

REQUEST FOR PROPOSALS

FOR

Battery Park City Artwork Logistics

Contractor Services

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I. INTRODUCTION

Battery Park City Authority d/b/a Hugh L. Carey Battery Park City Authority ("BPCA" or the "Authority"), a New York State public benefit corporation created pursuant to the NYS Public Authorities Law, is seeking to engage an artwork logistics contractor to provide BPCA with services necessary to protect and preserve the artworks located within the vicinity of the North/West Resiliency ("N/W BPCR") Project, as more fully set forth in this Request for Proposals ("RFP") and its attachments (the "Project").

A summary of BPCA's structure, mission, and history, as well as the Battery Park City project area, may be viewed at: http://bpca.ny.gov/. Public information regarding BPCA's finances, budget, internal controls, guidelines, and policies may be viewed at: http://bpca.ny.gov/public-information/. Information relating to the Battery Park City Parks Conservancy Corporation ("BPCPC"), BPCA's affiliate, may be viewed at: http://bpcparks.org/. Minority-Owned Business Enterprises ("MBE"), Women-Owned Business Enterprises ("WBE"), and Service-Disabled Veteran-Owned Business Enterprises ("SDVOB") are encouraged to submit Proposals.

II. OVERVIEW

BPCA hereby requests proposals (individually, a "Proposal" and collectively, the "Proposals") from experienced artwork logistics, relocation and installation contractors (individually, a "Proposer," and collectively, the "Proposers") to provide the services necessary to complete the Project as specified in the Scope of Work, attached hereto as Exhibit A (the "Work"). The Project's Drawings and Specifications are attached hereto as Exhibit B-1. A 2019 artwork conditions report, provided for reference purposes only, is attached hereto as Exhibit B-2.

III. GENERAL PROVISIONS

This RFP, including attachments, exhibits, and any amendments or addenda is subject to the rights reserved by BPCA, including, but not limited to BPCA's right to:

- Reject any or all Proposals received in response to this RFP;
- Withdraw the RFP at any time, at BPCA's sole discretion;
- Make an award under the solicitation associated with this RFP, in whole or in part;
- Disqualify any Proposer whose conduct and/or Proposal fails to conform to the requirements of this RFP;
- Seek clarifications and/or revisions of a Proposal or any part of a Proposal;
- Use information obtained by BPCA through site visits; interviews; investigation of a Proposer's qualifications, experience, ability or financial standing; and any other material or information provided by, or received from, the Proposer during the procurement process;
- Prior to BPCA's opening of the Proposals, direct Proposers to submit Proposal modifications addressing subsequent amendments to the RFP;
- Request that one or multiple Proposers submit best and final offers ("BAFOs") subsequent to BPCA's opening of the Proposals;
- Change any of this RFP's scheduled dates;
- Waive any requirements in accordance with BPCA's Procurement Guidelines;
- Negotiate with one or more selected Proposers within the RFP scope and in the best interests of BPCA;
- Utilize any and all ideas submitted in the Proposals received, regardless of whether a contract is offered;
- Require clarification at any time during the procurement process, and/or require correction of arithmetic or other apparent errors for the purpose of assuring a full and complete understanding of a Proposal and/or to determine a Proposer's compliance with the requirements of the RFP; and,
- Make non-material revisions to the Scope of Work following receipt of Proposals.

BPCA is not liable or responsible in any way for any expenses incurred in the preparation of a Proposal in response to this RFP. All information submitted in response to this RFP is subject to the Freedom of Information Law, Article 6 of the NYS Public Officers Law ("FOIL"), which requires public access to certain documents possessed by BPCA, unless a specific exemption applies. Proposers are responsible for identifying any information in their respective Proposals considered to be confidential and exempt from FOIL. BPCA, however, is obligated to disclose information consistent with the requirements of FOIL, NYS Public Officers Law Section 87.

IV. TIMETABLE & DESIGNATED CONTACT

A. Key Dates

Subject to change at BPCA's discretion, the following are key dates for this RFP:

PROCUREMENT STEP	DATE
RFP Issued	August 23, 2024
Mandatory Pre-Proposal Meeting	August 28, 10 a.m. at BPCA's Offices (200 Liberty Street, 24th Floor | New York, N.Y. 10281)
Mandatory Project Site Walk-Through	August 28, 2024 (following the Pre-Proposal Meeting)
Deadline to Submit Questions to BPCA*	September 6, 2024 by 5:00 p.m. (by email only)
BPCA's Response to Substantive Questions *Responses will be provided in the form of an addendum to be posted on BPCA's website (https://bpca.ny.gov/apply/rfp-opp/)*	September 13, 2024
PROPOSAL DUE DATE	September 27, 2024 by 3:00 p.m. (the "Due Date")
Contract Start Date	December 2024 *(Approximate)*
*All questions regarding this RFP should be submitted in writing via email to the "Designated Contact": Michael Lamancusa, BPCA's Assistant Contracting Officer, at Michael.Lamancusa@bpca.ny.gov.	

B. Anticipated Project Duration/Right to Terminate

BPCA expects that the Project will begin in approximately October 2024, and the Work will be completed in phases throughout the initial contract term of sixty (60) months pursuant to a BPCA-approved contractor schedule. Prompt ordering and confirmation of long-lead items will be key to achieving the target Project schedule. BPCA reserves the right to terminate the Contract at any time, with or without cause, in accordance with the terms of the Contract. BPCA's sample form of contract (the "Standard Form of Contract") is attached hereto as Exhibit G. BPCA, at its sole option, may extend the term of any awarded Contract by one (1) year, up to two (2) times for a potential total Contract duration of up to seven (7) years.

V. GENERAL REQUIREMENTS

A. Minimum Qualification Requirements

The following are the minimum qualification requirements for this RFP. Proposals that fail to meet these requirements will be rejected.

1) Proposer must have an office in or within ninety (90) miles of New York City;

2) Proposer must be lawfully authorized to do business/perform specific services in New York State;

3) Proposer must have demonstrated experience with and completed five (5) similar Art Logistic projects within the last five (5) years.

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

Contractor requirements and procedures for business participation opportunities for NYS-certified MBEs/WBEs/SDVOBs and equal employment opportunity requirements relating to minority group members and women are contained in Exhibit H. For questions relating to MBE/WBE/SDVOB participation, joint ventures and sub-contracting goals *only*, please contact the "MBE/WBE/SDVOB Designated Contact" Jennifer Yam at jennifer.yam@bpca.ny.gov or 212-417-2337.

C. Restricted Period

New York State's State Finance Law sections 139-j and 139-k apply to this RFP, restricting Proposers' contacts with BPCA. Proposers are restricted from making any contact (defined as oral, written or electronic communications with BPCA under circumstances where a reasonable person would infer that a communication was intended to influence BPCA's conduct or decision with respect to a procurement) relating to this RFP with anyone other than the Designated Contact, as specified in Section IV.A., or MBE/WBE/SDVOB Designated Contact, as specified in Section V.B., from the time of Proposer's receipt of notice of this RFP through the date of the Final Award as defined in BPCA's Procurement Guidelines (the "Restricted Period"). BPCA employees must record certain contacts during the Restricted Period, including, but not limited to, any oral or written communications that could reasonably be seen as intended to influence BPCA's conduct or award of this RFP. Upon notice of an improper contact, BPCA shall make a determination regarding the Proposer's eligibility to continue participating in this RFP.

D. Submission of Proposals

Proposals must be received by BPCA no later than 3:00 p.m. on September 27, 2024.

- Each Proposer must e-mail its Technical Proposal to the following e-mail address: technicalproposals@bpca.ny.gov. The Technical Proposal must be clearly labeled as "Proposal Enclosed – Battery Park City Artwork Logistics Project: Contractor Services."
- Each Proposer must also e-mail its Cost Proposal to the following e-mail address: costproposals@bpca.ny.gov. The Cost Proposal must be separately attached and clearly labeled as "Cost Proposal – Battery Park City Artwork Logistics Project: Contractor Services."
- **Each Proposer is responsible for the successful delivery and receipt of their Proposal. BPCA is not accepting Proposals sent via messenger, overnight courier, or certified mail to BPCA offices.** If a Proposer has already sent a Proposal via one of these methods, please e-mail the Proposal to the above e-mail address by the Due Date. If a Technical Proposal's file size is too large to submit by e-mail, the Proposer must make alternate electronic accommodations (e.g., linking to a file sharing website), which shall also be transmitted through technicalproposals@bpca.ny.gov. Please contact the Designated Contact prior to the Due Date in order to ensure successful transmission of the documents prior to the Due Date.
- **Proposals *must* arrive at the time and place specified herein. Please leave ample time for submission. Late Proposals, no matter the cause of their lateness, will NOT be accepted. Hard copy or faxed Proposals will NOT be accepted.** A Proposer may, after submitting a Proposal, amend its Proposal by submitting an amended Proposal, clearly labeled "Amended Proposal – Battery Park City Artwork Logistics Project: Contractor Services," as long as the amended Proposal is submitted by the Due Date.

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E. Project Subject to New York State Prevailing Wage Requirements

This Project is subject to NYS Labor Law §220, Prevailing Wage Law ("Prevailing Wage"). All labor employed on the Project must be paid the Prevailing Rate of Wage (the "Prevailing Wage Rate") as identified by the NYS Department of Labor ("NYSDOL"). Attached to this RFP as Exhibit F is a Prevailing Wage Schedule provided by the NYSDOL. Any discrepancy between the rates contained therein, and the rates which may be required by law, shall not relieve the selected Proposer from the requirement to pay the legally required rate, nor shall they entitle the selected Proposer to any additional compensation under the Contract.

VI. PROPOSAL FORMAT AND CONTENTS

A. Proposal Format

The submitted Proposal must be organized in accordance with the subheadings of Proposal contents set forth in this Section VI and shall be prepared to be printed on paper size no larger than standard 8 1/2" x 11" with a minimum font size of 11 point, with reasonable exceptions for charts, graphics and financial information. Proposal pages must be numbered, with the Proposer's name and "Battery Park City Artwork Logistics Project – Contractor Services" clearly marked on the cover of each of the Technical Proposal and the Cost Proposal.

B. Proposal Content

In addition to the separately sealed Cost Proposal, each Proposal must include the following in the order listed (the "Technical Proposal"):

1) Executive Summary.
2) Completed Proposal Submission Packet, attached as Exhibit C.
3) Financial Statements: Provide a copy of your firm's most recent Audited Financial Statements (within the last year) or where an audited financial statement is not available, the most recent tax return. In the event you do not have an audited financial statement you must provide a statement to that effect and summary financial information for the calendar year most recently ended certified by an authorized officer.
4) Appendices:
   a. Attach professional biographies for all key personnel identified in your Proposal.
   b. Objections to BPCA's Standard Form of Contract (attached as Exhibit G).
   c. Attach a project schedule showing resources based on the staffing required to manage the Project.
   d. Any additional attachments, exhibits or appendices listed herein or in the Proposal Submission Packet.

BPCA reserves the right to reject any Proposals that fail to include any required item described in this Section VI. B. As BPCA is currently only accepting electronic Proposal submissions, scans of documents requiring signatures and/or requiring notarization are acceptable.

VII. INSURANCE AND BOND REQUIREMENTS

A. General Requirements

The total cost of the required insurance listed in Sections A. and B. below, must be incorporated into the Cost Proposal. The additional insured protection afforded BPCA, BPCA's affiliate, Battery Park City Parks Conservancy ("BPCPC"), and the State of New York must be on a primary and non-contributory basis. All policies must include a waiver of subrogation in favor of BPCA, BPCPC, and the State of

New York, no policies may contain any limitations / exclusions for New York Labor Law claims, and cross liability coverage must be provided for BPCA, BPCPC, and the State of New York.

All of the carriers that provide the below required insurance must be rated "A-:VII" or better by A.M. Best and must provide direct written notice of cancellation or non-renewal to BPCA, BPCPC, and the State of New York at least 30 days before such cancellation or non-renewal is effective, except for cancellations due to non-payment of premium, in which case 10 days written notice is acceptable.

B. Insurance Requirements for the Selected Proposer

The selected Proposer will be required to obtain and provide proof of the types and amounts of insurance listed below: (i) as a condition precedent to the award of the contract for the Project; and (ii) continuing throughout the entire term of the contract. The insurance policies listed below must also conform to the applicable terms of the contract, as shown in BPCA's Standard Form of Contract (Exhibit G).

- **Commercial General Liability Insurance**, written on ISO Form CG 00 01 or its equivalent and with no modification to the contractual liability coverage provided therein, shall be provided on an occurrence basis and limits shall not be less than:
  - $1,000,000 per occurrence
  - $2,000,000 general aggregate which must apply on a per location / per project basis
  - $2,000,000 products/completed operations aggregate

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

- **Automobile Liability Insurance** with a combined single limit of not less than $1,000,000. Coverage must apply to the Proposer's owned, hired, and non-owned vehicles and protect BPCA, BPCPC, and the State of New York as additional insured.
- **Workers' Compensation, Employer's Liability, and Disability Benefits** shall not be less than statutory limits, including United States Longshore and Harbor Workers Act coverage as applicable to the operations of the Proposer.
- **Umbrella Liability Insurance** at a limit not less than $5,000,000 per occurrence and in the aggregate. BPCA, BPCPC and the State of New York must be protected as additional insureds on policies held by Contractor and any of its Subcontractors.
- **Either the Contractor or a Subcontractor, whichever will be performing marine, hoisting or rigging work, must provide the following coverage:**
  - **Comprehensive Marine Liability Insurance** must be maintained at a limit of not less than $1,000,000 per occurrence and include the following coverage:
    - Protection and indemnity
    - General liability
    - Pollution liability

BPCA, BPCPC, and the State of New York must be protected as additional insureds on policies held by the selected Proposer and any of its subcontractors.

- **Riggers Liability** at a limit of not less than $1,000,000.

C. Insurance Requirements for all Subcontractors

Any subcontractor(s) utilized by the selected Proposer will be required to obtain the types and amounts of insurance listed below: (i) as a condition of commencing any Work; and (ii) continuing throughout the duration of the subcontractor's Work. The insurance policies listed below must also conform to the applicable terms of the Contract, as shown in BPCA's Standard Form of Contract:

- **Commercial General Liability Insurance**, written on ISO Form CG 00 01 or its equivalent and with no modification to the contractual liability coverage provided therein, shall be provided on an occurrence basis and limits shall not be less than:
  - $1,000,000 per occurrence
  - $2,000,000 general aggregate which must apply on a per location / per project basis
  - $2,000,000 products/completed operations aggregate

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

- **Automobile Liability Insurance** with a combined single limit of not less than $1,000,000. Coverage must apply to the subcontractor's owned, hired, and non-owned vehicles and protect BPCA, BPCPC, and the State of New York as additional insured.
- **Workers' Compensation, Employer's Liability, and Disability Benefits** shall not be less than statutory limits, including United States Longshore and Harbor Workers Act coverage as applicable to the operations of the subcontractor.
- **Subcontractors will also be required to obtain all other insurances listed in Section A unless otherwise approved in writing by BPCA prior to commencement of any Subcontractor's work.**

VIII. COST PROPOSAL: FORMAT AND REQUIRED INCLUSIONS

Each cost proposal (the "Cost Proposal") must state the total not-to-exceed cost for the performance of all Work. Please note that the Project is subject to the Prevailing Wage requirements contained in NYS Labor Law §220. As stated in Section V. D. above, each Proposer must e-mail its Cost Proposal to the following e-mail address: costproposals@bpca.ny.gov. The submission must be clearly labeled as "Cost Proposal – Battery Park City Artwork Logistics Project: Contractor Services."

Proposer must submit with its Cost Proposal (the form of which is attached to this RFP as Exhibit D) an itemized cost for the Work, according to the Form of Proposal Breakdown (attached to this RFP as Exhibit E-1). The total sum of the itemized list contained in the Form of Proposal Breakdown should be equivalent to the price contained in the Cost Proposal.

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IX. SELECTION PROCESS

A. Evaluation

Each timely submitted Proposal will be reviewed for compliance with the form and content requirements of this RFP. A committee of BPCA employees selected by BPCA (the "Committee") will then review and evaluate the Proposals in accordance with the evaluation criteria set forth below. While only Committee members will score the evaluation criteria, the Committee may consult an outside expert for advisement on the evaluation of matters requiring technical expertise. Before final selection, BPCA must determine that the proposed selected Proposer is responsible, in accordance with applicable law and BPCA's Procurement Guidelines, which may be viewed at: http://bpca.ny.gov/public-information/.

B. Interviews

BPCA reserves the right to decide whether to interview any or all of the Proposers. The Committee may conduct interviews for many reasons, including to further assess a Proposer's ability to perform the Work or provide specific services, or to seek information related to any other evaluation criteria. The proposed Lead PM, as well as all other key personnel proposed to perform the Work, must be available to participate in the interview.

C. Evaluation Criteria for Selection

Selection will be based upon the following criteria:

1) Technical Evaluation:

CRITERIA	WEIGHT
Firm and its proposed Subcontractors' experience performing artwork logistics work including protection in place; removal and installation; transportation and storage; and restoration	35%
Approach to the Work – including methodologies; schedule; strategies for securing long-lead items and materials; weather protection measures; and any specific on-site materials/equipment laydown requirements determined to be necessary	30%
Experience and Qualifications of Key Personnel, including subcontractor(s)	25%
Response to Diversity Practices Questionnaire	10%

2) Cost Proposal evaluation.

D. Basis for Contract Award

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

X. NON-COLLUSION

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

XI. IRAN DIVESTMENT ACT

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

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

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

XII. EXECUTIVE ORDER 16

Pursuant to Executive Order 16 dated March 17, 2022, all New York State agencies and authorities are prohibited from Entering into any new contract or renewing any existing contract with an entity conducting business operations in Russia. As part of this RFP, each firm is required to certify that the firm is not an 'entity conducting business operations in Russia.' Certification under Executive Order No. 16 can be found in Section XV of Exhibit C: Proposal Submission Packet.

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EXHIBIT A
SCOPE OF WORK

BPCA has undertaken a series of coastal/storm resiliency projects impacting the full extent of its 92-acre property. The South Battery Park City Resiliency ("SBPCR") Project is anticipated to be completed in Spring 2025; the North/West Resiliency ("N/W BPCR") Project will begin construction in a series of phases starting in early 2025 and continuing through 2030. The SBPCR Project and the N/W BPCR Project are collectively referred to herein as the "Resiliency Projects." Throughout Battery Park City's open spaces are public artwork pieces (collectively, the "Artworks") – the individual pieces and locations of which are detailed below – that require protection-in-place or, alternatively, transportation to storage, in order to be kept intact and protected from ongoing construction associated with the Resiliency Projects. Under this contract (the "Contract"), the artwork logistics contractor to be selected by BPCA (the "Contractor") shall perform all artwork logistics services necessary to protect and preserve these Artworks.

The services comprising the Work shall include, but is not limited to, the following elements:

- assessment and documentation of existing artwork conditions;
- detailed approach plan design and proposed schedule;
- implementation; and,
- assessment and documentation of post-artwork logistics implementation.

The Contractor will be responsible for restoring any artwork that gets damaged during artwork logistics implementation.

For each task listed below, the Contractor will first assess and document the condition of the artwork and then prepare a detailed approach plan and schedule for BPCA's review. Upon receipt of BPCA's approval, the Contractor will proceed with implementation. The Contractor will also provide recommendations and coordination with any/all relevant entities for any required artwork restoration work and will be required to subcontract with other firms for any aspect(s) of the Work that it does not self-perform.

The Contractor will provide all labor, equipment, materials, and all services necessary for, and incidental to, the proper execution and completion of the following artwork logistics implementation tasks:

TASK 1: PROTECTION IN PLACE Contractor will protect the following Artworks in place at their existing locations:	
Artwork #1: Rector Gate	
Geographic Location:	Western terminus of Rector Place and the BPC Esplanade
Dimensions:	43' (H) x 31.6' (W) x 9'(D)
Medium:	Granite base, stainless steel, brass, bronze, copper and electric lights
Artist(s):	R. M. Fischer
Artwork #2: Tourcher	
Geographic Location:	Center of North Cove Marina
Dimensions:	18.5' (H)
Medium:	Granite base, steel, iron and glass; glass capital is electrified
Artist(s):	Siah Armajani and Scott Burton
Artwork #3: Four Large Granite Benches Flanking the Tourcher	
Geographic Location:	Center of North Cove Mariana
Dimensions:	4' (H) x 5'9?'(W) x 22' (L)
Medium:	Granite
Artist(s):	Scott Burton

TASK 1: PROTECTION IN PLACE *(Continued)*	
Contractor will protect the following Artworks in place at their existing locations:	
Artwork #4: Pylons	
Geographic Location:	Belvedere Plaza, north of the Marina and South of the Ferry terminal
Dimensions:	South Pylon: 56’ (H) x 8’3” (D)
	North Pylon: 73’ (H) x 5’3” (D)
Medium:	Granite, stainless steel, and electric lights
Artist(s):	Martin Puryear
Artwork #5: Pavilion	
Geographic Location:	Rockefeller Park below River Terrace and Warren Street
Dimensions:	20.5’ (H) x 37’ (W) x 37’ (L)
Medium:	Granite, wood, brick, copper
Artist(s):	Demetri Porphyrios

TASK 2: REMOVAL, REPAIR/RESTORATION OF RAILINGS, STORAGE, AND REINSTALLATION	
Contractor will remove*, pack/crate, ship, and store; coordinate with any/all relevant entities for necessary repairs and restoration; and reinstall the following Artwork:	
Only Artwork: North Cove Marina Railings (“Marina Railings”)	
Geographic Location:	North Cove Marina (northern edge, east of the NYC Police Memorial)
Dimensions (approximate):	two sections: each measure 3’ (H) x 60’ (L)
Medium:	Steel with inset lettering in bronze
Artist(s):	Siah Armajani

*****Upon removal of the Marina Railings, the Contractor will immediately provide and install protective fencing (the “Protective Fencing”) to prevent river water infiltration into the North Cove Marina. Contractor will inspect and maintain the Protective Fencing until the Marina Railings are re-installed.

TASK 3: REMOVAL, STORAGE, AND REINSTALLATION	
Contractor will remove, pack/crate, ship, store, and reinstall the following Artwork:	
Only Artwork: Sitting Stance	
Geographic Location:	Terminus of West Thames Street at the BPC Esplanade
Dimensions (approximate):	Small lounge: 70” (H) x 56” (W) x 96” (D)
	Large lounge: 76” (H) x 96” (W) x 90 (D)
	Two tall chairs: each measure 90” (H) x 29” (W) x 36” (D)
	Steel table with lamppost (including seat): 60” (H) x 88” (D)
	Tree bench: 29” (D)
Medium:	six individual structures made of wood, steel, granite, and a lamppost
Artist(s):	Richard Artschwager

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TASK 4: REMOVAL, REPAIR/RESTORATION, STORAGE, AND REINSTALLATION	
Contractor will remove, pack/crate, ship, and store; coordinate with any/all relevant entities for necessary repairs and restoration; and reinstall the following Artworks:	
Only Artwork: Berlin Wall Section	
Geographic Location:	Terminus of Liberty Street, on Elevated Portion of Kowsky Plaza
Dimensions:	79” (H) x 54.25” (W) x 60” (D)
Medium:	steel-reinforced concrete and paint
Artist(s):	Kiddy Citny and Thierry Noir

TASK 5: REMOVAL OF PROTECT-IN-PLACE MATERIALS
Upon completion of the Resiliency Projects, Contractor will remove the protection materials installed “in place,” at their existing locations, for the below-listed Artworks. Note that, as part of this Task 5 work, Contractor will be responsible for preparing/providing a Construction and Demolition Waste Management Plan that describes how the amount of waste sent to landfill as a result of this work will be reduced.
Artwork #1: Rector Gate
Artwork #2: Tourcher
Artwork #3: Four Large Granite Benches Flanking the Tourcher
Artwork #4: Pylons
Artwork #5: Pavilion

***

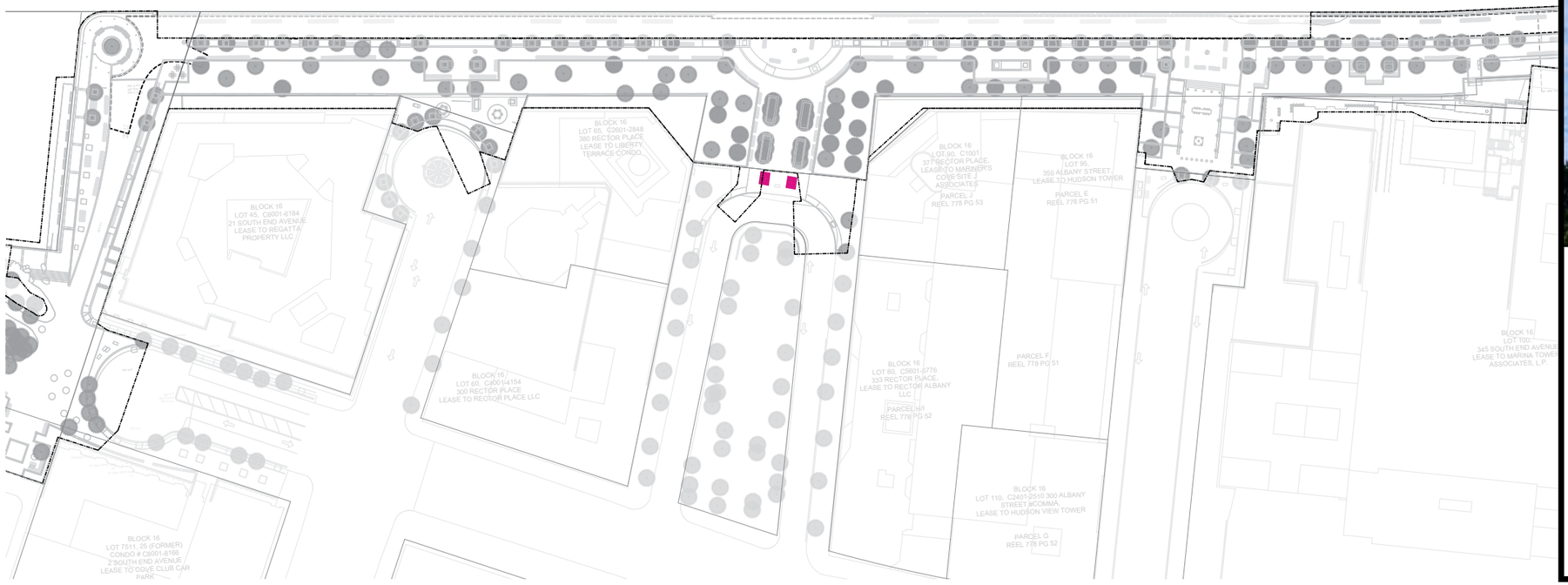
EXHIBIT B
SUPPLEMENTAL DOCUMENTATION

[NO FURTHER TEXT ON THIS PAGE]

EXHIBIT B-1
PROJECT DRAWINGS & SPECIFICATIONS

[ATTACHED]

Art Installation and Sculptures - Reach 6







RECTOR GATE

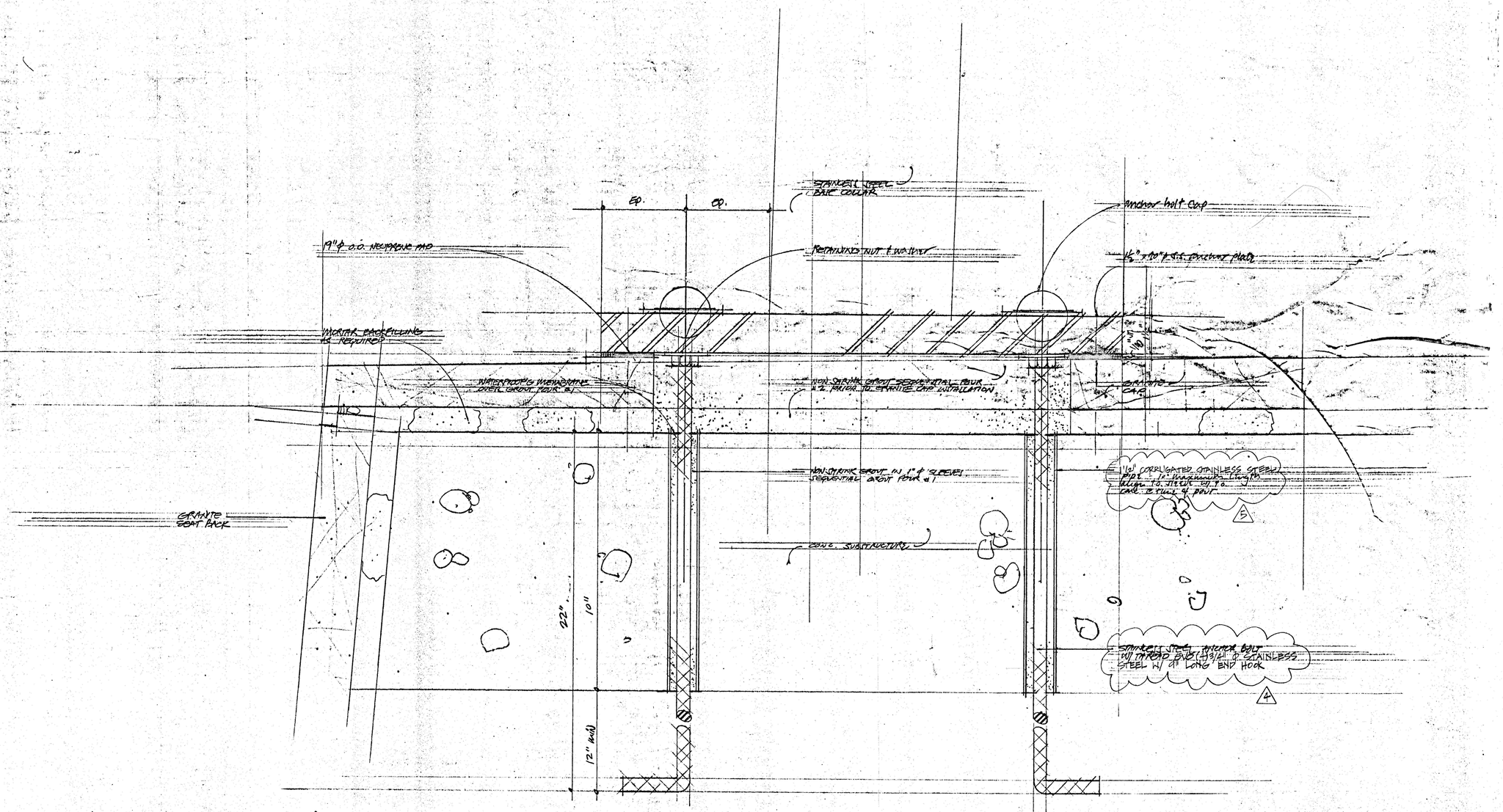
R.M. Fischer

Within Limit of Work: Yes

Installation: 1988

Location: The Esplanade, at Albany Street

Action: *Protect in place by BPCA or PDB?*



Anchor Plate, Detail

Scale = 1/2 of Full

Anderson/Bucciarelli
40 Hudson Street
New York New York 10013
212 608 0185

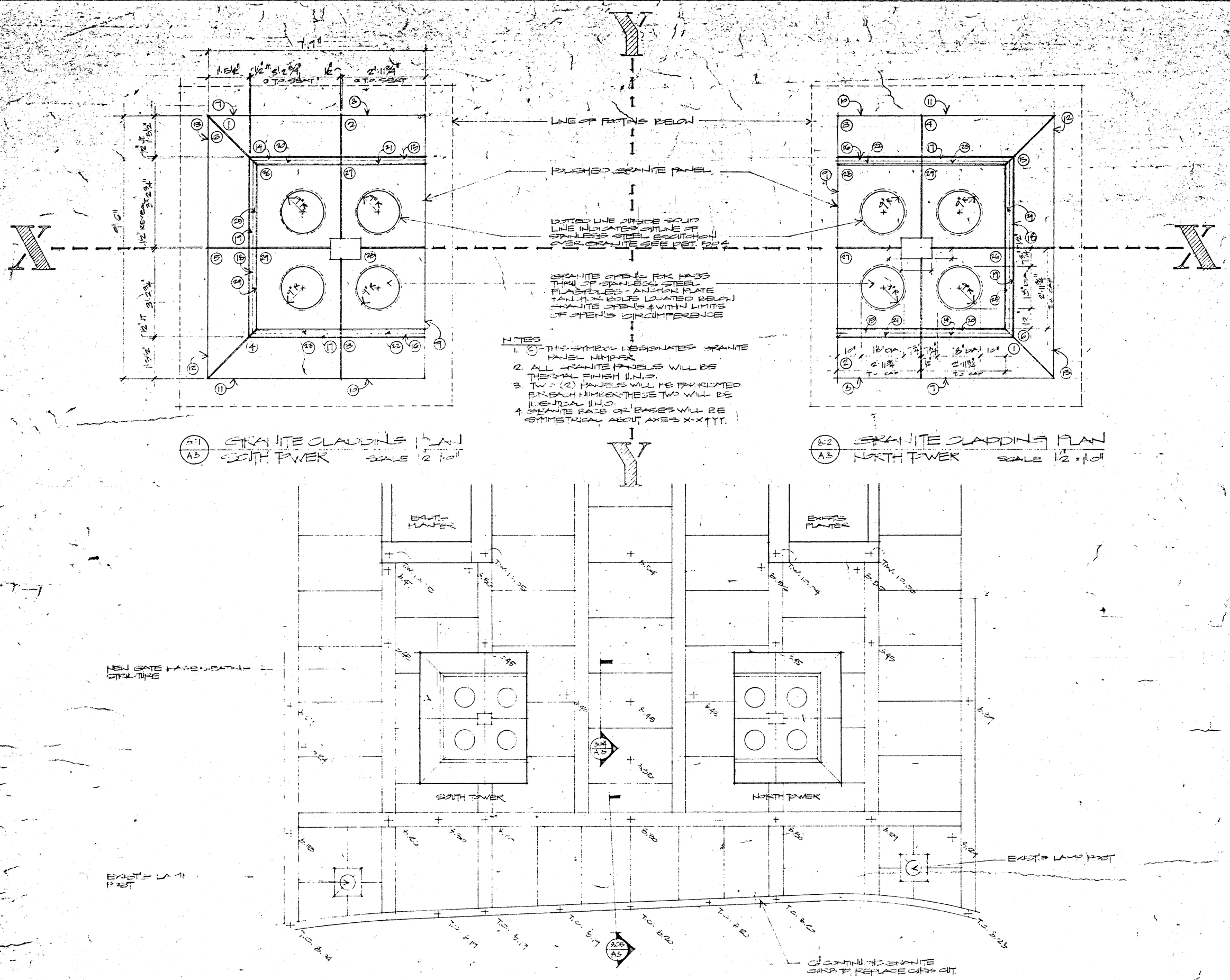
SUPPLEMENTAL DRWG # 3

4 3/25/88 REVISED

5 3/25/88 REVISED

FEB 15 1988
FEB 23 1988

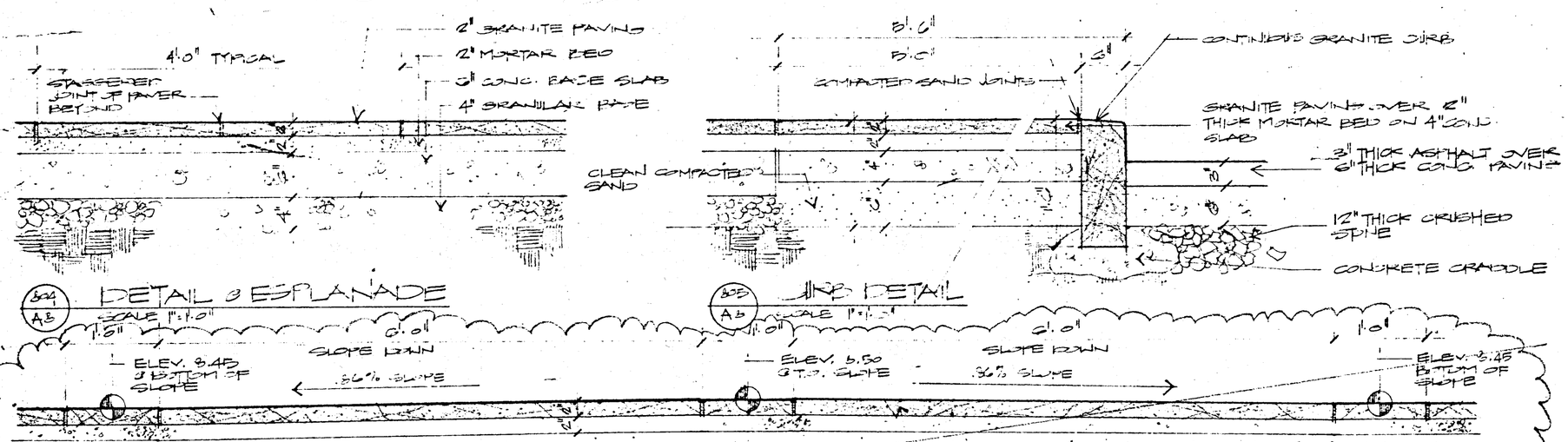
Rector Gate ©1985-89 R.M. Fraser



A3/A3 GRANITE CLADDING PLAN SOUTH TOWER SCALE 1/2"=1'-0"

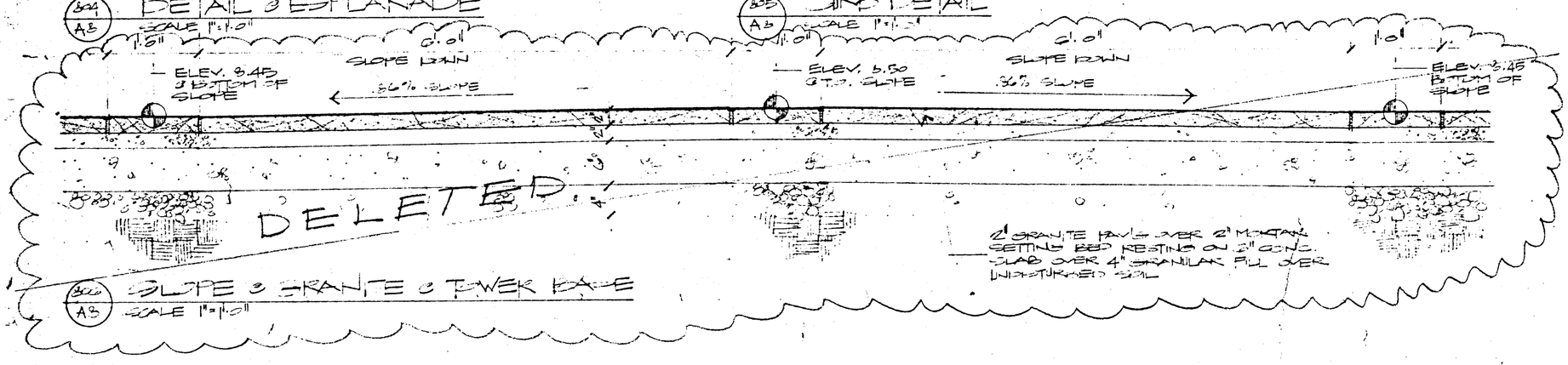
A2/A3 GRANITE CLADDING PLAN NORTH TOWER SCALE 1/2"=1'-0"

A3/A3 PAVING & GRADING SCALE 1/4"=1'-0"



A4/A3 DETAIL @ ESPLANADE SCALE 1"=1'-0"

A5/A3 CURB DETAIL SCALE 1"=1'-0"



A6/A3 SLOPE @ GRANITE @ TOWER BASE SCALE 1"=1'-0"

Battery Park City Authority
One World Financial Center
New York, New York

ANDERSON/SCHWARTZ
40 HUDSON STREET
NEW YORK, N.Y. 10013

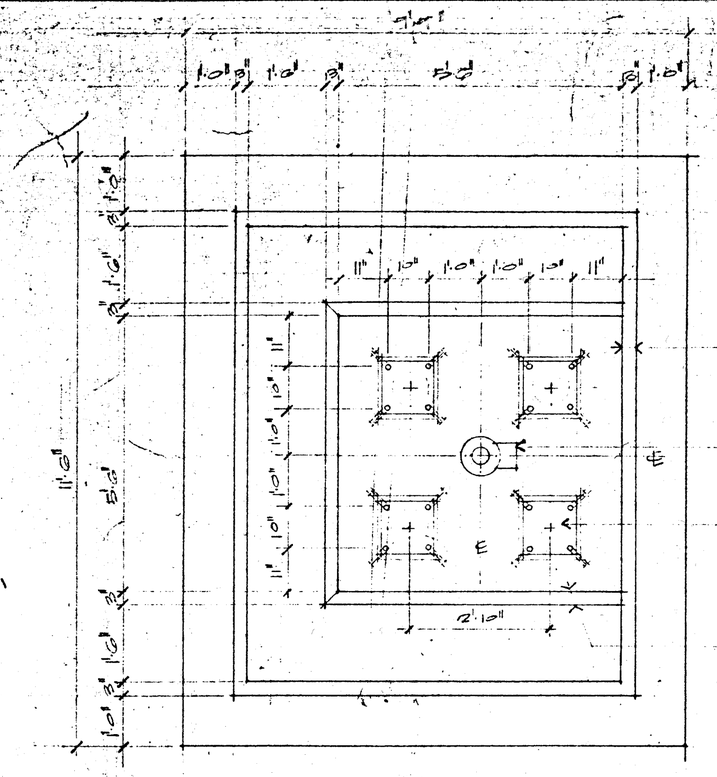
R.M. FISCHER
71 WEST BROADWAY
NEW YORK, N.Y.

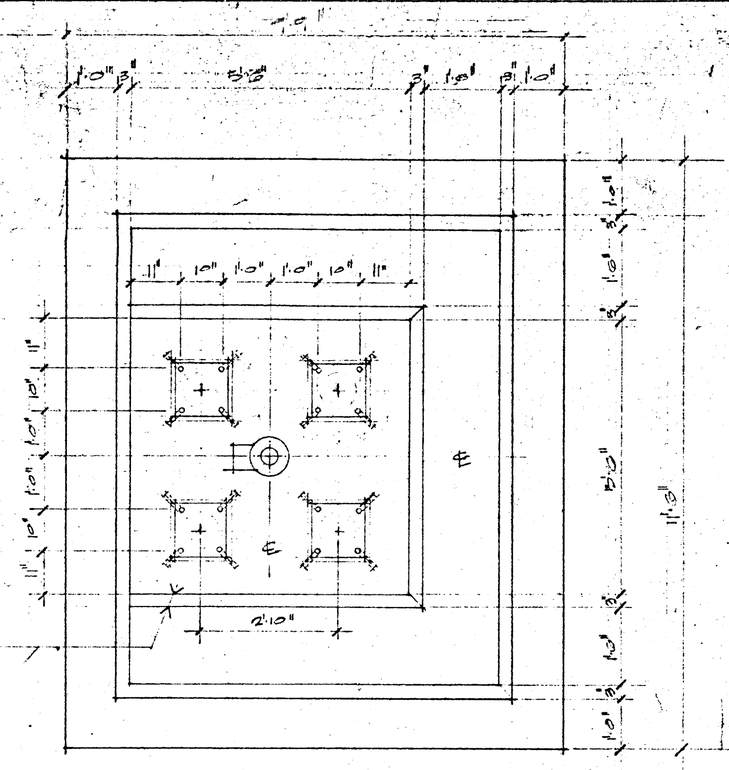
BATTERY PARK CITY AUTHORITY
Fine Arts Program

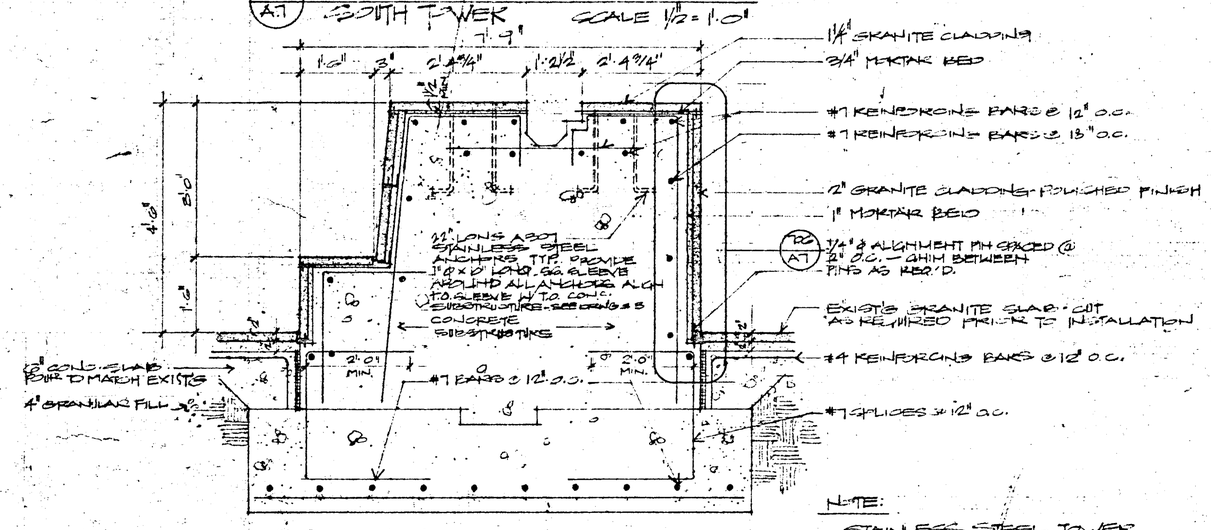
PAVING DETAILS/GRADING PLAN

Date: 10/5/27/3/15/85
Scale:
Drawn:
Checked:
Revised:

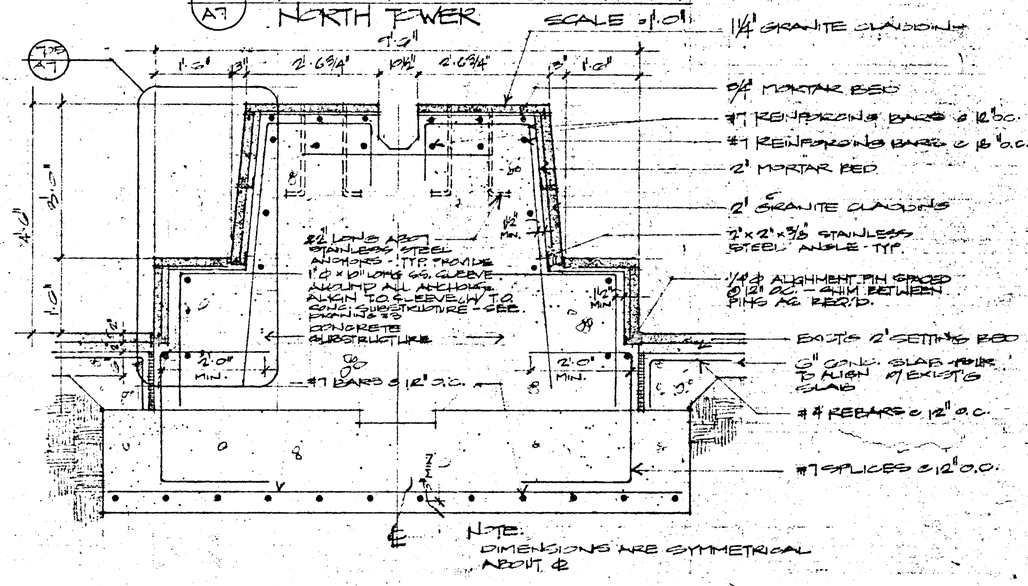
A8



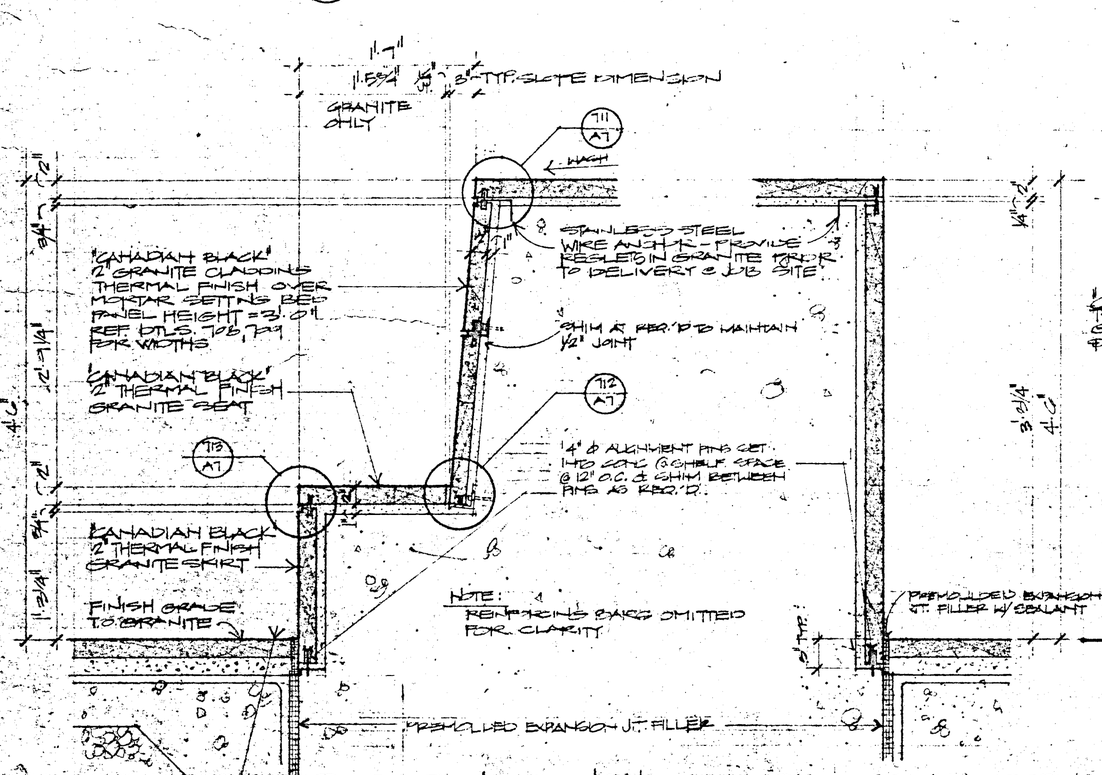


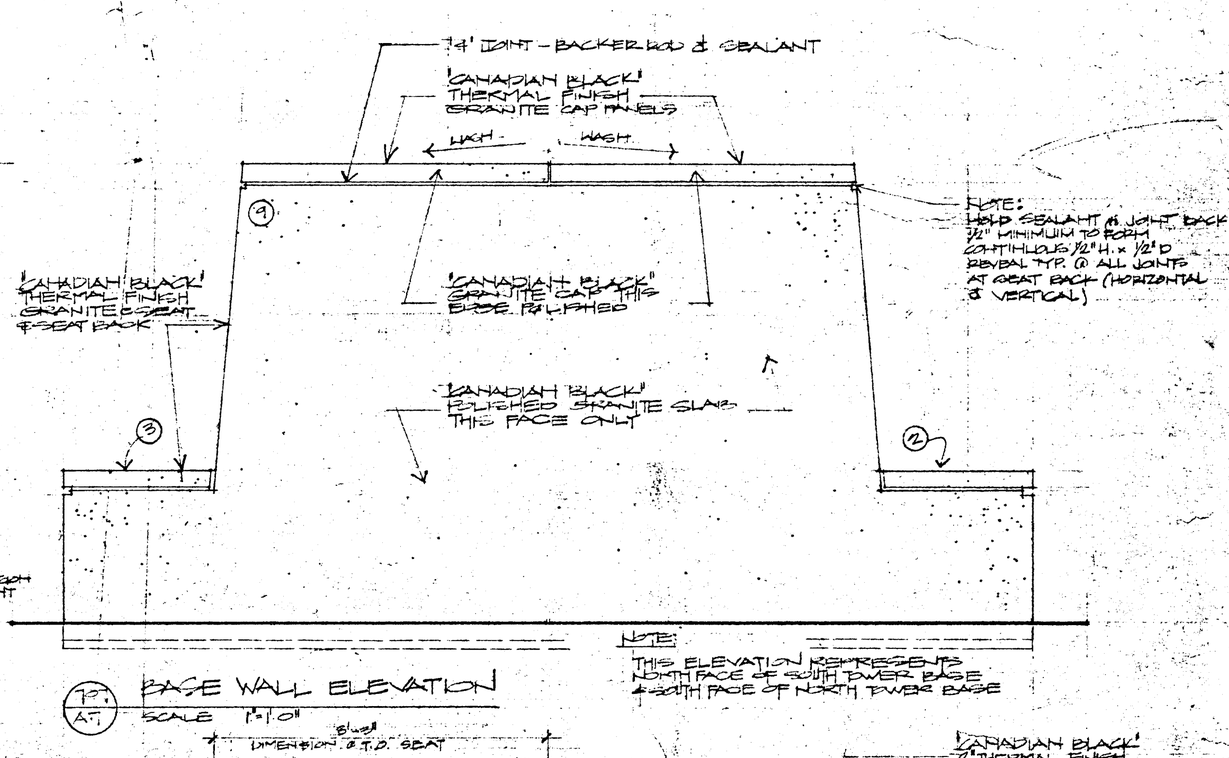


NOTE:
STAINLESS STEEL TOWER MASTS & BASE SLEEVES NOT SHOWN IN DETAILS 7/03-709 FOR CLARITY

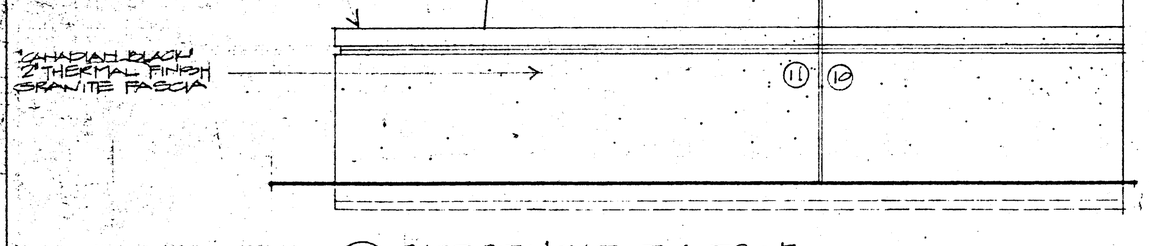


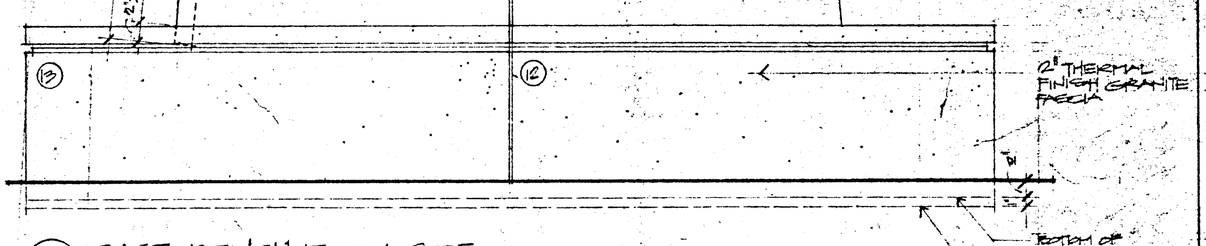
NOTE:
DIMENSIONS ARE SYMMETRICAL ABOUT ℄

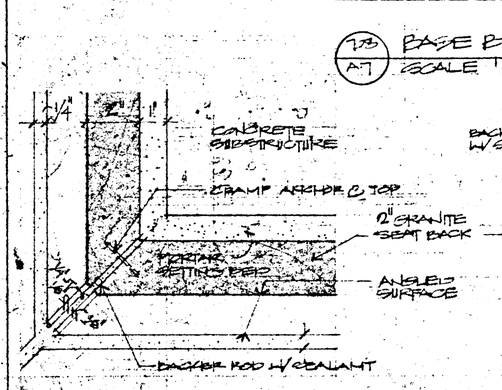


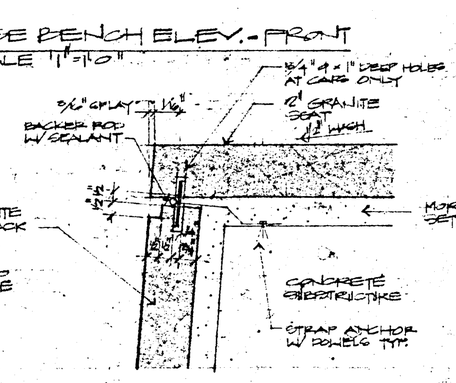


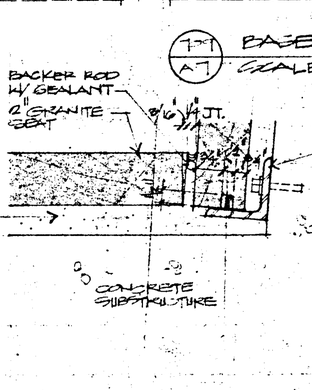
NOTE:
THIS ELEVATION REPRESENTS NORTH FACE OF SOUTH TOWER BASE & SOUTH FACE OF NORTH TOWER BASE

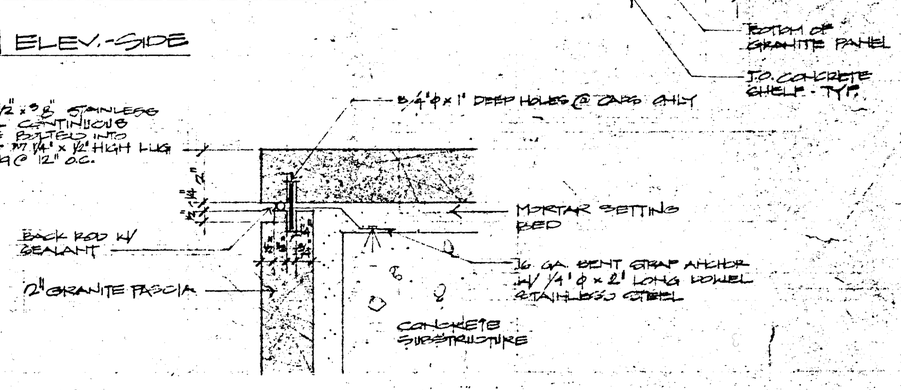












Rector Gate © 1985-89 R.M. Fischer

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New York, New York

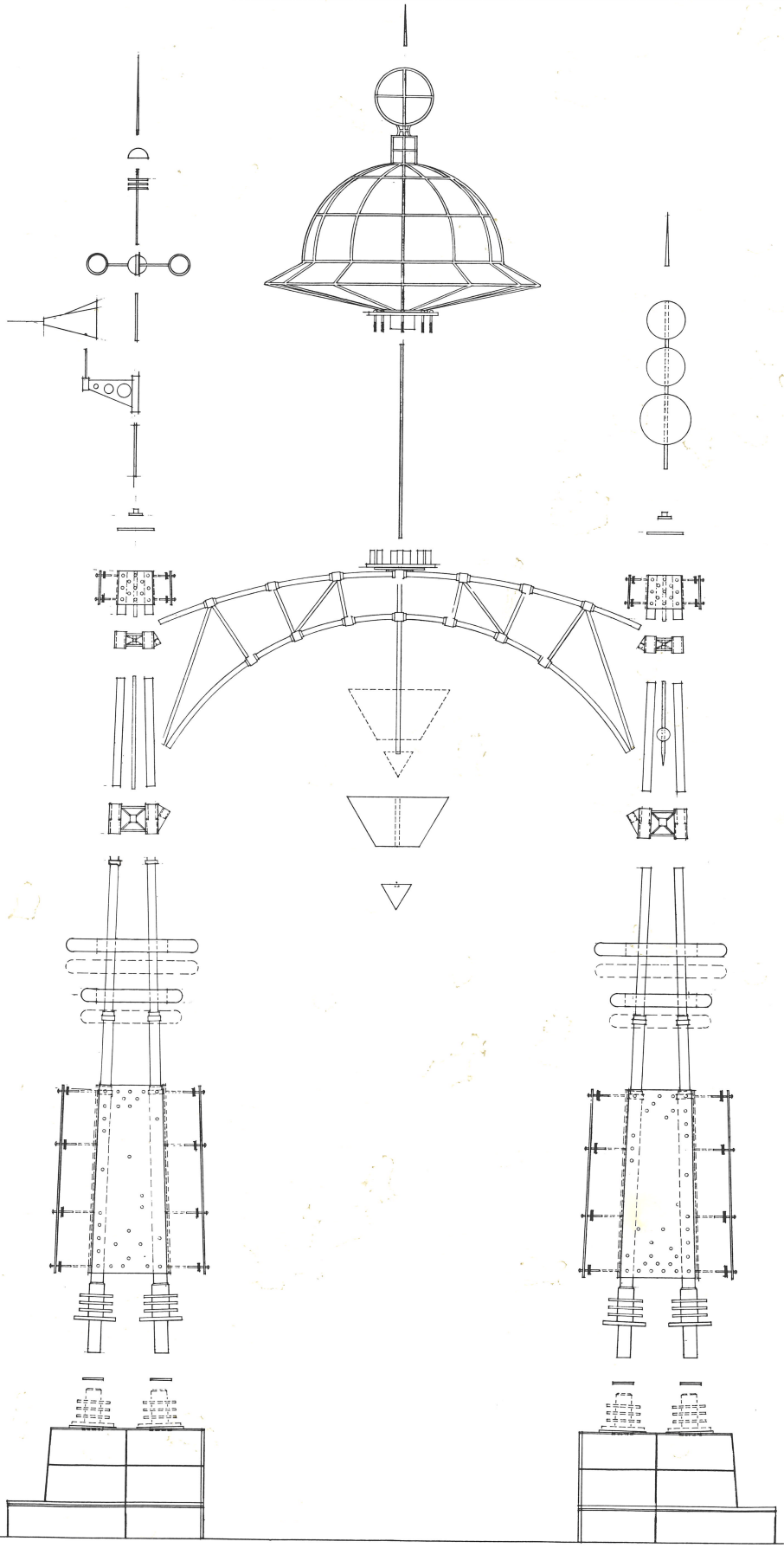
ANDERSON/SCHWARTZ
40 HUDSON STREET
NEW YORK, N.Y. 10013

R.M. FISCHER
71 WEST BROADWAY
NEW YORK, N.Y.

FOUNDATION/GRANITE CLADDING DETAILS

Date: 10/15/87, 3/15/88
Scale:
Drawn:
Checked:
Revised:

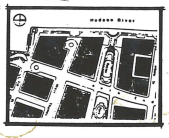
A7



EXPLODED ELEVATION

SCALE: ½" = 1'-0"

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New York, New York

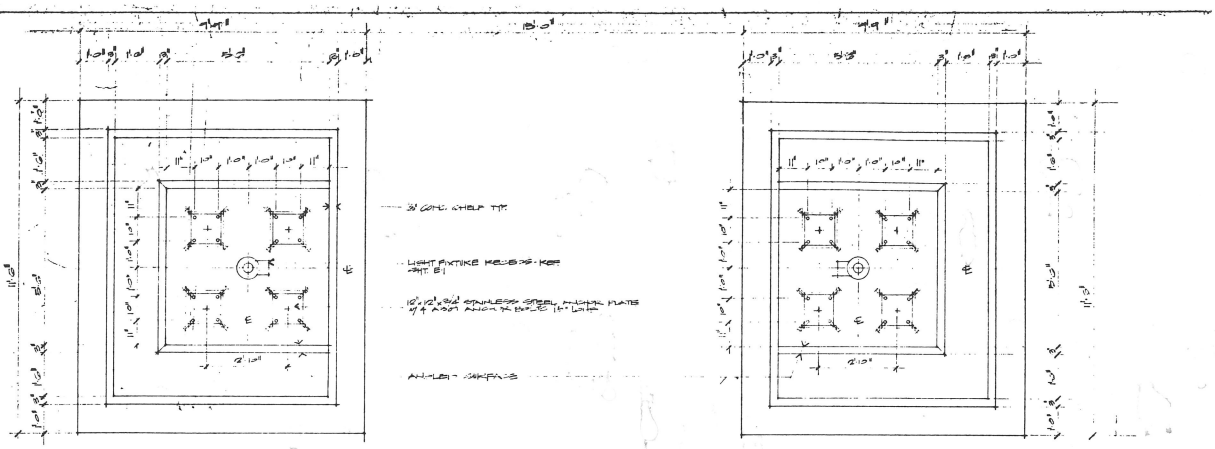
ANDERSON/SCHWARTZ
40 HUDSON STREET
NEW YORK, N.Y. 10013

R.M.FISCHER
71 WEST BROADWAY
NEW YORK, N.Y.

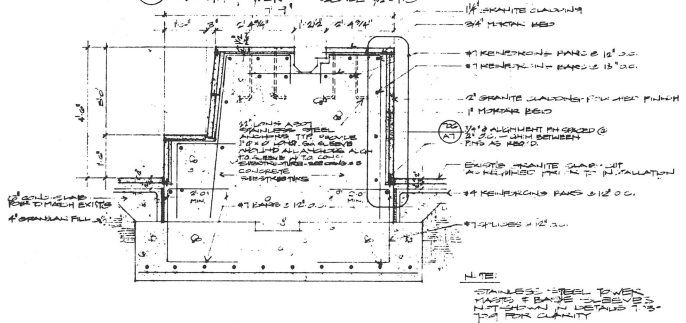
EXPLODED DIAGRAM/FINISHES

Date: 4/01/87
Scale:
Drawn:
Checked:
Revised:

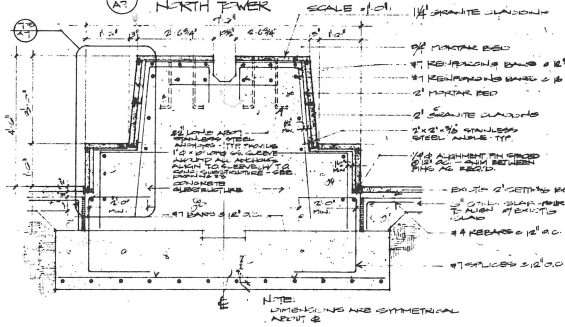
A6



A7.1 FOUNDATION/SUBSTRUCTURE PLAN
SOUTH TOWER
SCALE 1/2"=1'-0"

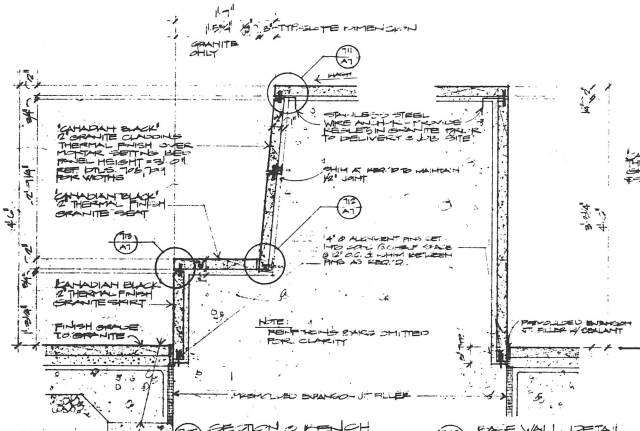


A7.2 FOUNDATION/SUBSTRUCTURE PLAN
NORTH TOWER
SCALE 1/2"=1'-0"

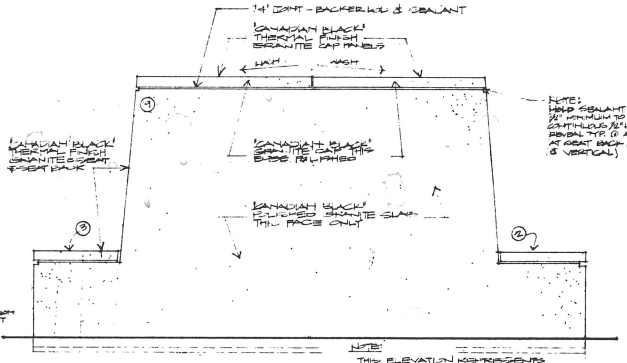


A7.3 FOOTING SECTION
SCALE 1½"=1'-0"

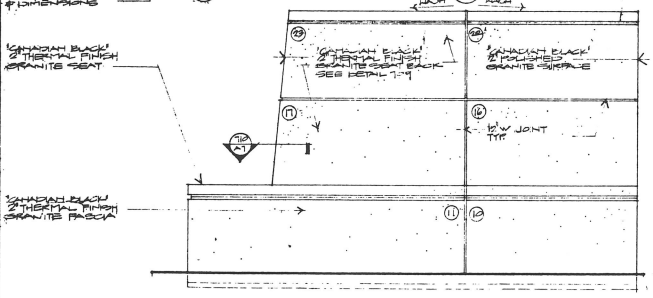
A7.4 FOOTING SECTION
SCALE 1½"=1'-0"



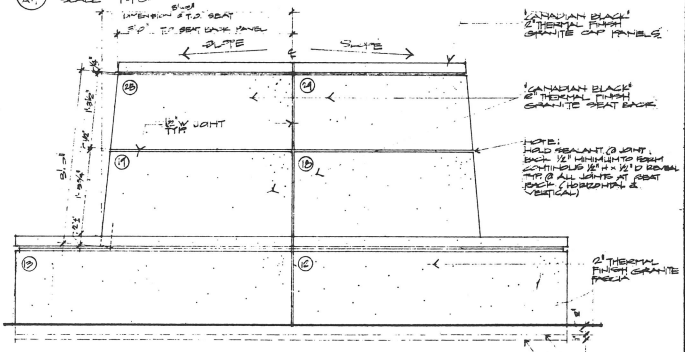
A7.5 SECTION @ BENCH
SCALE 1"=1'-0"



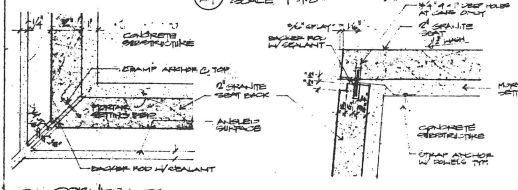
A7.6 BASE WALL DETAIL
SCALE 1"=1'-0"



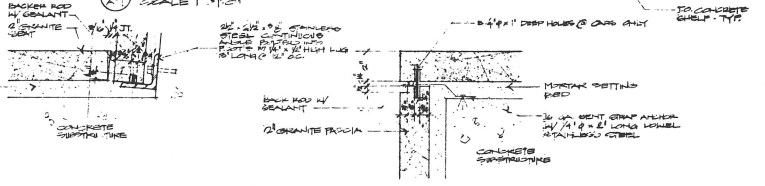
A7.7 BASE WALL ELEVATION
SCALE 1"=1'-0"



A7.8 BASE BENCH ELEV. - FRONT
SCALE 1"=1'-0"



A7.9 BASE BENCH ELEV. - SIDE
SCALE 1"=1'-0"



A7.10 CORNER DETAIL
SCALE 3"=1'-0"

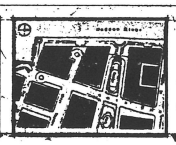
A7.11 DETAIL
SCALE 3"=1'-0"

A7.12 DETAIL
SCALE 3"=1'-0"

A7.13 DETAIL
SCALE 3"=1'-0"

Rocker Collection for R.M. Fischer

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Fine Arts Program



Battery Park City Authority
One World Financial Center
New York, New York

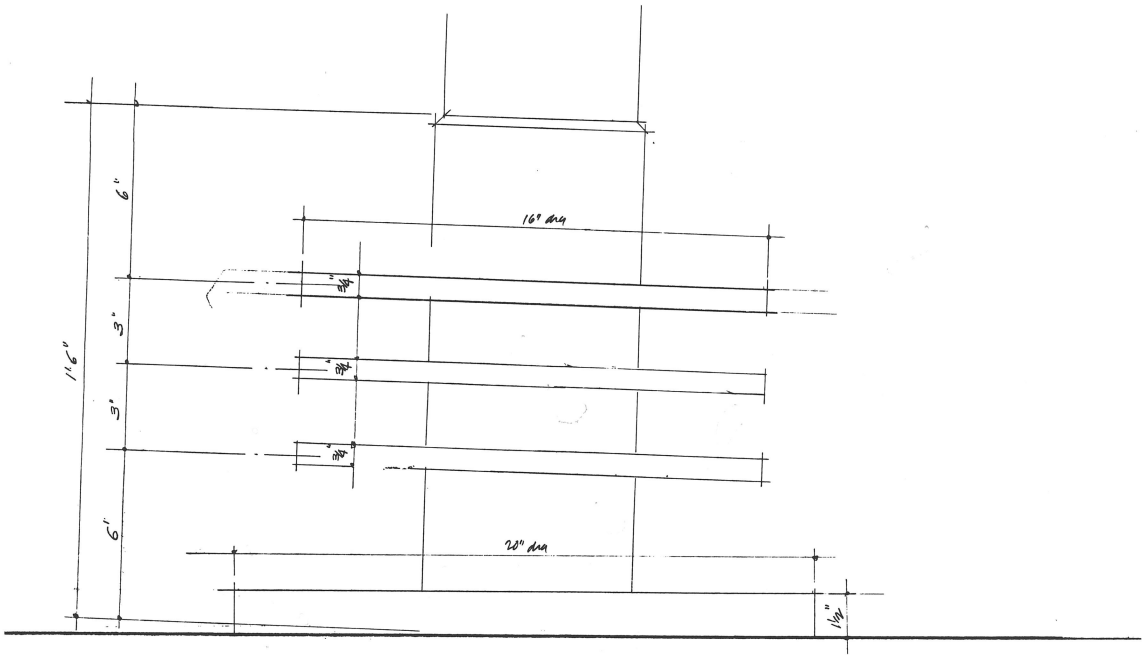
ANDERSON/SCHWARTZ
40 HUDSON STREET
NEW YORK, N.Y. 10013

R.M. FISCHER
71 WEST BROADWAY
NEW YORK, N.Y.

FOUNDATION/GRANITE CLADDING DETAILS

Date: 10/15/87 3/16/88
Scale:
Drawn:
Checked:
Revised:

A7

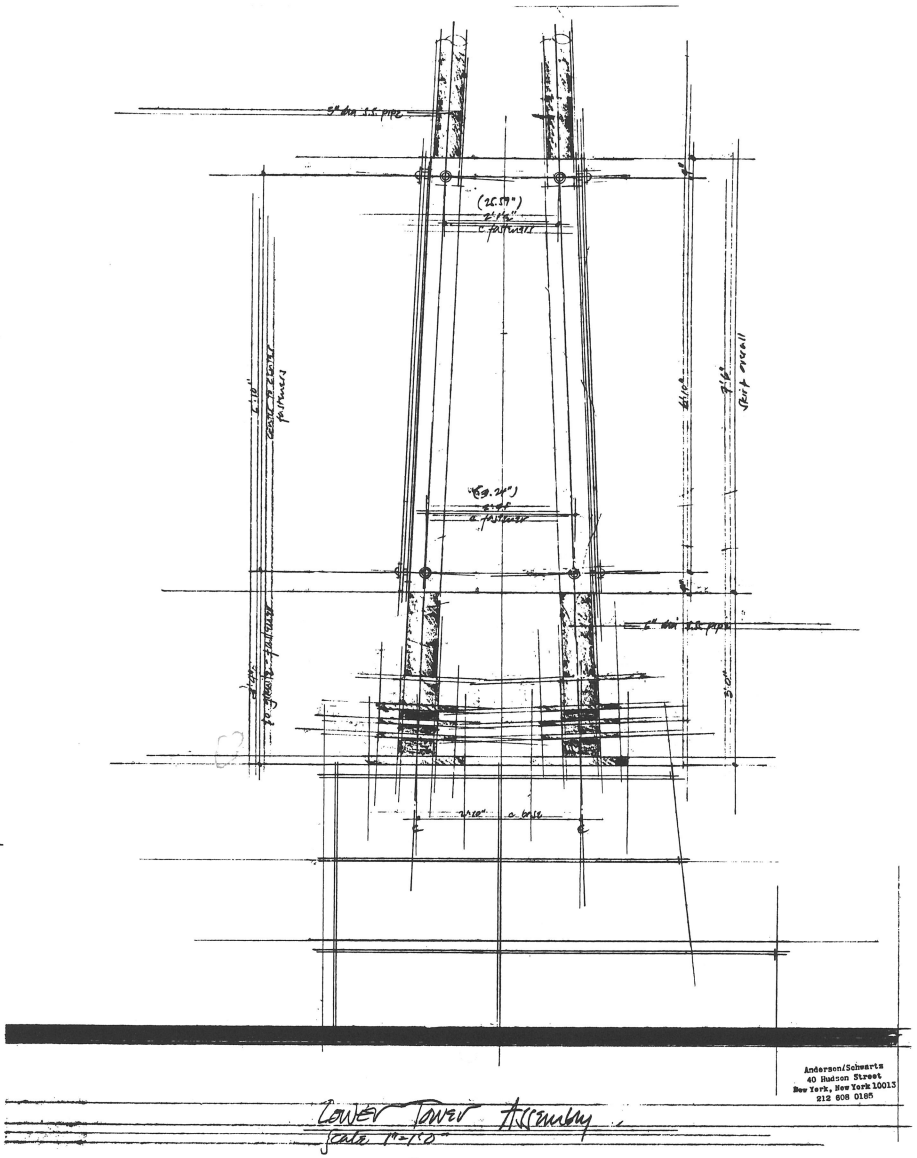


Stainless Steel Base Collar / Anchor Plate
Scale 1½" Full

FEB 15 1988

Anderson/Schwartz
40 Hudson Street
New York New York 10013
212 608 0185

FEB 23 1988
SUPPLEMENTAL DRAWING #2

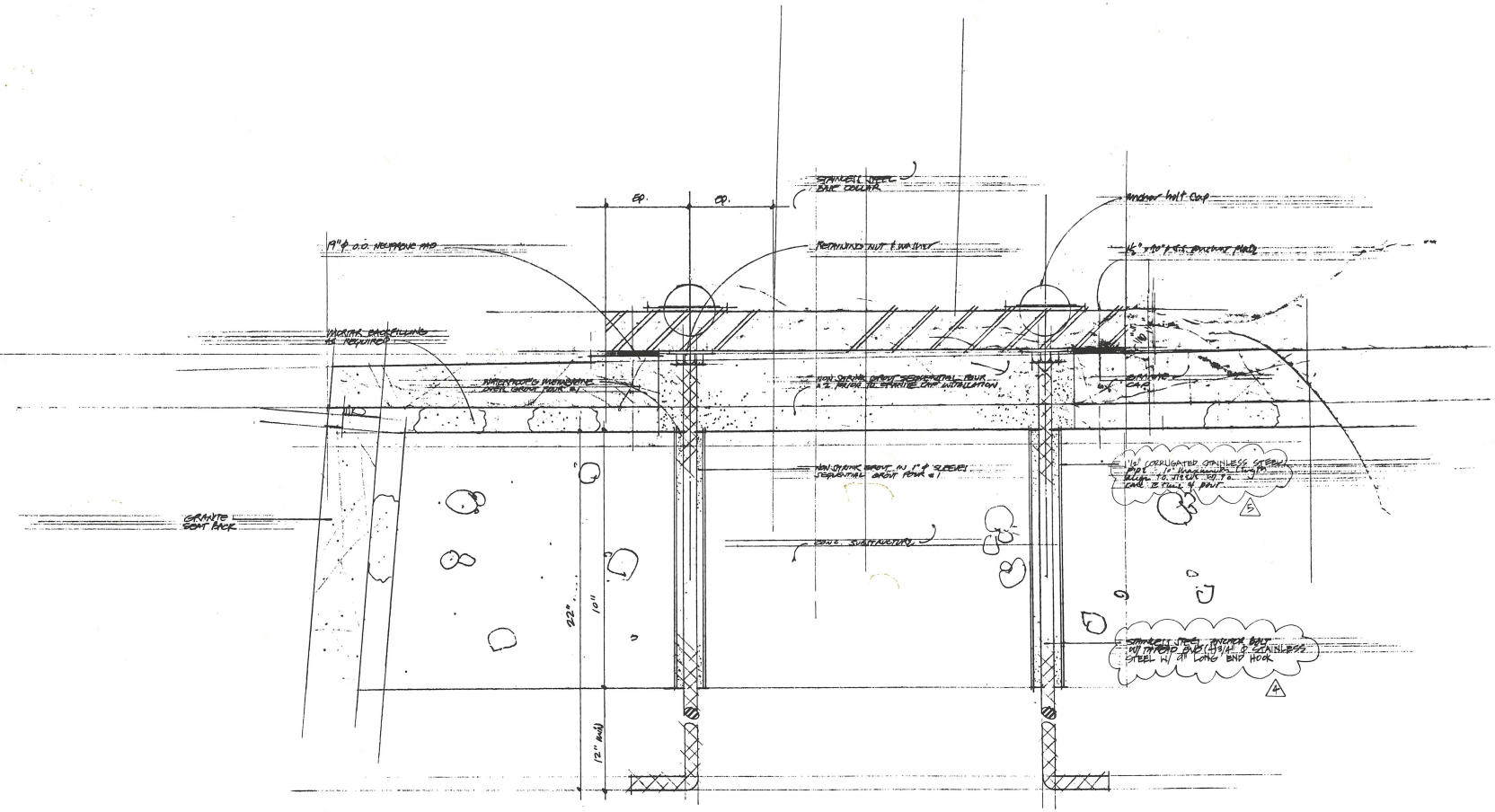


Lower Tower Assembly
Scale 1"=1'-0"

Anderson/Schwartz
40 Hudson Street
New York, New York 10013
212 608 0185

FEB 15 1988
FEB 23 1988
SUPPLEMENTAL DRAWING #1

Reider Code © 1985-87 R M Franken



Anchor Plate Detail

Scale = 1/2 of full

Anderson/Lu... ...ts
40 Hudson Street
New York, New York 10013
212 608 0185

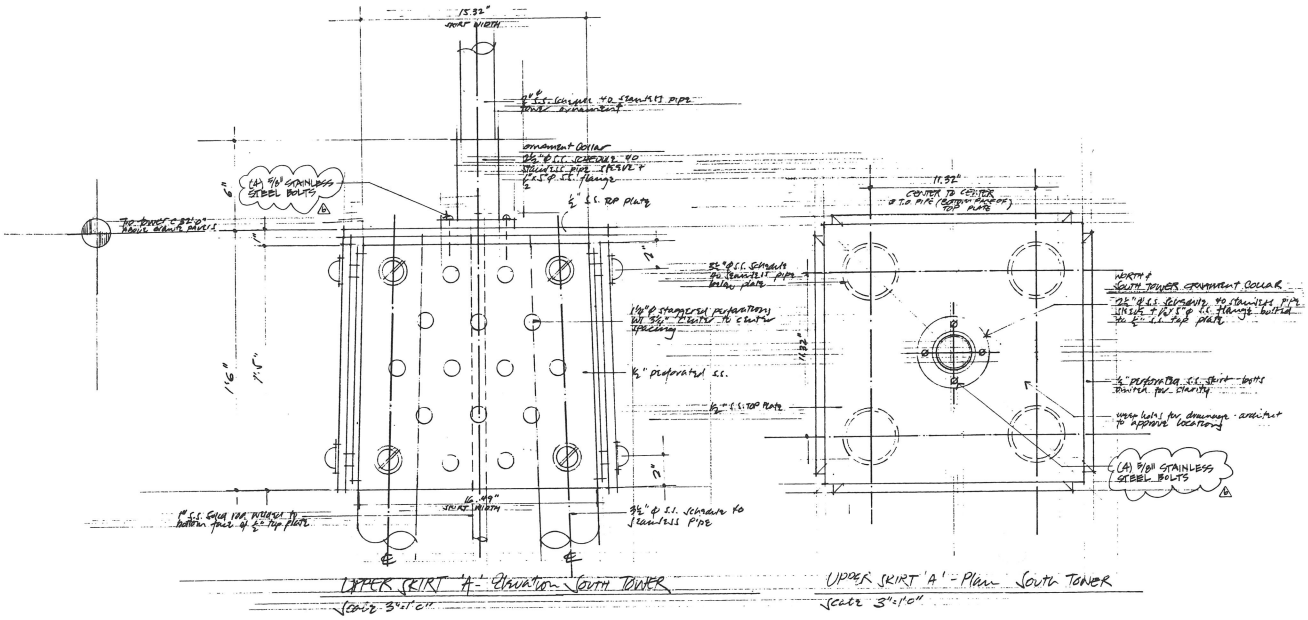
FEB 15 1988

FEB 23 1988

SUPPLEMENTAL DRWG # 3

4 3/25/88 REVISED

5 3/25/88 REVISED



UPPER SKIRT 'A' - Elevation SOUTH TOWER
Scale 3"=1'-0"

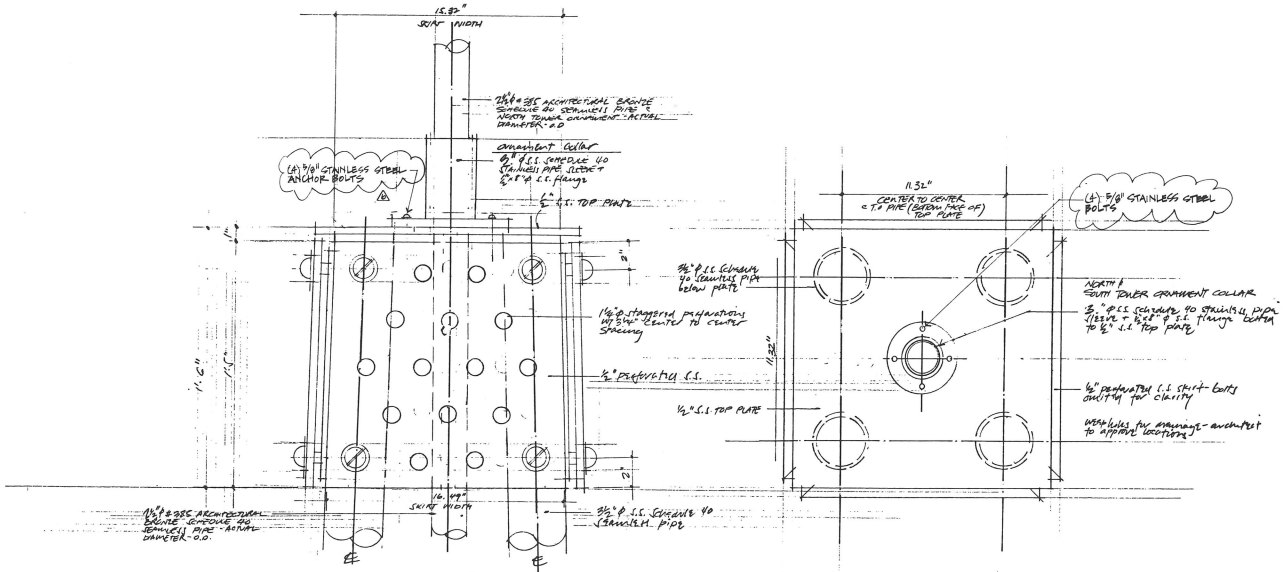
UPPER SKIRT 'A' - Plan SOUTH TOWER
Scale 3"=1'-0"

SUPPLEMENTAL DWG # 7

Anderson/Schwartz
43 Hudson Street
New York, New York 10013
212 608 0185

FEB 15 1988

FEB 22 1988



UPPER SKIRT 'B' - Elevation North Tower
Scale 3"=1'-0"

UPPER SKIRT 'B' - Plan North Tower
Scale 3"=1'-0"

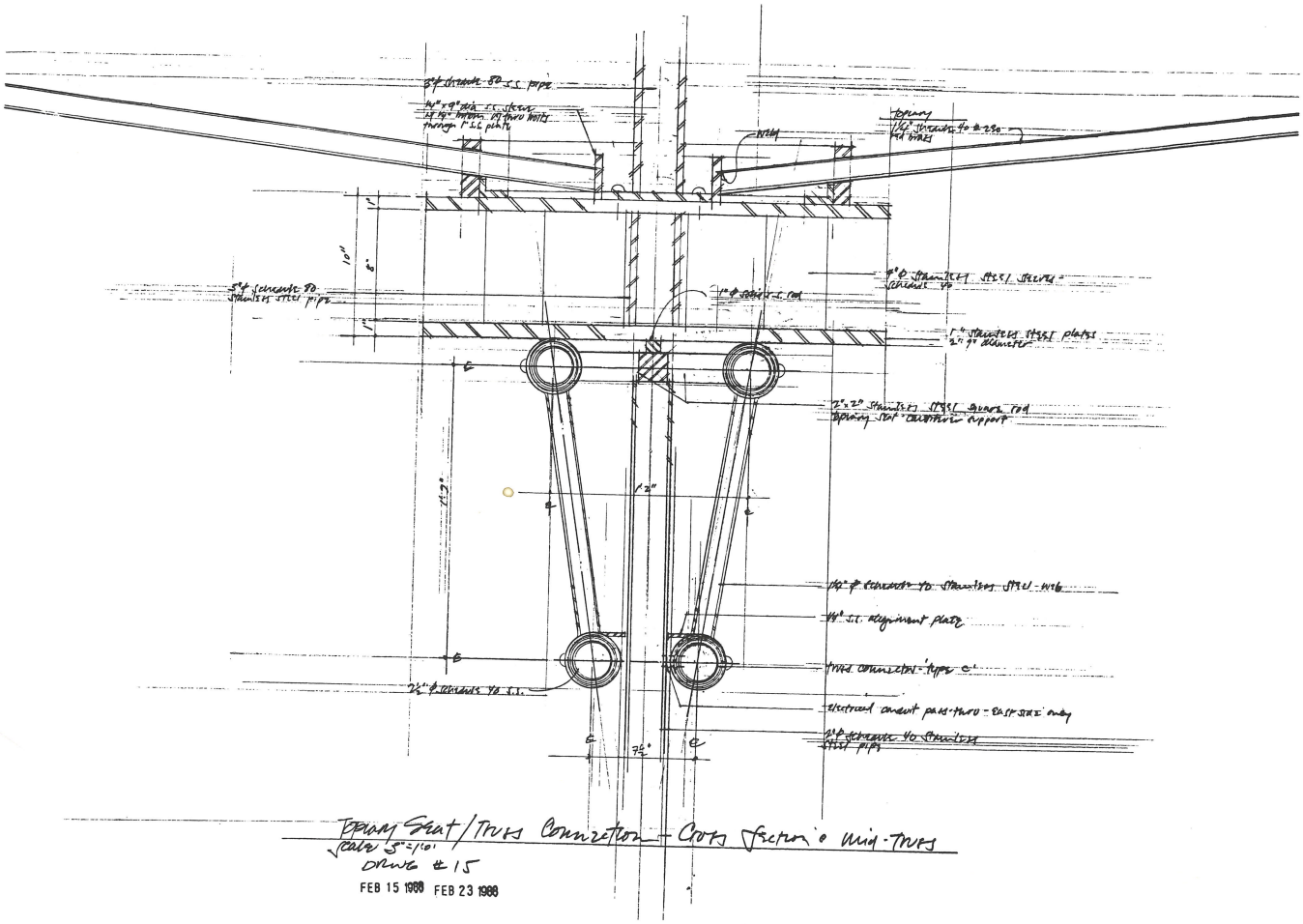
SUPPLEMENTAL DRAWING # 7A

Anderson/Schwartz
43 Hudson Street
New York, New York 10013
212 608 0185

FEB 15 1988

FEB 22 1988

⚠ REVISED 3/25/88

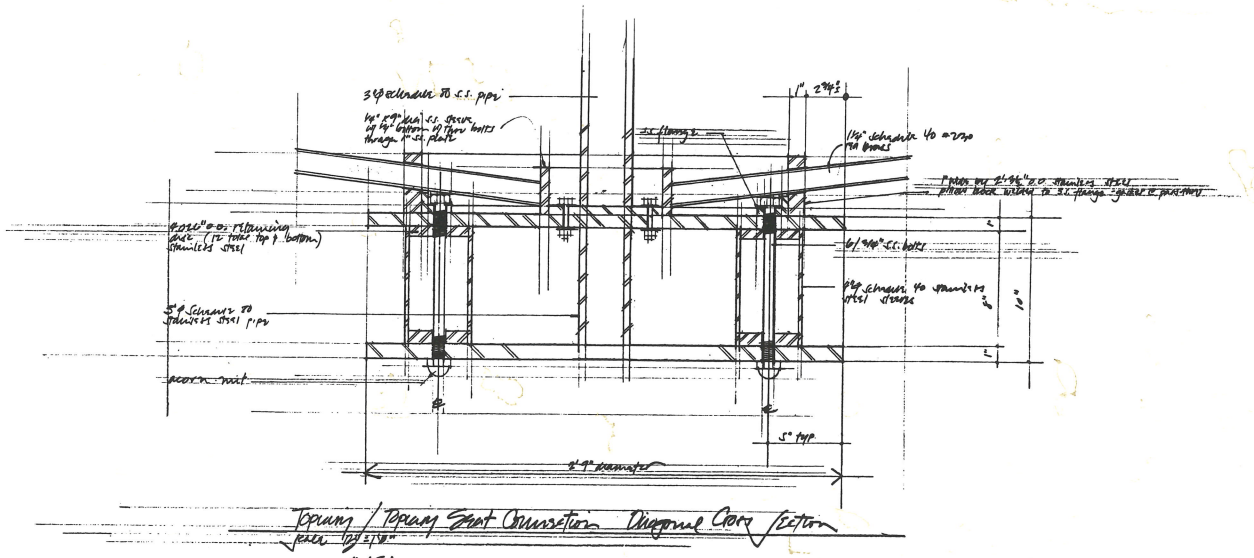


Topping Seat / Truss Connection - Cross Section @ Mid-Truss

Scale 3" = 1'-0"

Drwg # 15

FEB 15 1988 FEB 23 1988



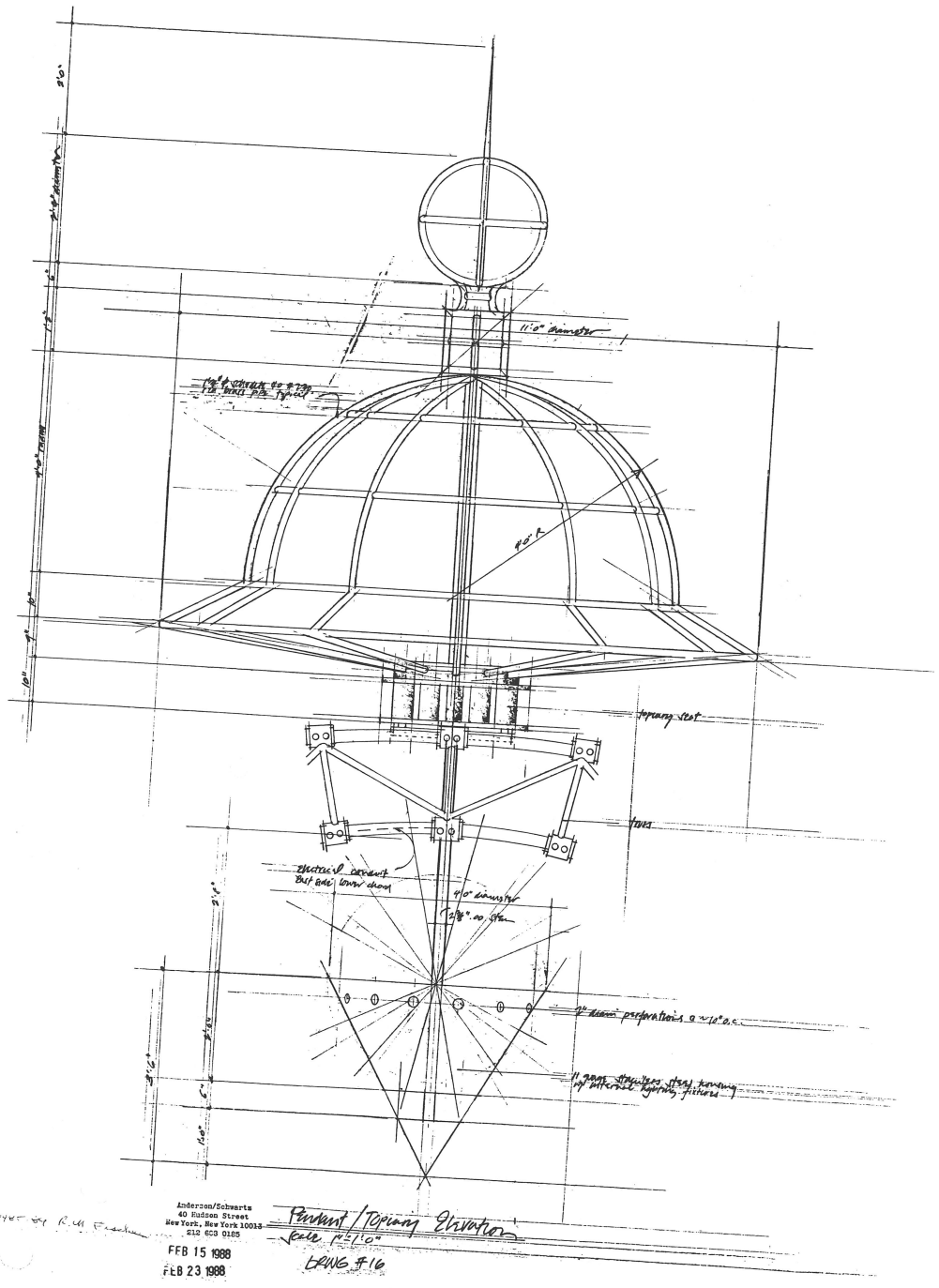
Topping / Topping Seat Connection Diagonal Cross Section

Scale 1 1/2" = 1'-0"

Drwg # 15A

Anderson/Schwartz
40 Hudson Street
New York, New York 10013
212 608 0185

FEB 15 1988
FEB 23 1988

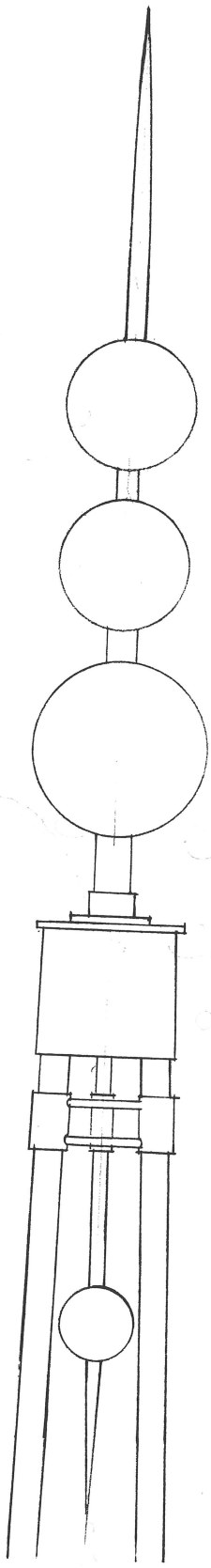


Anderson/Schwartz
40 Hudson Street
New York, New York 10013
212 608 0185

Pendant / Topiary Elevation
Scale 1"=1'-0"
DRWG #16

Revised date 2/14/88 for R.M. Fischer

FEB 15 1988
FEB 23 1988

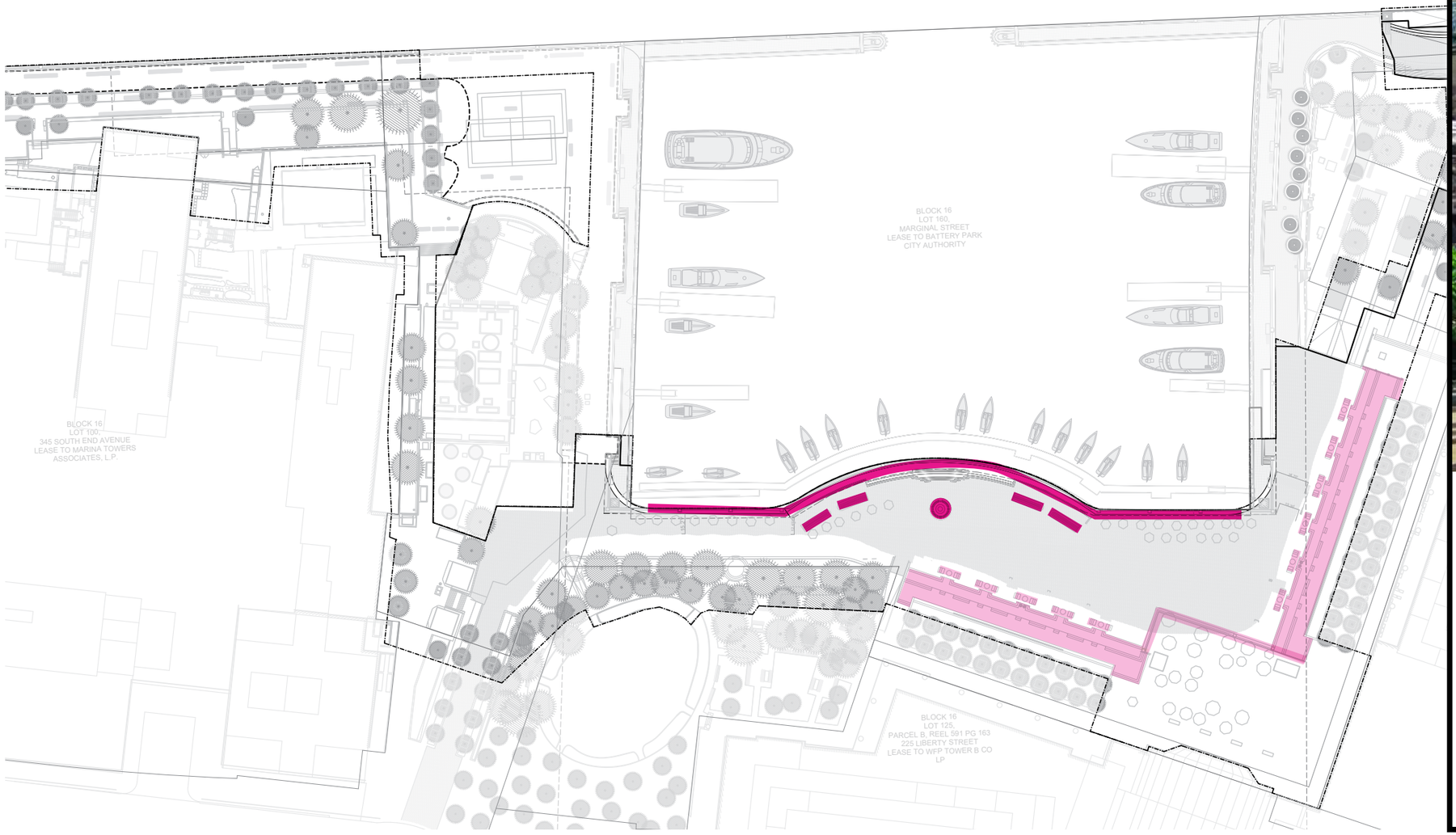


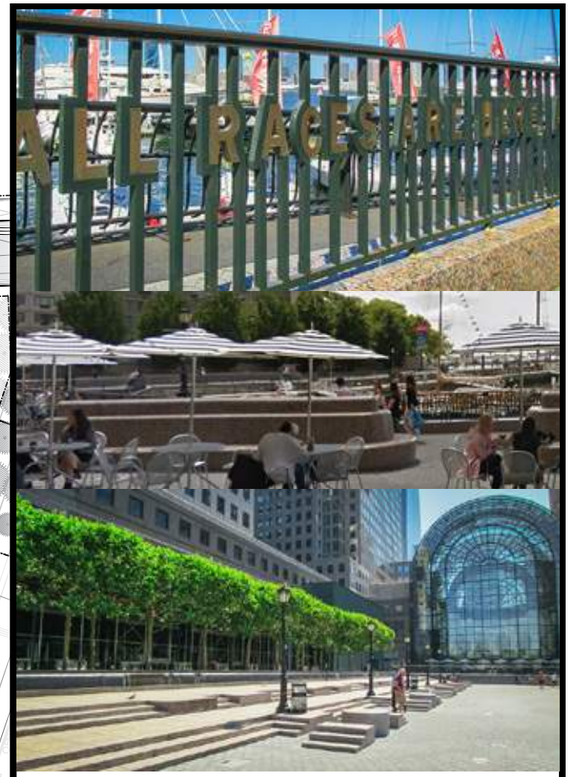
SCALE 3/4"=1'-0"

North Tower Elevation
revised #19a

Rector Gate © 1985-89 R.M. Fischer

Art Installation and Sculptures - Reach 5



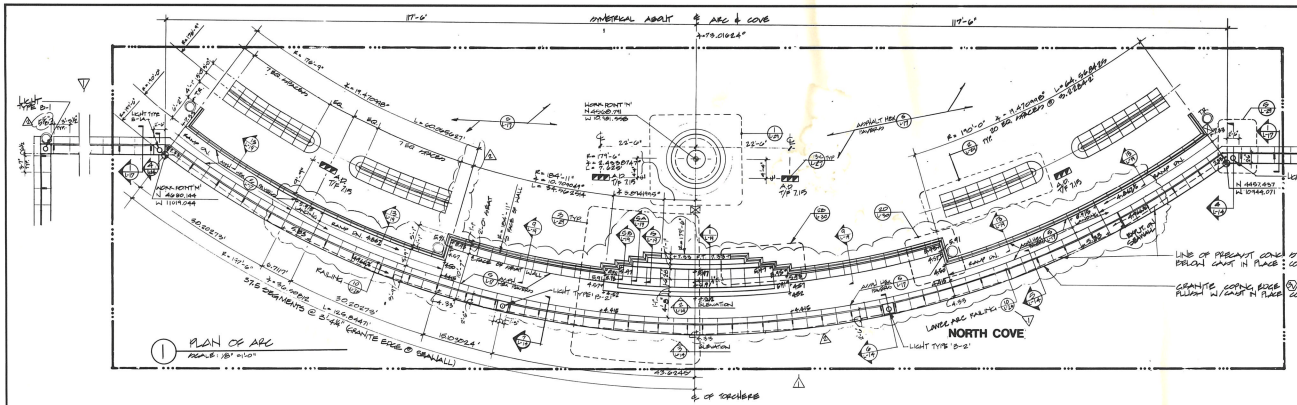


WATERFRONT PLAZA
Siah Armajani & Scott Burton

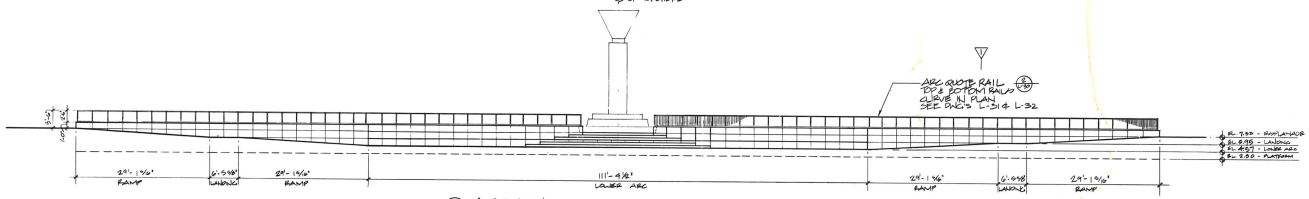
Within Limit of Work: Yes

Location: West of the Winter Garden (Brookfield Place)

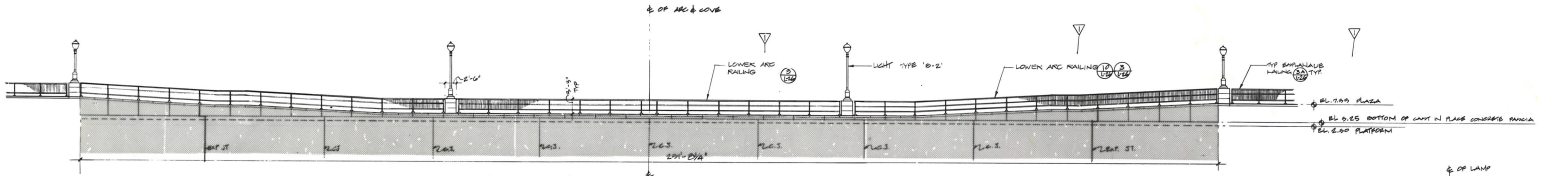
Action: Guardrails and seating on esplanade to be protected in place by BPCA or PDB?



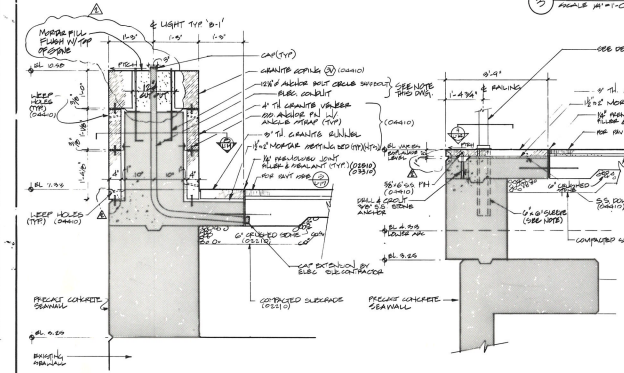
1 PLAN OF ARC
SCALE: 1/8" = 1'-0"



2 ELEVATION
SCALE: 1/8" = 1'-0"

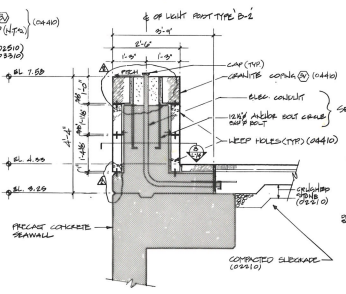


3 ELEVATION OF SEAWALL @ ARC
SCALE: 1/4" = 1'-0"



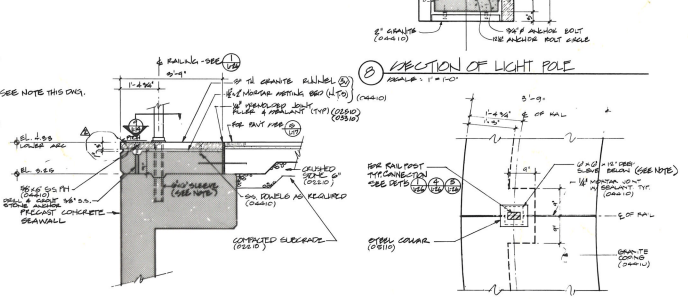
4 SECTION - ARC SEAWALL @ ELEV. 7.33
SCALE: 1" = 1'-0"

5 SECTION - ARC SEAWALL @ ELEV. 5.32
SCALE: 3/4" = 1'-0"

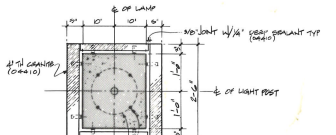


6 SECTION - ARC SEAWALL @ ELEV. 4.33
SCALE: 3/4" = 1'-0"

NOTE:
SHADED AREAS IN THIS DRAWING DENOTE WORK UNDER ARC CONTRACT WHICH INCLUDES ANCHOR BOLTS, SLEEVES IN CONC, ELEC CONDUIT AND REBARS. FOR DETAILS, INFO, SEE ARC CONTRACT DRAWINGS. PL-C1-ST-1 THRU 4.



7 SECTION - ARC SEAWALL @ ELEV. 4.33
SCALE: 3/4" = 1'-0"



8 SECTION OF LIGHT POLE
SCALE: 1" = 1'-0"

9 DETAIL OF RAIL POST SLEEVE
SCALE: 1" = 1'-0"

Revisions		
	ISSUED FOR BID	DEC 28
	REVISED BID ISSUE	2-25-86
	REVISED BID ISSUE	1-8-86
	REVISED BID ISSUE	2.7.86
1	GENERAL REVISION	6.9.86
2	PL-C1-PL-L4	8.9.88

Oscar Peri and Associates
Design Architects
1056 Chapel Street
New Haven, Connecticut 06510

M. Paul Friedberg & Partners
Landscape Architects
36 West 53rd Street
New York, New York 10023

Armajani-Burton Public Art Inc.
c/o Fox Glyn & Melamed
One Broadway
New York, New York 10004

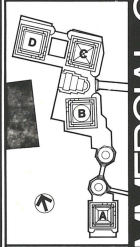
Adamson Associates Architects Planners
Building Site Heritage Coordination
2 Gloucester Street
Toronto, Ontario M4Y 1L3

Volmer Associates
Consulting Civil Engineers
11 West 19th Street
New York, New York 10011

Norman D. Kurtz
Consulting Engineers
475 Fifth Avenue
New York, New York 10017

Mueser Rutledge Consulting Engineers
Foundation Engineers
708 Third Avenue
New York, New York 10017

Fisher & Marantz Inc
Lighting Consultants
126 Fifth Avenue
New York, New York 10011



North

Contractor must check all dimensions

Drawn	Approved
D.J.T	S.T.L.
Checked	Date
R.—	8.19.85
Scale	
AS SHOWN	

Detail

Refer to sheet — Found on sheet

Title
PARTIAL PLAN:
THE ARC
(COVE PROJECTION)

Drawing: PL-C1-L14
Project

BATTERY PARK CITY COMMERCIAL CENTER OLYMPIA & YORK



Fig. 3: Detail of railing showing corrosion of steel and staining on granite below, and cracks and losses to the granite


Fig. 4: Detail of railing showing missing/deteriorated caulk and iron stains on granite

Art Installation and Sculptures - Reach 5



PYLONS

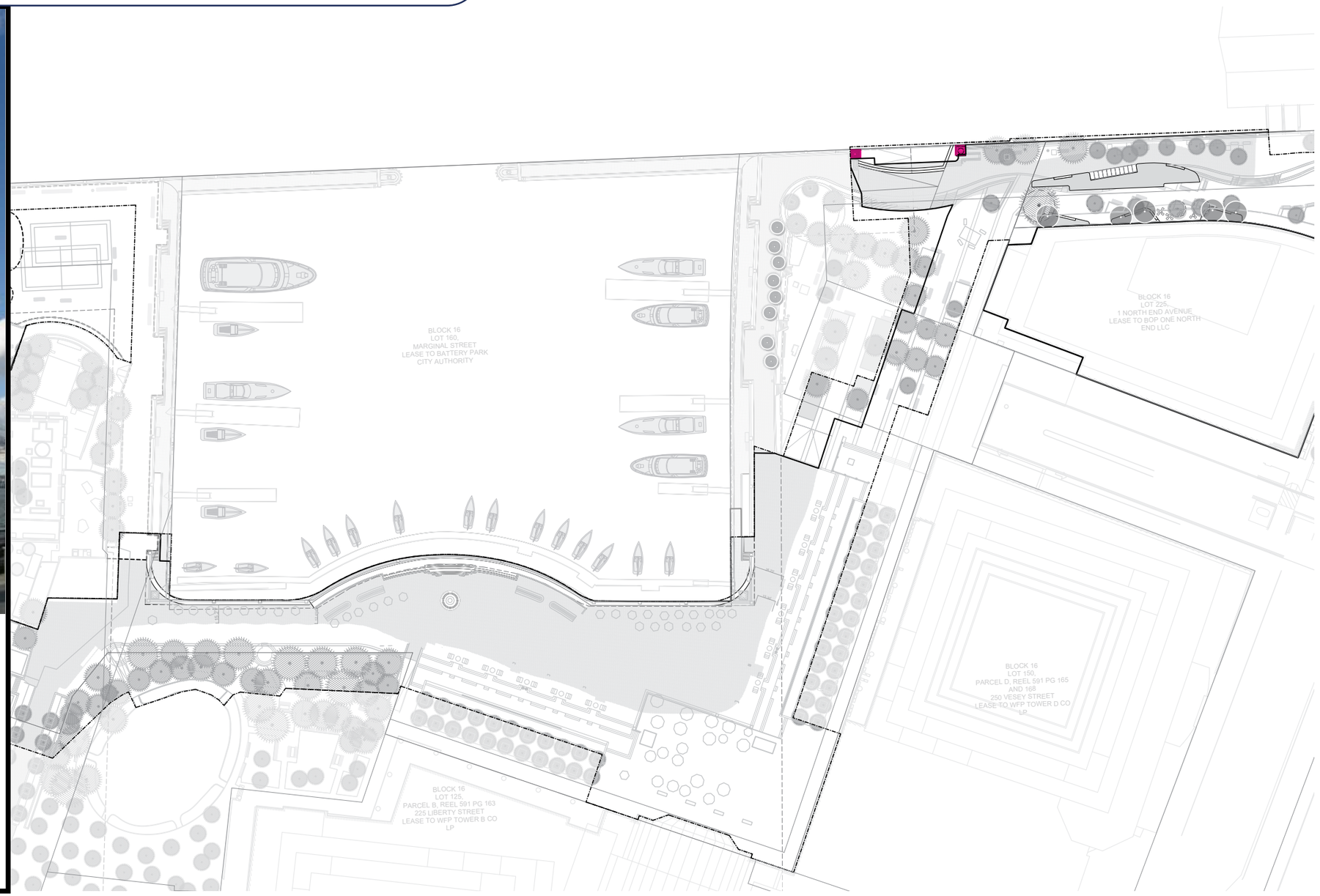
Martin Puryear

Within Limit of Work: Yes

Installation: 1995

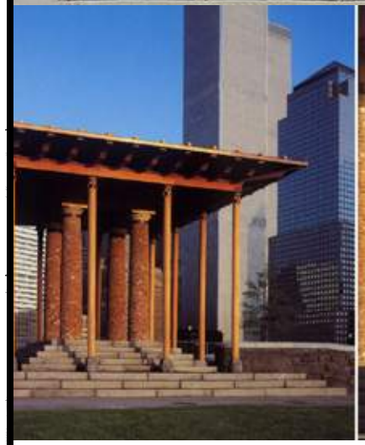
Location: The Esplanade, just north of North Cove

Action: To be protected in place by BPCA OR PDB?



Art Installation and Sculptures - Reach 3





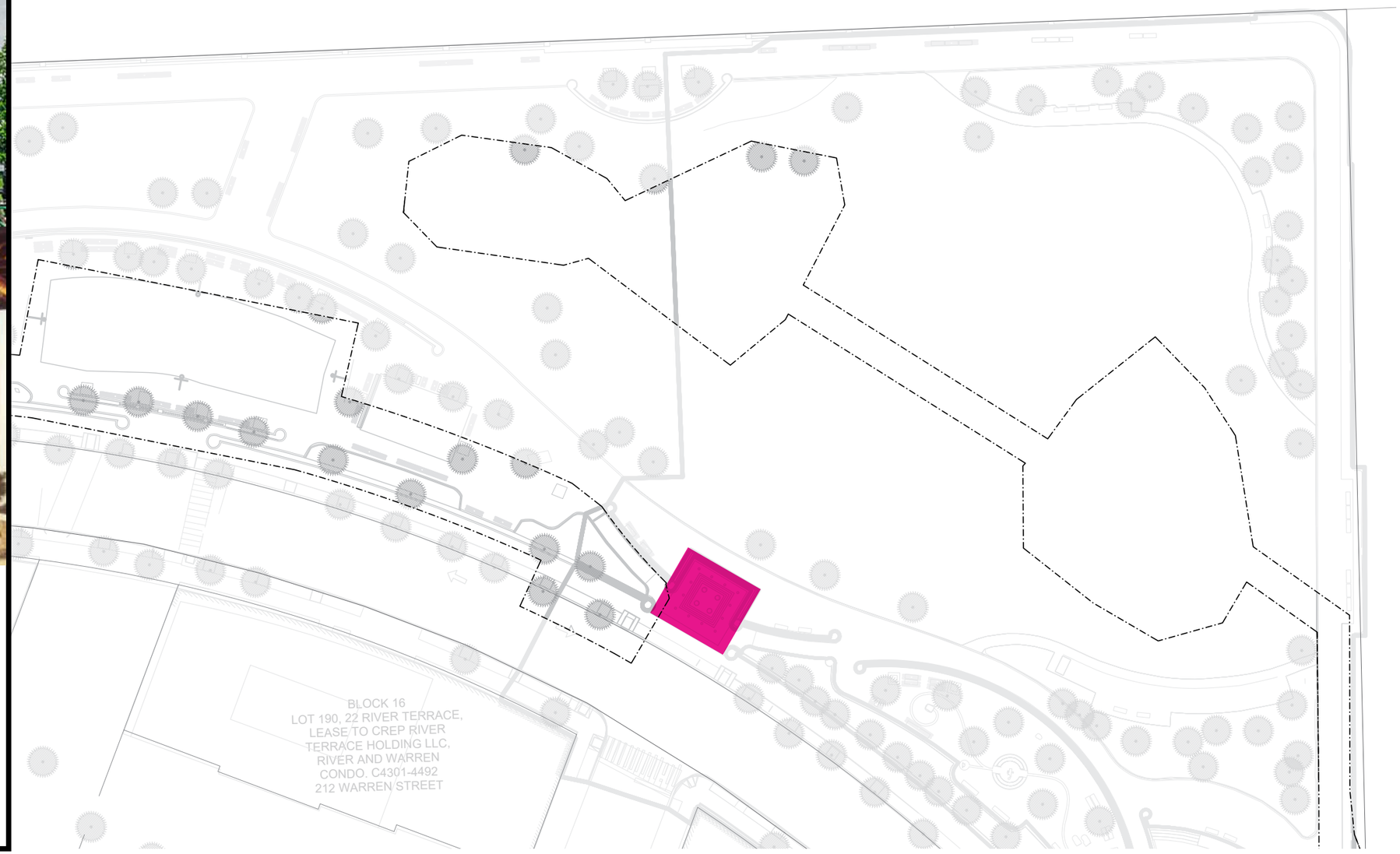


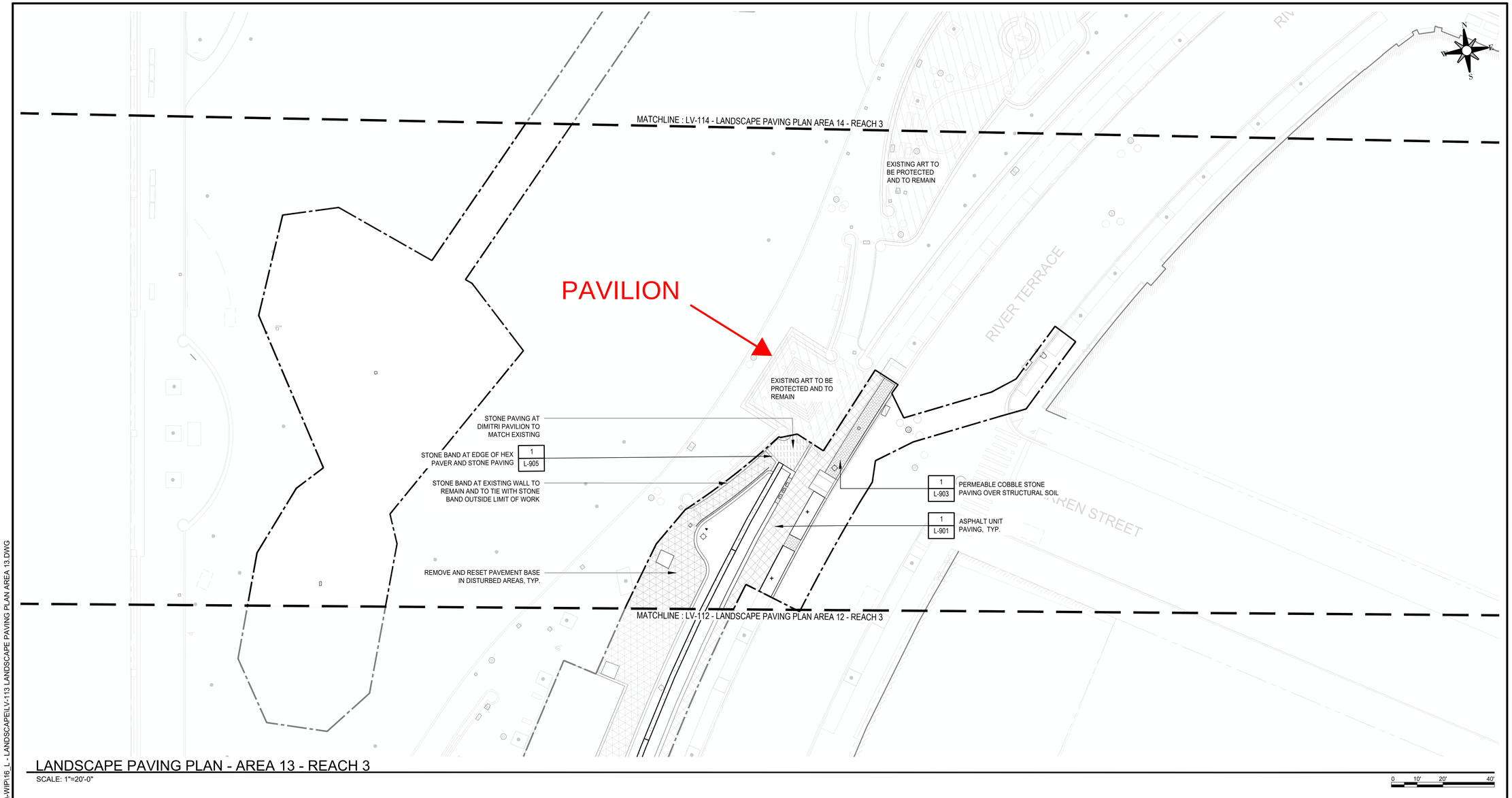
PAVILION
Demetri Porphyrios

Within Limit of Work: No

Installation: 1992

Action: Not in LOW but directly adjacent. To be protected in place by BPCA or PDB?

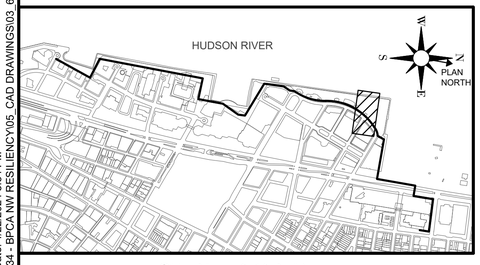




LANDSCAPE PAVING PLAN - AREA 13 - REACH 3

SCALE: 1"=20'-0"

0 10' 20' 40'



OVERALL KEY PLAN

LEGEND:

- LIMIT OF WORK
- PROPERTY LINE
- BUILDING FACE
- FBS WALL - SEE CIVIL DWGS - SEE STRUCTURAL DWGS
- CONCRETE PAVING
- SPORT COURTS
- PAVER WITH BONDED AGGREGATE MIX
- PINK GRANITE PAVERS 01
- PINK GRANITE UNIT PAVERS FRAYED EDGE
- ENGINEERED WOOD FIBER PLAYSURFACE
- PINK GRANITE UNIT PAVERS 02
- GRAY GRANITE UNIT PAVERS
- STONE BAND AT HEX PAVERS
- PAVEMENT TO MATCH EXISTING
- VEHICULAR UNIT PAVING (PERMEABLE)
- VEHICULAR UNIT PAVING ON CONCRETE SLAB (NON-PERMEABLE)
- VEHICULAR INTERLOCKING PAVING (PERMEABLE)
- VEHICULAR UNIT PAVING OVER STRUCTURAL SOIL (PERMEABLE)
- PEDESTRIAN UNIT PAVING (NON-PERMEABLE)
- PEDESTRIAN COBBLE STONE PAVING OVER STRUCTURAL SOIL (PERMEABLE)
- PEDESTRIAN UNIT PAVING OVER STRUCTURAL SOIL (PERMEABLE)
- CONCRETE PLANK PAVERS OVER STRUCTURAL SOIL (PERMEABLE)
- VEHICULAR STONE UNIT PAVING (NON-PERMEABLE)
- BONDED AGGREGATE PAVING
- CRUSHED STONE

IT IS A VIOLATION OF TITLE VIII ARTICLE 145, SECTION 7209.2 OF THE NEW YORK STATE EDUCATION LAW FOR ANY PERSON, UNLESS ACTING UNDER THE DIRECTION OF A LICENSED PROFESSIONAL ENGINEER, TO ALTER IN ANY WAY, PLANS, SPECIFICATIONS, PLATS OR REPORTS TO WHICH THE SEAL OF A PROFESSIONAL ENGINEER HAS BEEN APPLIED. IF AN ITEM BEARING THE SEAL OF A PROFESSIONAL ENGINEER IS ALTERED, THE ALTERING ENGINEER SHALL AFFIX TO THE ITEM HIS SEAL AND THE NOTATION "ALTERED BY" FOLLOWED BY HIS/HER SIGNATURE, THE DATE, AND A SPECIFIC DESCRIPTION OF THE ALTERATION.

Plot Date: 1/22/2024 5:54 PM
P:\2234 - BPCA NW RESILIENCY\05_CAD DRAWINGS\03_60PCT\02_REVISED 60PCT-WIP\16_L_ - LANDSCAPE\LV-113 LANDSCAPE PAVING PLAN AREA 13.DWG

ARCADIS

LEGAL ENTITY
ARCADIS OF NEW YORK, INC.

PROJECT
NORTH / WEST BATTERY PARK CITY
RESILIENCY DESIGN - PHASE I
HUDSON RIVER
BOROUGH OF MANHATTAN, NEW YORK

CLIENT
BATTERY PARK CITY AUTHORITY

NEW YORK STATE OF OPPORTUNITY. Battery Park City Authority

DESIGN BUILDER
TURNER EE CRUZ JV

Turner EE CRUZ

40% DESIGN SUBMISSION TO BPCA - RECEIVED ON 1/24/24 BY TURNER+CRUZ

SUB-CONSULTANTS:

SCAPE

SCAPE LANDSCAPE ARCHITECTURE
277 BROADWAY NINTH FLOOR
NEW YORK, NY 10007
T: (212) 462-2628
www.scapestudio.com

REGISTRATION:

40% DESIGN SUBMISSION
NOT FOR CONSTRUCTION

I/R	DATE	DESCRIPTION

ISSUES / REVISIONS

Project Status:	40% DESIGN SUBMISSION
Date:	01/23/2024
Designed By:	
Drawn By:	
Checked By:	
Approved By:	

Contract Number: 30084181

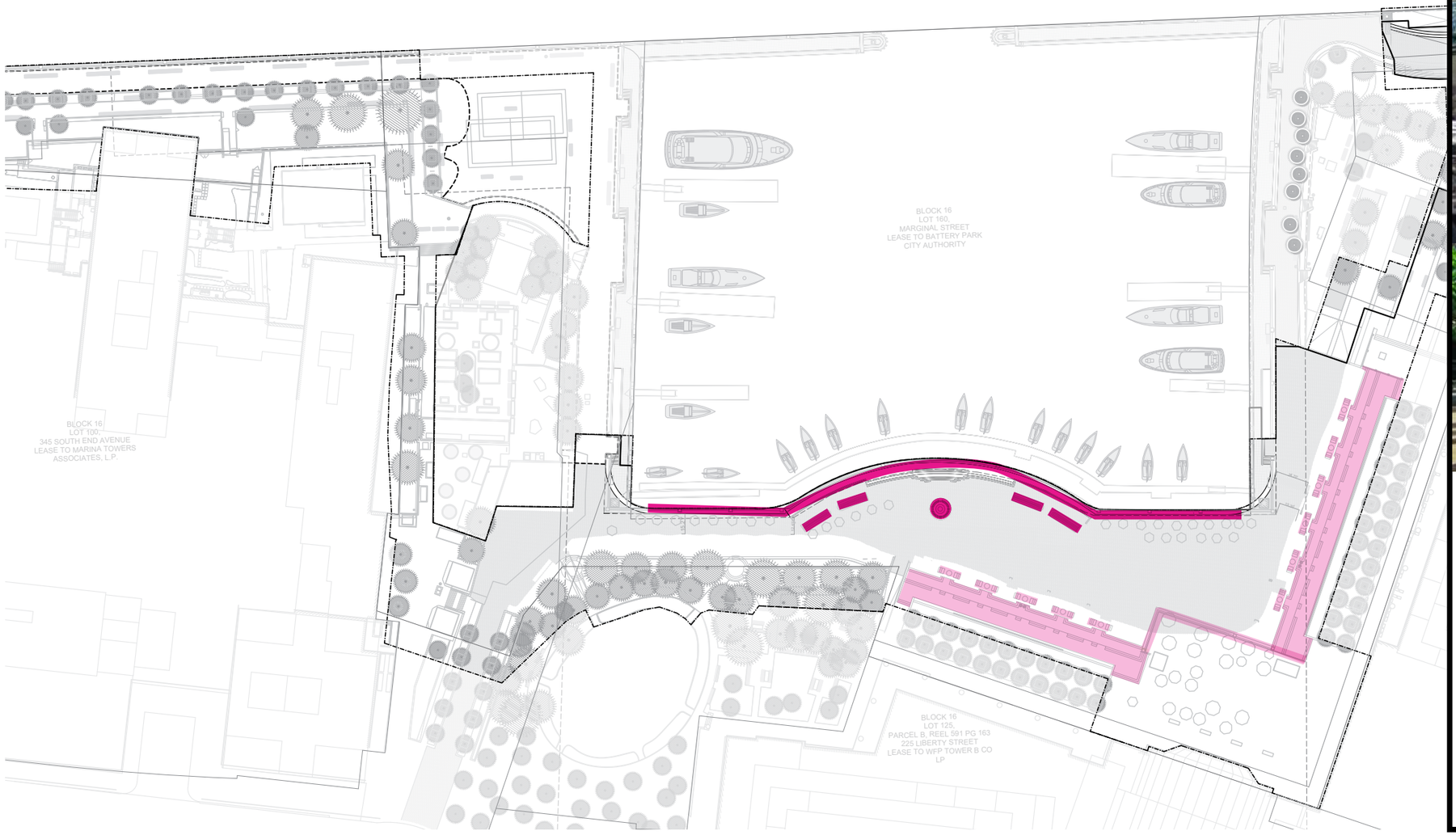
SCALE: 0 BAR IS ONE INCH ON UNREDUCED DRAWING

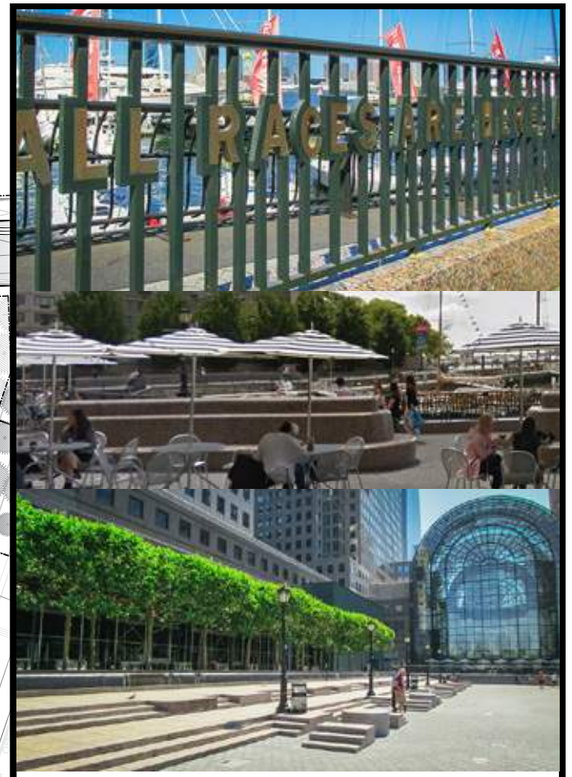
SHEET TITLE:
LV-100 PAVING PLANS

LANDSCAPE PAVING PLAN AREA 13 - REACH 3

SHEET NUMBER
LV-113

Art Installation and Sculptures - Reach 5





WATERFRONT PLAZA
Siah Armajani & Scott Burton

Within Limit of Work: Yes

Location: West of the Winter Garden (Brookfield Place)

Action: Guardrails and seating on esplanade to be protected in place by BPCA or PDB?



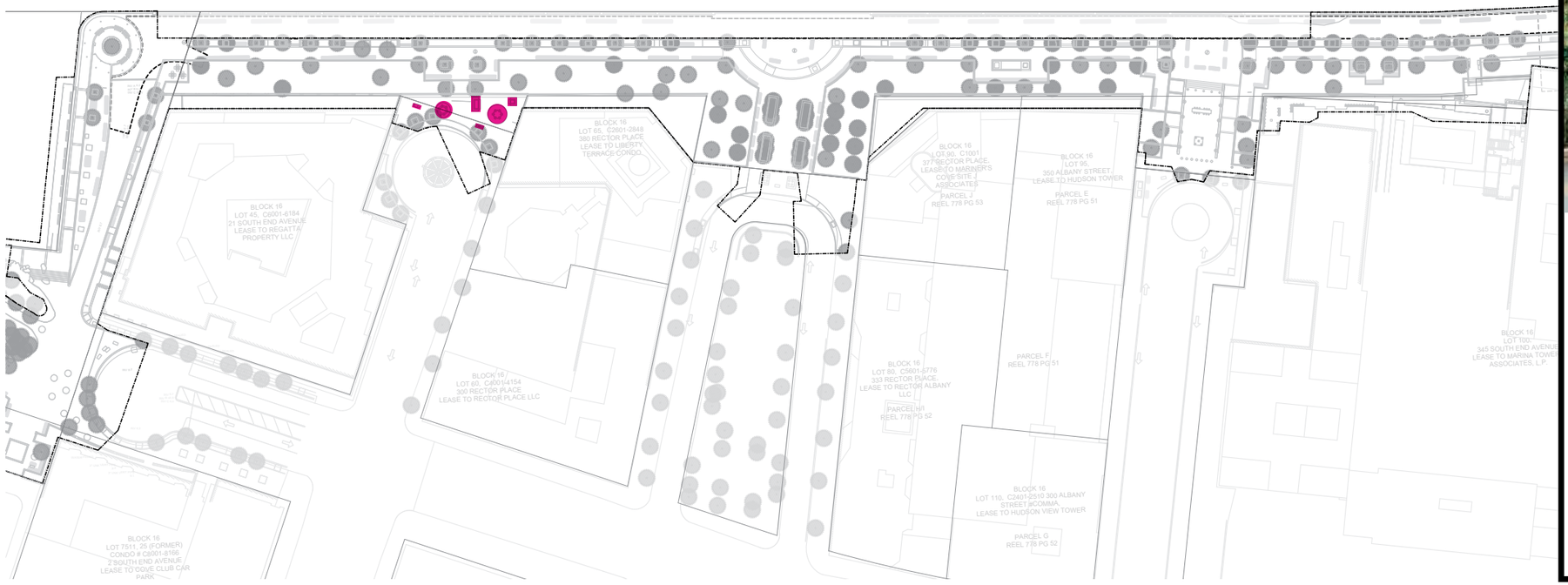



The above four images are multiple views of the fence with the inset bronze letters forming the poetry of Walt Whitman and Frank O'Hara. Below is the complete text.

Walt Whitman
CITY OF THE WORLD.
(FOR ALL RACES ARE HERE. ALL THE LANDS OF THE EARTH MAKE CONTRIBUTIONS HERE;)
CITY OF THE SEA!
CITY OF WHARVES AND STORES - CITY OF TALL FACADES OF MARBLE AND IRON!
PROUD AND PASSIONATE CITY- METTLESOME, MAD EXTRAVAGANT CITY!

Frank O'Hara
ONE NEED NEVER LEAVE THE CONFINES OF NEW YORK TO GET ALL THE GREENERY ONE WISHES-
I CAN'T EVEN ENJOY A BLADE OF GRASS UNLESS I KNOW THERE'S A SUBWAY HANDY, OR A RECORD STORE OR SOME OTHER SIGN THAT PEOPLE DO NOT TOTALLY REGRET LIFE

Art Installation and Sculptures - Reach 6

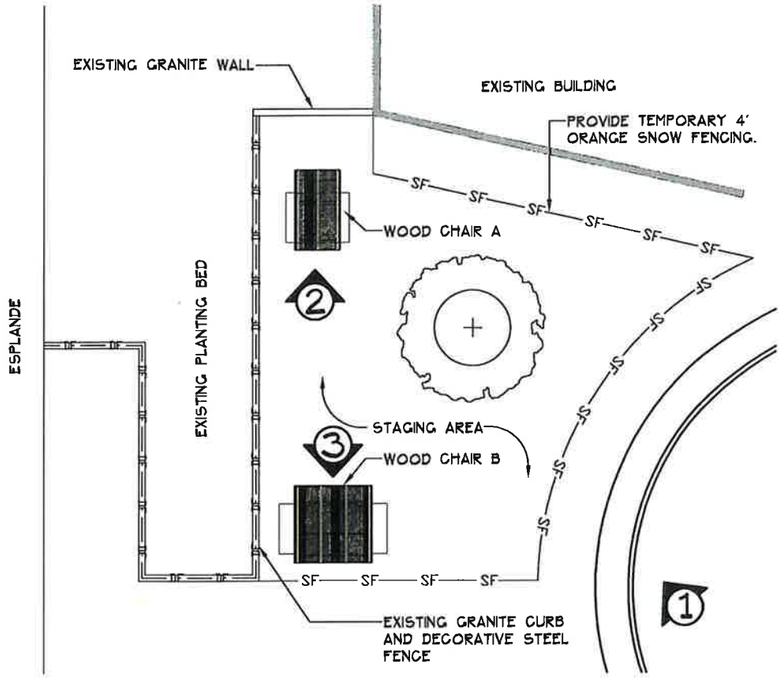




SITTING STANCE
FIVE SEPARATE PIECES
Richard Artschwager
Within Limit of Work: Yes

IInstallation: 1998

Action: Salvaged and reinstalled in new configuration by BPCA.

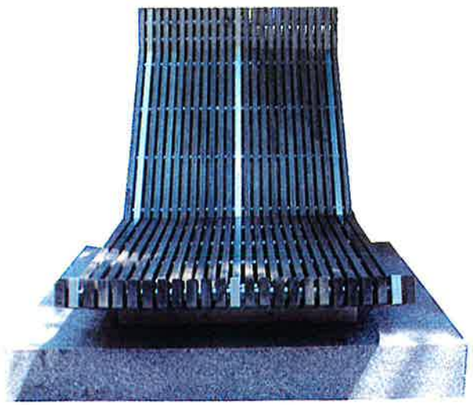


SITE PLAN

SCALE: 1"=10'-0"



1 View from Southeast corner of West Thames Street



2 Wood Chair A



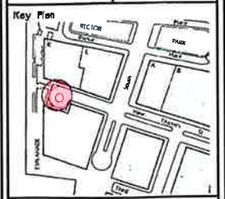
3 Wood Chair B

BATTERY PARK CITY AUTHORITY
ONE WORLD FINANCIAL CENTER
NEW YORK, NEW YORK 10281

No.	Date	Revision

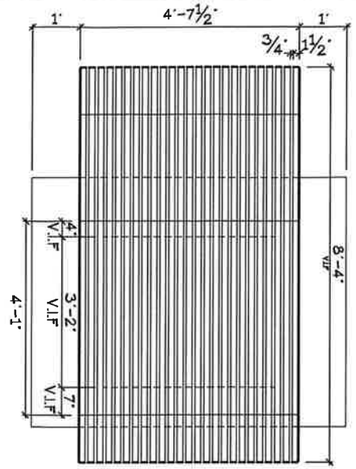
MARK K MORRISON ASSOCIATES LTD
LANDSCAPE ARCHITECTURE
348 WEST 30TH STREET SUITE 4D3
NEW YORK, NEW YORK 10001
212.929.9710 FAX:212.929.9711

Key Plan



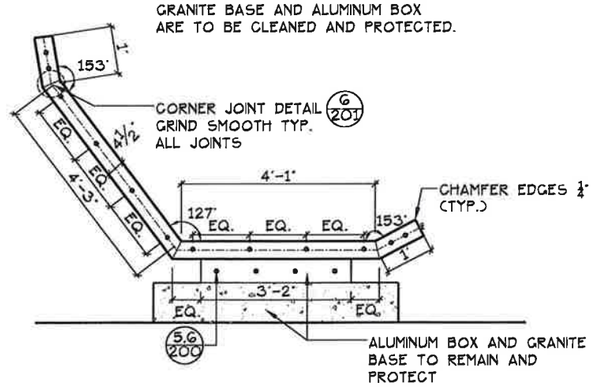
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EXISITNG CONDITIONS

DRAWN BY: AE	DRAWING NO.
CHECKED BY: MKM	LA-100
SCALE: NOT TO SCALE	
DATE: 07/14/2006	Sheet 1 of 4



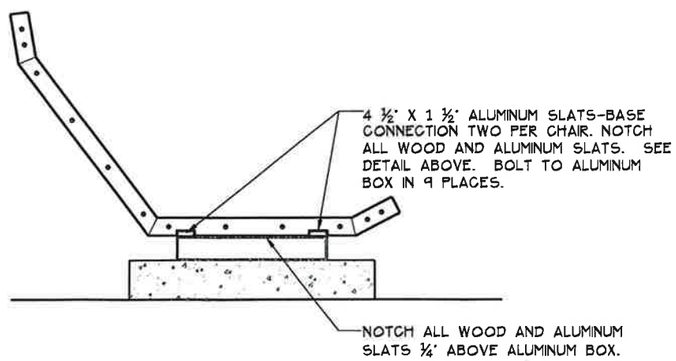
1 PLAN VIEW

SCALE: 1/2" = 1'-0"



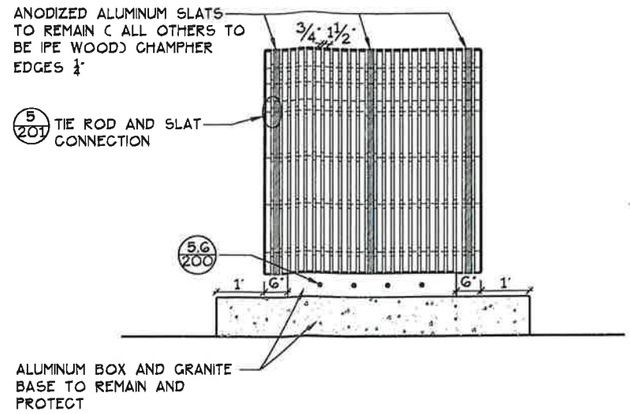
2 SIDE VIEW

SCALE: 1/2" = 1'-0"



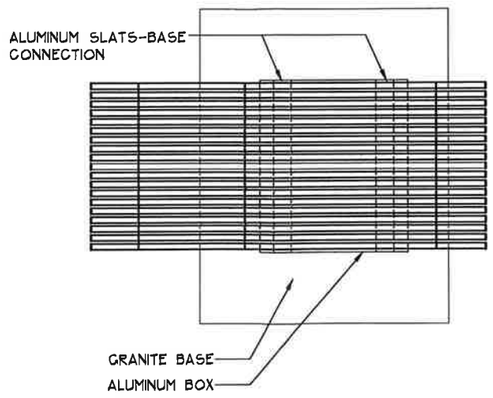
3 ALUMINUM SLATS-BASE CONNECTION

SCALE: 1/2" = 1'-0"



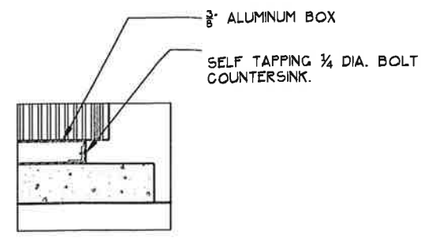
4 REAR VIEW

SCALE: 1/2" = 1'-0"



5 Base Connection Detail

SCALE: 1/2" = 1'-0"



6 ALUMINUM SLATS-BASE CONNECTION

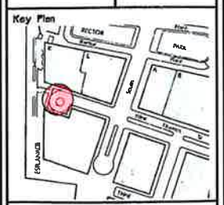
SCALE: 1/2" = 1'-0"

BATTERY PARK CITY AUTHORITY
ONE WORLD FINANCIAL CENTER
NEW YORK, NEW YORK 10281

No.	Date	Revision

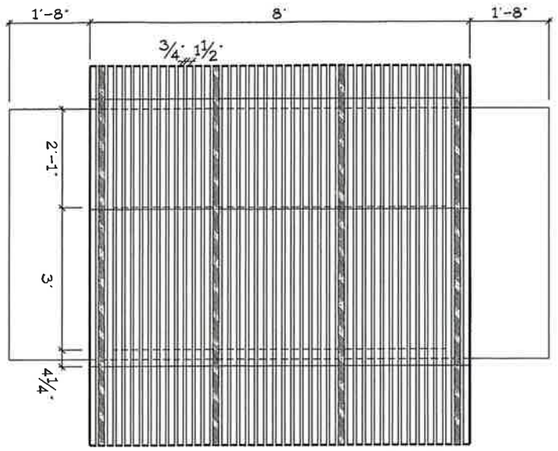
MARK K MORRISON ASSOCIATES LTD
LANDSCAPE ARCHITECTURE
540 WEST 30TH STREET SUITE 403
NEW YORK, NEW YORK 10001
212.629.9710 FAX: 212.629.9711

Key Plan



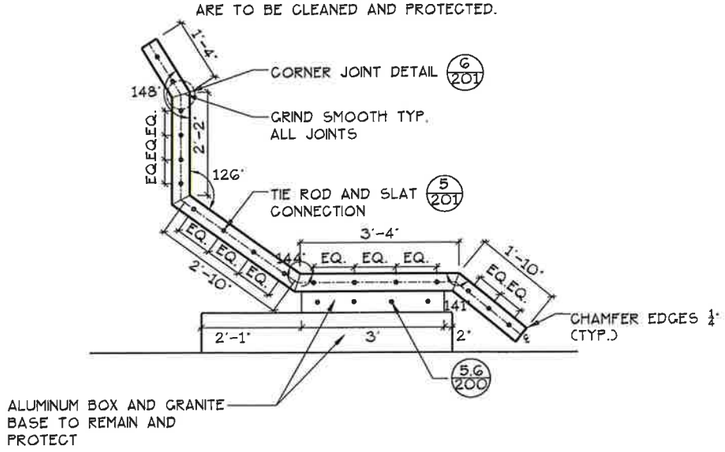
DRAWING TITLE
WOOD CHAIR A

DRAWN BY: J.S.	DRAWING NO.
CHECKED BY: MKM	LA-200
SCALE: NOT TO SCALE	
DATE: 07/14/2006	Sheet 2 of 4

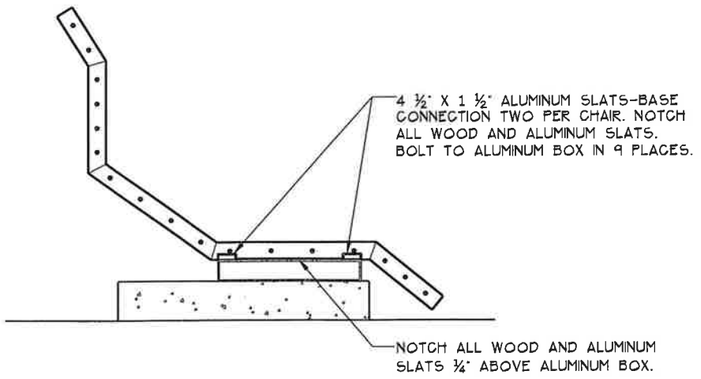


1 PLAN VIEW
SCALE: 1/2" = 1'-0"

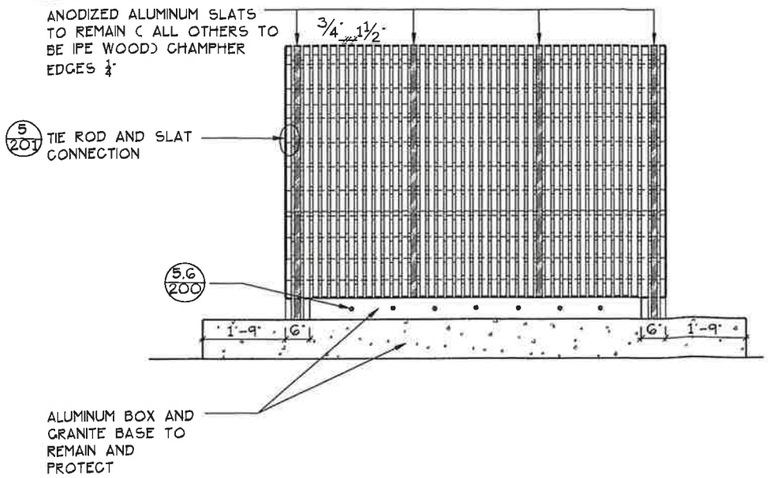
NOTE:
GRANITE BASE AND ALUMINUM BOX ARE TO BE CLEANED AND PROTECTED.



2 SIDE VIEW
SCALE: 1/2" = 1'-0"

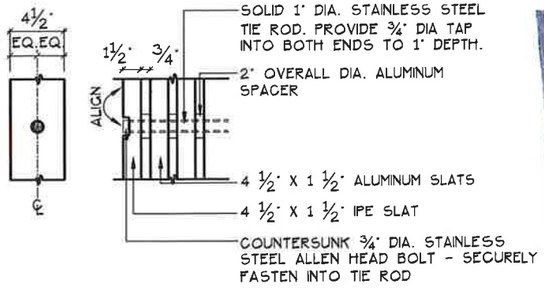


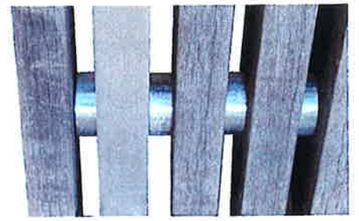
3 ALUMINUM SLATS-BASE CONNECTION
SCALE: 1/2" = 1'-0"



4 REAR VIEW
SCALE: 1/2" = 1'-0"

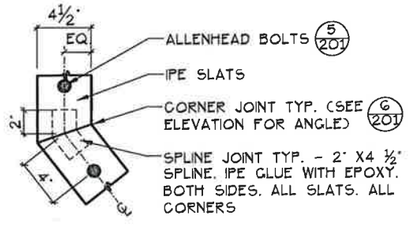
NOTE:
ALL FASTENERS AND ALUMINUM SPACERS ARE TO BE PROTECTED. CLEANED AND REUSED WHEREVER POSSIBLE.





5 TIE ROD AND SLAT CONNECTION
SCALE: 1 1/2" = 1'-0"

NOTE: GRIND ALL JOINTS SMOOTH



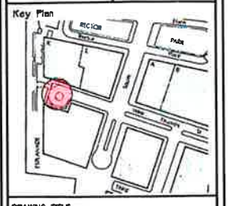


6 WOOD SLAT CONNECTION DETAIL
SCALE: 1 1/2" = 1'-0"

BATTERY PARK CITY AUTHORITY
ONE WORLD FINANCIAL CENTER
NEW YORK, NEW YORK 10281

No.	Date	Revision

MARK K MORRISON ASSOCIATES LTD
LANDSCAPE ARCHITECTURE
343 WEST 30TH STREET SUITE 403
NEW YORK, NEW YORK, 10001
212.629.9710 FAX: 212.629.9711



DRAWING TITLE
WOOD CHAIR B

DRAWN BY: JJL	DRAWING NO.
CHECKED BY: MKM	LA-201
SCALE: NOT TO SCALE	
DATE: 07/14/2006	Sheet 3 of 4

GENERAL NOTES:

1. ANY EXISTING OR BELOW GRADE ELEMENTS THAT ARE NOT INDICATED ON THE PLAN WHICH POTENTIALLY CONFLICT WITH NEW WORK SHALL IMMEDIATELY BE BROUGHT TO THE OWNERS ATTENTION IN WRITING BEFORE PROCEEDING ANY FURTHUR

2. NO DANGEROUS CONDITIONS SHALL BE LEFT WITHOUT APPROPRIATE HAZARD WARNINGS OR INDICATORS IN FULL COMPLIANCE WITH ALL GOVERNING CODES AND REGULATIONS

3. ALL PAVEMENT, WALLS AND/ OR EXISTING STRUCTURES SHALL BE FULLY PROTECTED FROM DAMAGE OCCURING AS A RESULT OF NEGLIGENCE DURING CONSTRUCTION OF CONTRACT WORK. THE CONTRACTOR SHALL BE RESPONSIBLE FOR ANY REPAIRS AT NO COST TO THE OWNER.

LUMBER SPECIFICATION:

MATERIAL:
LUMBER SHALL BE IPE (Tabebuia Spp. Lapacho Group)

SURFACE:
ALL IPE TO BE SUPPLIED S4S-E4E (SURFACED FOUR SIDES-EASED FOUR EDGES). EDGES SHALL BE EASED TO A RADIUS OF ⅛".

MOISTURE CONTENT:
IPE SHALL BE PARTIALLY AIR DRIED TO A MOISTURE CONTENT OF 15%-25%.

DIMENSIONAL TOLERANCE:
IPE SHALL BE SUPPLIED AT PLUS OR MINUS .06" IN BOTH WIDTH AND THICKNESS, MEASURED AT 30% MOISTURE CONTENT.

DESCRIPTION:
ALL IPE SHALL BE SPECIFIED IN ACTUAL OR NET DIMENSIONS. (FINISHED THICKNESS X FINISHED WIDTH X FINISHED LENGTH).

OVER LENGTH:
ALL IPE SHALL BE SUPPLIED 2 INCHES OVER THE SPECIFIED LENGTH. TO ALLOW FOR FINAL TRIM AND PROPER FIT IN THE FIELD.

LUMBER GRADE

IPE PREMIUM SELECTED CLEAR ALL HEART:

ALL LUMBER SHALL BE THIRD PARTY GRADE AND INSPECTED TO (PREMIUM SELECT CLEAR ALL HEART) GRADING RULES DEFINED AS FOLLOWS:

1. LUMBER SHALL BE GRADED FOUR FACES AND FOUR EDGES.

2. LUMBER SHALL BE STRAIGHT GRAINED AND PARALLEL CUT WITHOUT HEART CENTER.

3. LUMBER SHALL BE ALL HEARTWOOD, NO SAPWOOD ALLOWED.

4. LUMBER SHALL BE IN SOUND CONDITION, FREE FROM WORM HOLES OR KNOTS.

5. ALLOWABLE IMPERFECTIONS DEFINED AS - SMALL DRYING CRACKS, SMALL END SPLITS (LESS THAN $\frac{3}{32}$ INCHES IN WIDTH), THAT DO NOT IMPAIR THE STRENGHT OF THE MATERIAL OF FASTENING. DISCOLORATION CAUSED BY WEATHERING OR CHEMICAL REACTION, BOW OR TWIST WHICH CAN BE REMOVED USING NORMAL INSTALLATION METHODS AND TOOLS. SCALE GRAIN (ONE FACE ONLY).

6. NOT ALLOWABLE IMPERFECTIONS DEFINED AS- LONGITUDINAL HEART CRACKS, INTERNAL CRACKS, FIRM OR SOFT SAP WOOD, FUNGI AFFECTS - (BLUE TO GRAY, BROWN TO RED, WHITE TO YELLOW, OR INCIPIENT DECAY), BOW OR TWIST WHICH CANNOT BE REMOVED BY NORMAL INSTALLATION METHODS AND TOOLS.

PACKING AND STORAGE:

BREATHER STICKS:
ALL IPE BOARDS ARE TO BE STACKED WITH EVENLY SPACED STICKERS BETWEEN EACH LAYER OF BOARDS, TO PROMOTE PROPER DRYING AND REDUCE THE POSSIBILITY OF WATER STAIN.

ASSEMBLY, INSTALLATION GUIDELINES:

MATERIAL HANDLING AND STORAGE:

1. MATERIAL SHOULD BE STORED OUT OF DIRECT SUNLIGHT AND BE ALLOWED TO ACCLIMATE AND STABILIZE TO THE INSTALLATION ENVIRONMENT HUMIDITY LEVELS BEFORE INSTALLATION.

CUTTING AND DRILLING:

1. PREMIUM CARBIDE TIPPED SAWBLADES AND HIGH QUALITY DRILL BITS ARE TO BE USED TO ENSURE SMOOTH CUTS.

2. PREDRILL BOARDS WHEN USING FASTENERS. PREDRILL BOARDS AND COUNTERSINK WHEN USING SCREWS.

END SEALING:

1. SEAL ALL ENDS IMMEDIATELY AFTER CUTTING WITH A CLEAR AQUEOUS WAX END SEALER. SEE PLANS FOR SEALER TYPE.

FASTENING:

1. ANY DAMAGED OR MISSING HARDWARE IS TO BE REPLACED IN KIND. SEE PLANS FOR DETAILS AND TYPE.

GLUING:

1. USE ONLY MARINE GRADE EXPOXY GLUES AS SPECIFIED. CONTRACTOR IS TO PROVIDE SAMPLE FOR APPROVAL BY LANDSCAPE ARCHITECT.

SEALING AND STAINING:

1. ALL WOOD IS TO BE SEALED IMMEDIATELY AFTER INSTALLATION TO REDUCE THE POTENTIAL FOR SURFACE CHECKING.

2. DURING PROLONGED PERIODS OR DURING HOT WEATHER ALL WOOD IS TO BE SEALED AFTER EACH PHASE.

3. BEFORE APPLICATION OF SEALERS, BRUSH CLEAN THE SURFACE TO REMOVE DIRT, DUST, AND STICKER RESIDUE.

4. CONTRACTOR IS TO PROVIDE 12"X4½"X1 ½" SAMPLES OF STAINED IPE FROM THE FOLLOWING SEALERS LISTED BELOW FOR APPROVAL OF LANDSCAPE ARCHITECT.

SEALERS:
OLYMPIC CLEAR WOOD PRESERVATIVE, 800.441.9695 / WWW.OLYMPIC.COM

PENOFIN, 800.825.5382 / WWW.PENOFIN.COM

ENVIRONMENTAL SPECIFICATION AND CERTIFICATES

"CERTIFIED FOREST PRODUCTS COUNCIL" PURCHASING POLICY GUIDLINES:
IN AN EFFORT TO PROMOTE SUSTAINABLE FOREST MANAGEMENT, THE MATERIAL SUPPLIER WILL PROVIDE PROOF OF MEMBERSHIP IN THE CERTIFIED FOREST PRODUCTS COUNCIL AS CONFIRMATION OF THEIR COMMITMENT TO THE DEVELOPMENT OF SUSTAINABLE FOREST RESOURCES.

"FOREST STEWARDSHIP COUNCIL" ENDORSED THIRD PARTY CIETIFICATION:
IN AN EFFORT TO PROMOTE SUSTAINABLE FOREST MANAGEMENT, THE SUPPLIER WILL PROVIDE PROOF OF CHAIN OF CUSTODY CERTIFICATION STATUS IN AN FSC ENDORSED CERTIFICATION PROGRAM AS AN EXAMPLE: RAINFOREST ALLIANCE SMARTWOOD PROGRAM OR EQUAL.

"FIELDS TO FORESTS FOUNDATION" LOW IMPACT LOGGING PROGRAM:
IN AN EFFORT TO PROMOTE THE DEVELOPMENT OF LOW IMPACT LOGGING TECHNIQUES AND WELL MANAGED FOREST RESOURCES, THE MATERIAL SUPPLIER WILL PROVIDE PROOF OF MEMBERSHIP IN THE TROPICAL FOREST PROGRAM.

CERTIFICATE OF ENVIRONMENTAL COMPLIANCE: A CERTIFICATE OF ENVIRONMENTAL COMPLIANCE FROM INDEPENDANT THIRD PARTY INSPECTION AND GRADING AGENCY, MALLINCKRODT OR PREAPPROVED EQUAL. A CERTIFICATE SHALL BE SUBMITTED PRIOR TO DELIVERY CONFIRMING THAT THE IRON WOODS SUPPLIED WERE PRODUCED FROM LEGALLY HARVESTED LOGS, AND WERE SUPPLIED IN COMPLIANCE WITH ALL FOREIGN AND DOMESTIC LAWS AND REGULATIONS PERTAINING TO THE HARVEST AND TRADE OF TIMBER PRODUCTS.

CERTIFICATE OF ORIGIN: TO AVOID FOREST PRODUCTS ORIGINATING FROM FOREST TYPES AND REGIONS IDENTIFIED AS IMPERILED, THE MATERIAL SUPPLIER WILL SUPPLY AN OFFICIAL EXPORT 'CERTIFICATE OF ORIGIN' INDICATING SPECIES SUPPLIED AND COUNTRY OF ORIGIN WITH THEIR INVOICES.

CONVENTION ON INTERNATIONAL TRADE IN ENDANGERED SPECIES (CITES) LISTING:
A COPY OF THE CITES APPENDICES 1,2 AND 3 CONFIRMING THAT THE SPECIES OF IRON WOODS SUPPLIED ARE NOT LISTED AS; 1- THREATENED WITH EXTINCTION DUE TO TRADE, 2- MAY BECOME THREATENED WITH EXTINCTION DUE TO TRADE, OR 3- INCLUDE SPECIES OF CONCERN WHICH ANY COUNTRY CHOOSES TO VOLUNTARILY REGULATE, SHALL BE SUBMITTED WITH THE BID.

RR- RECYCLING AND REUSE
LIKE ALL NATURAL TIMBER PRODUCTS, IRON WOODS CAN BE SALVAGED, RECYCLED, AND REUSED IN THE FUTURE AS THERE IN NO DETERIORATION OF PHYSICAL PROPERTIES.

ALUMINUM CARE:

CLEANING:
ALL ALUMINUM SPACERS AND BOXES ARE TO BE PRESSURE WASHED WITH MILD DETERGENT AND WARM WATER. DO NOT USE BAKING SODA OR OTHER ALKALINE SUBSTANCES. THIS WILL DISCOLOR THE ALUMINUM.

BATTERY PARK CITY AUTHORITY
ONE WORLD FINANCIAL CENTER
NEW YORK, NEW YORK 10281

No.	Date	Revision

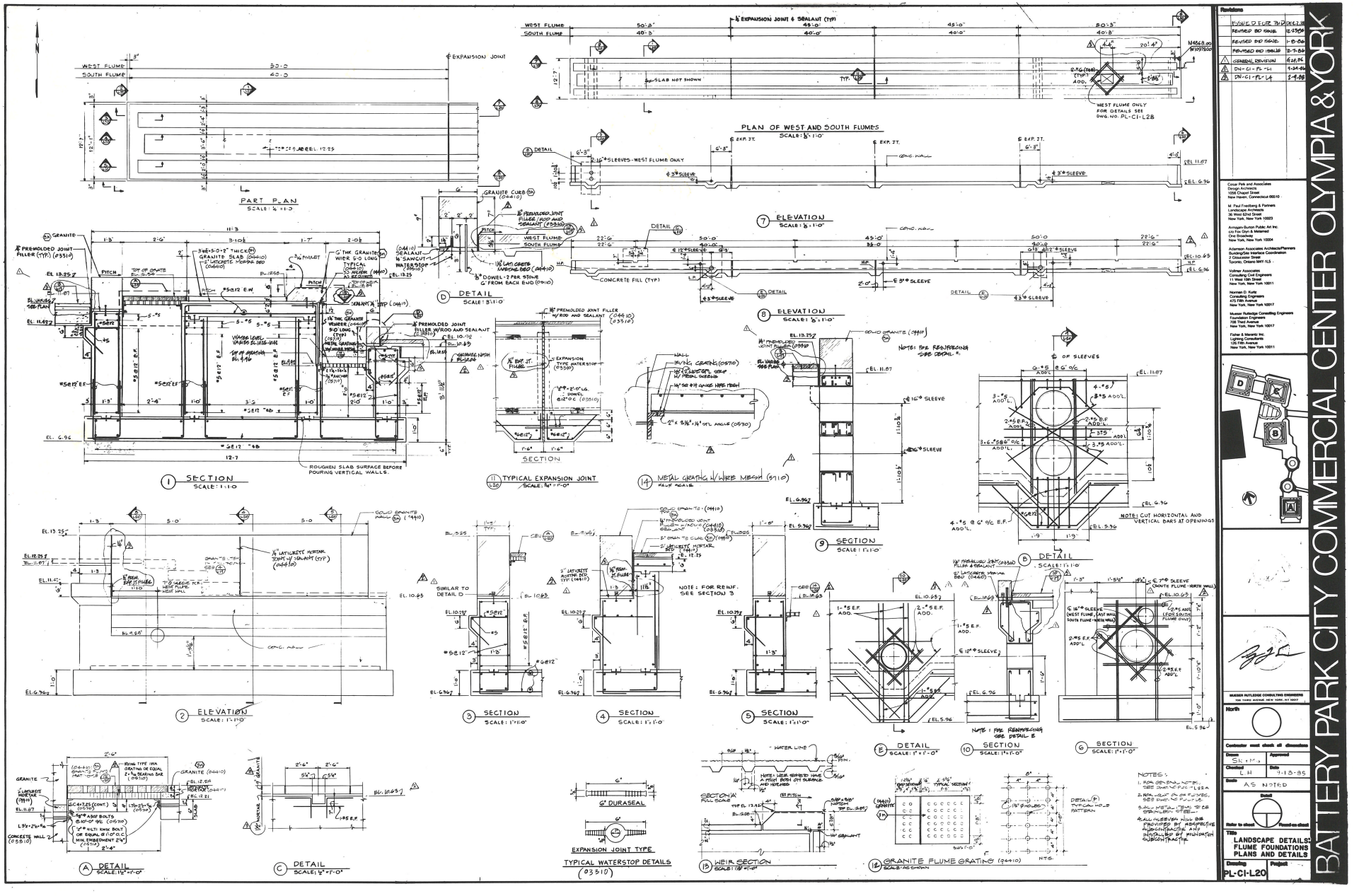
MARK K MORRISON ASSOCIATES LTD
LANDSCAPE ARCHITECTURE
241 FIFTH AVENUE, SUITE 402
NEW YORK, NEW YORK, 10001
212.689.9710 FAX:212.689.9711

Key Plan



DRAWING TITLE
GENERAL NOTES

DRAWN BY: JJL	DRAWING NO.
CHECKED BY: MKM	LA-300
SCALE: NOT TO SCALE	
DATE: 07/14/2006	Sheet 1 of 4



Revisions

	ISSUED FOR BID	DEC. 1, 1984
	REVISED BID ISSUE	12-27-84
	REVISED BID ISSUE	1-15-85
	REVISED BID ISSUE	2-7-85
1	GENERAL REVISION	6-21-85
2	DN-C1-PL-L1	7-24-85
3	DN-C1-PL-L4	7-9-85

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MUESER RUTLEDGE CONSULTING ENGINEERS
708 THIRD AVENUE, NEW YORK, N.Y. 10017

North

Contractor must check all dimensions

Drawn	Approved
SK+MP	
Checked	Date
L.H.	7-18-85
Scale	
AS NOTED	

Detail

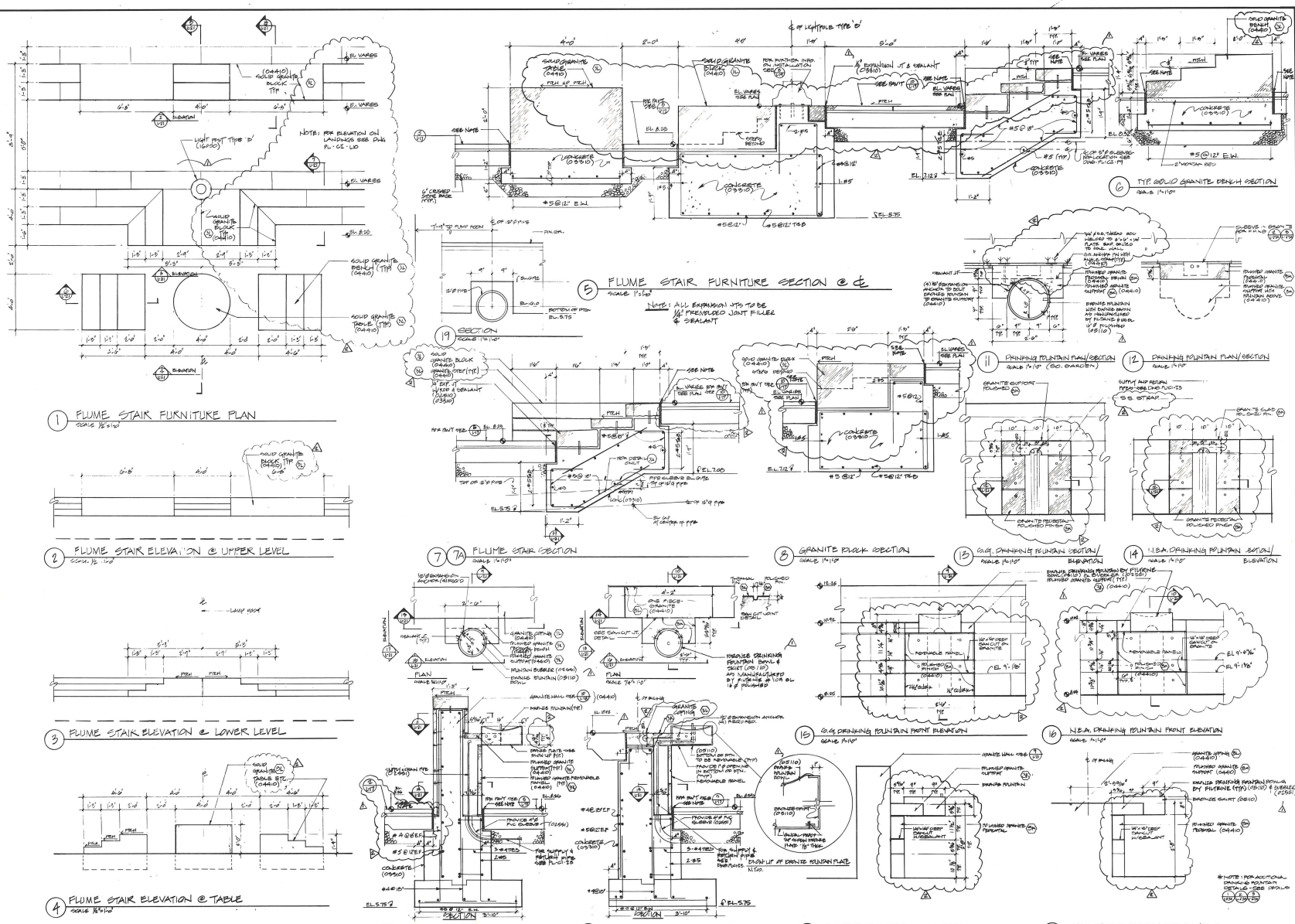
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Title
LANDSCAPE DETAILS
FLUME FOUNDATIONS
PLANS AND DETAILS

Drawing No. PL-C1-L20

Project

BATTERY PARK CITY COMMERCIAL CENTER OLYMPIA & YORK



Revisions.

ISSUED FOR BID	DEC 1/95
REVISED BID ISSUE	1995-96
REVISED BID ISSUE	1-8-96
REVISED BID ISSUE	2-7-96
⚠ GENERAL REVISION	6-6-96
⚠ PL-C1-PL-L4	2-7-96

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North

Contractor must check all dimensions

Drawn	Approved
P.L.K.W.	
Checked	Date
P.L.	8/7/96
Scale	
3/8" = 1'-0"	

Detail

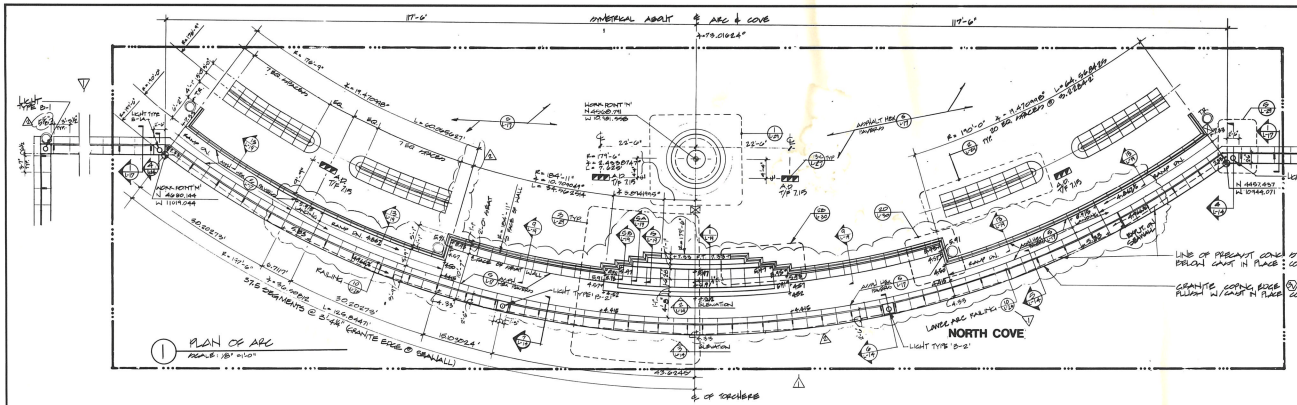
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Title
LANDSCAPE DETAILS: STONE FURNITURE

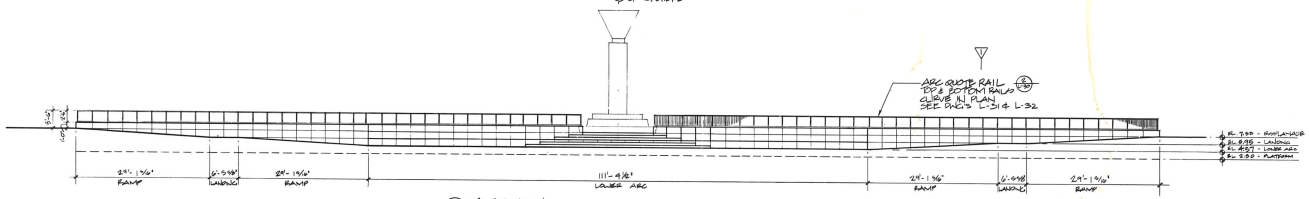
Drawing
PL-C1-L21

Project

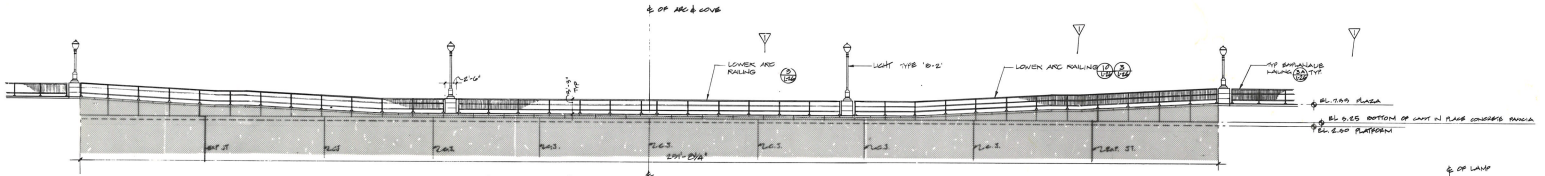
BATTERY PARK CITY COMMERCIAL CENTER OLYMPIA & YORK



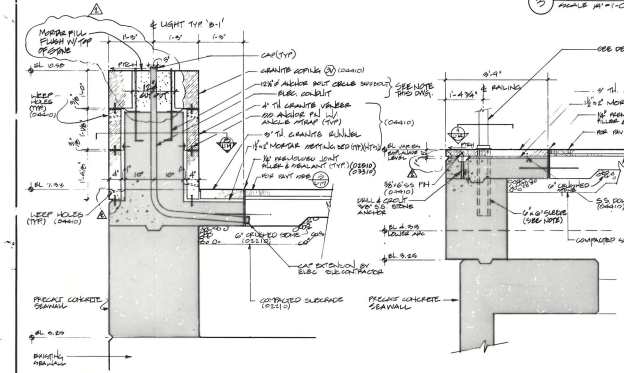
1 PLAN OF ARC
SCALE: 1/8" = 1'-0"



2 ELEVATION
SCALE: 1/8" = 1'-0"

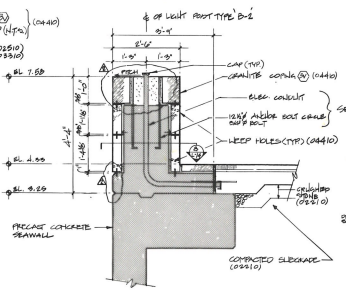


3 ELEVATION OF SEAWALL @ ARC
SCALE: 1/4" = 1'-0"



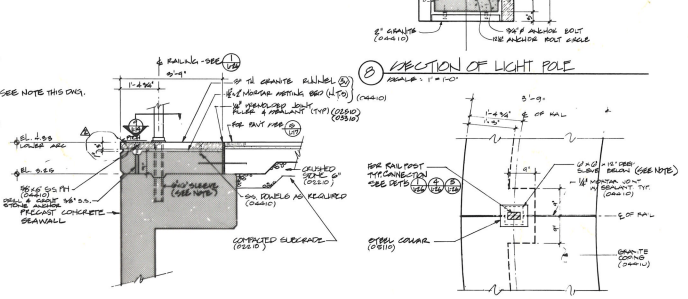
4 SECTION - ARC SEAWALL @ ELEV. 7.33
SCALE: 1" = 1'-0"

5 SECTION - ARC SEAWALL @ ELEV. 5.32
SCALE: 3/4" = 1'-0"

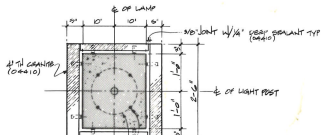


6 SECTION - ARC SEAWALL @ ELEV. 4.33
SCALE: 3/4" = 1'-0"

NOTE:
SHADED AREAS IN THIS DRAWING DENOTE WORK UNDER ARC CONTRACT WHICH INCLUDES ANCHOR BOLTS, SLEEVES IN CONC, ELEC CONDUIT AND REBARS. FOR DETAILS, INFO, SEE ARC CONTRACT DRAWINGS. PL-C1-ST-1 THRU 4.



7 SECTION - ARC SEAWALL @ ELEV. 4.33
SCALE: 3/4" = 1'-0"



8 SECTION OF LIGHT POLE
SCALE: 1" = 1'-0"

9 DETAIL OF RAIL POST SLEEVE
SCALE: 1" = 1'-0"

Revisions		
	ISSUED FOR BID	DEC 28
	REVISED BID ISSUE	2-25-86
	REVISED BID ISSUE	1-8-86
	REVISED BID ISSUE	2.7.86
1	GENERAL REVISION	6.9.86
2	PL-C1-PL-L4	8.9.88

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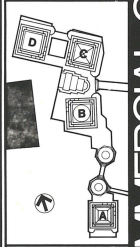
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Foundation Engineers
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New York, New York 10017

Fisher & Marantz Inc
Lighting Consultants
126 Fifth Avenue
New York, New York 10011



North

Contractor must check all dimensions

Drawn	Approved
D.J.T	S.T.L.
Checked	Date
R.—	8.19.85
Scale	
AS SHOWN	

Detail

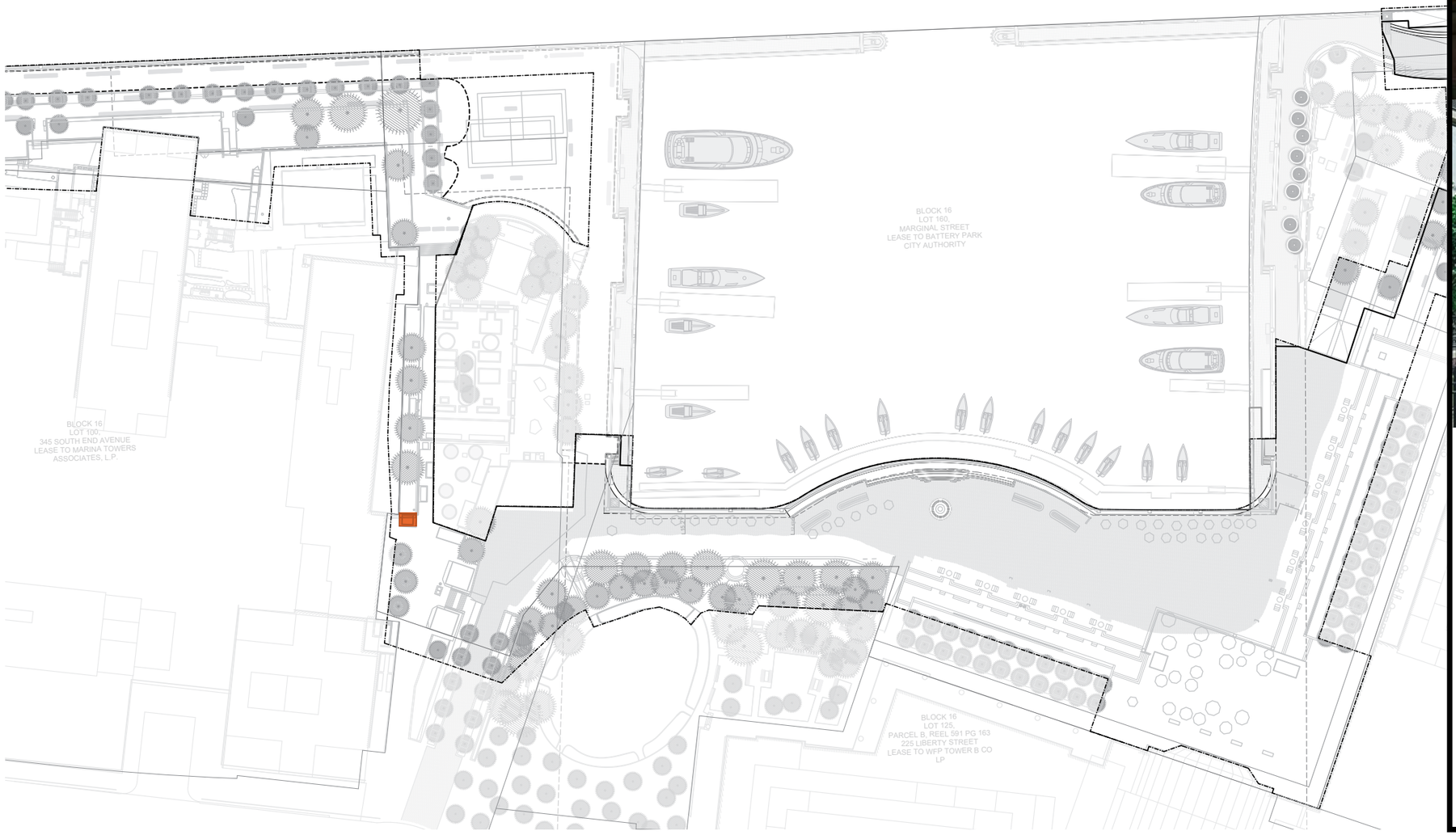
Refer to sheet — Found on sheet

Title
PARTIAL PLAN:
THE ARC
(COVE PROJECTION)

Drawing: PL-C1-L14
Project

BATTERY PARK CITY COMMERCIAL CENTER OLYMPIA & YORK

Memorials, plaques and other community considerations - Reach 5







BERLIN WALL SEGMENT

Donated by German Consulate

Within Limit of Work: Yes

Donation: 2004

Action: Proximity to FBS wall may necessitate relocation; PDB team to confirm relocation is required and if so propose additional locations where piece can be viewed from both sides.

BPCA TO REMOVE TO STORAGE AND RELOCATE WITHIN BPCA PROPERTY

SCAPE BIG

EXHIBIT B-2
ARTWORK CONDITIONS – 2019 REPORT
(REFERENCE DOCUMENT)

[ATTACHED]

ART WORK CONDITION REPORT
FROM 2019

BERLIN WALL
GRANITE BENCHES
NORTH COVE RAILINGS
TOURCHER

Brussat Sculpture Conservation, LLC
Melanie Brussat
Objects Conservator
35-26 79th St. #22
Jackson Heights, NY 11372

Condition Report

May 01, 2019

Client

Battery Park City Authority
Contact: Abby Ehrlich
Community Partnerships and Public Art Associate
200 Liberty Street, 24th Floor
New York, NY 10281
212-417-4256

Object

Berlin Wall section (Kowsky Plaza)





Date

Concrete wall 1975-1980, murals 1989 or later

Artist

Kiddy Citny & Thierry Noir

Materials

Steel reinforced concrete and paint

Dimensions

141 3/4 x 47 1/4 x 82 5/8 in.

Conservator

John Campbell, Melanie Brussat

- The previous layers of paint are built up very thickly, and poorly adhered, and are the cause of most of the large areas of flaking (fig. 9).
- The large flakes of paint are still flexible.

- The paint features multiple losses throughout (Fig. 1, 5, 6, 10)
  - The Noir mural features losses in the eye area and on the lower half, particularly in the area directly below the lips, exposing underlying white paint layer
  - The Noir mural shows evidence of at least one previous inpainting/retouching campaign, the medium of which no longer closely matches surrounding areas (Fig. 6).
    - According to Kenneth Windman of BPCA, since the Wall section was donated to BPC in 2004, it has not undergone any treatment. The present inpainting campaign therefore dates prior to 2004, when the wall resided in Germany.
  - On the Citny mural, the most prevalent loss is in hair of the figure and the large orange leaf element on the neighboring wall element at approximately the same height (Fig. 10).
- The paint is actively lifting and flaking in several areas of both murals (Fig. 5, 6, 9, 10).
  - Lifting and flaking is much more prevalent on the Noir mural and includes the area of the eye and the entire lower half of the mural, particularly on the neck.
    - Lifting and flaking includes the areas with thick layers of paint underneath (large cupped flakes 1" diameter and larger) and areas with no underlayers except white ground layer (smaller flakes, about 1/8"-1/2" diameter).
  - Flaking on the Citny mural is concentrated on the areas associated with loss in the hair of the figure and large orange leaf element on the neighboring wall element.

Condition Photographs





Fig. 4: Raised concrete on Citny mural



Fig. 5: Exposed length of steel re-bar in surface of Noir mural and loss to edge of right wall element



Fig. 8: Partial loss to mortar at gap between elements at ground level - surface soiling - exposed rebar

Recommended Treatment (by a conservator)

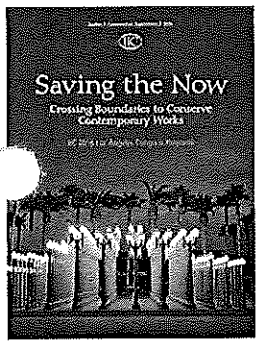
- **It is strongly recommended that the Berlin Wall fragment be placed indoors to ensure the long-term survival of this important historical artifact.**
    - The concrete structure and painted surface were not created for longevity outdoors.
    - The freeze/thaw cycle has caused extensive damage already and will eventually result in the complete loss of the painted surface.
    - Rusting of exposed rebar will continue to cause losses to the concrete and overlying painted surfaces.
    - Another Berlin Wall fragment in New York City has been placed indoors after a significant loss of the concrete and the painted surface (please see attachment and link: https://www.tandfonline.com/doi/full/10.1080/00393630.2016.1190996).
- Attempt to stabilize the paint with an appropriate adhesive.
    - Please note that stabilizing the paint in an outdoor environment may be difficult/impossible. According to mural specialist Katey Corda, the paint of a similar mural fragment could not be stabilized outdoors because of the solubility of the paint.
    - Attempt to flatten and adhere the cupped flakes of thick paint.
- Carefully clean the painted surface with an appropriate product.
- Consider retouching the losses. Consult with the artist and/or a relevant specialist to discuss the desirability of retouching or leaving the losses "as is".
- Conduct solubility tests to determine if blanched overpaint can be safely removed without affecting the original paint underneath.
- Investigate large break in concrete at bottom corner of wall
    - Evaluate stability and likely source of damage (e.g. rust jacking)
- Investigate exposed steel
    - Evaluate stability of corroded iron and neighboring concrete
- Clean concrete at ground level and supporting slab using appropriate product for removal of soiling and biological growth
- Investigate existing mortar at gap between wall elements at ground level
    - Evaluate stability and need for replacement
- Compensate for loss to mortar, or replace all mortar at gap between wall elements at ground level
- Stabilize area of damage at bottom corner of wall
    - Affix large fragment associated with break if possible

Recommended Maintenance (by park staff)

- Remove accumulation of dirt and plant matter from exposed gap at base of work and from pavers within fenced enclosure
- Remove biological growth from joins between pavers within the fenced enclosure

Priority Level

High Priority: The paint of the Berlin Wall section is actively flaking in large sections, and the concrete is being pushed apart by corroding rebar beneath the surface. This piece was not designed to last outdoors and this important historical document will eventually be completely lost if not



Studies in Conservation

ISSN: 0039-3630 (Print) 2047-0584 (Online) Journal homepage: http://www.tandfonline.com/loi/ysic20

Conserving a boundary: The conservation and management of a Berlin Wall mural

Kiernan Graves & Katey Corda

To cite this article: Kiernan Graves & Katey Corda (2016) Conserving a boundary: The conservation and management of a Berlin Wall mural, Studies in Conservation, 61:sup2, 61-66, DOI: 10.1080/00393630.2016.1190996

To link to this article: http://dx.doi.org/10.1080/00393630.2016.1190996

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Brussat Sculpture Conservation, LLC

Melanie Brussat
Objects Conservator
35-26 79th St. #22
Jackson Heights, NY 11372

Condition Report

March 28, 2019

Client

Battery Park City Authority
Contact: Abby Ehrlich
Community Partnerships and Public Art Associate
200 Liberty Street, 24th Floor
New York, NY 10281
212-417-4256

Object

Waterfront Plaza



Date

1986

Artist

Scott Burton (sculptural benches and tables)
Siah Armajani (railing with quotatations and entrance to Pumphouse Park)
Cesar Pelli (Winter Garden and World Financial Center)
M. Paul Friedberg (landscape architecture)

Materials

Granite benches and steps, painted steel fence with bronze inset letters on granite blocks, center column (painted concrete) with electric lights behind cast resin panels

Dimensions

3.5 acres

Conservator

Melanie Brussat

Description

Waterfront Plaza contains sculptural seating surfaces and tables as well as a selection of quotes from Walt Whitman and Frank O'Hara inscribed in bronze lettering on a painted steel railing overlooking the river. The railing is attached to one row of polished granite blocks above rows of unpolished granite that step down to the waterfront walkway. A large electric torch on a concrete column painted with black textured paint sits in the center of the plaza atop a round polished granite bench. Four boat-shaped benches made from polished granite are aligned with the railing near the waterfront. Along the north side of the plaza, six cylindrical granite tables are flanked by granite seats with three steps on the outer sides. An elongated rectangular water feature lies along the north side of the tables and seats. Five tables and seats of the same shape and a similar water feature line the east side of the plaza in front of the Winter Garden. The entrance to Pumphouse Park on the southeast end of the plaza features a steel gate painted black and green that sits on granite blocks.

Condition

Note: this report considers the condition of the elements of the plaza listed below. The landscape architecture and the Winter Garden were considered beyond the scope of this report.

Steel railing with bronze letters

- **The steel railing is severely corroding underneath the paint. The corrosion product, being greater in volume than the original steel, is pushing the paint off the surface and creating extensive paint loss and a lumpy appearance on the railing. Contact between the steel railing and the bronze letters causes galvanic (preferential) corrosion of the steel, exacerbated by the salts in a marine environment (fig. 2, 3).**
- The bronze letters are in relatively good condition, showing only minor corrosion in areas where water can pool, and minor pitting (fig. 2, 3).
- The caulk that attaches the fence to the granite base is deteriorated and in some cases completely missing (fig. 4).
- A section of the bronze railing top is out of alignment (above the word "LANDS").

Granite blocks below railing (see figs. 8,9 for maps of condition issues)

- The iron corrosion from the steel has caused rust staining of the polished granite directly below the railing (fig. 4).
- The granite blocks below the railing facing the waterfront have rust staining concentrated mostly in the joins of the lowest register (fig. 6). The staining is present below both railings but more pronounced below the north railing. The staining does not directly correspond with the corroded fence and may be related to another source.
- The caulk between the blocks has deteriorated and in some cases is missing (fig. 5).
- The area just below the north end of the south railing has shifted, resulting in misaligned granite blocks, misaligned pavers on the ground, wide joints between blocks, and cracks in the blocks.

- There are several chips in the granite blocks, especially at the corners (fig. 8,9).
- There are cracks in the granite blocks in several areas (fig. 8,9).
- At the north end of the north railing, a detached piece of granite was readhered, but there are cracks and a void in the stone that remain around this area.
- There is a small area of white graffiti on the waterfront side of the north railing.

Four boat-shaped granite benches (see figs. 8,9 for maps of condition issues)

- There are a few chip losses to the granite benches.
- There are small areas of deteriorated or missing caulk.
- There are two small stone repairs on the bench just south of the torch (fig. 7).

Concrete column and torch

- The ten-sided painted steel cap in the center of the top of the torch has areas of corrosion and paint loss (fig. 12).
- The hardware connecting the steel cap to the top of the torch is heavily corroded. Four of the bolts are missing (fig. 12).
- The top of the torch overall appears to be watertight.
- The diamond-shaped yellow cast resin panels on the torch are mostly in good condition, with a few small cracks.
- The caulk around the larger triangular panels of the upper area of the torch has deteriorated.
- The concrete column appears to be painted with a textured paint. There may be small cracks in the concrete that are covered by the paint.

Five granite tables and benches along the east side (see fig. 10 for map of condition issues)

- There are chips in many of the corners of the three-step granite seats.
- There is a circular rust stain in front in the granite paver in front of the lamppost on the south end.
- There is some staining and darkening of the verticals of the steps.

Six granite tables and benches along the north side (see fig. 11 for map of condition issues)

- There are chips in many of the corners of the three-step granite seats.
- There is a small repair in the stone of the three-step seat furthest to the west.
- There are a few dark stains in the stone of the tables and seats.
- There is a circular rust stain in front in the granite paver in front of the lamppost second from the western end.

Entrance to Pumphouse Park

- The steel gate is corroding underneath the paint, leading to paint loss and a lumpy appearance, mostly concentrated in the lower areas (fig. 13).
- There is no caulk or mortar connecting the steel gate to the granite blocks below. There are cylindrical recesses in the granite where the steel rests, where water can pool with no outlet (fig. 13).
- The gate has several coats of paint. It is painted black in some areas and green in others; some of the green areas have an earlier campaign of blue paint exposed in the losses.

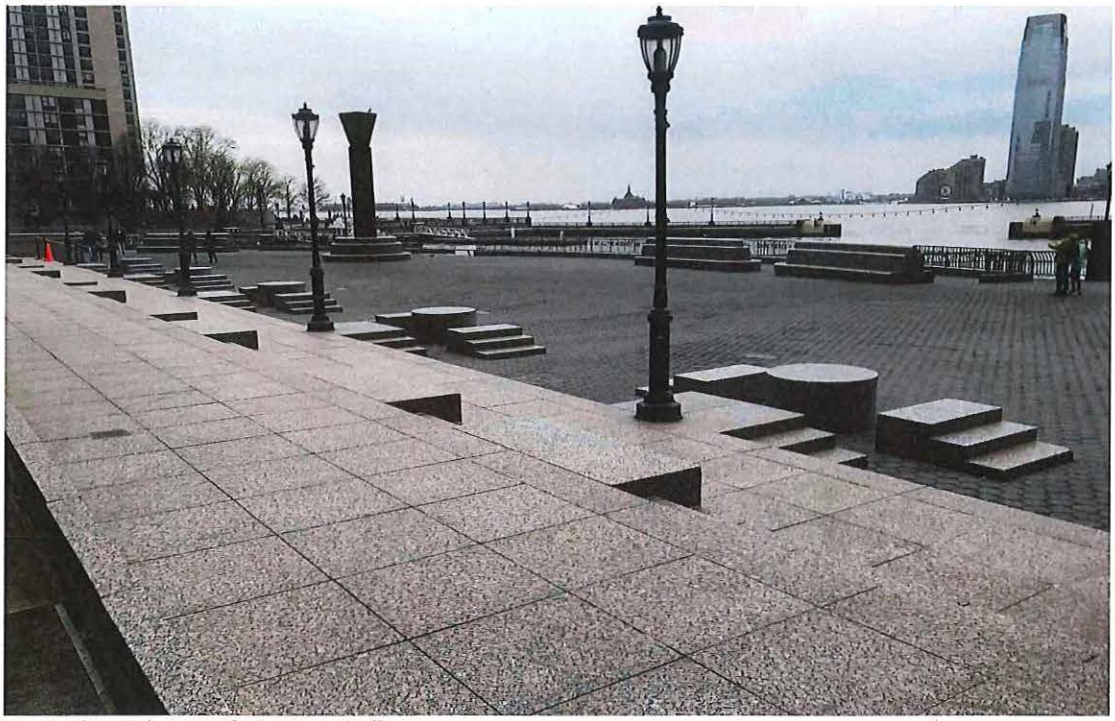


Fig. 1: Central area of plaza, overall

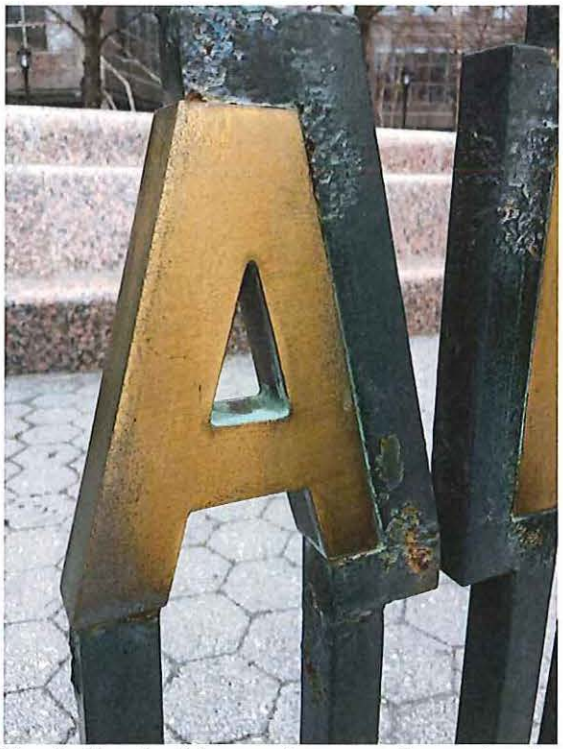


Fig. 2: Detail of bronze letter on fence, showing advanced iron corrosion of adjacent steel and relatively minor green bronze corrosion on interior cutout of "A"

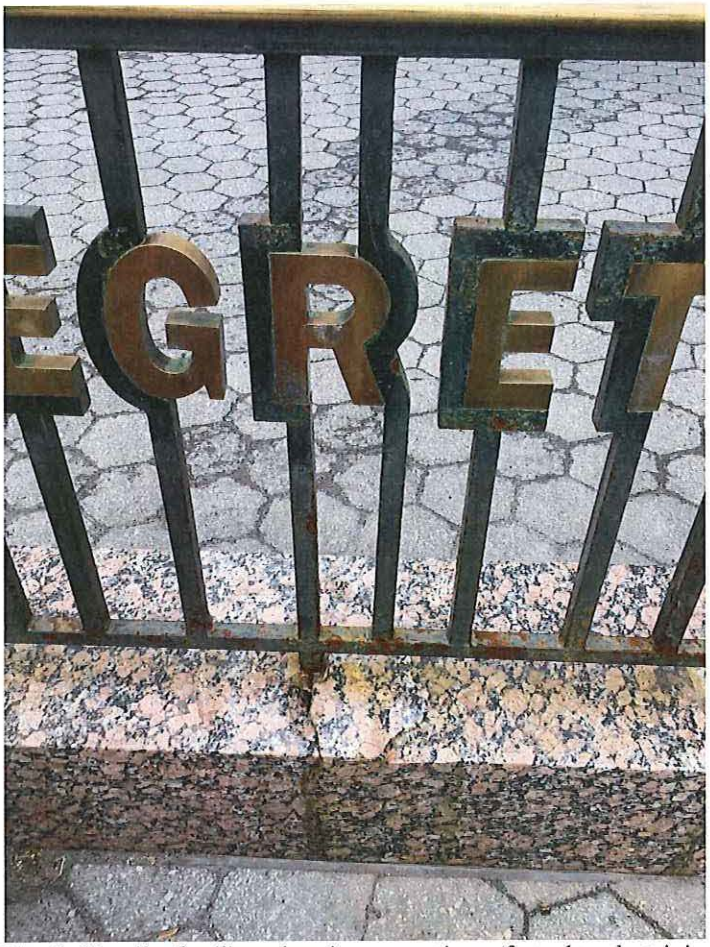


Fig. 3: Detail of railing showing corrosion of steel and staining on granite below, and cracks and losses to the granite


Fig. 4: Detail of railing showing missing/deteriorated caulk and iron stains on granite



Fig. 5: Deteriorated/missing caulk between granite blocks



Fig. 6: Detail of railing and rust stained granite blocks facing the waterfront

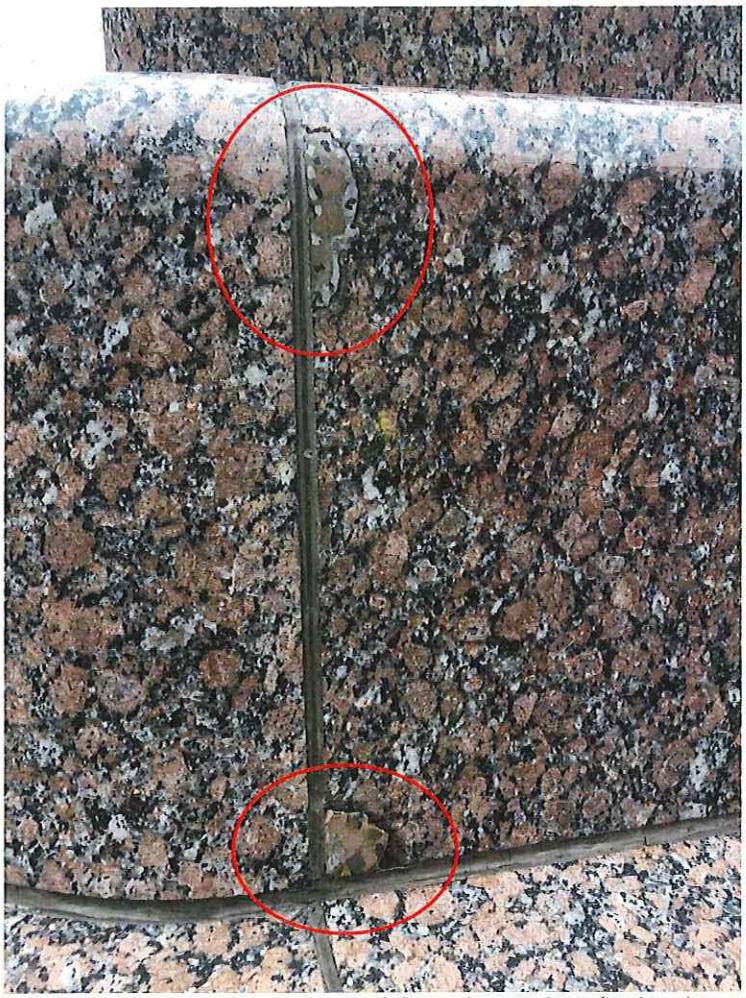


Fig. 7: Detail of oval bench (second from the south end), showing two repairs of lost granite

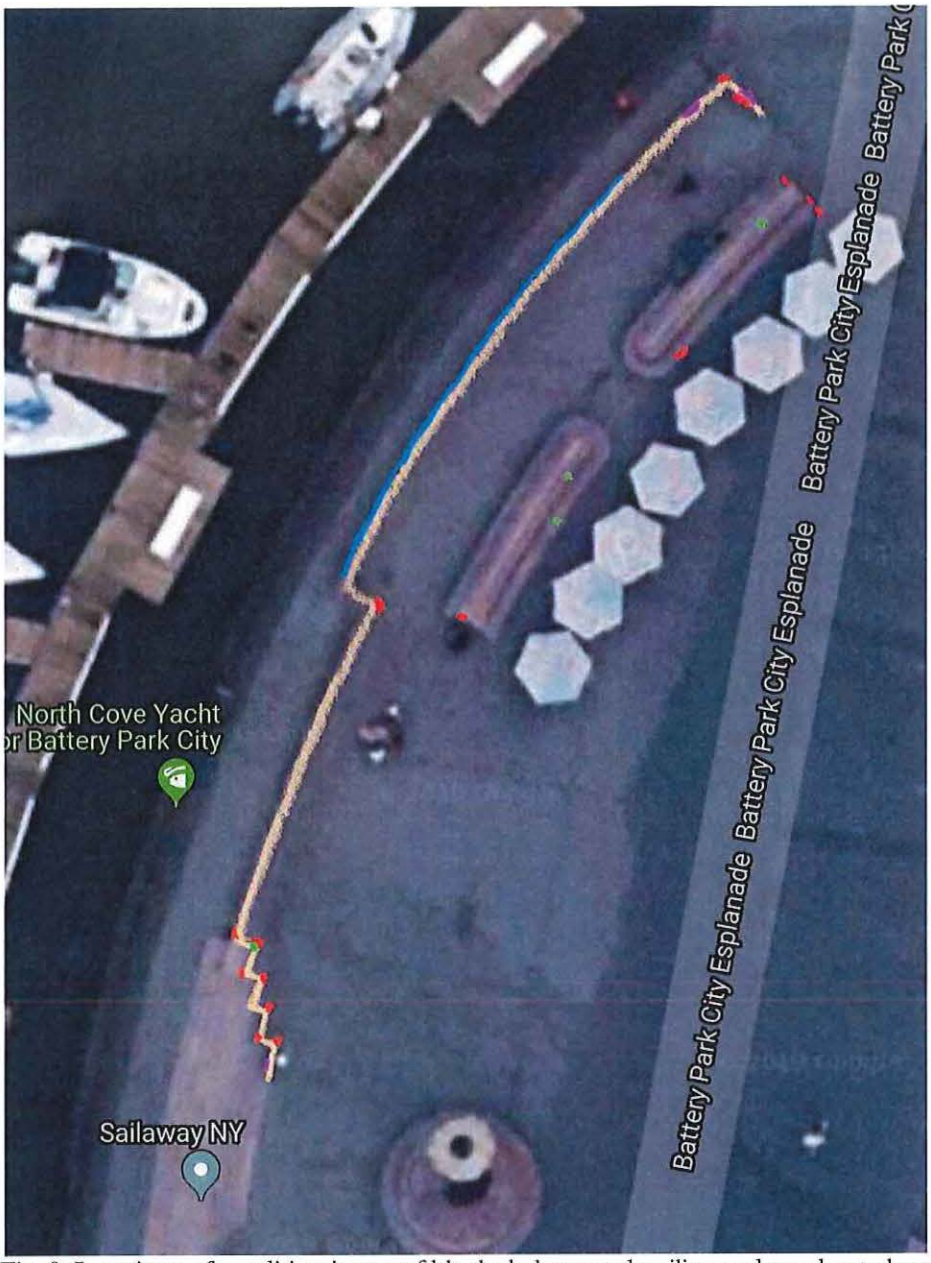


Fig. 8: Locations of condition issues of blocks below north railing and two boat-shaped benches (railing demarcated for clarity) (Aerial view from Google Maps)
Red=chips in stone
Blue=stains in stone
Purple=crack in stone
Green=large gap between blocks/missing caulk



Fig. 9: Locations of condition issues of blocks below south railing and two boat-shaped benches (railing demarcated for clarity) (Aerial view from Google Maps)
Red=chips in stone
Blue=stains in stone
Purple=crack in stone
Green=large gap between blocks/missing caulk

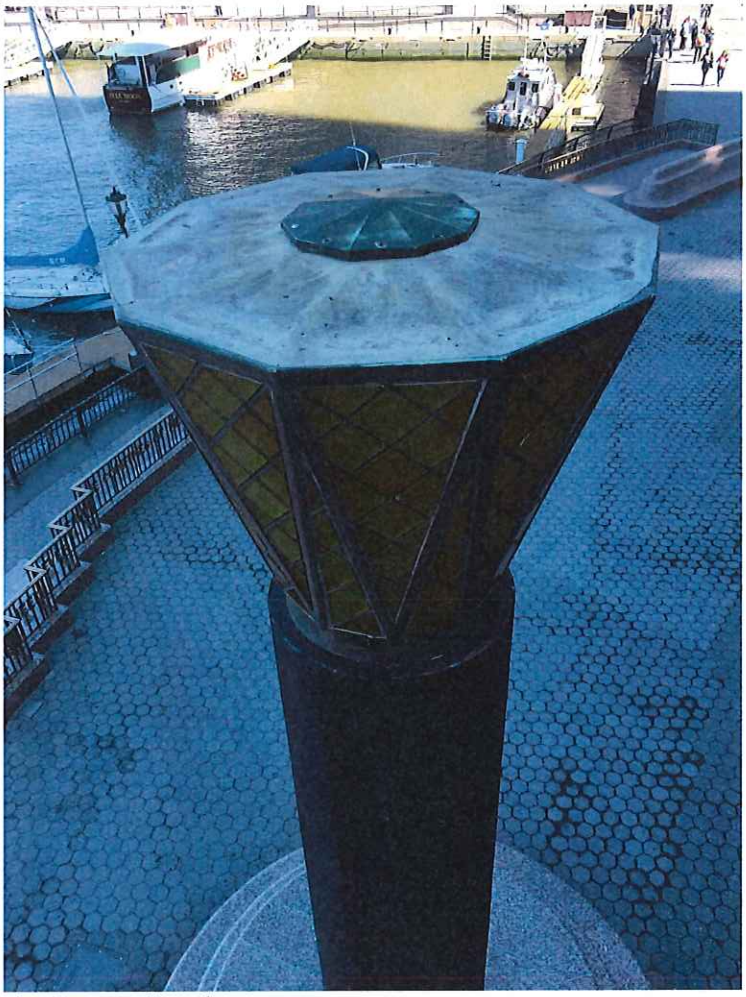


Fig. 12: top of torch



Fig. 13: Detail of water pooling and corrosion in Pumphouse Park gate

Recommended Treatment (by a conservator)

- Treat the corroded railing
    - Ideally the railing would be deinstalled and treated offsite.
    - The bronze letters should be detached for treatment.
    - Remove all corrosion from the steel railing.
    - Repaint the steel railing.
    - Consider an isolating layer between the steel and bronze to slow the effects of galvanic corrosion.
    - Remove the green corrosion from the bronze letters.
    - Wax the bronze letters.
- Fill the chips in the granite blocks that cannot be replaced.
- Replace the caulk between the granite blocks below the railing.
- Treat the stained granite below the railing.
- Replace the corroded/missing hardware on the top of the torch.
- Remove corrosion and repaint the ten-sided cap on the top of the torch.
- Replace the deteriorated caulk on the upper area of the torch.
- Treat the steel gate to Pumphouse Park:
    - Replace mortar that connects the bottom of the gate to the granite blocks below.
        - Ensure that water cannot pool in the recesses (mortar should fill the recesses).
    - Wash the granite blocks with a product designed for outdoor stone.
    - Consult with the artist to determine the intended color for the gate.
    - Remove the corrosion and repaint the gate.

General Maintenance

- The steel railing and gate should be treated for corrosion and repainted as necessary.
- The bronze letters on the gate should be rewaxed at least annually.
- The caulk on all areas considered artwork should be replaced as necessary.
- The granite should be washed seasonally with a product designed for outdoor stone.

Recommended Maintenance (by park staff)

- Replace deteriorated caulk around the pavers as necessary (conversation with onsite maintenance personnel suggests this is already happening).
- Reset or replace cracked or misaligned pavers as necessary (conversation with onsite maintenance personnel suggests this is already happening).

Priority Level

High Priority: The steel railing with bronze lettering and the gate to Pumphouse Park is heavily corroded and requires treatment to remove the corrosion. The granite below the railing is heavily stained and needs caulking. The remainder of the plaza can be considered low/medium priority.

EXHIBIT C
PROPOSAL SUBMISSION PACKET

I. PROPOSAL SUBMISSION CHECKLIST AND CONFIRMATION STATEMENT

[ ] The Proposer hereby certifies that they meet the Minimum Qualification Requirements as stated in Section IV.A of the RFP.

[ ] The Proposer hereby certifies that except as disclosed in the Proposal, no officer or employee of the Proposer is directly or indirectly a party to or in any other manner interested financially or otherwise in this RFP.

[ ] The Proposer hereby certifies that they have reviewed BPCA's Standard Form of Contract, attached as Exhibit G to the RFP, and either has no objections or has detailed their objections in an appendix to their Proposal.

[ ] The Proposer hereby certifies that they possess the experience, ability, resources and financial standing to perform the Services and shall, upon request by the Authority, provide documentation of such.

The Proposer hereby certifies that their Proposal submitted for the BPC Artwork Logistics Project includes the following required documents and forms, or that, where any required form or document may not be included, a written explanation has been provided for that omission:

1. Forms & Items included in this Exhibit:

[ ] This Checklist
[ ] Answers to "Information Required"
[ ] Vendor Responsibility Questionnaire / Certificate of No Change
[ ] Statement of Non-Collusion
[ ] Affirmation of Understanding of and Agreement Pursuant to State Finance Law §139-j(3) and §139-j(6)(b)
[ ] Certification of Compliance with New York State Finance Law §139-k(5)
[ ] Disclosure of Prior Non-Responsibility Determinations
[ ] Encouraging the Use of New York State Businesses Statement
[ ] Acknowledgement of Addenda Form
[ ] MWBE Utilization Plan
[ ] SDVOB Utilization Plan
[ ] Minority and Women Owned Business Enterprises And Equal Employment Opportunity Policy Statement
[ ] Diversity Practices Questionnaire
[ ] Executive Order 16 Certification

2. Additional Required Documents

[ ] Executive Summary
[ ] Copy of the Proposer's IRS W9 Form (https://www.irs.gov/pub/irs-pdf/fw9.pdf)
[ ] Copy of the Proposer's financial statements per section VI.B.3
[ ] Copies of appendices listed in section VI.B.4

Name of Proposer: _____

Officer Name: _____

Officer Title: _____ _____

Signature of Officer

II. INFORMATION REQUIRED

A. Minimum Qualifications

Provide an itemized and brief narrative demonstrating how the Proposer meets each of the minimum qualifications requirements set forth in Section V(A) of the RFP. Any projects identified in the Minimum Qualifications section of the firm's proposal must include the project title, a brief description of the scope of work, start date, end date (if applicable), location, project owner, budget (construction cost).

B. Questions and Information Sought Relating to the Work

1) Describe your firm's background, services, size, experience, expertise, and history as these factors are relevant to the Work – especially services performed in New York City.

2) Describe your firm's as well as your proposed subcontractors' experience and expertise in performing similar artwork logistics services including protection in place, removal and installation, transportation and storage, and restoration. Also, to the extent practical, describe your proposed team's experience with similar work for other public entities, with an emphasis on New York State public entities.

3) Describe your proposed approach to, and methodology for, the Work, including schedule, strategies for securing long-lead items and materials, weather protection measures and any specific on-site materials/equipment laydown requirements determined to be necessary.

4) Identify any subcontractors you intend to use for this engagement, and describe the services to be performed by each subcontractor.

5) List each key member of the team you intend to assign to this engagement and include for each listed individual: (a) area(s) of specialization; (b) title and/or position within your firm; (c) years and type(s) of relevant experience; and (d) the services to be performed.

6) Identify the Lead PM and primary contact in providing services to BPCA, and identify any other persons who will be listed as a "key person" in any contract with BPCA.

7) Describe your proposed team's experience (including both direct contract work and work performed under subcontracts) with similar work for other public entities, with an emphasis on New York State and City public entities. Include contract dates, the nature of the work performed, the contracting agency, the contract number (if known) and the supervisor for each.

8) Clearly identify any information in your Proposal that you believe to be confidential and exempt from FOIL, and state the reasons. Please note that this question is for informational purposes only, and BPCA will determine, in its sole discretion, whether requested documents are exempt from disclosure under FOIL.

9) Provide at least three (3) client references for whom your firm has performed similar work to that requested in this RFP. For each client, describe the project, the project's date, and services performed, and provide the name, address, and telephone number for a person at client's firm familiar with such work.

10) Identify any and all exceptions taken to BPCA's Standard Form of Contract, attached as Exhibit G, explaining the reasons for such exceptions. Such exceptions must be detailed in an appendix to your Proposal labeled, "Appendix: Objections to BPCA Form of Contract." No exceptions to the

Contract will be considered by BPCA after submission of the Proposals. BPCA maintains the right to reject Proposals based on non-conformance with the Standard Form of Contract.

11) Describe your firm's environmentally sustainable business practices or activities, and how such practices may be brought to use in the performance of the Work.

C. Questions and Information Sought Relating to Proposer's Firm & Eligibility

1) Within the past three (3) years, have there been any significant developments in your firm such as changes in ownership or restructuring? Do you anticipate any significant changes in the near future? If so, please describe.

2) How does your firm identify and manage conflicts of interest?

3) Are there any potential conflict of interest issues posed by your firm's performance of the Work on behalf of BPCA?

4) Has your firm, or have any of the firm's partners/employees, been disciplined or censured by any regulatory body within the last five (5) years? If so, please describe the relevant facts.

5) Within the last five (5) years, has your firm, or a partner or employee in your firm, been involved in litigation or other legal proceedings relating to the provision of professional services? If so, please provide an explanation and the current status or disposition of the matter.

6) List any professional or personal relationships your firm's employees may have with BPCA's Board Members and/or employees – a list of which is attached as Exhibit I.

7) If selected, will your firm assign any person to this engagement who was previously an employee of BPCA or BPCPC? If so, please: i) identify when (month and year) that person's employment at BPCA/BPCPC terminated, and ii) describe that person's involvement, if any, with matters related to this RFP during his/her employment at BPCA/BPCPC.

8) In the past five (5) years, have any public sector clients terminated their working relationship with your firm? If so, please provide a brief statement of the reasons. Provide the name of the client and provide a contact person, address and telephone number.

III. VENDOR RESPONSIBILITY QUESTIONNAIRE

A. Instructions

The Standard Vendor Responsibility Form should be filled out by someone in your firm who knows about tax filings, prior findings of non-responsibility by a governmental authority, etc., and can certify the accuracy of all information requested in the form (such as legal status, tax status, and debarment status). You must answer every question on the questionnaire.

NOTE: You may fill out the "Certificate of No Change" form instead ONLY if your firm has submitted the Vendor Responsibility form to Battery Park City Authority already during this calendar year. If this is the first time your firm is proposing to do work for Battery Park City Authority this year, then you must fill out the entire Vendor Responsibility Questionnaire.\

[NO FURTHER TEXT ON THIS PAGE]

B. Standard Vendor Responsibility Questionnaire

a. Legal Business Name:	
b. Federal Employer Id No. (FEIN):	
c. D/B/A – Doing Business As (if applicable): County Filed:	
d. Website Address (if applicable)	
e. Principal Place of Business	Address:
f. Telephone:	
g. Fax (if applicable):	
h. Authorized Contact for this Questionnaire:	i. Name: ii. Title: iii. Telephone: iv. Email:
i. Type of Business (please check appropriate box and provide additional information)	☐ Corporation (Sole Proprietor). State of Incorporation: ☐ Corporation (General Partnership). State of Incorporation: ☐ Corporation (Not-For-Profit). Charities Registration Number: ☐Corporation (Limited Liability Company/LLC). Jurisdiction Filed In: ☐Corporation (Limited Partnership). State/County filed in: ☐ Individual ☐ Other – Specify:
j. If not incorporated or formed in New York State, please provide a current Certificate of Good Standing from your state or applicable local jurisdiction.	
k. List the name and title of each principal owner, officer, major stockholder (10% or more of the voting shares for publicly traded companies, 25% or more of the shares for all other companies), director, and member, as applicable:	
l. Authorized Contact for the Proposed Contract:	i. Name: ii. Title: iii. Telephone: iv. Email:

Vendor Name:		**Vendor FEIN:**	
C. Does the vendor use, or has it used in the past five (5) years, any other business name, FEIN, or D/B/A other than what is listed in question a-c above? If yes, please provide the name(s), FEIN(s), and D/B/A(s) and the address for each such company and D/B/A on a separate page and attach to this response.			Yes ☐ No ☐
D. Within the past five (5) years, has the vendor, any principal, owner, officer, major stockholder (10% or more of the voting shares for publicly traded companies, 25% or more of the shares for all other companies), affiliate[1] or any person involved in the bidding, contracting or leasing process been the subject of any of the following:			
a. a judgment or conviction for any business related conduct constituting a crime under federal, state or local government law including, but not limited to, fraud, extortion, bribery, racketeering, price-fixing or bid collusion or any crime related to truthfulness and/or business conduct?			Yes ☐ No ☐
b. a criminal investigation or indictment for any business related conduct constituting a crime under federal, state or local government law including, but not limited to, fraud, extortion, bribery, racketeering, price-fixing or bid collusion or any crime related to truthfulness and/or business conduct?			Yes ☐ No☐
c. an unsatisfied judgment, injunction or lien for any business related conduct obtained by any federal, state or local government agency including, but not limited to, judgments based on taxes owed and fines and penalties assessed by any federal, state or local government agency?			Yes ☐ No☐
d. an investigation for a civil or criminal violation for any business related conduct by any federal, state or local agency?			Yes ☐ No☐
e. a grant of immunity for any business-related conduct constituting a crime under federal, state or local governmental law including, but not limited to, fraud, extortion, bribery, racketeering, price-fixing, bid collusion or any crime related to truthfulness and/or business conduct?			Yes ☐ No☐
f. a federal, state or local government suspension or debarment from the contracting process?			Yes ☐ No☐
g. a federal, state or local government contract suspension or termination for cause prior to the completion of the term of a contract?			Yes ☐ No☐
h. a federal, state or local government denial of a lease or contract award for non-responsibility?			Yes ☐ No☐
i. an administrative proceeding or civil action seeking specific performance or restitution in connection with any federal, state or local contract or lease?			Yes ☐ No☐
j. a federal, state or local determination of a willful violation of any public works or labor law or regulation?			Yes ☐ No☐
k. a sanction imposed as a result of judicial or administrative proceedings relative to any business or professional license?			Yes ☐ No☐
l. a consent order with the NYS Department of Environmental Conservation, or a federal, state or local government enforcement determination involving a violation of federal, state or local environmental laws?			Yes ☐ No☐

[1]"Affiliate" meaning: (a) any entity in which the vendor owns more than 50% of the voting stock; (b) any individual, entity or group of principal owners or officers who own more than 50% of the voting stock of the vendor; or (c) any entity whose voting stock is more than 50% owned by the same individual, entity or group described in clause (b). In addition, if a vendor owns less than 50% of the voting stock of another entity, but directs or has the right to direct such entity's daily operations, that entity will be an "affiliate" for purposes of this questionnaire.

Vendor Name:		**Vendor FEIN:**	
m. an Occupational Safety and Health Act citation and Notification of Penalty containing a violation classified as serious or willful?			Yes ☐ No☐
n. a rejection of a bid on a New York State contract or a lease with the State for failure to comply with the MacBride Fair Employment Principles?			Yes ☐ No☐
o. a citation, violation order, pending administrative hearing or proceeding or determination issued by a federal, state or local government for violations of:			
i. health laws, rules or regulations			Yes ☐ No☐
ii. unemployment insurance or workers' compensation coverage or claim requirements			Yes ☐ No☐
iii. ERISA (Employee Retirement Income Security Act)			Yes ☐ No☐
iv. human rights laws			Yes ☐ No☐
v. federal U.S. Citizenship and Immigration Services laws			Yes ☐ No☐
vi. Sherman Act or other federal anti-trust laws			Yes ☐ No☐
p. entered into an agreement to a voluntary exclusion from contracting with a federal, state or local governmental entity?			Yes ☐ No☐
q. a denial, decertification, revocation or forfeiture of Women's Business Enterprise, Minority Business Enterprise or Disadvantaged Business Enterprise status?			Yes ☐ No☐
r. a rejection of a low bid on a federal, state or local contract for failure to meet statutory affirmative action or Minority or Women's Business Enterprise or Disadvantaged Business Enterprise status requirements on a previously held contract?			
s. a finding of non-responsibility by an agency or authority due to a violation of State Finance Law §139-j?			Yes ☐ No☐
For each YES answer to questions D.a-s above, provide details n additional pages regarding the finding, including but not limited to cause, current status, resolution, etc.			

[NO FURTHER TEXT ON THIS PAGE]

Vendor Name:		**Vendor FEIN:**	
E. During the past three (3) years has the vendor failed to:			
a. File returns or pay any applicable federal, state or local government taxes? If yes, identify the taxing jurisdiction, type of tax, liability year(s) and tax liability amount the company failed to file/pay and the current status of the liability.			Yes ☐ No☐
b. File returns or pay New York State Unemployment Insurance? If yes, indicate the years the company failed to file/pay the insurance and the current status of the liability.			Yes ☐ No☐
F. Have any bankruptcy proceedings been initiated by or against the vendor or its affiliates within the past seven (7) years (whether or not closed) or is any bankruptcy proceeding pending by or against the vendor or its affiliates, regardless of the date of filing? If yes, indicate if this is applicable to the submitting vendor or one of its affiliates: If it is an affiliate, include the affiliate's name and FEIN: Provide the court name, address and docket number: Indicate if the proceedings have been initiated, remain pending or have been closed: If closed, provide the date closed:			Yes ☐ No☐
G. Does the vendor have the financial resources necessary to fulfill the requirements of the proposed contract?			Yes ☐ No☐

[NO FURTHER TEXT ON THIS PAGE]

Vendor Name:		Vendor FEIN:	

H. Certification:

State of:)

) ss:

County of:)

CERTIFICATION:

The undersigned, personally and on behalf of the vendor identified in questions 1-3 above, does hereby state and certify to Battery Park City Authority – State of New York that the information given above is true, accurate and complete. It is further acknowledged that Battery Park City Authority – State of New York will rely upon the information contained herein and in any attached pages for purposes of evaluating our company for vendor's responsibility for contract award and Battery Park City Authority – State of New York may, in its discretion, by means which it may choose, verify the truth and accuracy of all statements made herein. It is further acknowledged that intentional submission of false or misleading information may constitute a felony under Penal Law Section 175.35 or may constitute a misdemeanor under Penal Law Sections 175.30, or 210.45, and may also be punishable by a fine and/or imprisonment of up to five years under 18 USC Section 1001 and may result in a denial of contract award or contract termination.

Name of Business: _____

Address: _____

City, State, Zip: _____

Officer Name: _____

Officer Title: _____

_____

Signature of Officer

_____

IV. CERTIFICATE OF NO CHANGE FORM

NOTE: You may fill out the "Certificate of No Change" form instead ONLY if your firm has submitted the Vendor Responsibility form to Battery Park City Authority already during this calendar year. If this is the first time your firm is proposing to do work for Battery Park City Authority this year, then you must fill out the entire Vendor Responsibility Questionnaire.

CERTIFICATE OF NO CHANGE

STATE OF ( )

COUNTY OF) ss.:

The undersigned, being duly sworn, deposes and says:

1. I am_____, the_____ (title) of _____ (hereinafter the "Contractor"), which is currently submitting an amendment to a State Contract.

2. Contractor previously submitted the completed Battery Park City Authority Standard Vendor Responsibility Questionnaire, dated_____, in connection with another State Contract.

3. Attached is an accurate and true copy of such previously submitted Standard Vendor Responsibility Questionnaire.

4. I hereby certify that with the exception of the information specified in Question 12, and as changed herein, there has been no material change in the information pertaining to the Contractor specified on such attached Questionnaire.

AUTHORIZED CONTACT FOR THE PROPOSED CONTRACT:

Name & Title: _____

Telephone Number: _____

Email: _____

_____
Signature

_____
Print Name

_____
Title

V. STATEMENT OF NON-COLLUSION

A. By submission of this Proposal, Proposer and each person signing on behalf of Proposer certifies, (and in the case of a joint Proposal each party thereto certifies) as to its own organization, under penalty of perjury, that to the best of his knowledge and belief:
   a. The prices in this Proposal have been arrived at independently without collusion, consultation, communication or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other Proposer or with any competitor.
   b. Unless otherwise required by law, the prices which have been quoted in this Proposal have not been knowingly disclosed by the Proposer and will not knowingly be disclosed by the Proposer prior to opening, directly or indirectly to any other Proposer or to any competitor.
   c. No attempt has been made or will be made by Proposer to induce any other person, partnership, firm or corporation to submit or not to submit a Proposal for the purpose of restricting competition.

B. A Proposal shall not be considered for award nor shall any award be made where sub-paragraphs A.a, A.b, and A.c above have not been complied with provided however, that if in any case Proposer cannot make the foregoing certification and the Proposer shall so state and shall furnish with its Proposal a signed statement which sets forth in detail the reasons therefore. Where sub-paragraphs A.a, A.b, and A.c above have not been complied with, Proposal shall not be considered for award nor shall any award be made unless the Authority determines that such disclosure was not made for the purpose of restricting competition. The fact that a Proposer (a) has published price lists, rates, or tariffs covering items Being procured, (b) has informed prospective customers of proposed or pending Publication of a new or revised price lists for such item, or (c) has sold the same items To other customers at the same prices being proposed, does not constitute, without more, a disclosure within the meaning of paragraph A.a above.

C. This Proposal, if made by a corporate Proposer, shall be deemed to have been authorized by the board of directors of the Proposer and such authorization shall be deemed to include the signing and submission of the Proposal and the inclusion thereof of the statement of non-collusion as the act and deed of the corporation.

(Insert Name of Proposer and Sign Below)

By: _____

(Print full legal name of person, firm, partnership, or corporation)

_____

Signature

_____

Address

_____ _____ _____

Corporate ID Number Federal ID Number Date

STATEMENT OF NON-COLLUSION *(Continued)*

If the Proposer is an individual, the Proposer's legal residence is as follows:

Street Address	City	State	ZIP

If Proposer is a Firm or Partnership, complete the following:

Name of Members or Partners	Legal Residence

If Proposer is a Corporation, complete the following:

Names of All Officers	
President:	
Vice President:	
Secretary:	
Treasurer:	
Other Officers/Titles (if applicable):	

VI. OFFEROR'S AFFIRMATION OF UNDERSTANDING OF AND AGREEMENT PURSUANT TO STATE FINANCE LAW §139-j(3) AND §139-j(6)(b)

For reference, the applicable sections of the New York State Finance Law can be found here: https://www.nysenate.gov/legislation/laws/STF/139-J

Offeror affirms that it understands and agrees to comply with the procedures of Battery Park City relative to permissible Contacts as required by State Finance Law §139-j(3) and §139-j(6)(b).

By: _____ Date: _____

_____
Signature

_____
Name – Printed

_____
Title

Contractor Name: _____
Company

Contractor Address: _____

VII. OFFEROR'S CERTIFICATION OF COMPLAINCE WITH STATE FINANCE LAW §139-k(5)

For reference, the applicable sections of the New York State Finance Law can be found here: https://www.nysenate.gov/legislation/laws/STF/139-K

I certify that all information provided to Battery Park City Authority, its subsidiaries and affiliates with respect to State Finance Law §139-k is complete, true and accurate.

By: _____ Date: _____

_____
Signature

_____
Name – Printed

_____
Title

Contractor Name: _____
Company

Contractor Address: _____

VIII. OFFEROR DISCLOSURE OF PRIOR NON-RESPONSIBILITY DETERMINATIONS

Name of Individual or Entity Seeking to Enter into the Procurement Contract:	
Address:	
Project Name:	
Date:	

1. Has any Governmental Entity made a finding of non-responsibility regarding the individual or entity seeking to enter into the Procurement Contract in the previous four years? If yes, please answer the next questions:	Yes ☐ No☐
2. Was the basis for the finding of non-responsibility due to a violation of State Finance Law §139-j?	Yes ☐ No☐
3. Was the basis for the finding of non-responsibility due to the intentional provision of false or incomplete information to a Governmental Entity?	Yes ☐ No☐
4. If you answered yes to any of the above questions, please provide details regarding the finding of non-responsibility below: Governmental Entity: _____ Date of Finding of Non-responsibility: _____ Basis of Finding of Non-Responsibility: _____ (add additional pages if required)	
5. Has any Governmental Entity or other governmental agency terminated or withheld a Procurement Contract with the above-named individual or entity due to the intentional provision of false or incomplete information? If yes, please provide details below: Governmental Entity: _____ Date of Termination or Withholding of Contract: _____ Basis of Termination or Withholding: _____ (add additional pages if required)	Yes ☐ No☐

Offeror certifies that all information provided to the Governmental Entity with respect to State Finance Law §139-k is complete, true and accurate.

[NO FURTHER TEXT ON THIS PAGE; SIGNATURE PAGE TO FOLLOW]

By: _____ Date: _____

_____
Signature

_____
Name – Printed

_____
Title

Consultant Name: _____
Company

Consultant Address: _____

[NO FURTHER TEXT ON THIS PAGE]

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

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

Proposers are strongly encouraged, to the maximum extent practical and consistent with legal requirements, to use responsible and responsive New York State businesses in purchasing commodities that are of equal quality and functionality and in utilizing services and technology. Furthermore, Proposers are reminded that they must continue to utilize small, minority and women-owned businesses, consistent with current State law.

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

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

Proposers can demonstrate their commitment to the use of New York State businesses by responding to the question below. Each proposer must include a response to this question with their proposal. Please note that a "yes" response requires supporting information. If yes, identify New York State businesses that will be used and attach identifying information.

Will New York State businesses be used in the performance of this contract? Yes ☐ No ☐

X. ACKNOWLEDGEMENT OF ADDENDA FORM

RFP TITLE: _____

Complete Part I or Part II, whichever is applicable, and sign in Part III.

Part I

Listed below are the dates of issue for each Addendum received in connection with this RFP:

Addendum # 1, Dated _____, ____

Addendum # 2, Date: _____, ____

Addendum # 3, Dated_____, ____

Addendum # 4, Dated _____, ____

Addendum # 5, Dated_____, ____

Addendum # 6, Dated_____, ____

Part II: Acknowledgement of No Receipt

_____ No Addendum was received in connection with this RFP

Part III

Part III

Proposer's Name: _____

Proposer's Authorized Representative:

Name: _____

Title: _____

Signature: _____

[NO FURTHER TEXT ON THIS PAGE]

XI. MINORITY BUSINESS ENTERPRISE/WOMEN BUSINESS ENTERPRISE (MBE/WBE) UTILIZATION PLAN

Please fill out utilization plan for MBE/WBE(s) participation and use the same form for all additional MBE/WBE Firms.

Contractor Information

Project Name:		
Project No.:	Site #:	Date:
Name of Contractor:		
Address:		
Contact Person:		
Phone:	Fax:	
Federal ID No.:	Tax ID:	
Is Your Firm: MBE ☐ WBE☐		
Work to Begin:	Work to be Completed:	

MBE/WBE Information

Sub-Contractor or Vendor:		
Name:		
Address:		
Contact Person:		
Phone:	Fax:	
Federal ID No.:	Tax ID:	
Is This Firm: MBE ☐ WBE☐		
Total Percent of Contract Holder %	Trade:	
Scope of Work to be done by MBE/WBE:		
Work to Begin:	Work to be Completed:	

[NO FURTHER TEXT ON THIS PAGE]

MBE/WBE Information

Sub-Contractor or Vendor:	
Name:	
Address:	
Contact Person:	
Phone:	Fax:
Federal ID No.:	Tax ID:
Is This Firm: MBE ☐ WBE☐	
Total Percent of Contract Holder %	Trade:
Scope of Work to be done by MBE/WBE:	
Work to Begin:	Work to be Completed:

The Minimum MBE/WBE Business Participation Goal Expected for your Firm is as Follows:	Workforce Percentages set for this project is as Follows:
Trade(s)	Trade(s)
Minority Owned Business %	Minority Workforce %
Women Owned Business %	Female Workforce %

Please attach copies of the most recent New York State Certification Letters for all MBE/WBE Firms Listed on this Utilization Plan. If there are any changes in the information on this plan you must immediately re-submit this plan with the most recent date.

XII. SERVICE DISABLED VETERAN OWNED BUSINESSES (SDVOB) UTILIZATION PLAN

Please fill out utilization plan for SDVOB(s) participation and use the same format for all additional SDVOB sub-contractors.

Contractor Information

Contractor:	Date:
Name:	
Address:	
Contact Person:	Phone:
Federal ID No.:	Fax:

SDVOB Information

Sub-Contractor:	Federal ID No.:
Name:	Work to Begin
Address:	
Phone:	Work to Finish On:
Contact Person:	
Estimate % of Contract to be Awarded to SDVOB:	
Scope of Work to be Done by SDVOB:	

SDVOB Information

Sub-Contractor:	Federal ID No.:
Name:	Work to Begin
Address:	
Phone:	Work to Finish On:
Contact Person:	
Estimate % of Contract to be Awarded to SDVOB:	
Scope of Work to be Done by SDVOB:	

SDVOB Information

Sub-Contractor:	Federal ID No.:
Name:	Work to Begin
Address:	
Phone:	Work to Finish On:
Contact Person:	
Estimate % of Contract to be Awarded to SDVOB:	
Scope of Work to be Done by SDVOB:	

Workforce Percentage Information

Trade (s)	
Minority Workforce:	%
Female Workforce:	%

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

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

MBE/WBE

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

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

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

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

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

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

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

EEO

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

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

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

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

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

Agreed to this _____ day of _____

By _____

Print: _____ Title: _____

_____ is designated as the Consultant's Minority Business Enterprise Liaison responsible for administering the Minority and Women-Owned Business Enterprises - Equal Employment Opportunity (MBE/WBE - EEO) program.

MBE/WBE Contract Goals

30% Minority and Women's Business Enterprise Participation

___% Minority Business Enterprise Participation

___% Women's Business Enterprise Participation

EEO Contract Goals (if applicable)

___% Minority Labor Force Participation

___% Female Labor Force Participation

_____
(Authorized Representative)

Title: _____

Date: _____

XIV. DIVERSITY PRACTICES QUESTIONNAIRE

I, _____, as _____ (title) of _____ company (the "Company"), swear and/or affirm under penalty of perjury that the answers submitted to the following questions are complete and accurate to the best of my knowledge:

1. Does your Company have a Chief Diversity Officer or other individual who is tasked with supplier diversity initiatives? Yes ☐ No☐
   If Yes, provide the name, title, description of duties, and evidence of initiatives performed by this individual or individuals.

2. What percentage of your Company's gross revenues (from your prior fiscal year) was paid to New York State certified MBEs/WBEs as subcontractors, suppliers, joint-ventures, partners or other similar arrangement for the provision of goods or services to your Company's clients or customers?

3. What percentage of your Company's overhead (i.e. those expenditures that are not directly related to the provision of goods or services to your Company's clients or customers) or non-contract-related expenses (from your prior fiscal year) was paid to New York State certified MBEs/WBEs as suppliers/contractors?[1]

4. Does your Company provide technical training[2] to MBEs/WBEs? Yes ☐ No☐
   If Yes, provide a description of such training which should include, but not be limited to, the date the program was initiated, the names and the number of MBEs/WBEs participating in such training, the number of years such training has been offered and the number of hours per year for which such training occurs.

5. Is your Company participating in a government approved M/WBE mentor-protégé program? Yes ☐ No☐
   If Yes, identify the governmental mentoring program in which your Company participates and provide evidence demonstrating the extent of your Company's commitment to the governmental mentoring program.

6. Does your Company include specific quantitative goals for the utilization of MBEs/WBEs in its non-government procurements? Yes ☐ No☐
   If Yes, provide a description of such non-government procurements (including time period, goal, scope and dollar amount) and indicate the percentage of the goals that were attained.

7. Does your Company have a formal M/WBE supplier diversity program? Yes ☐ No☐
   If Yes, provide documentation of program activities and a copy of policy or program materials.

8. Does your Company plan to enter into partnering or subcontracting agreements with New York State certified MBEs/WBEs if selected as the successful Proposer? Yes ☐ No ☐
   If Yes, complete the attached Utilization Plan.

---

[1] Do not include onsite project overhead.

[2] Technical training is the process of teaching employees how to more accurately and thoroughly perform the technical components of their jobs. Training can include technology applications, products, sales and service tactics, and more. Technical skills are job-specific as opposed to soft skills, which are transferable.

All information provided in connection with the Diversity Practices Questionnaire is subject to audit and any fraudulent statements are subject to criminal prosecution and debarment.

Signature of Owner/Official _____

Printed Name of Signatory _____

Title _____

Name of Business _____

Address _____

City, State, Zip _____

STATE OF _____
COUNTY OF) ss:

On the _____ day of _____, 20__, before me, the undersigned, a Notary Public in and for the State of _____, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to this certification and said person executed this instrument.

_____
Notary Public

XV. CERTIFICATION UNDER EXECUTIVE ORDER NO. 16 PROHIBITING STATE AGENCIES AND AUTHORITIES FROM CONTRACTING WITH BUSINESSES CONDUCTING BUSINESS IN RUSSIA

Executive Order No. 16 provides that "all Affected State Entities are directed to refrain from entering into any new contract or renewing any existing contract with an entity conducting business operations in Russia." The complete text of Executive Order No. 16 can be found here.

The Executive Order remains in effect while sanctions imposed by the federal government are in effect. Accordingly, vendors who may be excluded from award because of current business operations in Russia are nevertheless encouraged to respond to solicitations to preserve their contracting opportunities in case the sanctions are lifted during a solicitation or even after award in the case of some solicitations.

As defined in Executive Order No. 16, an "entity conducting business operations in Russia" means an institution or company, wherever located, conducting any commercial activity in Russia or transacting business with the Russian Government or with commercial entities headquartered in Russia or with their principal place of business in Russia in the form of contracting, sales, purchasing, investment, or any business partnership.

Is Vendor an entity conducting business operations in Russia, as defined above? Please answer by checking one of the following boxes:

[ ] 1. No, Vendor does not conduct business operations in Russia within the meaning of Executive Order No. 16.

[ ] 2.a. Yes Vendor conducts business operations in Russia within the meaning of Executive Order No. 16 but has taken steps to wind down business operations in Russia or is in the process of winding down business operations in Russia. (Please provide a detailed description of the wind down process and a schedule for completion.)

[ ] 2.b. Yes, Vendor conducts business operations in Russia within the meaning of Executive Order No. 16 but only to the extent necessary to provide vital health and safety services within Russia or to comply with federal law, regulations, executive orders, or directives. (Please provide a detailed description of the services being provided or the relevant laws, regulations, etc.)

[ ] 3. Yes, Vendor conducts business operations in Russia within the meaning of Executive Order No. 16.

The undersigned certifies under penalties of perjury that they are knowledgeable about the Vendor's business and operations and that the answer provided herein is true to the best of their knowledge and belief.

Vendor Name (Legal Entity): _____

By (Signature): _____

Name: _____

Title: _____

Date: _____

EXHIBIT D
FORM OF COST PROPOSAL

COST PROPOSAL

(Proposer to submit executed Cost Proposal on its letterhead)

Date:

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

Attention: Mr. Michael LaMancusa
Contract Administrator

Dear Mr. LaMancusa,

The undersigned (the "Proposer") hereby proposes to provide all specified work necessary to perform the Work for the **Battery Park City Artwork Logistics – Contractor Services** in accordance with the terms stipulated below and for the sums described below.

Base Proposal

A total not-to-exceed amount of $ _____to perform all Work for the Project, which is the sum of the following amounts:

1) A lump sum amount of $_____ to perform all Work **except for** (i) offsite storage of the artwork; and (ii) repairs to the North Cove Marina Railings and the Berlin Wall, both as described in Exhibit A;

2) A not-to-exceed amount of $_____ for offsite storage of the North Cove Railings, Sitting Stance and Berlin Wall (to be calculated as detailed in Exhibit E-1); and

3) A not-to-exceed amount of $_____ to perform repairs to the North Cove Marina Railings and the Berlin Wall (to be calculated as detailed in Exhibit E-2).

Itemized Proposal

The Proposer has submitted with its Proposal an itemized cost for the Work, according to the attached Proposal Breakdown Form (attached hereto as Exhibits E-1 and E-2), for the Scope of Work attached as Exhibit A.

Name of Proposer: _____

By: _____

Title: _____

EXHIBIT E
COST BREAKDOWN SHEETS

[NO FURTHER TEXT ON THIS PAGE]

EXHIBIT E-1
FORM OF PROPOSAL BREAKDOWN

TASK 1: PROTECT IN PLACE THE FOLLOWING ART WORKS			
LOCATIONS	ASSESSMENT (A)	PROTECTION (B)	COST (C = A+B)
RECTOR GATE			
TOURCHER			
GRANITE BENCHES			
PYLONS			
PAVILION			

TASK 2: REMOVAL, REPAIR/RESTORE, STORE AND REINSTALL						
LOCATION	ASSESSMENT (A)	REMOVAL (B)	CRATE/SHIP (C)	STORAGE (D)	REPAIR[3] (E)	REINSTALL (F)
NORTH COVE RAILINGS				$/month	From Exhibit E-2	
LUMP SUM TOTAL (COLUMNS A + B + C + F)						
NOT-TO-EXCEED TOTAL FOR STORAGE (COLUMN D x 60 months)						
NOT-TO-EXCEED TOTAL FOR REPAIR (COLUMN E)						

TASK 3: REMOVE, STORE AND REINSTALL					
LOCATION	ASSESSMENT (A)	REMOVAL (B)	CRATE/SHIP (C)	STORAGE (D)	REINSTALL (E)
SITTING STANCE				$/month	
LUMP SUM TOTAL (COLUMNS A + B + C + E)					
NOT-TO-EXCEED TOTAL FOR STORAGE (COLUMN D x 60 months)					

TASK 4: REMOVAL, REPAIR/RESTORE, STORE AND REINSTALL						
LOCATION	ASSESSMENT (A)	REMOVAL (B)	CRATE/SHIP (C)	STORAGE (D)	REPAIR[3] (E)	REINSTALL (F)
BERLIN WALL				$/month	From Exhibit E-2	
LUMP SUM TOTAL (COLUMNS A + B + C + F)						
NOT-TO-EXCEED TOTAL FOR STORAGE (COLUMN D x 60 months)						
NOT-TO-EXCEED TOTAL FOR REPAIR (COLUMN E)						

TASK 5: REMOVE PROTECTIONS & WASTE MANAGEMENT			
LOCATIONS	REMOVE PROTECTIONS (A)	WASTE MANAGEMENT (B)	COST (C = A+B)
RECTOR GATE			
TOURCHER			
GRANITE BENCHES			
PYLONS			
PAVILION			

[3] Proposer must provide a not-to-exceed amount for repairs of the North Cove Marina Railings and the Berlin Wall which shall be the sum of the product of the hourly rates for repair services specified in Exhibit E-1 multiplied by an estimated number of hours and the estimated cost of materials (including any markup). Repair estimates should be based upon the condition report provided in Exhibit B-2 and the Proposer's observations during the mandatory site walkthrough.

EXHIBIT E-2
COST OF REPAIR SERVICES

Not-to-Exceed Labor Rates[4] to Repair the North Cove Marina Railings

JOB TITLE	HOURLY RATE (A)	ESTIMATED # OF HOURS (B)	COST OF LABOR (C = A*B)
TOTAL NOT-TO-EXCEED LABOR COST (SUM OF COLUMN C)			

Not to Exceed Labor Rates[4] to Repair the Berlin Wall

JOB TITLE	HOURLY RATE (A)	ESTIMATED # OF HOURS (B)	COST OF LABOR (C = A*B)
TOTAL NOT-TO-EXCEED LABOR COST (SUM OF COLUMN C)			

Not-to-Exceed Material Costs for Repairs

LOCATION	ESTIMATED COST OF MATERIALS (A)	MARKUP (AS A %) (B)	TOTAL COST OF MATERIAL (C = A + (A*B))
NORTH COVE MARINA RAILINGS			
BERLIN WALL			
TOTAL NOT-TO-EXCEED MATERIAL COST (SUM OF COLUMN C)			

Total Not-to-Exceed Repair Costs

LOCATION	TOTAL NOT-TO-EXCEED LABOR (A)	TOTAL NOT-TO-EXCEED MATERIALS (B)	TOTAL NOT-TO-EXCEED REPAIR (C = A + B)
NORTH COVE RAILINGS			
BERLIN WALL			
TOTAL NOT-TO-EXCEED REPAIR COSTS (SUM OF COLUMN C)			

[4] All Rates must conform to the requirements of the Prevailing Wage Law and Schedule for this Project provided in Exhibit F, if applicable.

EXHIBIT F
PREVAILING WAGE RATE SCHEDULE

Wage rates shall apply as shown in the Prevailing Wage Schedule prepared by the New York State Department of Labor ("NYSDOL") for this Battery Park City Artwork Logistics: Contractor Services (the Prevailing Wage Case Number (PRC#)) assigned to this Project is **2024006261**). The Prevailing Wage Rate Schedule (the "Schedule") can be viewed at, and downloaded from, the following website: NYSDOL - Prevailing Wages (View PRC).

Upon award of the Contract to the selected Proposer, a hard copy of the Schedule will be provided.

***

EXHIBIT G
BPCA'S STANDARD FORM OF CONTRACT

[ATTACHED]

CONSTRUCTION AGREEMENT

between

HUGH L. CAREY BATTERY PARK CITY AUTHORITY

and

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

Dated as of **[DATE]**

Contract No. **[ENTER CONTRACT NUMBER]**

(PROJECT NAME)

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CONSTRUCTION AGREEMENT

AGREEMENT made as of _____ by and between BATTERY PARK CITY AUTHORITY, d/b/a HUGH L. CAREY BATTERY PARK CITY AUTHORITY, ("**BPCA"**), a body corporate and politic, constituting a public benefit corporation and having a place of business at 200 Liberty Street, 24th Floor, New York, New York 10281, and [NAME OF COMPANY], formed under the laws of the State of [STATE], having an office at [Street Address, City, Zip Code] ("**Contractor**").

W I T N E S S E T H:

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

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

WHEREAS, BPCA intends to hire a contractor to perform [type of services], consisting of the Work, as hereinafter defined, for the [structure] upon which work will be performed (the "**Project**"), located in and adjacent to [location], in Battery Park City, in the Borough of Manhattan, County, City and State of New York (the "**Site**"); and

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

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

ARTICLE 1 - DEFINITIONS

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

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

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

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

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

(e) BPCA - as defined in the introductory clause of this Agreement. BPCA hereby designates [BPCA Person and Title], as the representative of BPCA for the purpose of acting on behalf

of BPCA whenever action is required to be taken hereunder by BPCA. Such designation may be revoked in writing at any time after notice given by BPCA to Contractor. In addition, such representative of BPCA shall have full power and authority to delegate in writing any or all of her responsibilities hereunder to any one or more persons after notice to Contractor.

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

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

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

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

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

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

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

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

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

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

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

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

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

(s) Guarantor - as defined in Section 27.3.

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

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

(v) Materialman - supplier of Materials.

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

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

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

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

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

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

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

(dd) Product Data - illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by Contractor to illustrate a Material, product or system for some portion of the Work.

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

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

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

(hh) Requisitions - as defined in Section 5.2.

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

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

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

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

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

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

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

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

(qq) Work - as defined in Section 2.1.

(rr) Work Completion Date - as defined in Section 3.1(a).

ARTICLE 2 - SCOPE OF WORK, MATERIALS AND LABOR

2.1 Definition of Work

Contractor shall perform and complete (and shall cause all Subcontractors to perform and complete) for BPCA the work more particularly described in Exhibit A (the "**Work**") annexed hereto and made a part hereof, required by and in conformity with the Contract Documents in connection with the construction of the Project on the Site. All materials to be furnished and labor and work to be performed and completed by Contractor and/or Subcontractors as required in the Contract Documents and in conformity with all requirements applicable with respect thereto are herein collectively referred to as the "Work."

2.2 Contract Documents

The "**Contract Documents**" shall consist of the following:

(a) This instrument (the "**Agreement**"), which includes, in addition to the text comprising Articles 1 through 27, the following:

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

(b) The Payment and Performance Bonds (as defined in Section 13.3).

(c) Change Orders adopted pursuant to Article 9.

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

2.3 Intent of Contract Documents

(a) The intent of the Contract Documents is to include in the Work all labor and materials, insurance, tools, equipment, permits, licenses, taxes, approvals, transportation, surveys, testing, field engineering and other professional services (other than the services of BPCA's Architect, Construction Manager, Engineers, and attorneys, and the inspection, survey and testing services of BPCA) and any other items required to execute and complete the Work satisfactorily and in accordance with the Contract Documents. Contractor shall perform and complete the Work in accordance with the true intent and meaning of the Contract Documents and shall perform all Work incident thereto or as is usually performed in connection therewith or as is reasonably inferable therefrom, it being the intention that all work usually performed by the trade covered by

this Agreement and necessary to produce the intended result be performed by Contractor whether or not specifically covered by the Contract Documents.

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

(c) If any conflicts or ambiguities are found in or between the Drawings and Specifications, or among any of the Contract Documents, they shall be brought to the attention of Construction Manager immediately for resolution. Architect and Construction Manager will interpret the Contract Documents so as to secure in all cases the most substantial and complete performance of the Work as is most consistent with the needs and requirements of the Work. In the event that Architect and Construction Manager disagree as to the interpretation of the Contract Documents, such dispute shall be presented to BPCA, which shall have sole authority to resolve the dispute.

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

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

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

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

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

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

every nature related to such systems and equipment, obtain maximum headroom, and provide adequate clearances as required for operation and maintenance.

2.4 Completion of Drawings and Specifications

Contractor acknowledges that there are items of work which are not drawn or specified with complete detail in the Drawings and Specifications but which are required for the completion of the Work. Any such item, when identified as part of the reasonable development of the Work, shall be drawn or specified by Architect in consultation with Contractor, in a manner consistent with contemplated kind and quality and customary standards. When such drawing or specification is approved by BPCA, the drawing or specification so approved shall thereupon be part of the Contract Documents and the item of work shall be performed by Contractor as part of the Work without further action or order of Construction Manager or BPCA and without any increase in the Contract Price (as hereinafter defined) as if such drawing and/or specification were originally included in the Contract Documents.

2.5 Title to Materials

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

2.6 Contractor's Obligations

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

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

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

(d) Contractor shall deliver all Materials at such times and in such quantities as will insure the speedy and uninterrupted progress of the Work. All Materials shall be delivered to the Site in proper order and quantity and shall be stored at the Site, if storage space is available in Construction Manager's opinion, in such places as Construction Manager shall direct; provided, that no delivery of Materials shall be made to the Site without prior approval by Construction Manager. Contractor has been advised and is aware that the Project is located in a congested metropolitan area, and there may not be sufficient space to store Materials on Site. If storage space is unavailable on Site, Contractor shall make arrangements to store Materials off Site at Contractor's own cost. Contractor shall not be entitled to additional compensation for moving Materials from one storage area to another, whether such storage areas are on or off Site. No Materials shall be removed from the Site without the consent of Construction Manager. Contractor shall handle and take care of all Materials used in performance of the Work whether furnished by Contractor or BPCA, as the same are delivered to the Site or to any applicable offsite storage location and shall be solely responsible for the security and condition of the same. After final completion and acceptance of the Work, or sooner if requested by Construction Manager, Contractor shall remove all surplus Materials and scaffolding furnished by it which have not been incorporated in the Work.

(e) Contractor shall follow and perform the Work in accordance with the Contract Documents as interpreted by Architect, Construction Manager, and BPCA.

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

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

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

2.7 "Or Equal" Clause

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

(b) It is deemed that the term "or approved equal" is included after all Materials

referred to in the Specifications or on the Drawings.

(c) Architect will initially judge the equivalency of proposed substitute Materials. Architect will make written recommendation of acceptance or rejection to Construction Manager and/or BPCA. Construction Manager and/or BPCA will then authorize Architect to issue to Contractor written approval or rejection of the substitution.

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

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

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

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

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

2.8 Quality and Labeling

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

this Agreement.

ARTICLE 3 - COMMENCEMENT AND COMPLETION OF THE WORK

3.1 Commencement, Completion and Progress Schedule

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

(b) The Progress Schedule for the Work shall be formatted in a detailed precedence-style critical path method, or such other format satisfactory to BPCA and Construction Manager and shall also (a) provide a graphic representation of all activities and events including float values that will affect the critical path of the Work, (b) incorporate and coordinate all pertinent information involving each phase of Work, and (c) identify dates that are critical to ensuring the timely and orderly completion of the work in accordance with the requirements of the Contract Documents, including the dates for Substantial Completion of each respective phase of the Work. The Progress Schedule for the Work shall be updated weekly, or at any other time at the request of Construction Manager or BPCA, and submitted to Construction Manager and BPCA for review and approval. Failure to submit any requested update shall constitute a material breach of this Agreement. The Contractor shall promptly give written notice of any actual or potential delays to BPCA and Construction Manager. After submission of the Progress Schedule for the Work, Construction Manager shall coordinate the Progress Schedule for the Work with the Progress Schedule for the Project. The Progress Schedule for the Work may be revised by Construction Manager from time to time.

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

(d) If, in the opinion of Construction Manager, Contractor falls behind the Progress Schedule for the Project then in effect, Contractor shall take whatever steps may be necessary to improve its progress and shall, if requested by Construction Manager, submit operational plans to demonstrate the manner in which the lost time may be regained. It is the responsibility of Contractor to maintain its schedule so as not to delay the progress of the Project or the schedules

of other contractors. If Contractor delays the progress of its Work or the work of other contractors, it shall be the responsibility of Contractor to increase the number of workers, the number of shifts, the days of Work and/or, to the extent permitted by law, to institute or increase overtime operations, all without additional cost to BPCA, in order to regain any time lost and maintain the Progress Schedule for the Project then in effect as established by Construction Manager.

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

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

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

(h) It is further agreed that time is of the essence for each and every portion of the Work. In any instance in which additional time is allowed for the completion of any Work, the new time of completion established by said extension shall be of the essence. Contractor shall not be charged with [liquidated damages or] **[delete if no liquidated damages]** any excess cost if BPCA determines that Contractor is without fault and that the delay in completion of the Work is due to:

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

(2) causes beyond the control and without the fault of, or negligence of

Contractor, and approved by BPCA, including, but not limited to, acts of God or of public enemy, fires, epidemics, quarantine, strikes, freight embargoes and unusually severe weather; and

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

(i) Notwithstanding the foregoing, and whether or not, at any given time, a Progress Schedule, or update thereto (as appropriate) has been submitted, the Work shall be completed by the Work Completion Date.

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

3.2 Coordination with Other Contractors

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

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

3.3 Notice of Delay

Should Contractor be or anticipate being delayed or disrupted in performing the Work hereunder for any reason, including, without limitation, its financial condition or Contractor's general nonpayment of its debts as such debts become due, it shall promptly and in no event more

than three (3) days after the commencement of any condition that is causing or is threatening to cause such delay or disruption notify Construction Manager in writing of the effect of such condition upon the Progress Schedule for the Project, stating why and in what respects the condition is causing or is threatening to cause delay, provided, however, that notwithstanding the above, if such delay or disruption, or anticipated delay or disruption, should be the result of any change or anticipated change in Contractor's financial condition, Contractor shall notify Construction Manager forthwith of such cause or anticipated cause. Failure to strictly comply with this notice requirement shall be sufficient cause to deny Contractor a change in schedule and to require it to conform to the Progress Schedule for the Project then in effect established by Construction Manager.

3.4 Extension of Time

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

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

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

(2) by the acts or omissions of other contractors or causes beyond the control and without the fault or negligence of Contractor including, but not limited to, acts of God, acts of public enemy, acts of any Government body, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather, or delays of Subcontractors or Materialmen arising from unforeseeable causes beyond the control and without the fault or negligence of both Contractor and such Subcontractors or Materialmen; provided, that Contractor shall have used its best efforts and diligently sought to have minimized any such period of delay, by taking whatever measures are necessary, including without limitation, if applicable, seeking alternate sources of Materials, other Subcontractors or other facilities in which to perform the required construction operations; and provided, further, that an application is made pursuant to the requirements of the immediately preceding paragraph.

ARTICLE 4 - CONTRACT PRICE

For the performance and completion of the Work, BPCA shall pay Contractor a lump sum amount of **($$$$$)**, (such sum is herein sometimes referred to as the "**Contract Price**"), which amount shall include any monies earned by or paid to Contractor prior to the execution of this Agreement, provided, that if the Contract Price shall be expressly revised by a Change Order in accordance with Article 9 hereof, the Contract Price shall thereafter mean the Contract Price as so revised. Contractor will submit appropriate Time Sheets in the form of Exhibit [x].

ARTICLE 5 - METHOD, SCHEDULE AND TERMS OF PAYMENTS

5.1 Partial Payment

(a) In accordance with Requisitions (as defined in Section 5.2) submitted and approved as provided below for Work performed in accordance with this Agreement, Contractor shall be entitled to partial payment on account of the Contract Price in an amount equal to the value, as determined in accordance with the Trade Payment Breakdown (as defined in Section 5.3), of the portions of the Work completed and acceptable to BPCA and Construction Manager for purposes of such payment, less a retainage equal to ten percent (10%) of the total amount of all prior partial payments. Partial payments shall constitute advances against the Contract Price until final payment is made and accepted. No partial payment made, nor approval of a portion of the Work given for purposes of making a partial payment, shall constitute an acceptance of any Work not in accordance with the Contract Documents.

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

5.2 Requisitions

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

5.3 Trade Payment Breakdown

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

5.4 Payment for Stored Materials

If approved in advance of delivery by BPCA and Construction Manager, payments will be made on account of 80% of the value of Materials that have not been incorporated in the Work to date, but delivered and suitably stored at the Site or at some other offsite location agreed upon in

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

5.5 Receipts and Releases of Liens

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

In addition to the documents required to be furnished by the preceding paragraph, with the Final Requisition, Contractor shall furnish (y) its affidavit that there are no liens, claims or demands by, and that there is no indebtedness to, Subcontractors, Materialmen, laborers, other employees or third persons for which BPCA, Construction Manager, or Architect might in any way be responsible and (z) releases from all Subcontractors and Materialmen dealing directly or indirectly with Contractor. Should any such Subcontractor or Materialman fail or refuse to furnish such release, Contractor may be required to furnish a bond satisfactory to BPCA to indemnify it against any such lien, claim or demand. If any such lien, claim or demand remains unsatisfied after all payments are made to Contractor, Contractor shall refund to BPCA all monies that BPCA may be compelled to pay in discharging such lien, claim or demand including all costs, expenses and attorneys' fees which BPCA may incur in connection therewith.

5.6 Time of Payment

(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 signed by BPCA and Construction Manager before payment is made. The value of any Work included in a Requisition for partial payment which is found unacceptable by BPCA or Construction Manager may be deducted from that or any

subsequent Requisition.

(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 Reduction of Retainage

Upon the issuance of a Certificate of Substantial Completion, as defined in Section 8.6, Contractor shall submit a Requisition in an amount equal to the Contract Price less five percent (5%) of the total contract amount (including all approved Change Orders and pending Change Order proposals), and less the total amount of all prior payments. Upon approval of the same by BPCA, BPCA shall pay to Contractor the amount approved less any amount which BPCA is entitled to withhold hereunder.

5.8 Final Payment

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

(1) Contractor's Final Requisition has been submitted by Contractor and approved by BPCA and Construction Manager;

(2) the affidavit provided for in Section 5.5 hereof has been submitted by Contractor, and any other documents or actions expressly specified in the Contract Documents as preconditions to final payment have been submitted or completed; and

(3) any inspections or approvals with respect to any of the Work that BPCA deems legally required or appropriate by governmental authorities or by the applicable Board of Fire Underwriters have been performed or obtained.

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

5.9 Release and Consent of Surety

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

5.10 BPCA's Right to Audit and Inspect Records

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

5.11 Withholding of Payments

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

(1) to assure payment of just claims or liens of any persons supplying labor or Materials for the Work;

(2) to protect BPCA from loss due to defective Work or to reimburse BPCA, Construction Manager and Architect for fines on account of non-compliance with applicable laws, rules and regulations, including rules promulgated by the Office of Safety & Health Administration;

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

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

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

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

In any of such events, BPCA shall have the right to apply any such amounts so withheld in such manner as BPCA may deem proper to satisfy such claims, to secure such protection, to

complete the Work or to compensate BPCA for any loss suffered by reason of Contractor's delay. Such application shall be deemed payment for the account of Contractor. In the event that BPCA gives Contractor notice that it intends to make such application, Contractor shall be estopped from disputing liability or the amount of liability unless, within three days after receipt of such notice, it indicates to BPCA in writing that it is not liable or that the amount of its liability is different from that set forth in the notice.

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

ARTICLE 6 – CONTRACTOR

6.1 Superintendence by Contractor, Discipline and Employee Skills

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

6.2 Representations and Warranties

Contractor represents and warrants that:

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

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

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

(d) Contractor has carefully examined the Contract Documents and the Site and, from Contractor's own investigations, is satisfied as to the nature and location of the Work, the character, quality and quantity of surface and subsurface materials likely to be encountered, the character of equipment and other facilities needed for the performance of the Work, the general and local conditions, and all other conditions or items that may affect the Work. Prior to submitting its bid for performance of the Work, Contractor notified BPCA or Construction Manager in writing of any discrepancies or errors in the Contract Documents.

6.3 Verifying Dimensions and Site Conditions

Before proceeding with the Work, Contractor will check all previous and surrounding work and determine the correctness of the same; failure on its part to detect or report discrepancies will relieve BPCA of liability from any and all claims to recover cost, expense, loss or damage resulting therefrom. Contractor shall take, determine, investigate and verify all field measurements, dimensions, field construction criteria and Site conditions for the performance of the Work and shall check and coordinate the information contained in the Contract Documents and the boring logs which shall be available for inspection with the requirements of the Work. Contractor shall be responsible for determining the exact location of and to verify the spatial relationships of all Work. If any conflicts or discrepancies are found in the Contract Documents or if Contractor has any questions concerning the foregoing, it shall immediately notify Construction Manager and shall thereafter perform the Work in accordance with the directions of Construction Manager.

6.4 Copies of Contract Documents for Contractor

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

6.5 Meetings

Contractor shall attend all meetings as directed by BPCA or Construction Manager, including meetings set forth in Section 26.3, and shall be represented at such meetings by a person having knowledge of the Work and authorized to act for Contractor at all times. If at any time such person is not satisfactory to BPCA or Construction Manager, Contractor shall, if requested by BPCA, be represented by another person satisfactory to BPCA, having knowledge of the Work and authorized to act for Contractor at all times.

6.6 Related Work

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

6.7 Surveys and Layout

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

6.8 Reports and Access

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

6.9 Financial Information

During the Term, Contractor agrees to notify BPCA forthwith in writing of any event which

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

ARTICLE 7 - CONTRACT ADMINISTRATION

7.1 Architect's Responsibilities and Functions

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

Architect's duties and services shall in no way supersede or dilute Contractor's obligation to perform and complete the Work in conformity with the Contract Documents.

7.2 Construction Manager's Responsibilities and Functions

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

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

7.3 Scope of Responsibility of Architect and Construction Manager

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

ARTICLE 8 - INSPECTION AND ACCEPTANCE

8.1 Access to the Work

BPCA, Construction Manager, Architect or their authorized representatives shall at all

times have access to and the right to observe the Work and all facilities where the Work or any part thereof is being fabricated or stored, and Contractor shall provide proper facilities for such access and observation.

8.2 Notice of Required Inspections and Tests

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

8.3 Additional Inspections and Tests

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

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

8.4 Uncovering of Work

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

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

8.5 Correction of Work

Any Work not approved by BPCA, Architect and Construction Manager shall immediately be reconstructed, made good, replaced or corrected by Contractor including all Work of other contractors destroyed or damaged by such removal or replacement. Rejected material shall be

removed immediately from the Site. Acceptance of Materials and workmanship by BPCA shall not relieve Contractor from Contractor's obligation to replace all Work which is not in full compliance with the Contract Documents.

8.6 Certificate of Substantial Completion

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

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

8.7 Completion of Work and Acceptance

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

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

ARTICLE 9 - CHANGES IN THE WORK

9.1 Change Orders

(a) BPCA may, at any time, in any quantity or amount, without notice to the sureties and without invalidating or abandoning this Agreement, order Extra Work. Notwithstanding the terms of subsection 3.1(a) hereof, BPCA may, but shall be under no obligation to, change the manner, sequence or method of performance of the Work or direct acceleration of the Work and

Contractor shall, therefor, be entitled to a Change Order (as defined in Section 9.1(b)) provided that such change or acceleration was not ordered to maintain the Progress Schedule for the Project, the Progress Schedule for the Work or to coordinate the Work with the work of other contractors. Contractor shall be obligated to perform changed Work promptly in conformity with any Change Order or Field Order issued in accordance herewith and may not suspend or otherwise refuse to perform the Work contained therein or any other aspect of the Work required under this Agreement because a Change Order has yet to be fully executed.

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

(1) Extra Work,

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

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

(4) an extension or decrease of time to complete Work,

(5) an increase or reduction in the payment to Contractor, or

(6) any other change in the Contract Documents or in the sequence of performing or phasing of the Work.

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

9.2 Change in Contract Price and Time

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

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

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

(3) receiving from Contractor a detailed breakdown satisfactory to BPCA and Construction Manager, including actual time slips and invoices, itemizing the direct cost of labor and Materials to perform the changed Work and adding thereto fifteen percent (15%) to cover profit and all indirect and overhead costs, except that where the changed Work is performed by a Subcontractor or Materialman, the direct cost of labor and Materials to perform the changed Work plus fifteen percent (15%) for profit and all indirect and overhead costs to Subcontractor or Materialman and an additional sum for profit and all indirect and overhead costs of Contractor equal to ten percent (10%) of the first $100,000, five percent (5%) of the second $100,000 and three percent (3%) of any cost in excess of $200,000 to Contractor. No allowance shall be paid on

the premium portion of overtime pay. Where the changed Work involves both an increase and a reduction in any contract Work, the above percentage override shall be applied only on the amount, if any, by which the cost of the increase exceeds the cost of the reduction.

(4) receiving from Contractor a true copy of its bid work sheets to determine the contract price for the elimination of any contract Work. The amount of reduction shall not include the overhead or profit of Contractor for the eliminated Work. Should Contractor fail to furnish BPCA with such bid work sheets, then Construction Manager shall determine the amount of the reduction. The determination of Construction Manager shall be final and binding unless erroneously or fraudulently arrived at, or arbitrary and capricious;

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

(6) adding to the Contract Price, the actual incremental labor and equipment costs incurred by the Contractor resulting from a change in the manner, sequence or method of performing the Work.

(b) The compensation specified in a Change Order shall constitute a release and full payment for the Extra Work covered thereby and for any delay and disruption cost or expense occasioned by reason of said change in the Work.

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

9.3 Field Orders

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

9.4 Changed Conditions

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

(b) Contractor shall promptly, and before such conditions are disturbed, notify

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

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

ARTICLE 10 - SUBCONTRACTS AND PURCHASE ORDERS

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

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

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

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

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

(e) Contractor shall submit to BPCA promptly following execution, three copies of every revision, amendment, modification or cancellation executed or issued by Contractor with respect to any Subcontractor or Materialman. BPCA is not obligated to make payment on account of Work performed or Materials furnished by a Subcontractor or a Materialman under a Subcontract or contract for construction supplies or Materials (hereinafter "**Purchase Order(s)**")

unless there shall have been filed with BPCA prior to the submission of a Requisition for each payment, three copies of such Subcontract or Purchase Order containing the provisions required by this Agreement to be contained therein, except as may otherwise be specified by BPCA with respect to Purchase Orders for minor purchases.

10.2 Access by BPCA and Others

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

10.3 Retainage

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

10.4 Miscellaneous

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

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

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

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

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

ARTICLE 11 - ASSIGNMENT

11.1 No Assignment of Duties

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

11.2 No Assignment of Monies

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

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

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

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

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

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

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

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

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

of performance in accordance with the terms of such undertaking.

11.3 Assignment by BPCA

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

ARTICLE 12 - MECHANICS' LIENS AND CLAIMS

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

ARTICLE 13 – INSURANCE AND CONTRACT SECURITY

13.1 Insurance

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

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

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

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

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

option, obtain insurance affording coverage equal to that required, the cost of such insurance to be payable by Contractor to BPCA.

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

(1) Worker's Compensation and Employer's Liability Insurance (including United States Longshoreman & Harbor Workers and Jones Act Coverages) during the Term for the benefit of such employees as are required to be insured by the applicable provisions of law and voluntary compensation for employees excluded from statutory benefits. Employer's Liability Insurance and benefits resulting from disease shall not be less than an annual aggregate amount of **($$$$$)** for each consecutive 12-month period.

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

(3) Commercial General Liability Insurance as follows:

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

Combined Single Limits, Bodily Injury and Property Damage Liability

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

Product and Completed Operations

($$$$$)

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

(4) Automobile Liability Insurance as follows:

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

Combined Single Limits,

Bodily Injury and Property Damage Liability

($$$$$) per each occurrence.

(5) Marine Protection and Indemnity insurance of not less than [amount] per occurrence, if Contractor or any of its Subcontractors utilizes floating equipment, barges or floats, or performs marine-related construction, covering any and all claims for personal injury, death and property damage arising out of or in connection with this Agreement.

(6) Pollution Liability Insurance, on an occurrence basis, providing coverage for bodily injury liability, property damage or environmental damage caused by pollution conditions with a limit of liability of not less than [amount] per occurrence and in the aggregate. The policy shall include coverage for environmental clean-up on land, in air and on water. The policy shall include coverage for completed operations for two (2) years after the completion of the performance of the Work, gradual and sudden and accidental pollution coverage, with a time element of no less than seven (7) days' notice and thirty (30) days' reporting. The policy shall not contain a sunset provision, or any other provision, which would prohibit the reporting of a claim and the subsequent defense and indemnity that would normally be provided by the policy. The policy shall provide transportation coverage for the hauling of hazardous materials from the Project Site to the final disposition location.

(7) Vessel Pollution Liability Insurance, on an occurrence basis, providing coverage for bodily injury liability, property damage or environmental damage caused by pollution conditions, emanating from any floating equipment, barges or floats, utilized by Contractor or Subcontractors in the performance of Marine related construction, with a limit of liability of not less than [amount] per occurrence and in the aggregate. The policy shall include coverage for environmental clean-up on land, in air and on water.

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

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

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

(11) If the Work involves the removal, repair, installation or testing of underground petroleum storage tanks, or petroleum remediation operations, or the performance of work or services related to excavation, loading, transporting or unloading of hazardous or contaminated materials, Contractor shall provide Contractors Professional Liability Insurance with

a limit of **[$$$$$]**. Coverage shall provide and encompass the following:

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

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

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

(g) The insurance required under subsections 13.1(f) 3, 4 [and 5] shall be of a type which shall protect Contractor and Subcontractors, respectively, against damage claims which may arise from operations under this Agreement, whether such operations be by the insured or by anyone directly or indirectly employed by the insured. Each of the aforesaid policies shall provide that the insurance company or an attorney approved and retained by the insurance company shall defend any suit or proceeding against BPCA or any officers, agents or employees of BPCA whether or not such suit is groundless, false or fraudulent. Notwithstanding the foregoing, BPCA shall have the right to engage its own attorneys for the purpose of defending any suit or proceeding against it or its respective officers, agents or employees, and, in such event, Contractor shall, indemnify BPCA for all attorneys' fees and disbursements and other costs incurred by it arising out of, or incurred in connection with, any such defense. The said insurance shall name BPCA, BPCPC, the State of New York, Construction Manager and Architect as additional insureds as respects this location and shall, where applicable, be written on an occurrence basis and shall contain a provision that it is primary and that any similar insurance which BPCA, BPCPC, the State of New York, Construction Manager, Architect, Contractor or Subcontractor elect to carry for their own benefit is secondary or excess and not contributing insurance.

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

(i) BPCA shall, at all times during the period of construction and until completion and Final Acceptance of the Work procure and maintain at the cost and expense of BPCA "**Builders Risk**" insurance, or its functional equivalent, against direct physical loss or damage to the Work and on all Materials to be made a part of the Work in the names of BPCA, Construction Manager, Contractor and Subcontractors, said amount of insurance to be procured and maintained on a one hundred percentage (100%) completed value basis on the insurable portion of the Work, which insurance shall contain a deductible provision for all losses except flood and earthquake in the amount of TEN THOUSAND DOLLARS ($10,000) and a deductible provision for flood and earthquake in the amount of TEN THOUSAND DOLLARS ($10,000). BPCA recognizes that the deductible applicable to flood and earthquake may be greater than TEN THOUSAND DOLLARS

($10,000) due to insurance market conditions and shall notify Contractor if such deductible is greater than TEN THOUSAND DOLLARS ($10,000). Losses up to and including the amounts of such deductible provisions shall be borne by Contractor. The insurance specified above may, in certain instances, include other parties as named insureds, as the interests of such parties may appear. Loss, if any, is to be made adjustable with and payable to BPCA on behalf and for the named insureds as the interests of such insureds may appear. BPCA shall, in BPCA's sole discretion, have power to adjust and to settle with the insureds any loss or claim under such insurance. The above is not intended to be a complete, full or accurate description of the coverage provided by the policies of insurance, copies of which are on file with BPCA. This subsection (i) is not intended to create or give any rights to Contractor or Subcontractors other than those which may be made available to such Contractors or Subcontractors under the terms of such policies. BPCA assumes no obligation to obtain insurance other than that evidenced by said polices. Contractor and Subcontractors shall not violate or permit to be violated any term or condition of such policies and shall at all times satisfy the safety requirements of BPCA and of the insurance companies issuing the aforementioned policies. The Contractor shall, upon notification by BPCA, obtain such insurance at BPCA's expense on a date determined by BPCA, which date shall not be less than thirty (30) days after notice to Contractor of such determination by the BPCA.

13.2 Effect of Procurement of Insurance

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

13.3 Contract Security

Contractor shall, if it has not already done so, furnish to BPCA, with the execution of this Agreement, to BPCA, a bond in the form acceptable to BPCA in an amount at least equal to one hundred percent (100%) of the Contract Price for performance of the Work (the "**Performance Bond**"), and a labor and material payment bond in the form acceptable to BPCA in an amount at least equal to one hundred percent (100%) of the Contract Price for the payment of all persons performing labor or providing Materials in connection with the Work (the "Payment Bond"). The surety on said bond shall be a surety company authorized to do business in the State of New York and shall be rated at last B+ by A.M. Best and Company, or meet such other requirements as are acceptable to BPCA.

13.4 Additional or Substitute Bond

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

ARTICLE 14 - CLAIMS FOR EXTRA WORK

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

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

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

(3) present to the Construction Manager for signature daily time and Material tickets to confirm quantities of Material and hours of labor in cases where Contractor is performing the Work which it considers to be Extra Work.

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

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

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

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

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

such determination, order or directive.

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

ARTICLE 15 - TERMINATION

15.1 Termination for Cause

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

(1) Contractor shall violate any substantial provision of this Agreement, including, without limitation, by failing to maintain the Progress Schedule for the Project or Progress Schedule for the Work then in effect in accordance with, or failing to discharge any of its responsibilities under, Section 3.1(d) hereof, including abandonment of the Work by Contractor, or by failing to indemnify and hold harmless BPCA (as required by Sections 3.1(e), 3.2, 17.5, 21.1, 21.2, 22(c) or any other provision of this Agreement) from and against any and all claims, liabilities, losses, costs or damages arising out of Contractor's performance of, or failure to perform, its obligations under this Agreement in accordance with its terms, or if the Contractor fails to maintain the insurance required by the provisions of Section 13; or

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

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

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

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

(b) Upon the occurrence of an Event of Default, at BPCA's option exercised by written notice to Contractor, title to any or all of Contractor's Materials, equipment, work product, work in process and dies and tools, whether on the Site or off site, which are necessary or useful in

completing the Work shall vest in BPCA and BPCA may take possession of and utilize the same for completion of the Work; provided that title to such items shall revert to Contractor upon effectuation of a cure of the Event of Default prior to the termination of this Agreement. If no cure has been effected, this Agreement has been terminated and BPCA has taken possession of the same, then after BPCA has taken possession and the Work shall have been completed by or on behalf of BPCA, BPCA shall pay to Contractor, in respect to the items for which title has vested in BPCA, an amount equal to the sum of:

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

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

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

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

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

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

15.2 Termination for Convenience of BPCA

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

Contractor shall:

(1) stop work under this Agreement on the date specified in the notice of termination;

(2) place no further Purchase Orders or Subcontracts for Materials, services or facilities;

(3) unless directed otherwise by BPCA, terminate all Purchase Orders and Subcontracts;

(4) assign to BPCA, in the manner, at the times, and to the extent directed by Construction Manager, all of the right, title and interest of Contractor under the Purchase Orders and Subcontractors so terminated, in which case BPCA shall have the right, in its sole discretion, to settle or pay any or all claims arising out of the termination of such Purchase Orders and Subcontracts;

(5) to the extent required by Construction Manager, settle all outstanding liabilities and all claims arising out of such termination of Purchase Orders and Subcontracts, with the approval or ratification of Construction Manager, which approval or ratification shall be final for all the purposes of this Section 15.2;

(6) transfer title to BPCA and deliver in the manner, at the time, and to the extent, if any, directed by the Construction Manager (i) the fabricated or unfabricated parts, Work in process, completed Work, supplies, and other Material produced as a part of, or acquired in connection with the performance of, the Work terminated by the notice of termination, and (ii) the completed or partially completed plans, drawings, work product, information and other property, which if this Agreement had been completed, would have been required to be furnished to BPCA; and

(7) take such action as may be necessary, or as the Construction Manager may direct, for the protection and preservation of the property related to this Agreement which is in the possession of Contractor and in which BPCA has or may acquire an interest.

(b) In the event of a termination of this Agreement pursuant to this Section 15.2, Contractor shall be paid by BPCA only the apportioned Contract Price for Work installed, the fair and reasonable value of Materials stored on the Site and under order for which Contractor is responsible for payment, less any sums properly deductible by BPCA, except that in no event shall Contractor be entitled to compensation in excess of the total Contract Price.

15.3 Suspension of Work

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

may thereafter specify in writing.

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

ARTICLE 16 - COMPOSITE DRAWINGS AND COOPERATION

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

ARTICLE 17 - PROTECTION OF RIGHTS, PERSONS AND PROPERTY

17.1 Accident Prevention

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

17.2 Safety Programs

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

17.3 Protection of Work and Property

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

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

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

(d) Contractor shall be responsible for all cutting, fitting or patching that may be required to complete the Work, to make its several parts fit together properly and to make the Work fit together properly with previous and surrounding work. The requirement to cut, fit or patch shall be determined by Construction Manager; provided, that structural elements of the Project shall not be cut, patched, or otherwise altered or repaired without prior authorization by BPCA. Authorization to proceed with remedial operation on any damaged or defective element or portion of the Project shall not constitute a limitation or a waiver of BPCA's, Construction Manager's or Architect's right to require the removal and replacement of any Work which fails to fulfill the requirements of the Contract Documents.

17.4 Adjoining Property

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

17.5 Risks Assumed by Contractor

(a) Contractor solely assumes the following risk whether such risk arises from acts or omissions (whether negligent or not and whether supervisory or otherwise) of BPCA, Construction Manager, of Architect or Contractor, of any Subcontractor, of any Materialman, of third persons or from any other cause, including unforeseen obstacles and difficulties which may be encountered in the prosecution of the Work, whether such risk is within or beyond the control of Contractor and whether such risk involves any legal duty, primary or otherwise, imposed upon BPCA:

The risk of loss or damage, direct or indirect, of whatever nature, to the Work or to any Materials furnished, used, installed or received by BPCA, Contractor or any Subcontractor, Materialmen or workmen performing services or furnishing Materials for the Work, whether such Work or Materials are stored at the Site or at an offsite location in accordance with Section 5.4 hereof. Contractor shall bear such risk of loss or damage until Final Acceptance of the Work by BPCA or until completion of such Materials or removal of such Materials from the Site following a determination that they will no longer be needed for the Project and delivery to the location at which they are to be subsequently stored or disposed of, whichever event occurs last. A portion of the risk of such loss or damage may be insured against under the terms of a "builder's risk" insurance policy maintained in the name of Contractor, among others, as described in Section 13.1(i). Notwithstanding the status of any actual or potential recovery or claim under the said "builder's risk" insurance policy, in the event of any loss or damage, Contractor immediately shall repair, replace or make good any such loss or damage.

(b) Contractor shall not, without obtaining express advance permission of BPCA, raise

any defense involving in any way the: (i) jurisdiction of any court in which BPCA brings an action arising under this Agreement, (ii) the governmental nature of BPCA, or (iii) the provisions of any statutes respecting suits against BPCA.

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

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

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

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

ARTICLE 18 - USE PRIOR TO ACCEPTANCE BY BPCA

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

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

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

ARTICLE 19 - EXEMPTION FROM SALES AND COMPENSATING USE TAXES

19.1 BPCA Exempt

BPCA is exempt from payment of sales and compensating use taxes of the State of New York and of cities and counties thereof on all Materials that will become an integral component of

the completed Project pursuant to this Agreement.

19.2 Certificates

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

ARTICLE 20 - WARRANTIES AND GUARANTIES

20.1 In General

(a) Contractor guarantees that all Work performed and all Materials furnished will conform to the Contract Documents as to kind, quality, functions, design and characteristics of material and workmanship. Contractor shall remove, replace and repair, at its sole cost and expense, all defects in workmanship, Materials, ratings, capacities, or design characteristics occurring in or to the Work including, without limitation, any portion of the Work furnished or performed by any Subcontractor or Materialman, within one year from the date of Final Acceptance. Contractor guarantees that all Work performed and all Materials furnished will conform to the Contract Documents as to kind, quality, functions, design and characteristics of material and workmanship. Contractor hereby acknowledges that BPCA may be required to incur substantial expense if correction of the Work is required particularly if such correction involves the uncovering, removal or replacement of concrete, wiring and piping installed at the Site. If Contractor shall fail to reimburse BPCA for any such expense which may become payable as provided in this paragraph, BPCA shall be entitled to deduct such expense from any payments required to be made by BPCA to Contractor pursuant to this Agreement. Contractor, upon demand, shall pay for any and all damage to any Work affected by or from such defects and all expenses necessary to remove, replace and repair such Work that may be damaged in removing, replacing or repairing such defects.

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

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

20.2 Additional Guaranties

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

20.3 Repair by Another

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

ARTICLE 21 - INDEMNITY

21.1 Delay or Failure

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

21.2 Inventions

In addition to the indemnity set forth in Section 17.5(a), Contractor shall indemnify and hold BPCA harmless from all claims, demands or liabilities of any kind or nature, including costs and expenses, for or on account of any patented or unpatented plan, design, invention, article, arrangement, appliance, Material, or preparation, manufactured, used or followed in the performance of or incident to the Work hereunder, and shall defend any and all actions arising out of the same. In the event of any injunction or legal action by reason thereof, which shall operate to stop or retard the Work, BPCA shall have the right to substitute such other articles of like kind as will enable it to complete the Project, and all costs and expenses occasioned thereby shall be borne by Contractor.

21.3 Liability

To the fullest extent allowed by law, Contractor shall hold BPCA, BPCPC, the State of New York, Construction Manager and Architect and their servants, agents and employees harmless from and shall indemnify them against any and all liability, loss, cost, damage or expense, including attorneys' fees, by reason of claims of Contractors employees or employees of its Subcontractors or Materialmen for injuries or death or by reason of claims of any other person or persons, including BPCA, BPCPC, the State of New York, Construction Manager, and Architect and their servants, agents or employees, for injuries to person or property or for death occasioned in whole or in part by any act or omission of Contractor, its Subcontractors and Materialmen and their servants, agents and employees whether or not it is contended that BPCA contributed thereto or was responsible therefor by reason of nondelegable duty. If, however, this indemnification is limited by applicable law, then the said indemnification hereby shall be similarly limited to conform with such law, it being the intention that this indemnification shall be as permitted by applicable law. BPCA may retain any monies due or to become due hereunder sufficient to

indemnify BPCA, BPCPC, the State of New York, Construction Manager, and Architect and their servants, agents and employees against such injuries, claims, suits, actions, costs or damages should any such claim arise. Contractor shall, at the sole option of BPCA and upon written demand of BPCA, assume the defense in behalf of BPCA, BPCPC, the State of New York, Construction Manager, and Architect or their servants, agents or employees of any action or proceeding commenced against them whether or not Contractor is named as a party therein as part of Contractor's aforementioned obligation to indemnify and hold them harmless.

ARTICLE 22 - PATENTS AND ROYALTIES

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

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

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

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

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

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

(3) Engineering data and information necessary in connection with and solely in connection with, all work performed by BPCA or other contractors hired by BPCA to complete the work after termination of this Agreement pursuant to Section 15.1.

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

ARTICLE 23 - AS-BUILT DRAWINGS

(a) Contractor shall be furnished by BPCA, at BPCA's expense, with one physical set

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

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

ARTICLE 24 - SHOP DRAWINGS AND SAMPLES

24.1 Contractor Submittal

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

24.2 Contractor's Responsibility

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

ARTICLE 25 – NOTICES

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

(a) if to BPCA:

Battery Park City Authority

Attn: [Name], [Title]
200 Liberty Street, 24th Fl
New York, NY 10281

with a copy to: General Counsel, at the same address

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

(b) if to Contractor:

[Company]
Attn: [Name], [Title]
[Street Address]
[City, State, Zip]

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

(c) if to Construction Manager

[Company]
Attn: [Name], [Title]
[Street Address]
[City, State, Zip]

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

(d) if to Architect/Engineer/etc.

[Company]
Attn: [Name], [Title]
[Street Address]
[City, State, Zip]

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

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 Participation by Minority and Women-Owned Business Enterprises

(a) General Provisions

(1) Owner is required to implement the provisions of New York State Executive Law Article 15-A and Parts 140-145 of Title 5 of the New York Codes, Rules and Regulations ("NYCRR") for all contracts, as defined therein, with a value (1) in excess of $25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of $100,000 for real property renovations and construction.

(2) Contractor agrees, in addition to any other nondiscrimination provision herein and at no additional cost to Owner, to fully comply and cooperate with Owner in the implementation of New York State Executive Law Article 15-A and the regulations promulgated thereunder. These requirements include equal employment opportunities for minority group members and women ("EEO") and contracting opportunities for New York State-certified minority and women-owned business enterprises ("MWBEs"). Contractor's demonstration of "good faith efforts" pursuant to 5 NYCRR § 142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the "Human Rights Law") and other applicable federal, state, and local laws.

(3) Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility and/or a breach of contract, leading to the assessment of liquidated damages pursuant to Section 26.1(g) and such other remedies as are available to Owner.

(b) Contract Goals

(1) For purposes of this Contract, Owner hereby establishes an overall goal of XX% for MWBE participation, XX% for New York State-certified minority-owned business enterprise ("MBE") participation and XX% for New York State-certified women-owned business enterprise ("WBE") participation (collectively, "MWBE Contract Goals") based on the current availability of MBEs and WBEs.

(2) For purposes of providing meaningful participation by MWBEs on the Agreement and achieving the MWBE Contract Goals established in Section 26.1(b)(1) hereof, Contractor should reference the directory of MWBEs at the following internet address: https://ny.newnycontracts.com.

(3) Additionally, Contractor is encouraged to contact the Division of Minority and Women's Business Development at (212) 803-2414 to discuss additional methods of maximizing participation by MWBEs on this Agreement.

(4) Contractor understands that only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be applied towards the achievement of the applicable MWBE participation goal. [FOR CONSTRUCTION CONTRACTS – The portion of a contract with an MWBE serving as a supplier that shall be deemed to represent the commercially useful function performed by the MWBE shall be 60% of the total value of the contract. The portion of a contract with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be the monetary value for fees, or the markup percentage, charged by the MWBE]. [FOR ALL

OTHER CONTRACTS - The portion of a contract with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be 25% of the total value of the contract.]

(5) Contractor must document "good faith efforts," pursuant to 5 NYCRR § 142.8, to provide meaningful participation by MWBEs as Subcontractors and suppliers in the performance of this Agreement. Such documentation shall include, but not necessarily be limited to:

(A) Evidence of outreach to MWBEs;
(B) Any responses by MWBEs to Contractor's outreach;
(C) Copies of advertisements for participation by MWBEs in appropriate general circulation, trade, and minority or women-oriented publications;
(D) The dates of attendance at any pre-bid, pre-award, or other meetings, if any, scheduled by Owner with MWBEs; and,
(E) Information describing specific steps undertaken by Contractor to reasonably structure the Work to maximize opportunities for MWBE participation.

(c) Equal Employment Opportunity ("EEO")

(1) The provisions of Article 15-A of the Executive Law and the rules and regulations promulgated thereunder pertaining to equal employment opportunities for minority group members and women shall apply to this Agreement.

(2) In performing the Agreement, Contractor shall:

(A) Ensure that each Contractor and Subcontractor performing work on the Agreement shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.

(B) Contractor shall submit an EEO policy statement to Owner within seventy-two (72) hours after the date of the notice by Owner to award the Agreement to Contractor.

(C) If Contractor, or any of its Subcontractors, does not have an existing EEO policy statement, Owner may require Contractor or Subcontractor to adopt a model statement (see Exhibit D – Equal Employment Opportunity Policy Statement).

(D) Contractor's EEO policy statement shall include the following language:

(i) Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability, or marital status, will undertake or continue existing EEO programs to ensure that minority group

members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force.

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

(iii) 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.

(iv) Contractor will include the provisions of Sections 26.1(c)(2)(D)(i) through (iii), which provides for relevant provisions of the Human Rights Law, in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each Subcontractor as to the Work.

[PLEASE NOTE THAT THIS REQUIREMENT "C" IS ONLY APPLICABLE WHERE A STATE AGENCY EXPECTS TO ENTER INTO A STATE CONTRACT WITH A TOTAL EXPENDITURE IN EXCESS OF $250,000. NOTE: THIS LANGUAGE SHOULD BE DELETED FROM THE FINAL CONTRACT]

(3) Staffing Plan. 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 the Agreement by the specified categories listed, including ethnic background, gender, and Federal occupational categories. Contractor shall complete the staffing plan form (https://www.ogs.ny.gov/MWBE/Docs/EEO100.docx) and submit it as part of their bid or proposal or within a reasonable time, as directed by Owner.

WORKFORCE UTILIZATION REPORTS SHALL BE COLLECTED ON A MONTHLY BASIS FOR CONSTRUCTION CONTRACTS AND A QUARTERLY BASIS FOR ALL OTHER CONTRACTS. NOTE: THIS LANGUAGE SHOULD BE DELETED FROM THE FINAL CONTRACT]

(4) Workforce Utilization Report

(A) Contractor shall submit a Workforce Utilization Report (https://its.ny.gov/sites/default/files/documents/eeo_workforce_utilization_report.xlsx) and shall require each of its Subcontractors to submit a Workforce Utilization Report, in such form as shall be required by Owner on a monthly/quarterly basis during the term of this Agreement.

(B) Separate forms shall be completed by Contractor and any Subcontractors.

(C) Pursuant to Executive Order #162, Contractors and Subcontractors are also required to report the gross wages paid to each of their employees for the work performed by such employees on the contract on a monthly/quarterly basis.

(5) Contractor shall comply with the provisions of the Human Rights Law, and all other State and Federal statutory and constitutional non-discrimination provisions. Contractor and its 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) MWBE Utilization Plan

(i) Contractor represents and warrants that Contractor has submitted an MWBE Utilization Plan, or shall submit an MWBE Utilization Plan at such time as shall be required by Owner, through the New York State Contract System ("NYSCS"), which can be viewed at https://ny.newnycontracts.com, provided, however, that Contractor may arrange to provide such evidence via a non-electronic method to Owner, either prior to, or at the time of, the execution of the contract.

(ii) Contractor agrees to adhere to such MWBE Utilization Plan in the performance of the Work.

(iii) Contractor further agrees that failure to submit and/or adhere to such MWBE Utilization Plan shall constitute a material breach of the terms of the Agreement. Upon the occurrence of such a material breach, Owner shall be entitled to any remedy provided herein, including but not limited to, a finding that Contractor is non-responsive.

(e) Waivers

(i) If Contractor, after making good faith efforts, is unable to achieve the MWBE Contract Goals stated herein, Contractor may submit a request for a waiver through the NYSCS, or a non-electronic method provided by Owner. Such waiver request must be supported by evidence of Contractor's good faith efforts to achieve the maximum feasible MWBE participation towards the applicable MWBE Contract Goals. If the documentation included with the waiver request is complete, Owner shall evaluate the request and issue a written notice of approval or denial within twenty (20) business days of receipt.

(ii) If Owner, upon review of the MWBE Utilization Plan, quarterly MWBE Contractor Compliance Reports described in Section 26.1(c)(iv)(C), or any other relevant information, determines that Contractor is failing or refusing to comply with the MWBE Contract Goals, and no waiver has been issued in regards to such non-compliance, Owner may issue a notice of deficiency to Contractor. Contractor must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE Contract Goals.

(f) Contractor is required to submit a quarterly MWBE Contractor Compliance Report through the NYSCS, provided, however, that Contractor may arrange to provide such report via a non-electronic method to Owner by the 10th day following the end of each quarter during the term of the Agreement.

(g) Liquidated Damages - MWBE Participation

(1) Where Owner determines that Contractor is not in compliance with the requirements of this Section 26.1 and Contractor refuses to comply with such requirements, or if Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals, Contractor shall be obligated to pay to Owner liquidated damages.

(2) Such liquidated damages shall be calculated as an amount equaling the difference between:

(A) All sums identified for payment to MWBEs had Contractor achieved the contractual MWBE goals; and

(B) All sums actually paid to MWBEs for work performed or materials supplied under the Agreement.

(3) In the event a determination has been made which requires the payment of liquidated damages and such identified sums have not been withheld by Owner, Contractor shall pay such liquidated damages to Owner within sixty (60) days after they are assessed. Provided, however, that if Contractor has filed a complaint with the Director of the Division of Minority and Women's Business Development pursuant to 5 NYCRR § 142.12, liquidated damages shall be payable only in the event of a determination adverse to Contractor following the complaint process.

26.2 Participation by Service-Disabled Veteran-Owned Businesses

(a) General Provisions

Article 17-B of the New York State Executive Law provides for more meaningful participation in public procurement by New York State-certified Service-Disabled Veteran-Owned Businesses ("SDVOB"), thereby further integrating such businesses into New York State's economy. Owner recognizes the need to promote the employment of service-disabled veterans and to ensure that certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of Owner contracts.

In recognition of the service and sacrifices made by service-disabled veterans and in recognition of their economic activity in doing business in New York State, Contractors are expected to consider SDVOBs in the fulfillment of the requirements of the Agreement. Such participation may be as Subcontractors or suppliers, as protégés, or in other partnering or supporting roles.

(b) Contract Goals

(i) Owner hereby establishes an overall goal of __% for SDVOB participation, based on the current availability of qualified SDVOBs. For purposes of providing meaningful participation by SDVOBs, the Contractor should reference the directory of New York State Certified SDVOBs found at: http://ogs.ny.gov/Core/docs/CertifiedNYS_SDVOB.pdf. Questions regarding compliance with SDVOB participation goals should be directed to Shinay Stewart at shinay.stewart@bpca.ny.gov or (212) 336-9353. Additionally, following execution of this Agreement, Contractor is encouraged to contact the Office of General Services' Division of Service-Disabled Veterans' Business Development at 518-474-2015 or VeteransDevelopment@ogs.ny.gov to discuss additional methods of maximizing participation by SDVOBs on the Agreement.

(ii) Contractor must document "good faith efforts" to provide meaningful participation by SDVOBs as subcontractors or suppliers in the performance of the Contract (see Section 26.2(d) below).

(c) SDVOB Utilization Plan

(i) In accordance with 9 NYCRR § 252.2(i), Contractors are required to submit a completed SDVOB Utilization Plan on Form SDVOB 100 (https://ogs.ny.gov/Veterans/Docs/2016/SDVOB_100_Utilization_Plan.docx) with their bid.

(ii) The Utilization Plan shall list the SDVOBs that Contractor intends to use to perform the Work, a description of the Work that Contractor intends the SDVOB to perform to meet the goals on the Agreement, the estimated dollar amounts to be paid to an SDVOB, or, if not known, an estimate of the percentage of Work the SDVOB will perform. By signing the Utilization Plan, Contractor acknowledges that making false representations or providing information that shows a lack of good faith as part of, or in conjunction with, the submission of a Utilization Plan is prohibited by law and may result in penalties including, but not limited to, termination of a contract for cause, loss of eligibility to submit future bids, and/or withholding of payments. Any modifications or changes to the agreed participation by SDVOBs after the contract award and during the term of the Agreement must be reported on a revised SDVOB Utilization Plan and submitted to Owner.

(iii) Owner will review the submitted SDVOB Utilization Plan and advise the Contractor of Owner acceptance or issue a notice of deficiency within 20 days of receipt.

(iv) If a notice of deficiency is issued, Contractor agrees that it shall respond to the notice of deficiency, within seven business days of receipt, by submitting to Owner a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by Owner to be inadequate, Owner shall notify Contractor and direct the Contractor to submit, within five business days of notification by Owner, a request for a partial or total waiver of SDVOB participation goals on Form SDVOB 200 (https://ogs.ny.gov/Veterans/Docs/2016/SDVOB_200_Waiver_Form.docx). Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.

(v) Owner may disqualify a Contractor's bid or proposal as being non-responsive under the following circumstances:

(A) If Contractor fails to submit an SDVOB Utilization Plan;
(B) If Contractor fails to submit a written remedy to a notice of deficiency;
(C) If Contractor fails to submit a request for waiver; or
(D) If Owner determines that Contractor has failed to document good faith efforts.

(vi) Contractor certifies that it will follow the submitted SDVOB Utilization Plan for the performance of SDVOBs on the Agreement pursuant to the prescribed SDVOB contract goals set forth above.

(vii) Contractor further agrees that a failure to use SDVOBs as agreed in the Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, Owner shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsibility.

(d) Waivers

(i) Prior to submission of a request for a partial or total waiver, Contractor shall speak to Shinay Stewart at shinay.stewart@bpca.ny.gov or (212) 336-9353 for guidance.

(ii) In accordance with 9 NYCRR § 252.2(m), a Contractor that is able to document good faith efforts to meet the goal requirements, as set forth in Section 26.2(e) below, may submit a request for a partial or total waiver on Form SDVOB 200 (https://ogs.ny.gov/Veterans/Docs/2016/SDVOB_200_Waiver_Form.docx), accompanied by supporting documentation. Contractor may submit the request for waiver at the same time it submits its SDVOB Utilization Plan. If a request for waiver is submitted with the SDVOB Utilization Plan and is not accepted by Owner at that time, the provisions of Section 26.2(c)(iii), (iv) and (v) will apply. If the documentation included with the Contractor's waiver request is complete, Owner shall evaluate the request and issue a written notice of acceptance or denial within 20 days of receipt.

(iii) Contractor shall attempt to utilize, in good faith, the SDVOBs identified within its SDVOB Utilization Plan, during the performance of the Work. Requests for a partial or total waiver of established goal requirements made subsequent to award of the Agreement may be made at any time during the term of the Agreement to Owner, but must be made no later than prior to the submission of a request for final payment.

(iv) If Owner, upon review of the SDVOB Utilization Plan and Monthly SDVOB Compliance Report determines that Contractor is failing or refusing to comply with the contract goals and no waiver has been issued in regards to such non-compliance, Owner may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven business days of receipt. Such response may include a request for partial or total waiver of SDVOB contract goals. Waiver requests should be sent to Owner.

(e) Required Good Faith Efforts. In accordance with 9 NYCRR § 252.2(n), Contractors must document their good faith efforts toward utilizing SDVOBs on the Agreement. Evidence of required good faith efforts shall include, but not be limited to, the following:

(i) Copies of solicitations to SDVOBs and any responses thereto.

(ii) Explanation of the specific reasons each SDVOB that responded to Contractors' solicitation was not selected.

(iii) Dates of any pre-bid, pre-award or other meetings attended by Contractor, if any, scheduled by Owner with certified SDVOBs whom Owner determined were capable of fulfilling the SDVOB goals set in the Agreement.

(iv) Information describing the specific steps undertaken to reasonably structure the Work for the purpose of subcontracting with, or obtaining supplies from, certified SDVOBs.

(v) Other information deemed relevant to the waiver request.

(f) Monthly SDVOB Contractor Compliance Report

In accordance with 9 NYCRR § 252.2(q), Contractor is required to report Monthly SDVOB Contractor Compliance to Owner during the term of the Agreement for the preceding month's activity, documenting progress made towards achieving the SDVOB goals. This information must be submitted using form SDVOB 101 available at https://ogs.ny.gov/Veterans/Docs/2016/SDVOB_101_Monthly_Compliance%20_Report.docx and should be completed by the Contractor and submitted to Owner, by the 10th day of each month during the term of the Contract, for the preceding month's activity to: Shinay Stewart at shinay.stewart@bpca.ny.gov.

(g) Breach of Contract and Damages

In accordance with 9 NYCRR § 252.2(s), any Contractor found to have willfully and intentionally failed to comply with the SDVOB participation goals set forth in this Agreement, shall be found to have breached the Agreement and Contractor shall pay damages as set forth therein.

ARTICLE 27 - STANDARD PROVISIONS

27.1 Provision Required by Law Deemed Inserted

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

27.2 Compliance with Laws, Rules and Regulations

Contractor and each Subcontractor and Materialman shall comply fully with all applicable

laws, rules and regulations pertaining to the Project and the Work.

27.3 Applicable Law, Forum and Jurisdiction

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

27.4 No Third Party Rights

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

27.5 Exculpation; Limitation of Liability

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

27.6 Protection of Lives and Health

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

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

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

and methods.

27.7 Waiver of Immunity Clause

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

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

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

27.8 Prohibited Interests

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

27.9 Labor Provisions

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

(b) Contractor specifically agrees, as required by New York Labor Law Sections 220

and 220-d as amended, that:

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

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

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

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

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

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

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

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

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

(2) less than the stipulated minimum hourly wage scale as specified in Labor

Law, Section 220-d, as amended.

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

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

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

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

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

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

27.10 Disputes Resolution Procedure

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

(b) The parties to this Agreement hereby authorize and agree to the resolution of all Disputes arising out of, under or in connection with, this Agreement in accordance with the following and pursuant to the procedures set forth in paragraph (c) of this Section 27.10. With respect to any Dispute which relates in whole or primary part to technical issue(s) under this Agreement including, without limitation, determinations as to the acceptability or fitness of any Work, the meaning or interpretation of the Contract Documents, the question of whether any Work falls within the scope of the Specifications set forth in the Contract Documents, the acceptability

of any proposed substitutions, modifications or other submissions under this Agreement, the disapproval of proposed Subcontractors or Materialmen (to the extent such disapproval is related to technical issues), the extension of time to the extent related to a technical matter, the question of whether substantial completion or final completion has been achieved, the parties hereby authorize the General Counsel of BPCA, or his/her designee, (hereinafter referred to as the "**Arbiter**"), acting personally, to render a final and binding decision.

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

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

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

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

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

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

(d) Any final determination of the Arbiter with respect to a Dispute initiated pursuant to this Article 27 shall be subject to review solely in the form of a challenge following the decision by the Arbiter in a Court of competent jurisdiction of the State of New York, County of New York, under Article 78 of the New York Civil Practice Law and Rules or a United States Court located in New York City under the procedures and laws applicable in that court, it being understood the review of such Court shall be limited to the question of whether or not the Arbiter's determination is arbitrary, capricious or lacks a rational basis. No evidence or information shall be introduced or relied upon in such proceeding which has not been duly presented to the Arbiter in accordance with this Article 27.

27.12 Limitation on Actions

(a) Subject to the provisions of Section 27.11, no action or proceeding shall lie or shall be maintained by Contractor against BPCA, Construction Manager, or Architect unless (i) such action or proceeding shall be commenced within six (6) months of the date of the issuance of the Certificate of Substantial Completion to Contractor; or (ii) in the case of an action or proceeding for monies due pursuant to Section 5.7 hereof, or arising exclusively from or pertaining exclusively to work performed after the date of issuance of the Certificate of Substantial Completion, unless such action or proceeding is commenced no later than six (6) months after the issuance of the certificate of final completion to Contractor; or (iii) if this Agreement is terminated by BPCA prior to the issuance of the Certificate of Substantial Completion, unless such action or proceeding is commenced within six (6) months after the date of such termination.

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

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

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

27.13 Waiver of Remedies

Contractor acknowledges that it can be compensated adequately by money damages for any breach of this Agreement which may be committed by BPCA, Construction Manager, or Architect. Contractor agrees that no default, act or omission of BPCA, Construction Manager, or Architect shall constitute a material breach of contract entitling Contractor to cancel or rescind this Agreement or to suspend or abandon performance thereof, other than the failure of BPCA to make a payment of the Contract Price in accordance with the terms hereof solely because sufficient funds to pay the Contract Price have not been appropriated or will otherwise not be made available to BPCA. Contractor hereby waives any and all rights and remedies to which Contractor might otherwise be or become entitled to because of any wrongful act or omission of BPCA, Construction Manager, or Architect except as provided in this Section 27.13 and Contractor's right to money damages.

27.14 Modification of Agreement

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

27.15 Signs and Parking

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

27.16 Entire Agreement

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

27.17 Rights and Remedies

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

27.18 Participation in International Boycott Prohibited

Contractor agrees, as a material condition of this Agreement, that neither Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated or is participating or shall participate in an international boycott in violation of the provisions of the United States Export Administration Act of 1969, as amended, or the United States Export

Administration Act of 1979, as amended, or the Regulations of the United States Department of Commerce promulgated thereunder. This Agreement shall be rendered forfeit and void by the Comptroller of the State of New York if, subsequent to execution, such person, firm, partnership or corporation has been convicted of a violation of the provisions of either of such federal acts or such Regulations or has been found upon the final determination of the United States Commerce Department or any other appropriate agency of the United States to have violated the provisions of either of such federal acts or such Regulations.

27.19 Compliance with "Buy-American" Statutes

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

27.20 Permitted Successors

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

27.21 MacBride Fair Employment Principles

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

27.22 Iran Divestment Act

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

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

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

27.24 Labor Peace

The Contractor and its Subcontractors and Materialmen shall not employ on the Work any labor, materials or means whose employment, or utilization during the course of this Agreement, may tend to or in any way cause or result in strikes, Work stoppages, delays, suspension of Work or similar troubles by workers employed by the Contractor or its Subcontractors, Materialmen, or by any of the trades working in or about the buildings and premises where Work is being performed under this Agreement, or by other contractors or their subcontractors pursuant to other agreements, or on any other building or premises owned or operated by BPCA, its contractors or affiliates. Any violation by the Contractor of this requirement may be considered as proper and sufficient cause for declaring the Contractor to be in default, and for BPCA to take action against Contractor as set forth in Article 15 of this Agreement, or such other Section of this Agreement as BPCA may deem proper.

27.25 Comptroller's Approval

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

27.26 Key Person/Personnel

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

27.27 Form of Agreement Not an Offer

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

27.28 General Responsibility

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

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

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

27.29. Counterparts

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

27.30. Section Headings

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

27.31. Subordination of Terms in the Exhibits

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

SIGNATURE PAGE FOLLOWS

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

BATTERY PARK CITY AUTHORITY, d/b/a

HUGH L. CAREY BATTERY PARK CITY AUTHORITY

By: _____

Name: _____

Title: _____

[CONTRACTOR NAME]

By: _____

Name: _____

Title: _____

FEIN #

EXHIBIT H

CONTRACTOR REQUIREMENTS AND PROCEDURES FOR PARTICIPATION BY NEW YORK STATE-CERTIFIED MBES/WBES/SDVOBS AND EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITY GROUP MEMBERS AND WOMEN

NEW YORK STATE LAW

Pursuant to New York State Executive Law Article 15-A and Parts 140-145 of Title 5 of the New York Codes, Rules and Regulations BPCA is required to promote opportunities for the maximum feasible participation of New York State-certified MBEs/WBEs (collectively, "MWBE(s)") and the employment of minority group members and women in the performance of BPCA contracts. Pursuant to New York State Executive Law Article 17-B and 9 NYCRR §252, BPCA recognizes its obligation under the law to promote opportunities for maximum feasible participation of certified SDVOBs.

Business Participation Opportunities for MWBEs

For purposes of this solicitation, BPCA hereby establishes the following MWBE participation goals, based on the current availability of MWBEs:

Overall goal for total MWBE participation: 30%

NYS-Certified Minority-Owned Business ("MBE") Participation: 15%

NYS-Certified Women-Owned Business ("WBE") Participation: 15%

A contractor ("Contractor") on any contract resulting from this procurement ("Contract") must document its good faith efforts to provide meaningful participation by MWBEs as subcontractors and suppliers in the performance of the Contract. To that end, by submitting a response to this RFP, the Proposer agrees that BPCA may withhold payment pursuant to any Contract awarded as a result of this RFP pending receipt of the required MWBE documentation. The directory of MWBEs can be viewed at: https://ny.newnycontracts.com. For guidance on how BPCA will evaluate a Contractor's "good faith efforts," refer to 5 NYCRR § 142.8.

The Proposer understands that only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be applied towards the achievement of the applicable MWBE participation goal. The portion of a contract with an MWBE serving as a broker that shall be deemed to represent the commercially useful function providing supplies shall be sixty percent (60%) of the total value of the Contract. The portion of a contract with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be the monetary value for fees, or the markup percentage, charged by the MWBE.

In accordance with 5 NYCRR § 142.13, the Proposer further acknowledges that if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in a Contract resulting from this RFP, such finding constitutes a breach of contract and BPCA may withhold payment as liquidated damages.

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

By submitting a bid or proposal, a Proposer agrees to demonstrate its good faith efforts to achieve the applicable MWBE participation goals by submitting evidence thereof through the New York State Contract System ("NYSCS"), which can be viewed at https://ny.newnycontracts.com, provided, however, that a Proposer may

arrange to provide such evidence via a non-electronic method by contacting Jennifer Yam at jennifer.yam@bpca.ny.gov or 212-417-2337. Please note that the NYSCS is a one-stop solution for all of your MBE/WBE and Article 15-A contract requirements. Please note that the NYSCS is a one-stop solution for all of your MBE/WBE and Article 15-A contract requirements. For additional information on the use of the NYSCS to meet the Proposer's MBE/WBE requirements, please see the attached MBE/WBE guidance from the New York State Division of Minority and Women's Business Development, "Your MWBE Utilization and Reporting Responsibilities Under Article 15-A.".

Additionally, a Proposer will be required to submit the following documents and information as evidence of compliance with the foregoing:

A. An MWBE Utilization Plan with their bid or proposal. Any modifications or changes to an accepted MWBE Utilization Plan after the Contract award and during the term of the Contract must be reported on a revised MWBE Utilization Plan and submitted to BPCA for review and approval.

B. BPCA will review the submitted MWBE Utilization Plan and advise the Proposer of BPCA acceptance or issue a notice of deficiency within thirty (30) days of receipt.

C. If a notice of deficiency is issued, the Proposer will be required to respond to the notice of deficiency within seven (7) business days of receipt by submitting to Jennifer Yam at BPCA, by email at jennifer.yam@bpca.ny.gov, a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by BPCA to be inadequate, BPCA shall notify the Proposer and direct the Proposer to submit, within five (5) business days, a request for a partial or total waiver of MWBE participation goals. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.

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

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

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

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

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

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

The successful Proposer will be required to submit a quarterly M/WBE Contractor Compliance & Payment Report to BPCA, by the tenth (10th) day following each end of quarter over the term of the Contract documenting the progress made toward achievement of the MWBE goals of the Contract.

Business Participation Opportunities for SDVOBs

For purposes of this solicitation, BPCA hereby establishes an overall goal of **6% for SDVOB participation**. A Proposer must document good faith efforts to provide meaningful participation by SDVOBs as subcontractors or suppliers in the performance of the Contract and Proposer agrees that BPCA may withhold payment pending receipt of the required SDVOB documentation. The directory of New York State Certified SDVOBs can be viewed

at: https://sdves.ogs.ny.gov/business-search. For guidance on how BPCA will determine a Contractor's "good faith efforts," refer to 9 NYCRR §252.2(f)(2).

In accordance with 9 NYCRR §252.2(s), the Proposer acknowledges that if it is found to have willfully and intentionally failed to comply with the SDVOB participation goals set forth in the Contract, such finding constitutes a breach of Contract and Contractor shall be liable for damages to be calculated based on the actual cost incurred by BPCA related to BPCA's expenses for personnel, supplies and overhead related to establishing, monitoring and reviewing certified SDVOB programmatic goals. Such damages shall be calculated based on the actual cost incurred by BPCA related to BPCA's expenses for personnel, supplies and overhead related to establishing, monitoring and reviewing certified SDVOB programmatic goals.

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

B. BPCA will review the submitted MWBE Utilization Plan and advise the Proposer of BPCA acceptance or issue a notice of deficiency within thirty (30) days of receipt.

C. If a notice of deficiency is issued, the Proposer will be required to respond to the notice of deficiency within seven (7) business days of receipt by submitting to Jennifer Yam at BPCA, by email at jennifer.yam@bpca.ny.gov, a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by BPCA to be inadequate, BPCA shall notify the Proposer and direct the Proposer to submit, within five (5) business days, a request for a partial or total waiver of SDVOB participation goals. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or Proposal.

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

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

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

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

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

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

The successful Proposer is required to submit a Contractor's SDVOB Contractor Compliance & Payment Report to BPCA on a monthly basis over the term of the Contract documenting the progress made toward achievement of the SDVOB goals of the Contract.

Equal Employment Opportunity ("EEO") Requirements

By submission of a bid or proposal in response to this solicitation, the Proposer agrees with all of the terms and conditions of the attached MWBE EEO Policy Statement. The Proposer is required to ensure that it and any subcontractors awarded a subcontract for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work"), except where the Work is for the beneficial use of the Proposer, undertake or continue programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, equal opportunity shall apply in the areas of recruitment,

employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, and rates of pay or other forms of compensation. This requirement does not apply to: (i) work, goods, or services unrelated to the Contract; or (ii) employment outside New York State.

The Proposer will be required to submit a MWBE and EEO Policy Statement, Form # 4, to BPCA with its bid or proposal.

If awarded a Contract, Proposer shall submit a Workforce Utilization Report and shall require each of its Subcontractors to submit a Workforce Utilization Report, in such format as shall be required by BPCA on a monthly basis during the term of the Contract using the New York State Contract System or by other electronic means accepted by BPCA. Workforce Utilization Reporting shall be via the NYSCS Workforce Reporting Module. Monthly reports will be generated from the NYSCS for relevant contractors, and must be completed in order to be in compliance with this requirement.

Pursuant to Executive Order #162, contractors and subcontractors will also be required to report the gross wages paid to each of their employees for the work performed by such employees on the contract utilizing the Workforce Utilization Report on a quarterly basis.

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

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

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

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

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

GETTING STARTED

To access the system, please login or create a username and password at https://ny.newnycontracts.com/. If you are uncertain whether you already have an account set up or still need to register, please send an email to the customer service contact listed on the Contact Us & Support page, or reach out to Jennifer Yam at jennifer.yam@bpca.ny.gov or 212-417-2337. For verification, in the email, include your business name and contact information.

VENDOR RESPONSIBILITIES

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

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

For more information, contact Jennifer Yam at jennifer.yam@bpca.ny.gov or 212-417-2337.

EXHIBIT I
LIST OF BPCA & BPCPC BOARD MEMBERS AND EMPLOYEES

LIST OF BOARD MEMBERS

Donald Capoccia

Martha J. Gallo

Lester Petracca

Catherine McVay Hughes

Anthony Kendall

Angela Pinsky

Clinton Plummer

Employees:

Betzayda Afzal
Curtis Afzal
Elsa Alvarez
Dana Anders
Conrad Anderson
David Babb
Sharmila Baichu
Marie Baptiste
Brett Beecham
Freddy Belliard
Marieke Bender
Yipin Benon
Zachary Bergen
Marcus Billips
Emily Birdseye
Nidia Blake
Sully Bonnelly
Latoya Brooks-Jones
Nancy Buivid
Anthony Buquicchio
Peter Campbell
Angel Caraballo
Daniel Carmalt
Monica Centeno
Terence Cho
Alexis Torres Cid
Jonathan, Cogan
Jason Compaan
Sarah Curtin
Elizabeth Davis
Raymond Davy
Gwen Dawson
Nicole Dawson
Gilbert De Padua
DeSantis, Phillip
Joshua DeVoto
Ismael Diaz
Jan Pierre Diaz
Paul Diaz-Larul
Daniel Dickson
Tonasia Dopson
Terrence Eggleston
Abigail Ehrlich
AnnMaria Ellison
Jason, Espinal,
Richard Faraino
Claudia Filomena
Tamara Flores
Juan Fonseca
Dennis Fortune
Pamela Frederick
James Gallagher
Abigail Goldenberg
DonnaMarie, Garcia-Edwards
Anastasia Gonzalez
Robert, Gould
Evelyn Gregg
Jonathan Gross
Zalissa Guigma
Dmitriy Gutin
Robert Hansen
Nimisha Patel-Haribaran
Nicole Heater
Sankar Heerah
Alex Hing
Raul Hernandez
Brendan Hoey
Tasha Holley
Megan Hood
Angela Howard
Craig Hudon
Amy Jogie
Jade Johnson
Jasmine Mikayla Johnson
Gamal Jones
Saladin Jones
Ebonique Julien
Ann Ketring
Karl Koenig
Michael Lamancusa
Boris Leon
Marianna Lerner
Triny Lima
Rene Lopcy
Janira Lopez
Roman Lora
Robert Maggi
Evelin Maisonet
Raju Mann
Lenore Manzella
Eric Martinez
Maria Martinez
Princess McNeill
Vanessa Mesine
Ronnie Mohammed
Lilka Mimbella
Irene Moulketis
Eric Munson
Patrick Murphy
Ryan Murray
Lauren Murtha
Jahmeliah Nathan
Janie Ngo
Yoshihiro Nishida
Stuart Ohleyer
Maril Ortiz
Kevin O'Toole
Willem Paillant
Jonathan Parker
Bertram Payne Onwuegbule
Gladys Pearlman
Dahlia Pena
Roman Petrov
Rynell Pimentel
Katherine Powell
Sandra Power
Robert Quon
Jason Rachnowitz
Madelin Ramirez
Aline Reynolds
Kwame Richards
Angel Rivera
Manuel Rivera
Ruben Rivera
Nelson Rogers
Joel Rufino
Paul Russell
Carlos Santiago
Kimberlae Saul
Nicholas Sbordone
Jean Schwartz
Rekha Sewraj-Kumar
Sean Simon
Kemnarine Singh
Sarah Smedley
Shinay Stewart
Patricia Striggles
Jerome Sturiano
Marcella Taft
Ryan Torres
Michelle Torres Davila
Douglas Van Horn
Christian Vargas
Peter Velsey
Yves Emmanuel Veve
Peter Velsey
Evangelio Villalobos
Sharon Wade
David Wallace
John Wells
Dwight Williams
Jennifer Wisnewski
Al Wright
Sarah Wolfe
Jennifer Yam
Erin Yokoi