Equal Employment Opportunities for Minority Group Members and Women

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

- (1) Contractor shall not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status; shall undertake or continue existing programs to ensure that Minority Group Members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status; and shall make and document its good faith effort to achieve prompt and full utilization of Minority Group Members and women at all levels and in all segments of its work force where deficiencies exist.
- (2) At the request of BPCA, Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of Contractor’s obligations herein.
- (3) Contractor shall state in all solicitations or advertisements for employees that in the performance of the Work, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.
- (4) Contractor and any Subcontractor shall be required to submit compliance reports in accordance with this Section 26 relating to their operations and the implementation of the Diversity Program in effect as of the date of execution of this Agreement.

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

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

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

(d) Miscellaneous

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

(e) Enforcement

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

26.3 Workforce Participation

(a) Contractor is required to make and document good faith efforts to achieve the participation of fifteen percent (15%) Minority Group Members and fifteen percent (15%) women in the workforce for each trade or services utilized by Contractor in the Work as set forth in the Utilization Plan.

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

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

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

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

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

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

- (1) BPCA may require that Contractor submit Utilization Compliance Reports for the duration of this contract to BPCA regarding Contractor's operation and implementation of the Utilization Plan portion of the Diversity Program in effect as of the date of execution of this Agreement.
- (2) The Utilization Compliance Reports shall include information on any Subcontractor involved in the performance of the contract with regard to the Subcontractor's compliance with the Diversity Program.
- (3) The Utilization Compliance Reports shall include, but are not limited to the following:
 - (i) a breakdown of the Subcontractors by ethnic background, gender or such other categories as may be required by BPCA;
 - (ii) the actions the Contractor and Subcontractors have taken to meet the components of the Diversity Program;
 - (iii) how Contractor and Subcontractors intend to utilize participation of Minority Group Members and women in their workforce in connection with the performance of the Work and timetables therefor during the remainder of their performance of the Work.

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

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

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

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

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

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

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

- (1) MBE/WBE Compliance Reports shall be submitted to BPCA on a monthly basis and shall include information with respect to:
 - (i) dividing the Work to be subcontracted into smaller portions, where economically and technically feasible;
 - (ii) actively and affirmatively making a good faith effort to solicit bids for subcontracts from qualified MBEs and WBEs identified in the directory of certified businesses available at the office of the BPCA's Diversity Officer, including the circulation of solicitations to Minority contractor associations. Contractor shall maintain records detailing the efforts made to provide for meaningful MBE and WBE participation in the Work, including the names and addresses of all MBEs and WBEs contacted and, if any such MBE or WBE is not selected as a joint venture or subcontractor, the reasons for such decision;
 - (iii) making plans and specifications for prospective work available to MBEs and WBEs in sufficient time for review;
 - (iv) utilizing the services and cooperating with those organizations providing technical assistance to BPCA in connection with the participation of MBEs and WBEs in the project to which the Work relates;
 - (v) encouraging the formation of joint ventures, partnerships or other similar arrangements among subcontractors where appropriate;

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

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

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

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

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

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

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

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

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

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

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

26.5 Failure to Comply

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

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

ARTICLE 27 - STANDARD PROVISIONS

27.1 Provision Required by Law Deemed Inserted

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

27.2 Compliance with Laws, Rules and Regulations

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

27.3 Applicable Law, Forum and Jurisdiction

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

27.4 No Third Party Rights

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

27.5 Exculpation; Limitation of Liability

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

27.6 Protection of Lives and Health

(a) Contractor’s, Subcontractor’s and Materialman’s attention is specifically called to the rules and regulations, codes and bulletins of the New York State Department of Labor.

Attention is also directed to the standards imposed under the Federal Occupational Safety and Health Act of 1970, as amended.

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

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

27.7 Waiver of Immunity Clause

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

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

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

27.8 Prohibited Interests

No official of BPCA who is authorized in such capacity and on behalf of BPCA to negotiate, make, accept, or approve, or take part in negotiating, making, accepting, or approving any Architectural, Engineering, inspection, Job Order, Purchase Order or any Subcontract in connection with the Work, shall become directly or indirectly interested personally in the Agreement or the other Contract Documents. Contractor is advised that no official or employee of BPCA is permitted to indirectly solicit, accept, or receive gifts whether in the form of money, service, loan, travel, entertainment, hospitality, thing or promise, or in any other form. No officer, official, employee, architect, attorney, engineer, inspector or

consultant of or for BPCA who is authorized in such capacity and on behalf of BPCA to exercise any legislative, executive, supervisory or other similar functions in connection with the Work, shall become directly or indirectly interested personally in the Agreement, any Purchase Order, any Job Order, Subcontract, insurance contract, or any other contract pertaining to the Work.

27.9 Labor Provisions

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

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

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

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

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

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

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

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

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

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

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

27.10 Disputes Resolution Procedure

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

(b) The parties to this Agreement hereby authorize and agree to the resolution of all Disputes arising out of, under or in connection with, this Agreement in accordance with the following and pursuant to the procedures set forth in paragraph (c) of this Section 27.10. 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, or any Construction Manager or Architect designated in the Contract Documents unless (i) such action or proceeding shall be commenced within six (6) months of the Agreement Termination Date;; or (ii) if this Agreement is terminated by BPCA prior to Agreement Termination Date, unless such action or proceeding is commenced within six (6) months after the date of such termination.

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

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

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

27.13 Waiver of Remedies

Contractor acknowledges that it can be compensated adequately by money damages for any breach of this Agreement which may be committed by BPCA, or any Construction Manager or Architect designated in the Contract Documents. Contractor agrees that no default, act or omission of BPCA, or any Construction Manager or Architect designated in the Contract Documents shall constitute a material breach of contract entitling Contractor to cancel or rescind this Agreement or to suspend or abandon performance thereof, other than the failure of BPCA to make a payment of the Job Contract Price in accordance with the terms hereof solely because sufficient funds to pay the Job Contract Price have not been appropriated

or will otherwise not be made available to BPCA. Contractor hereby waives any and all rights and remedies to which Contractor might otherwise be or become entitled because of any wrongful act or omission of BPCA, or any Construction Manager or Architect designated in the Contract Documents, except as provided in this Section 27.13 and Contractor's right to money damages.

27.14 Modification of Agreement

No change in or modification, termination or discharge of this Agreement or any other Contract Document in any form whatsoever shall be valid or enforceable unless it is in writing and signed by the party to be charged therewith or its duly authorized representative, provided, however, that any change in or modification, termination or discharge of this Agreement or any other Contract Document expressly provided for in this Agreement shall be effective as so provided.

27.15 Signs and Parking

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

27.16 Entire Agreement

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

27.17 Rights and Remedies

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

27.18 Participation in International Boycott Prohibited

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

27.19 Compliance with “Buy-American” Statutes

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

27.20 Permitted Successors

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

27.21 MacBride Fair Employment Principles

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

27.22 Iran Divestment Act

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

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

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

27.24 Labor Peace

The Contractor and its Subcontractors and Materialmen shall not employ on the Work any labor, materials or means whose employment, or utilization during the course of this Agreement or the other Contract Documents, may tend to or in any way cause or result in strikes, Work stoppages, delays, suspension of Work or similar troubles by workers employed by the Contractor or its Subcontractors, Materialmen, or by any of the trades working in or about the buildings and premises where Work is being performed under this Agreement or the other Contract Documents, or by other contractors or their subcontractors pursuant to other agreements, or on any other building or premises owned or operated by BPCA, its contractors or affiliates. Any violation by the Contractor of this requirement may be considered as proper

and sufficient cause for declaring the Contractor to be in default, and for BPCA to take action against Contractor as set forth in Article 15 of this Agreement, or such other Section of this Agreement as BPCA may deem proper.

27.25 Comptroller's Approval

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

27.26 Key Person/Personnel

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

27.27 Binding Agreement

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

27.28 General Responsibility

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

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

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

27.29. Counterparts

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

27.30. Section Headings

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

27.31. Subordination of Terms in the Exhibits

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

SIGNATURE PAGE FOLLOWS

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

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

By: _____

Name: _____

Title: _____

[CONTRACTOR]

By: _____

Name: _____

Title: _____

FEIN # []

EXHIBIT A
JOB ORDER ASSIGNMENT PROCEDURE

Contractor shall perform various work at the direction of the BPCA, in accordance with the following protocol:

I. Contractor Receipt of Job Notification

As the need for construction services may arise, the BPCA may prepare and issue a notification ("the Job Notification") to one or more Job Order Contractors with whom BPCA is under contract. The Job Notification shall set forth the scope of work needed for an individual work assignment (hereafter, a "Job"), to a level of detail that befits the complexity of the particular Job. A Job Notification may add to, or revise, any of the general requirements of the Job Order Construction Agreement ("Contract") as may be appropriate for the Job. However, in the absence of an express exclusion of contract terms, all terms, provisions and requirements of the Contract will apply to the Job.

II. Contractor Response to Job Notification

A. Upon receipt of a Job Notification, unless otherwise directed by BPCA, the Contractor shall:

1. If so requested, coordinate with BPCA to conduct a site visit to the site of the Job ("Site Visit") within forty-eight (48) hours of receipt of the Job Notification; and,
2. Within five (5) business days of the Site Visit, or the issuance of the Job Notification if no Site Visit is requested, submit to BPCA a written proposal (the "Job Proposal"), including (1) a Lump Sum or Not-To-Exceed cost for the Job (inclusive of all Labor, Materials and Equipment to fully perform the work set forth in the Job Notification)¹; (2) the date upon which Contractor would be prepared to commence work on the Job (proposed commencement date); (3) a duration of the construction work; (4) a brief narrative description of Contractor's anticipated means and methods for completing the Job; and (5) a description of how Contractor intends to comply with its M/WBE and SDVOB obligations.

B. In the event that sufficient information is not available to submit the Job Proposal within the specified five (5)-day period, the Contractor shall submit to BPCA, prior to the expiration of the five (5)-day period, a written request, including specific reasons therefor, for an extension of the five (5)-day period for submission of the Job Proposal. Notwithstanding the foregoing, under emergency circumstances, BPCA may request that the Contractor conduct a site visit and submit a Job Proposal within such shorter period of time as BPCA reasonably specifies under the circumstances.

C. Failure to respond to a Job Notification by BPCA, to conduct a Site Visit, or to submit a Job Proposal within the timeframes referenced above, unless an extension is approved in advance and in writing by BPCA, more than five (5) times during the course of the Contractor's Job Order Contract term shall be grounds for termination of such Contractor's Job Order Contract for cause by BPCA.

¹ The submitted cost is subject to the additional breakdown and specification requirements for Approach Plans, as detailed in this Exhibit A Section II.E. herein.

D. If the duration of a Job is greater than ten (10) total work days and the estimated cost for such Job is greater than fifty thousand dollars (\$50,000), the Contractor shall provide an Approach Plan (the "Approach Plan," as outlined in Item E, below) to BPCA with respect to such Job, along with the Job Proposal. In the event that any specific element listed in the Approach Plan does not apply to the Job, the selected Proposer may so specify.

E. If required for a Job, the Approach Plan provided by the Contractor shall include the following information (along with any additional information deemed necessary by the BPCA Project Manager):

- A concise narrative description of how the Contractor intends to handle any challenging or difficult aspects of the Job;
- Biographies or resumes or key personnel the Contractor intends to utilize on the Job;
- A brief listing of projects completed by the Contractor in the past five (5) years of similar scope and complexity;
- A listing of any materials with long lead times;
- A listing of any M/WBE and SDVOB enterprises that the Contractor intends to utilize in the performance of its work;
- A Trade Payment Breakdown or Schedule of Values breaking down all Job costs for purposes of payment;
- A Bar schedule including durations and proposed start date for work to be performed, along with information as to whether and how a different start date may impact the Job schedule; and
- Any other information specifically requested in the Job Notification.

III. BPCA Selection of Contractor and Assignment of Work

BPCA, upon receipt of one or more Job Proposals and Approach Plans, if applicable, shall assign the Job to one of the responding Job Order Contractors on a best value basis. The BPCA may assign the Job either on the basis of a Lump Sum amount specified by a Contractor and agreed to by the BPCA, or on a Time-and-Material basis utilizing the rates identified in the Rate Sheet made a part of this Contract.

The BPCA shall consider the following factors in an award of a Job:

- The expertise of the Contractor as relevant to the Job;
- The Contractor's proposed cost and/or its rates, as identified in either the Lump Sum Proposal Amount, or the Rate Sheet;
- The availability and experience of the Contractor's employees proposed to be assigned to the Job;
- The amount of other BPCA work assigned to the Contractor; and
- The Contractor's proposed compliance with M/WBE and SDVOB goals of the Job Order Contract.

In assigning Jobs, BPCA reserves the right to take into account any prior poor performance or lack of responsiveness on the part of Contractor in connection with other Job Order Services.

Upon selection of a Contractor, the BPCA shall issue a Job Order to the Contractor.

IV. Performance of Work

The Contractor shall perform all labor, material, and equipment specified in the Job Order, in accordance with the specific scope of work (including drawings and specifications, if applicable) set forth in the Job Order and/or Job Notification. Contractor shall perform all work either directly or through subcontractors. The names of all prospective subcontractors shall be submitted to BPCA for approval.

Contractor shall provide all services identified in the Job Order Contract as it relates to the Job, including but not limited to all requirements contained in Article 2 and Article 6 of the Contract. This includes, but is not limited to, the Contractor's obligation to perform all necessary investigation; planning and scheduling; permitting; supervision; coordination; close-out; sign-offs; and, warranties, as applicable. Contractor shall additionally provide any additional services identified in the Scope of Work applicable to the Job Order and/or Job Notification.

The Contractor shall not proceed with any Job with a value in excess of fifty-thousand dollars (\$50,000) until a) BPCA approves the Approach Plan as submitted, or (if applicable) as revised; and b) the parties have executed a "Job Order" for performance of the relevant Job.

ATTACHMENT #2
NOVEMBER 20, 2023 PRE-PROPOSAL MEETING
ATTENDEE LIST

(ATTACHED)

BATTERY PARK CITY AUTHORITY

One World Financial Center

NEW * YORK

MEETING SIGN-IN SHEET

Subject: General Contractor Services Job order Contract - Pre proposal meeting

Date: 11/20/2023

NAME	AFFILIATION	TELEPHONE	FAX
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Joseph Marrinan	D'Dnofrio	718 832 5700	
Chris Petersen	Triton Construction	(516) 640-9289	
Robert Soto	Construction Force Services	929 531-8748	
Joseph Visconti	DBC	917 217 0824	
Joe Angione	Kelly's Crew	516-416 1366	
Raul Hernandez	BPCA		
Mike LAMANKUSA	BPCA	212.417.4335	