



**Hugh L. Carey Battery Park City Authority**

## **PIER A**

June 1, 2010  
Phase 3 – Core & Shell

# **REQUEST FOR PROPOSALS**

## **General Construction**

**David A. Paterson, Governor, STATE OF NEW YORK**

**William Thompson, Chairman, James E. Cavanaugh, President & CEO**

Designated Contact for Administrative Issues:

**Venus Callender 212.417.4335**

Designated Contact for Technical Issues:

**Michelle Arrington 212.417.4337**

Designated Contact for M/WBE:

**Anthony Peterson 212.417.2337**





## **LiRo Program and Construction Management, P.C.**

A LiRo Group Company

111 Broadway Suite 501, New York, NY 10006

Telephone 212.563.0280

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**June 1, 2010**

**To: Prospective Proposers**

**Subject: Request for Proposals**

**Project Name: Pier A Core and Shell Renovation**

**Contract #1: GC**

Battery Park City Authority (BPCA) is soliciting proposals for the above referenced project.

Contract Documents associated to this project, can be downloaded via an FTP site on Thursday June 3, 2010 @3PM.(No Earlier) The link to this site is:

ftp://216.75.85.87/pier-a-public

User account:

Username: pierapublicftp

Password: cpieraftp4589

**A pre-bid conference will be held on Wednesday June 9, 2010 at 10 a.m. at the LiRo Field Offices at the Pier A site. (Intersection of West Street and Battery Place) Attendance is mandatory. The pre proposal meeting will include a walkthrough of the proposed project. All who intend to attend this walkthrough shall come equipped with an approved hardhat and safety shoes. Absolutely No Exceptions!!!!!!**

Sealed bids, labeled accordingly, responsive to the requirements of the attached RFP, must be delivered by the close of business, no later, on **Tuesday June 29, 2010** to the address referenced below. Late bids will not be accepted.

### **Bid Envelope Label Shall Have the Following Information:**

**TO: Battery Park City Authority**

**One World Financial Center, 24<sup>th</sup> Floor**

**New York, NY 10281**

**Attention: Venus Calender, Contract Administrator Construction**

**Project: Pier A Core and Shell Renovation**

**Contract: General Construction**

Should you have any questions, please do not hesitate to call me at 347.231.6647

Sincerely,

**LiRo Program & Construction Management, P.C.**

**Frank S. Franco, AIA**

**Vice President**

**PIER A, NEW YORK, NY**  
**Hugh L. Carey Battery Park City Authority**

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## **I. INTRODUCTION**

The Battery Park City Authority (the "Authority") is hereby requesting proposals for the project described on the cover sheet of this document (the "Project").

Proposers ("Proposers") are invited to submit proposals ("Proposal") for the work ("Work") described in **Appendix V** in accordance with the terms and conditions of this request for proposals ("RFP"). Attendance at a pre-proposal conference, which will include a site visit, is mandatory. Background information if applicable and a general description of the Project is also included in **Appendix V**.

The Authority reserves the right, in its sole discretion, to reject at any time any or all Proposals, to withdraw this Request without notice and to negotiate with one or more Proposers submitting Proposals on terms other than those set forth herein. The Authority reserves the right to waive compliance with and/or change any of the terms and conditions of this Request. Under no circumstances will the Authority pay any costs incurred by a Proposer in responding to this Request. All questions regarding the Request should be directed to Ms. Venus Callender, the Authority's Contract Administrator, at (212) 417-4335.

Payment and Performance Bonds will be required for the Work. Accordingly, each Proposal must include a letter from a surety bonding company certifying that bonds in the amount equal to one hundred percent (100%) of the contract price will be issued for the project in the form attached to this Request. The cost of the bonds shall be included in the Proposal. The bonding company must carry a rating of A-VI or better from Best's Key Rating Guide to be acceptable. The insurance requirements shall be stated in the Model Agreement.

## **II. AFFIRMATIVE ACTION PROGRAM**

### **1. Compliance and Enforcement**

With respect to the requirements of Section 317 of Article 15-A of the Executive Law of the State of New York and the regulations adopted in furtherance of such law, the selected proposer (sometimes referred to as the "Proposer") agrees to comply with the provisions of this Request and the Agreement attached hereto.

### **2. Opportunities for Minority and Women-Owned Business Enterprises(MBE'S/WBE'S)**

2.1 Proposer will be required to make every good faith effort to achieve the participation goals described in **Appendix IV** for utilization of MBEs and WBEs.

2.2 A directory of MBEs and WBEs is available for inspection at the office of the Authority's Affirmative Action officer. Information concerning certified businesses, certification, or other equal opportunity or affirmative action matters may be obtained by contacting Anthony Peterson at 212.417.2337.

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- 2.3 In the further event that the Authority finds that the written remedy response is either untimely or is inadequate, Proposer may request a partial or full waiver of the participation goal requirements, by filing a waiver form within five days after receipt of the Authority's above referenced notice of deficiency. Failure to file a waiver form in a timely manner may be grounds for disqualification of the Proposal.
- 2.4 Disqualification of the Proposer from entering into the Agreement may result from the failure by Proposer to (i) submit a MBE/WBE Required Participation Plan, (ii) remedy noted deficiencies in the MBE/WBE Required Participation Plan, and (iii) document good faith efforts to meet participation goals.
- 2.5 Proposer must submit with its Proposal, a utilization plan (using the form named "Exhibit Part 4 Utilization Plan" attached in Appendix IV) setting forth a participation goal as described in Appendix V for utilization of employees who are Minority Group Members (as defined in the Agreement) and who are women, which the Proposer will use to perform the Work described in Appendix V. Failure to timely submit the Utilization Plan will be grounds for the disqualification of the Proposal.
- 2.6 Proposer further agrees that once it has submitted its MBE/WBE required Participation Plan and the Utilization Plan to the Authority, it will not alter, change or amend either plan for the duration of the agreement without the prior written consent of the Authority.
- 2.7 Proposer will be required to ensure that Minority Group Members and Women are afforded equal employment opportunities without discrimination in all segments of the workforce for the Work.

### **III. NEW YORK STATE OMNIBUS PROCUREMENT ACT OF 1992**

It is the policy of the Authority and the State of New York to encourage the use of the New York State subProposers and suppliers, and to promote the participation of minority and women-owned businesses, where possible in the procurement of goods and services.

Information on the availability of New York State subProposers and suppliers is available from the New York State Department of Economic Development, Division for Small Business, (518) 474 7756. A directory of minority and women-owned business enterprises is available from the New York State Department of Economic Development (518) 474-6346.

By signing a Proposal in the amount greater than \$1 million, each Proposer certifies that it:

- a. Has made all reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subProposers on this project, and has retained the documents of these efforts to be provided upon request to the Authority;
- b. Has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;

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- c. Agrees to make all reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements and agrees to documents these efforts and to provide said documentation to the Authority upon request and:
- d. Acknowledges notice that New York State may seek to obtain offset credits from foreign countries as a result of the contract for this project and agrees to cooperate with the State in these efforts.

#### **IV. MACBRIDE FAIR EMPLOYMENT PRINCIPLES**

By submitting a proposal, Proposer 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% greater ownership in it, either:

have no business operations in Northern Ireland; or

shall take lawful steps in good faith to conduct any business operations they have in Northern Ireland in accordance with the MacBride Fair Employment Principles relating to nondiscrimination in employment and freedom of workplace opportunity regarding such operations in Northern Ireland, as set forth in Section 174-b of the New York State Finance Law, and shall permit independent monitoring of their compliance with such principles.

#### **V. PROPOSAL SUBMISSION PROCESS**

Proposers will be required to submit a **Proposal** for the Work indicated in **Appendix VI: General Description and Scope of Work**. The Proposal shall be in bound format with each the Cost Proposal up front, and all items listed in "Submittals to Accompany Proposal" in a separate tabbed section clearly labeled in the same order as listed in the RFP. The Authority will review the Proposal for completeness and compliance with terms and conditions thereof. The Authority reserves the right to request additional information or materials it may deem useful or appropriate to evaluate each Proposer's qualifications and past experience. Submission of a Proposal shall constitute the Proposer's permission to the Authority to make such inquiries concerning the Proposer as the Authority in its sole discretion deems useful or appropriate.

In the event that the Authority becomes aware of any material inaccuracy in the information supplied by a Proposer, the Authority shall have the right to refuse to continue review of the Proposal or to take any other action as shall be deemed appropriate by the Authority, in its sole discretion.

Public access to materials submitted by Proposer in response to this Request shall be governed by the relevant provisions of the Freedom of Information Law, Article 6 of the New York State Public Officers Law ("FOIL"), and regulations adopted pursuant thereto. If a Proposer submits information which it believes to be a trade secret or otherwise exempt from disclosure under

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FOIL, it must specifically identify such information and state in writing the reasons why the information should be exempt from disclosure.

The review of a Proposal submitted by a Proposer will create no legal or equitable rights in favor of the Proposer, including without limitation, rights of enforcement or reimbursement. Failure by the Authority for any reason to select a Proposer as a result of this Request will not create any liability on the part of the Authority or any of its members, officers, employees, agents, consultants or Proposers. Submission of a Proposal by a Proposer in response to this Request will constitute a waiver by such Proposer of any claim against any of the foregoing for any costs incurred or for any matters arising thereunder or in connection with the review of such Proposal by the Authority.

To be eligible for consideration, the Proposal must be submitted in writing on the form included in Appendix VIII and placed in a sealed envelope and delivered by an authorized officer of the firm. The name of the project being bid must appear clearly on the envelope. The Authority must receive proposals no later than the date specified in Appendix VI and addressed to:

Battery Park City Authority  
One World Financial Center - 24th Floor  
New York, NY 10281-1097

Attention: Ms. Venus Callender  
Contract Administrator

*One bound copy and one fully electronic copy on disk of the Proposal must be received on or before the submission date. The electronic copy must include all submittals to accompany the Proposal as noted in Appendix VII and be identical to the paper copy. Each electronic file must be titled after the appropriate section it represents. The CD must be labeled with your company's name, the date of the submission, and the project title. Only Microsoft Word (doc), Microsoft Excel (xls) and Adobe Reader (pdf) formats will be accepted. The Proposal form must be a pdf file.*

## **VI. SELECTION PROCESS**

The Authority may make requests for additional materials or for clarification or modification of any submitted Proposal, but will not be obligated to request such additional materials or seek clarification or modification of a Proposal which is incomplete or non-conforming as submitted. Proposers will not be entitled to change their Proposals once submitted, without the consent of the Authority.

The Authority reserves the right to request and accept modifications or additions to Proposals, to reject any and all Proposals or to withdraw this Request at any time without notice. This Request is not a request for bids or part of a competitive bid process and the Authority reserves the right to use the Proposal as a basis for negotiation and to negotiate with Proposers prior to or after Proposer selection.

The Authority will exclude from consideration those Proposers that in the sole judgment of the Authority fail to demonstrate the necessary qualifications to undertake the Project. From the remaining Proposals, the Authority, will select the Proposer which, in the sole judgment of the projects\forms\rfspall

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Authority, most successfully demonstrates the necessary experience to undertake the project, offers the most favorable financial terms, and best meets the other needs and goals of the Project and the Authority.

## VII. EXECUTION OF THE AGREEMENT

The submission of a Proposal with respect to the Project shall constitute an agreement by the Proposer to execute the Agreement (the "Agreement"), in the form appended to this Request, within fifteen (15) business days after submission to it for execution, time being of the essence. In the event that the Proposer fails to execute the Agreement for any reason within such period, the Authority may terminate the selection of the Proposer and negotiate and execute the Agreement with another party. No changes to the Agreement are permitted by the Proposer.

The selection of a Proposer will create no legal or equitable rights in favor of the selected Proposer, including without limitation, rights of enforcement or reimbursement. Failure by the Authority for any reason to execute the Agreement with the selected Proposer will not create any liability on the part of the Authority or any of its members, officers, employees, agents, or consultants. Submission of a Proposal by a Proposer in response to this Request will constitute a waiver by such Proposer of any claim against any of the foregoing for any costs incurred or for any matters arising thereafter or in conjunction with the negotiation or execution of (or failure to execute) this Agreement.

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(End of Information to Proposer. Appendices follow)

APPENDIX I:

MODEL AGREEMENT

RFP Information for Proposers  
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**APPENDIX I: MODEL AGREEMENT**

**between**

**Battery Park City Authority**

**d/b/a Hugh L. Carey Battery Park City Authority**

**and**

**NAME OF CONTRACTOR IN CAPS**

**Dated as of Month,  
Contract No. \_\_\_\_\_**

**(NAME OF PROJECT IN INIT CAPS)**

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EXHIBIT C: TIMESHEETS.....

EXHIBIT D: OWNER'S PROMPT PAYMENT POLICY.....

## CONSTRUCTION AGREEMENT

AGREEMENT made as of the                                  between BATTERY PARK CITY AUTHORITY, doing business as Hugh L. Carey Battery Park City Authority, a body corporate and politic, constituting a public benefit corporation and having a place of business at One World Financial Center, 24th Floor, New York, New York 10281 ("Owner" or "Authority") and NAME OF CONTRACTOR IN CAPS, a corporation incorporated under the laws of New York, having an office at                                  ("Contractor").

### W I T N E S S E T H:

WHEREAS, Owner 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, Owner intends to cause the staged development of Battery Park City, in individual parcels, with the goal of creating a richly diversified mixed use community which will provide residential and commercial space, with related amenities such as parks, plazas, recreational areas and a waterfront esplanade; and

WHEREAS, Owner intends to hire a contractor to perform \_\_\_\_\_ [insert description of work] ("the Project" or "the Work"), at Pier A, to the south of Battery Park City, in the Borough of Manhattan and State of New York ("Site"); and

WHEREAS, Contractor has been selected to perform \_\_\_\_\_ [insert description of work] ("the Project" or "the Work"), at Pier A, to the south of Battery Park City, in the Borough of Manhattan and the State of New York upon the terms and conditions hereinafter provided,

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

## ARTICLE 1 - DEFINITIONS

The following terms, wherever used in the Contract Documents, 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.
- (b) Architect – H3 Collaboration Architecture, LLC
- (c) Artist - n/a
- (d) Battery Park City Authority - as set forth on page 1 hereof.
- (e) Battery Park City Authority - Owner.
- (f) Change Order - as defined in Section 9.1.
- (g) Construction Manager – PHB Catalyst Group, Inc.
- (h) Contract Documents - as defined in Section 2.2.
- (i) Contract Payment Breakdown - as defined in Section 5.3.
- (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 at the site pursuant to Section 7.2 hereof.
- (l) Contractor - as set forth on page 1 hereof.
- (m) Certificate of Substantial Completion - as set forth in Section 8.6.
- (n) Drawings - as defined in Article 23.
- (o) Extra Work - Any Work in addition to the obligations initially imposed upon the Contractor by this Agreement.
- (p) Field Order - as noted in Section 9.3.
- (q) Final Acceptance - Acceptance by Owner of the Work as provided in Section 8.7.
- (r) Final Requisition - as defined in Section 5.2.

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- (s) 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.
- (t) Materialman - Supplier of Materials.
- (u) Materials - All products, materials, fixtures, tools, equipment, apparatus, and furnishings intended to form a part of the Work.
- (v) Minority Business Enterprise or Minority Owned Business Enterprise or MBE - as defined in Article 26.
- (w) Minority or Minority Group Member - as defined in Article 26.
- (x) Owner - as defined on page 1. Owner hereby designates Kevin Chin, Project Manager, as the representative of Owner ("Authority's Representative") for the purpose of acting on behalf of Owner whenever action is required to be taken hereunder by Owner. Such designation may be revoked in writing at any time after notice given by Owner to Contractor. In addition, such representative of Owner shall have full power and authority to delegate in writing any or all of his responsibilities hereunder to any one or more persons after notice to Contractor.
- (y) Payment Bond - as defined in Section 13.3.
- (z) Performance Bond - as defined in Section 13.3.
- (aa) 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.
- (bb) Progress Schedule - as defined in Section 3.1.
- (cc) Project - as defined in the third "Whereas" clause.
- (dd) Provide - To furnish all labor, materials, appliances, equipment and services necessary for the fabrication and/or installation of articles, assemblies and processes required for the completion of that portion of the work, that is, furnish and install.
- (ee) Requisitions - as defined in Section 5.2.
- (ff) Samples - Physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.
- (gg) Site - as defined in the third "Whereas" clause.

- (hh) Specifications - as defined in Section 2.2.
- (ii) Subcontract - An Agreement between the Contractor and a Subcontractor for work on the Site.
- (jj) Subcontractor - A person, firm, partnership or corporation under contract with Contractor.
- (kk) Supply - To purchase, procure and acquire complete with all related accessories necessary or required, and deliver to the Site.
- (ll) Trade Payment Breakdown - as defined in Section 5.3.
- (mm) Women's Business Enterprise or Women Owned Business Enterprise or WBE - as defined in Article 26.
- (nn) Work - as defined in Section 2.1.

## **ARTICLE 2 - SCOPE OF WORK, MATERIALS AND LABOR**

### **2.1 Definition of Work**

Contractor shall perform and complete for Owner the work particularly described in Exhibit A - Scope of Services 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 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 the following:
  - (1) Exhibit A: Scope of Work
  - (2) Exhibit B: List of Drawings and Specifications
  - (3) Exhibit C: Time Sheets
  - (4) Exhibit D: Owner's Prompt Payment Policy

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- (b) Addenda, if any, attached hereto.
- (c) The Payment and Performance Bonds, if any (as defined in Section 13.3).
- (d) Change Orders adopted pursuant to Article 9.

The Contract Documents form the contract between Owner 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 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 Owner's architect, construction manager, engineers and attorneys, and the inspection, survey and testing services of Owner) 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 shall disagree as to the interpretation of the Contract Documents, such dispute shall be presented to Owner for resolution.

(d) Addenda to parts of the Contract Documents are for the purpose of varying, modifying, rescinding or adding to the 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.

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- (e) Captions, headings, cover pages, tables of contents and footnote instructions contained in the Contract Documents are inserted only to facilitate reference and for convenience and in no way define, limit or describe the scope, intent or meaning of any provision of the Contract.
- (f) Words and abbreviations which have well-known technical or trade meanings are used in the Contract Documents in accordance with such recognized meanings.
- (g) Should a conflict or discrepancy occur in or between or among any parts of the Contract Documents, the more reasonable way of doing the Work, the better quality or greater quantity of material to achieve the purpose intended shall govern, unless Owner otherwise directs.
- (h) 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.
- (i) A typical or representative detail indicated on the Drawings shall constitute the standard for workmanship and material throughout corresponding parts of the Work. Where necessary, and where reasonably inferable from the Drawings or Specifications, Contractor shall adapt such representative detail for application to such corresponding parts of the Work. The details of such adaptation shall be subject to prior approval by Architect. Repetitive features shown in outline on the Drawings shall be in exact accordance with corresponding features completely shown.
- (j) 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 Owner, 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 Owner and without any increase in the Contract Price as if such drawing and specification were originally included in the Contract Documents.

## 2.5 Title to Materials

(a) Contractor hereby agrees that immediately upon purchase by Owner from Contractor of any Materials to be incorporated in the Project or other Improvements (as such terms are defined in the lease pursuant to which the Owner acquired a leasehold interest in the property (the "Lease")), such Materials shall become the sole property of Landlord (as defined in the Lease and subject to the terms thereof), notwithstanding that such materials have not been incorporated in, or made a part of, such Project or other Improvements at the time of such purchase (subject to the right of Owner, Construction Manager or Architect to reject same for failure to conform to the standards of any or all of the Contract Documents); provided, however, that Landlord shall not be liable in any manner for payment or otherwise to Contractor in connection with the purchase of any such Materials and Landlord shall have no obligation to pay any compensation to Contractor by reason of such Materials becoming the sole property of Landlord.

(b) Contractor hereby agrees that notwithstanding that Contractor performed work at or furnished any materials for the Premises (as such term is defined in the Lease) or any part thereof, Landlord shall not be liable in any manner for payment or otherwise to Contractor in connection with the work performed at or materials furnished for the Premises.

(c) Title to all Work and Materials shall be in Landlord, 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.

(d) Contractor hereby agrees to make available for inspection by Landlord during reasonable business hours, Contractor's books and records relating to Construction Work (as defined in the Lease) being performed or the acquisition of any material or Equipment (as such term is defined in the Lease) furnished for the Premises.

(e) All covenants, representations, guarantees and warranties of Contractor hereunder shall if this Agreement is taken over by the Landlord (as defined in the Lease) be deemed to be made for the benefit of said Landlord under the Lease and shall be enforceable against Contractor by said Landlord.

(f) Landlord is not a party to this Agreement and will not in any way be responsible to any party for any claims of any nature whatsoever arising or which may arise from such Agreement unless Landlord shall take over this Agreement and then only as to claims arising after this Agreement is so taken over.

(g) Notwithstanding anything herein to the contrary, if as of date of execution of this Agreement the Lease has not yet become effective, then during the period (the "Interim Period") from and after such date until the date as of which the Lease becomes effective, the term "Landlord" shall be deemed to refer to the Lessor, and the term Owner shall be deemed to refer to the Licensee, under the Access License currently in effect between Landlord (as Lessor) and Owner (as Licensee), pursuant to which Owner and its representatives, agents, contractors and consultants are granted access to the Site during the Interim Period for the purpose of performance of the Work hereunder.

## 2.6 Contractor's Obligations

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

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

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

(d) Contractor shall deliver all Materials at such times and in such quantities as will insure the speedy and uninterrupted progress of the Work. All Materials shall be delivered to the Site in proper order and quantity and shall be stored at the Site, if storage space is available in Construction Manager's opinion, in such places as Construction Manager shall direct; provided, that no delivery of Materials shall be made to the Site without prior approval by Construction Manager. No Materials shall be removed from the Site without the consent of Construction Manager. Contractor shall handle and take care of all Materials used in performance of the Work whether furnished by Contractor or Owner, 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 Owner.

(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, it 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 site upon which Contractor is performing the Work free from all debris.

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

## 2.7 "Or Equal" Clause

(a) The products, materials and equipment 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 Owner.

(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 and/or Owner will be the sole judge of equivalency of proposed substitute Materials. Architect will make written recommendation of acceptance or rejection to Owner. Owner 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

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item Contractor proposes is, in fact, equal to that specified and had demonstrated such equality by at least three years of satisfactory service, 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) Materials and methods proposed as substitutions for specified items shall be supported by certification of their acceptance for use by any authority, person or persons having jurisdiction over the use of the specified materials or method.

(h) Acceptance of substitutions shall not relieve Contractor from responsibility for compliance with all the requirements of 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 his consultants.

(i) 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 unless stated otherwise. When Materials are specified to conform to any standard, the Materials delivered to the Site shall bear manufacturer's labels stating that the Materials meet such standards. The above requirements shall not restrict or affect Owner's right to test Materials as provided in the Contract.

# ARTICLE 3 - COMMENCEMENT AND COMPLETION OF THE WORK

## 3.1 Commencement, Completion and Progress Schedule

(a) Contractor agrees to be bound by and comply with the completion dates and the progress schedule for completion and progress of the Project (the "Progress Schedule")

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established by Construction Manager from time to time and waives any right to charge or claim damages or any increased cost, charges or expenses against Owner, Construction Manager or Architect for delays or disruptions from any cause whatsoever. Contractor's sole remedy as against Owner, Construction Manager and Architect for any delays or disruptions shall be as provided in Section 3.4 hereof.

(b) Contractor, before commencing the Work, shall prepare and submit to Construction Manager and Owner a Progress Schedule detailing, without limitation, all items of Work to be performed. Such Progress Schedule shall be updated monthly or at the request of Construction Manager or Owner. Failure to submit the Progress Schedule shall constitute a material breach of this Agreement. After submission of the Progress Schedule for the Work, Construction Manager shall coordinate the Progress Schedule for the Work in coordination with the Progress Schedule for the entire Project. The Progress Schedule for the Work may be revised by Construction Manager from time to time.

(c) Contractor shall commence the Work upon receipt of a written notice to proceed signed by Owner, and shall thereafter prosecute the Work to be performed hereunder 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 to the satisfaction of Owner, Architect, and Construction Manager.

(d) If, in the opinion of Construction Manager, Contractor falls behind the Progress Schedule then in effect, Contractor shall take whatever steps may be necessary to improve its progress and shall, if requested by Construction Manager, submit operational plans to demonstrate the manner in which the lost time may be regained. It is the responsibility of Contractor to maintain its schedule so as not to delay the progress of the Project or the schedules of other contractors. If Contractor delays the progress of its Work or the work of other contractors, it shall be the responsibility of Contractor to increase the number of men, 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 Owner, in order to regain any time lost and maintain the Progress Schedule then in effect as established by Construction Manager.

(e) If Contractor shall fail to complete the Work within the Contract time, or within the time to which such completion may have been extended, Owner may, at its option, withhold from any sums otherwise due and owing to Contractor hereunder, so much of the balance thereof as Owner shall deem necessary to secure it against any costs, expenses, or damages which may be incurred by Owner 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 the Owner harmless from any and all cost, expense or damage incurred by Owner by reason of such failure.

(h) It is further agreed that time is of the essence for each and every portion of the Work. In any instance in which additional time is allowed for the completion of any Work,

the new time of completion established by said extension shall be of the essence. Contractor shall not be charged with liquidated damages or any excess cost if Owner determines that Contractor is without fault and that the delay in completion of the Work is due:

- (1) to any preference, priority or allocation order duly issued by the Government of the United States or the State of New York;
- (2) to an unforeseeable cause beyond the control and without the fault of, or negligence of Contractor, and approved by Owner, including, but not limited to, acts of God or of public enemy, acts of Owner, fires, epidemics, quarantine, restrictions, strikes, freight embargoes and unusually severe weather; and
- (3) to any delays of Subcontractors or suppliers occasioned by any of the causes specified in Subsections 1 and 2 of this paragraph.

### **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 Owner, Architect and Construction Manager harmless from any and all claims or judgments for damages, costs and expenses to which Owner, Architect or Construction Manager may be subjected or which they may suffer or incur by reason of Contractor's failure to comply with Construction Manager's directions promptly. If Contractor notifies Construction Manager in writing that another contractor is failing to coordinate its work with the Work to be performed hereunder, Construction Manager shall promptly investigate the charge. If Construction Manager finds that charge to be true, it shall promptly issue such direction to the other contractor with respect thereto as the situation may require. Owner, Architect and Construction Manager shall not, however, be liable for any damages suffered by Contractor by reason of the other contractor's failure promptly to comply with the directions so issued by Construction Manager or by reason of another contractor's default in performance. Should Contractor sustain any damage through any act or omission of any other contractor, Contractor shall have no claim against Owner, Architect or Construction Manager 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 contract 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 Owner for the performance of work upon the Project sustain any damage through any act or omission of Contractor hereunder, Contractor agrees to reimburse such other contractor for all such damages and to indemnify and hold Owner, Architect and Construction Manager harmless from all such claims. Any claim against a performance bond surety made by any contractor shall be subordinated to any claim of Owner 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 seven days after the commencement of any condition which is causing or is threatening to cause such delay or disruption notify Construction Manager in writing of the effect of such condition upon Owner's Progress Schedule, stating why and in what respects the condition is causing or is threatening to cause delay, provided, however, that notwithstanding the above, if such delay or disruption, or anticipated delay or disruption, should be the result of any change or anticipated change in Contractor's financial condition, Contractor shall notify Construction Manager forthwith of such cause or anticipated cause. Failure strictly to comply with this notice requirement shall be sufficient cause to deny Contractor a change in schedule and to require it to conform to the Progress Schedule then in effect established by Construction Manager.

### 3.4 Extension of Time

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

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

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

that an application is made pursuant to the requirements of the immediately preceding paragraph.

#### **ARTICLE 4 - CONTRACT PRICE**

[Contract price to be determined after bid process.]

### **ARTICLE 5 - METHOD, SCHEDULE AND TERMS OF PAYMENTS**

#### **5.1 Partial Payment**

(a) In accordance with requisitions submitted and approved as provided below for Work performed in accordance with this Agreement, Contractor shall be entitled to partial payment on account of the Contract Price in 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 Owner 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 Owner 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 Owner. If Owner approves a reduction of retainage as herein described, Owner 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 Owner 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 Owner and Construction Manager. Each Requisition shall be supported by such data substantiating Contractor's right to payment as Owner 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 Owner and supported by such data to substantiate its correctness as Construction Manager may require. After approval by Owner 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 by Owner and Construction Manager, payments will be made on account of 80% of the value of Materials not incorporated in the Work but delivered and suitably stored at the Site or at some other offsite location agreed upon in writing by Owner and Construction Manager. Such payments shall be conditioned upon submission by Contractor of bills of sale or other supporting documentation satisfactory to Owner and Construction Manager to establish Owner'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 Owner, 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 Owner and/or Construction Manager; (b) the Material will be covered under the Owner's builder's risk policy subject to policy limits and restrictions; and (c) the Material may be inspected by the Owner and /or Construction Manager to assure compliance with Contract Documents and project specifications.

#### **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 and shall furnish its affidavit certifying that all Subcontractors and Materialmen have been paid for Work performed and Materials furnished through such date except for any permitted retainage. Owner 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 such Work performed and Materials furnished and/or (ii) the consent of the surety issuing the Payment Bond to such payment. Owner 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 immediately preceding paragraph, with the Final Requisition, Contractor shall furnish (1) its affidavit that there are no liens, claims or demands by, and that there are no indebtedness to, Subcontractors, Materialmen, laborers, other employees or third persons for which Owner, Construction Manager or Architect might in any way be responsible and (2) releases from all

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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 Owner 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 Owner all monies that Owner may be compelled to pay in discharging such lien, claim or demand including all costs, expenses and attorneys' fees which Owner may incur in connection therewith.

**5.6 Time of Payment**

Requisitions shall be submitted by Contractor to Owner and Construction Manager by the seventh day of each month for Work completed up to the last day of the previous month or other day approved by Owner, and payment shall be made on or about twenty days after Owner receives the Requisition together with the documents required pursuant to Sections 5.2 and 5.5 hereof. Contractor shall only be entitled to payment in the amount approved by Owner, and Construction Manager with respect to such Requisitions, each of which must be signed by Owner, and Construction Manager before payment is made. The value of any Work included in a Requisition for partial payment which is found unacceptable by Owner, or Construction Manager may be deducted from that or any subsequent Requisition.

**5.7 Reduction of Retainage**

Upon the issuance of a Certificate of Substantial Completion as provided in Section 8.6, Contractor shall submit a Requisition in an amount equal to the Contract Price less an amount equal to two times the value of the Work on the punch list as determined by Construction Manager and less the total amount of all prior payments. Upon approval of the same by Owner, Owner shall pay to Contractor the amount approved less any amount which Owner is entitled to withhold hereunder.

**5.8 Final Payment**

(a) The final balance due Contractor under this Agreement shall be payable to Contractor by Owner, 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 Owner, 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

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- (3) any inspections or approvals with respect to any of the Work that Owner 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 Owner a consent of surety to final payment or reduction of retainage in a form and substance acceptable to Owner.

**5.10     Owner'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. Owner 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 Owner or any representative of Owner arising out of any such inspection or audit. 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.

**5.11     Withholding of Payments**

(a) Owner 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 Owner, be necessary:

- (1) to assure payment of just claims or liens of any persons supplying labor or Materials for the Work;
- (2) to protect Owner from loss due to defective Work or to reimburse Owner, Architect and Construction Manager for fines on account of non-compliance with applicable laws, rules and regulations, including OSHA;
- (3) to protect Owner from loss due to death or injury to persons or damage to the Work or property of Owner, 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, Owner shall have the right to apply any such amounts so withheld in such manner as Owner may deem proper to satisfy such claims, to secure such protection, complete the Work or to compensate Owner 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 Owner 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 Owner 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 Owner, and any action or non-action by Owner shall not give rise to any liability on the part of Owner. Failure to so act shall not be deemed a waiver of any present or future claims of Owner.

## **ARTICLE 6 – CONTRACTOR**

### **6.1 Superintendence by Contractor**

Contractor shall provide a competent construction superintendent to be in charge of the Work; the construction superintendent shall devote full time to the Work, shall be present at the Site during the time the Work is required to be performed and shall have full authority to accept instructions, make decisions and act for Contractor at all times. If at any time the superintendent is not satisfactory to Owner or Construction Manager, Contractor shall, if requested by Owner, replace such superintendent with another satisfactory to Owner. Contractor shall not remove or replace the superintendent in charge of the Work unless he is discharged by Contractor or resigns from the employ of Contractor, without the consent of Owner.

### **6.2 Representations and Warranties**

Contractor represents and warrants that:

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

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Price;

- (b) Contractor is familiar with all Federal, State or other laws, ordinances, orders, rules and regulations, which may in any way affect the Work;
- (c) any temporary and permanent Work required by this Agreement can be satisfactorily constructed, and such construction will not injure any person or damage any property; and
- (d) Contractor has carefully examined the Contract Documents and the Site and, from Contractor's own investigations, is satisfied as to the nature and location of the Work, the character, quality and quantity of surface and subsurface materials likely to be encountered, the character of equipment and other facilities needed for the performance of the Work, the general and local conditions, and all other conditions or items which may affect the Work. Prior to submitting its bid for performance of the Work, Contractor notified Owner 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 accurately check all previous and surrounding work and determine the correctness of the same; failure on its part to detect or report discrepancies will relieve Owner 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**

Owner 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 Owner or Construction Manager including meetings set forth in Section 28(g) 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 Owner or Construction Manager,

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Contractor shall, if requested by Owner, be represented by another person satisfactory to Owner, having knowledge of the Work and authorized to act for Contractor at all times.

**6.6      Related Work**

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

**6.7      Surveys and Layout**

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

**6.8      Reports and Access**

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

**6.9      Financial Information**

Until completion of the Work, Contractor agrees to notify Owner 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 Owner. Contractor also agrees to furnish to Owner at Owner's request, current quarterly and, if available, audited annual financial statements and from time to time, such additional information as Owner 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.

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**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 Section 7.2. 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 Owner. 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**

Owner, 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 Owner, Construction Manager and Architect timely notice of readiness of the Work for inspection or testing and the date fixed for such inspection or testing.

**8.3 Additional Inspections and Tests**

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(a) Whenever, in the opinion of Owner, 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 which may be originally included in the Work, they shall have authority to do so whether or not such Work be then fabricated, installed, covered or completed. If such inspection or testing reveals a failure of the Work to comply (1) with the requirements of the Contract Documents, or (2) with respect to the performance of the Work, with laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, Contractor shall bear all costs thereof, including Architect's and Construction Manager's additional services made necessary by such failure; otherwise Owner 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, Owner, 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 Owner, Architect or Construction Manager, such Work shall, if required by Owner, 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, Owner may order additional testing. The cost of such additional examination, inspection or testing, any additional professional services required, and any other expenses incurred by Owner 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, Owner, 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 Owner, 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 material and workmanship by Owner 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 is 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 is so performed, commencing such inspection within ten (10)

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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 Owner for delivery to Contractor a Certificate of Substantial Completion and a punch list of items of Work remaining to be completed prior to the completion of the Work. Such certificate shall specify the date of substantial completion of the Work for purposes of this Agreement.

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

#### **8.7 Completion of Work and Acceptance**

Upon their receipt of written notice from Contractor stating its belief that the Work is 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 being acceptably completed in any punch list or otherwise, Architect and Construction Manager shall perform an inspection for purposes of determining whether the work is 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 Owner and 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 Owner for delivery to Contractor a Certificate of Final Completion, and, upon delivery of the Certificate to Contractor the Work shall be deemed to be finally accepted by Owner.

### **ARTICLE 9 - CHANGES IN THE WORK**

#### **9.1 Change Orders**

(a) Owner may, at any time, in any quantity or amount, without notice to the sureties and without invalidating or abandoning the contract, order Extra Work. Notwithstanding the terms of subsection 3.1(a) hereof, Owner 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 be entitled to a Change Order therefore; provided that such change or acceleration was not ordered to maintain the Progress Schedule then in effect or to coordinate the Work with the work of other contractors. Contractor shall not perform any change in the Work unless it has received a Change Order as described hereunder or Field Order duly signed as hereinafter provided. Contractor shall be obligated to perform changed Work promptly in conformity with any Change Order or Field Order issued in accordance herewith.

(b) A Change Order is a written order issued by the Authority to Contractor after execution of this Agreement, authorizing or requiring:

- (i) Extra Work, or deleted or omitted Work,
  - (ii) an extension of time to complete Work,
  - (iii) an increase or reduction in the payment to Contractor; or
  - (iv) 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 Owner, and to be valid, must be countersigned by Owner. Change Orders will provide for signature and acceptance by Contractor, but such signature is not required for the effectiveness of any Change Order.

## 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 Owner and Construction Manager by one or more of the following methods:

- (1) by accepting an amount agreed upon by Owner and Contractor;
- (2) by applying the applicable unit prices and alternates where the Work involved is covered by unit prices in the contract;
- (3) by receiving from Contractor a detailed breakdown satisfactory to Construction Manager, including actual time slips and invoices, itemizing the direct cost of labor and material to perform the changed Work and adding thereto fifteen percent (15%) to cover profit and all indirect and overhead costs, except that where the changed work is performed by a Subcontractor, the direct cost of labor and material to perform the changed Work plus fifteen percent (15%) for profit and all indirect and overhead costs to Subcontractor 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.

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- (4) by receiving from Contractor a true copy of his 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 Owner with such bid work sheets, then Construction Manager shall determine the amount of the reduction. The determination of Construction Manager shall be final and binding unless erroneously or fraudulently arrived at, or arbitrary and capricious;
  - (5) by adding to the Contract Price only the amount of the premium portion of overtime pay resulting from an acceleration of the Work; or
  - (6) by adding to the Contract Price, the actual incremental labor and equipment costs incurred by the Contractor resulting from a change in the manner, sequence or method of performing the Work.
- (b) The compensation specified in a Change Order shall constitute a release and full payment for the Extra Work covered thereby and for any delay and disruption cost or expense occasioned by reason of said change in the Work.
- (c) No time extension shall be granted Contractor by reason of the issuance of any Change Order unless it is expressly stated therein.

### 9.3 Field Orders

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

### 9.4 Changed Conditions

- (a) Contractor shall promptly, and before such conditions are disturbed, notify Construction Manager in writing of: (1) subsurface or latent physical conditions differing materially from those indicated in the Contract Documents, or (2) unknown physical

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

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

## ARTICLE 10 - SUBCONTRACTS AND PURCHASE ORDERS

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

(a) Contractor shall submit, within 21 calendar days of notice to proceed, to Construction Manager 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 employ, contract with or use the services of any contractors, contractors or other third parties (collectively, "Subcontractors") in connection with the performance of its obligations hereunder without the prior written consent of Owner to the use of each such Subcontractor, and to the agreement to be entered into between Contractor and any such Subcontractor. Contractor shall inform Owner in writing of any interest it may have in a proposed Subcontractor. No such consent by Owner, or employment, contract, or use by Contractor, shall relieve Contractor of any of its obligations hereunder.

(c) Contractor shall be responsible for the performance of the Work of any Subcontractors 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 engaged by Contractor hereunder shall at all times be deemed engaged by Contractor and not by Owner.

(d) Upon the request of Owner, Contractor shall cause any Subcontractor employed by the Contractor in connection with this Agreement to execute a copy of the Agreement wherein such Subcontractor 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.

(e) Contractor shall submit to Owner promptly following execution, three copies of every revision, amendment, modification or cancellation executed or issued by Contractor with respect thereto. Owner is not obligated to make payment on account of Work performed or Materials furnished by a Subcontractor or a Materialman under a subcontract or purchase order unless there shall have been filed with Owner 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 Owner with respect to purchase orders for minor purchases.

#### **10.2 Access by Owner and Others**

Contractor shall include a provision in all subcontracts and purchase orders, except as may otherwise be specified by Owner with respect to permit verification of Contractor's costs, that Owner shall have the right to have its representatives inspect and audit the books of account and records of the Subcontractor and Materialmen, including the right to make excerpts from such books and records. All payments by Contractor to a Subcontractor or Materialman shall be by check specifically indicating that payment is attributable to this Agreement. Contractor shall include a provision in all subcontracts and purchase orders that will enable representatives of the State of New York, Construction Manager and Owner, 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 Owner. 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.

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

(d) Contractor shall include a provision in all substantial subcontracts and purchase orders requiring the Subcontractor or Materialman, if requested by Owner, 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 6.9 and promptly upon receipt thereof Contractor shall deliver copies thereof to Owner.

## 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 sublet or subcontract the Work or any part thereof except in compliance with Article 10 hereof and with the prior written consent of Owner, and each and every such assignment, 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 Owner an undertaking, in favor of Owner, in form and substance satisfactory to Owner, providing that:

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

(2) assignee will file a copy of the assignment, containing the covenant required by the Lien Law, with the County Clerk of New York County;

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

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the consent of assignee;

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

(e) the assignee shall agree with Owner in writing that the assignee shall require and cause Contractor to keep his books and records in the form and manner described in Section 75 of the Lien Law; and

(f) the assignee shall agree with Owner in writing that the assignee will indemnify and hold Owner 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 Owner**

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

## **ARTICLE 12 - MECHANICS' LIENS AND CLAIMS**

If any mechanic's lien or other claim shall be filed for or on account of the Work, Contractor shall promptly discharge such lien or claim.

## **ARTICLE 13 – INSURANCE AND CONTRACT SECURITY**

### **13.1 Insurance**

(a) Contractor shall procure and maintain all of the insurance required under this Article 13 until final acceptance of the Work.

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

(c) Contractor shall furnish to Owner, **attention: Megan Churnetski, Assistant Corporate Secretary**, certified copies of the original policies of insurance and a certificate or certificates of the insurance required under this Article, within the time period required by Owner and before commencing the Work. Such certificate or certificates shall be in form satisfactory to Owner, shall list the various coverages and shall contain, in addition to any

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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 Owner is given 90 days' written notice to the contrary.

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

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

(f) All policies of insurance, except worker's compensation/employer's liability, required by this Article shall contain a written waiver of the right of subrogation with respect to all of the named insureds and Additional Insureds (as hereinafter defined). Should other or additional types of insurance or clauses thereafter become available, Contractor agrees to furnish such new policies to Owner. Contractor further agrees to execute and deliver any additional instruments and to do or cause to be done all acts and things that may be requested by Owner to insure Owner and the Additional Insureds properly and fully against all damage and loss as herein provided for and to effectuate and carry out the intents and purposes of this Agreement.

(g) Each policy of insurance required to be carried pursuant to the provisions of this Article 13, except worker's compensation/employer's liability, shall contain a provision that no error or omission of Consultant shall affect or limit the obligation of the insurance company to pay the amount of any loss sustained by any of the Additional Insureds (as hereinafter defined).

(h) The insurance policies required by Sections 13.1 (j) (3), (6) and (7), below, shall be primary protection and none of the Additional Insureds (as hereinafter defined) will be called upon to contribute to a loss that would otherwise be paid by Licensee's insurer.

(i) The certificates of insurance for the commercial liability and marine protection and indemnity insurance shall name Owner, Battery Park City Parks Conservancy Corporation, the State of New York, the City of New York, the New York City Economic Development Corporation and Apple Industrial Development Corp. as additional insureds (collectively, the "Additional Insureds"), as their interests may appear.

(j) Contractor and each Subcontractor shall secure in form satisfactory to Owner:

(1) Worker's Compensation and Employer's Liability Insurance during the

term of this Agreement 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 amount of \$500,000 per person/per accident 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 written on coverage form ISO CG0001 or its equivalent, covering the liability of Contractor for all the Work and operations relating thereto and all obligations assumed by Contractor under this Agreement in an amount which shall not be less than the following limits:

Combined Single Limits, Bodily Injury, Death  
Property Damage and Personal Injury Liability

\$20,000,000 . . . . . Aggregate  
\$10,000,000 . . . . . Each Occurrence

The aforesaid said insurance shall (A) be written on an occurrence basis, with a deductible of not more than \$25,000 per loss, (B) contain no exclusions beyond those provided in Form ISO CG 0001 unless specifically approved in each instance by Owner, which approval shall not be unreasonably withheld or delayed, (C) include a contractual liability endorsement to insure Contractors' obligations under this Agreement, (D) conform to independent contractors coverage, and (E) may be written through a combination of primary and umbrella coverage. The certificate of insurance must indicate that the insurance afforded by this Section is on a "Per Project" aggregate basis. To the extent that said insurance is written through umbrella coverage, it must specifically list Commercial General Liability as primary coverage and the certificate of insurance must indicate that the insurance afforded is on a "Per Occurrence" basis.

- (4) Automobile Liability and Property Damage Insurance as follows: A policy covering the use in connection with the Work of all owned, non-owned and hired vehicles bearing, or under the circumstances under which such vehicles are being used being required by the Motor Vehicle Laws of the State of New York to bear license plates. The coverage under such policy shall not be less than the following limits:

Combined Single Limits,

Bodily Injury and Property Damage Liability  
\$1,000,000 per each occurrence.

- (5) Jones Act Insurance and U.S. Harbor Workers' and Long Shoremens' Compensation Act Insurance in statutory amounts, if Contractor or any of its Subcontractors utilizes floating equipment, barges or floats, or performs marine-related construction in connection with the Work
  - (6) Marine Protection and Indemnity insurance incorporating U.K. Rules or the equivalent with a limit of liability of not less than twenty million dollars (\$20,000,000) 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.
  - (7) 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 five million dollars (\$5,000,000) 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 Pier to the final disposition location.
- (k) Owner, at Owner's cost and expense, may, at its sole option, procure and maintain such insurance as shall in the opinion of Owner, protect Owner from contingent liability of Owner 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 Owner 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.
- (l) Owner 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 Owner Builder's Risk Insurance (standard "All Risk" property damage or equivalent coverage) in an amount not less than the cost of reconstruction, written on a completed value (non-reporting) basis, for property damage protecting Owner, Battery Park City Parks Conservancy Corporation, the State of New York, the City of New York, the New York City Economic Development Corporation, Apple Industrial Development Corp., and the Contractor against

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all insurable legal liability claims resulting from the Work. This subsection (l) is not intended to create or give any rights to Contractor or Subcontractors other than those which may be made available to such Contractors under the terms of such policies. Owner assumes no obligation to obtain insurance other than that evidenced by said policies. Contractor and Subcontractors shall not violate or permit to be violated any term or condition of such policies and shall at all times satisfy the safety requirements of Owner and of the insurance companies issuing the aforementioned policies. The Contractor shall, upon notification by Owner, obtain such insurance at Owner's expense on a date determined by Owner, which date shall not be less than (thirty) 30 days after notice to Contractor of such determination by the Owner.

**13.2    Effect of Procurement of Insurance**

Neither the procurement nor the maintenance of any type of insurance by Owner 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 has furnished a bond (the "Performance Bond") in an amount at least equal to one hundred percent (100%) of the Contract Price for performance of the Work and also a labor and material payment bond (the "Payment Bond") in an amount at least equal to one hundred percent (100%) of the Contract Price for the payment of all persons performing labor or providing Materials in connection with the Work.

**13.4    Additional or Substitute Bond**

If at any time Owner shall be or shall become dissatisfied with any surety or sureties then upon the Performance Bond or the Payment Bond, or if for any other reason such bonds shall cease to be adequate security to Owner, Contractor shall within five (5) days after notice from Owner 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 Owner, 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 Owner.

**ARTICLE 14 - CLAIMS FOR EXTRA WORK**

(a) If Contractor is of the opinion that (1) any work which it has been ordered to perform is Extra Work and not Work as set forth in the Contract Documents, (2) any action or omission of Owner, 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 (3) any determination, order or directive of Owner, Construction Manager or Architect is contrary to the terms of the Contract Documents and

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will require the performance of Extra work or will cause additional expense to Contractor, Contractor shall:

- (1) not suspend Work but promptly comply with each determination, order or directive and proceed diligently with the performance of the Work in accordance with Owner's instructions, and
- (2) notify Owner, Construction Manager and Architect in writing within 72 hours of such determination, order or directive of its reasons for its opinion and request a final determination thereon by Owner.
- (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 Owner determines that (1) work is Work required to be performed hereunder and not Extra Work, (2) action or omission is proper or (3) a determination, order or directive is proper, Contractor, in order to reserve its right to claim compensation for or damages resulting from the performance of such work or the compliance with such determination, order or directive, must notify Owner in writing within three (3) working days after receiving notice of Owner'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 Owner, 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 Owner. Contractor's failure to comply with any provision of this Article:

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

methods described in Section 9.2.

## ARTICLE 15 - TERMINATION

### **15.1 Termination for Cause**

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

- (1) Contractor shall violate any substantial provision of this Agreement, including, without limitation, by failing to maintain the Progress Schedule then in effect in accordance with, or failing to discharge any of its responsibilities under, Section 3.1(d) hereof, or by failing to indemnify and hold harmless Owner (as required by Sections 3.1(e), 3.2, 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 obligation under this Agreement in accordance with its terms; or
- (2) any material adverse change shall take place in the financial condition of the Contractor;
- (3) any action shall be taken by Contractor which would result in it becoming the subject of any insolvency proceeding. The term "insolvency proceeding" as used herein shall include the filing of a petition for relief under Title 11 of the United States Code by Contractor or the consent, acquiescence or taking of any action by Contractor, or the filing by or against Contractor of petition or action, looking to or seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any other regulation; or the appointment, with or without the consent of Contractor, of any trustee, custodian, receiver or liquidator of Contractor or any property or assets of Contractor; or Contractor's making of an assignment for the benefit of creditors or its inability to pay its debts as they become due.
- (4) Contractor shall have misrepresented or omitted information in its submission of the Statement of Qualifications of Contractor submitted by Contractor to Owner in connection with this Agreement; or

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

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

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

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

(c) Upon complete or partial termination of this Agreement, Owner 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 Owner deems advisable. Owner may deduct any loss it incurs thereby from any payment then or thereafter due to Contractor without prejudice to any other remedy Owner 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 Owner's option, be automatically assigned to Owner, and Contractor shall insert a provision to this effect in all subcontracts and purchase orders. In the event that it shall be determined that a termination under this paragraph was wrongful or not justified, such termination shall be conclusively deemed to be a termination for convenience of Owner under Section 15.2 hereof and the sole right, remedy and recourse of Contractor against Owner shall be governed and determined by Section 15.2 hereof.

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(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 Owner 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 Owner shall subject Contractor to all damages sustained by Owner.

(f) If this Agreement shall have been terminated by Owner pursuant to this Section 15.1 and it shall be finally determined by a court of competent jurisdiction that adequate grounds for such termination did not exist, then such termination shall be deemed a termination for convenience as provided hereunder.

#### **15.2 Termination for Convenience of Owner**

(a) Owner, at any time, may terminate this Agreement in whole or in part 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 and to the extent specified in the notice of termination;
- (2) place no further purchase orders or subcontracts for Materials, services or facilities except as may be necessary for completion of such portion of the Work under this Agreement as is not terminated;
- (3) unless directed otherwise by Owner, terminate all purchase orders and subcontracts to the extent that they relate to the performance of Work terminated by the notice of termination;
- (4) assign to Owner, in the manner, at the times, and to the extent directed by Construction Manager, all of the right, title and interest of Contractor under the purchase orders and subcontracts so terminated, in which case Owner 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 Owner (or, if so directed by Owner, to Landlord) and deliver in the manner, at the time, and to the extent, if any, directed by the Construction Manager (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in connection with the performance of, the Work terminated by the notice of termination, and (ii) the completed or partially completed plans, drawings, information and other property, which if this Agreement had been completed, would have been required to be furnished to Owner;
  - (7) complete performance of such part of the Work as shall not have been terminated by the notice of termination; and
  - (8) 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 Owner 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 Owner 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 Owner, except that in no event shall Contractor be entitled to compensation in excess of the total Contract Price.

### **15.3 Suspension of Work**

- (a) Owner 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 Owner 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 Owner for additional compensation.

### **ARTICLE 16 - COMPOSITE DRAWINGS AND COOPERATION**

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

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

## ARTICLE 17 - PROTECTION OF RIGHTS, PERSONS AND PROPERTY

### **17.1    Accident Prevention**

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

### **17.2    Safety Programs**

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

### **17.3    Protection of Work and Property**

(a)    Contractor shall at all times guard Owner'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 Owner.

(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 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 Owner 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 Owner. 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 Owner'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 Owner, of Construction Manager, of Architect, or Contractor, of any Subcontractor, 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 Owner:

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 Owner, 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 Owner or until completion or removal of such Materials from the Site and the vicinity thereof, whichever event occurs last. A portion of the risk of such loss or damage may be insured against under the terms of a "builder's risk" insurance policy maintained in the name of Contractor, among others, as described in Section 13.1(i). Notwithstanding the status of any actual or potential recovery or claim under the said "builder's risk" insurance policy, in

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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 Owner, raise any defense involving in any way jurisdiction of the tribunal over Owner, governmental nature of Owner or the provisions of any statutes respecting suits against Owner.

(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 making any payment shall release Contractor from Contractor's obligations under this Article 17. The enumeration elsewhere in this Agreement of particular risks assumed by Contractor or of particular claims for which Contractor is responsible shall not be deemed to limit the effect of the provisions of this Article 17 or to imply that Contractor assumes or is responsible for only risks or claims of the type enumerated; and neither the enumeration in this Article nor the enumeration elsewhere in this Agreement of particular risks assumed by Contractor 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 Owner arising from Contractor's obligations under this Article 17 or Article 13 (Insurance) may be offset or deducted by Owner from any payments due to Contractor hereunder.

#### **ARTICLE 18 - USE PRIOR TO ACCEPTANCE BY OWNER**

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

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

(c) Contractor shall continue the performance of the Work in a manner which shall not unreasonably interfere with such use and operation by Owner.

## ARTICLE 19 - EXEMPTION FROM SALES AND COMPENSATING USE TAXES

### 19.1 Owner Exempt

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

### 19.2 Certificates

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

## ARTICLE 20 - WARRANTIES AND GUARANTIES

### 20.1 In General

(a) Contractor guarantees that all Work performed and all Materials furnished will conform to the Contract Documents as to kind, quality, functions, design and characteristics of material and workmanship. Contractor shall remove, replace and repair, at its sole cost and expense, all defects in workmanship, Materials, ratings, capacities, or design characteristics occurring in or to the Work including, without limitation, any portion of the Work furnished or performed by any Subcontractor, within five years from the date of completion and acceptance of the Work pursuant to Section 8.7 hereof. 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 acknowledging that Owner 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 Owner for any such expense which may become payable as provided in this paragraph, Owner shall be entitled to deduct such expense from any payments required to be made by Owner to Contractor pursuant to this Agreement. Contractor, upon demand, shall pay for all damage to all other work resulting from such defects and all expenses necessary to remove, replace and repair such other work which may be damaged in removing, replacing or repairing such defects.

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

(c) The rights and remedies afforded Owner under this Section are in addition to and not in lieu of and do not in any way affect, change, alter, modify, vary or prejudice any right, remedy or recourse which Owner 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 Owner has requested Contractor to correct any Work and Contractor shall not have completed any correction of the Work as shall be required pursuant to Article 20 within ten (10) working days after receipt of written notice from Owner 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, Owner 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 Owner all amounts which Owner expends for such work.

### **ARTICLE 21 - INDEMNITY**

**21.1** To the fullest extent permitted by law, Contractor (and, where applicable, its sureties) shall indemnify and save Owner, Construction Manager, Architect, Battery Park City Parks Conservancy, the State of New York, City of New York, New York City Economic Development Corporation, and Apple Industrial Development Corp, and each member, director officer, agent and employee of each of the aforesaid parties (said parties and their members, etc., being referred to herein, individually and collectively as the "Indemnitees") harmless from and against any and all liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses, including, without limitation, reasonable architects' and attorneys' fees and disbursements, that may be imposed upon or incurred by or asserted against any of the Indemnitees by reason of the following subparagraphs (a) through (g):

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- (a) injury to any person or persons, including death, or any damage to property of any nature in connection with or arising out of, in whole or in part, any negligent act(s) or omission(s) of Contractor;
- (b) any breach, violation or nonperformance of any covenant, condition or agreement in this Agreement;
- (c) the unexcused delays of Contractor (determined as set forth in Section 3.1 hereof);
- (d) the performance of the Work;
- (e) the storage, transportation, disposal, release or threatened release by Contractor of any Hazardous Materials (as hereinafter defined) over, under, in, on, from or affecting the Site or any persons, real property, personal property, or natural substances thereon or affected thereby;
- (f) the existence of any Hazardous Materials at the Site which claim or liability arose out of or resulted from any acts or omissions by Contractor; or
- (g) 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. In the event of any injunction or legal action by reason thereof, which shall operate to stop or retard the Work, Owner 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.

For purposes of this Section 21.1, "Hazardous Materials" means (i) any "hazardous waste" as defined under the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 *et seq.*, or (ii) "hazardous substance" as defined under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601 *et seq.*, or (iii) "hazardous materials" as defined under the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801 *et seq.*, or (iv) "hazardous waste" as defined under New York Environmental Conservation Law Section 27-0901 *et seq.*, or (v) "hazardous substance" as defined under the Clean Water Act, 33 U.S.C. Section 1321 *et seq.*

**21.2** The obligations of Contractor under this Section 21 shall not be affected in any way by the absence of insurance coverage, or by the failure or refusal of any insurance carrier to perform an obligation on its part under insurance policies affecting the Premises.

**21.3** If any claim, action or proceeding is made or brought against any of the Indemnitees by reason of any event to which reference is made in this Article 21 then upon demand by Owner, Contractor shall either resist, defend or satisfy such claim, action or proceeding in such Indemnitee's name, by the attorneys for, or approved by, Owner's insurance carrier (if such claim, action or proceeding is covered by insurance) or by such

other attorneys as Owner shall reasonably approve. The foregoing notwithstanding, such Indemnitee or another Indemnitee may engage its own attorneys to defend such Indemnitee, or to assist such Indemnitee in such Indemnitee's defense of such claim, action or proceeding, as the case may be, and Contractor shall pay the reasonable fees and disbursements of such attorneys of such Indemnitee if it is determined that such Indemnitee is not at fault in any way.

**21.4** Each Indemnitee shall notify Contractor of the incurrence by or assertion against such Indemnitee, or the imposition of any cost or expense as to which Consultant has agreed to indemnify such Indemnitee pursuant to any of the provisions of this Article 21. Contractor agrees to pay such Indemnitee all amounts due under this Article 21 within five (5) days after such payment is determined to be Indemnitee's obligation, and any non-payment thereof by Contractor shall constitute a default for which Owner may terminate this Agreement in accordance with Section 15.1 (a) hereof.

**21.5** Consultant shall include in each contract it enters into with a Subcontractor a provision whereby the Subcontractor shall be liable for and agree to indemnify, defend and hold harmless the Indemnitees in terms substantially similar to those pertaining to Contractor in the preceding subsections of this Article 21.

**21.7** The provisions of this Article 21 shall survive the expiration or other termination of this Agreement.

## 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 Owner for the infringement of any patents. Contractor shall defend all suits and claims for infringement of any patent rights and shall indemnify and hold Owner 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 Owner an irrevocable and non-exclusive license to utilize all of the Contractor's rights in and to:

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

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

- (3) all engineering data and information necessary in connection with and solely in connection with, all work performed by Owner or other contractors hired by Owner 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 in and to the foregoing, in form and substance acceptable to Owner, granting Owner the aforesaid license. Owner shall not be obligated to pay any royalties, license fees or any other consideration to Contractor or any Subcontractor for this license. Contractor and each Subcontractor shall execute a separate license agreement, in form and substance satisfactory to Owner, 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 shall furnish Owner 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 Owner, at Owner's expense with one set of mylar reproducible sepia prints of the 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 an up-to-date mylar reproducible sepia showing the Work as installed. At completion of the Work, Contractor shall complete, sign and date the mylar reproducible sepia and deliver it to Architect.

(b) After review by Architect and return to Contractor for any required changes, Contractor shall furnish to Owner at least two sets of the approved tracings or prints.

### 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 therefore.

**24.2 Contractor's Responsibility**

Architect's approval of Shop Drawings, Product Data and Samples shall not relieve Contractor of responsibility for 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**

Any notice required or permitted to be given under this Agreement must be in writing and shall be deemed to have been given when delivered personally, by registered or certified mail, return receipt requested, or by overnight mail to the party to whom the notice is given at the address designated below or, if any party subsequently designates a different address for this purpose, at such subsequently designated address. Notices to Contractor shall be addressed and delivered to its address \_\_\_\_\_ as stated at the beginning of this Agreement, or to Contractor's superintendent at the Site. Notices to Owner, Construction Manager and Engineer shall be addressed and delivered as follows:

If to Owner:

Battery Park City Authority  
One World Financial Center, 24th Fl.  
New York, NY 10281-1097  
Attention: \_\_\_\_\_, Project Manager  
cc: General Counsel

If to Construction Manager:

PHB Catalyst Group, Inc.  
440 Ninth Avenue – 18<sup>th</sup> Floor  
New York, NY 10001  
Attention:

**ARTICLE 26 - EMPLOYMENT AND AFFIRMATIVE ACTION**

**26.1 Definitions**

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

- (a) "Affirmative Action Program." The program by which Owner shall monitor Contractor's compliance with the requirements set forth in (i) the MBE/WBE Required Participation Plan and (ii) the Utilization Plan.
- (b) "Certified Business." A business verified as a minority or women-owned business enterprise by the Division or such other New York State agency authorized to make such certification.
- (c) "Division." The Division of Minority and Women's Business Development of the New York State Department of Economic Development.
- (d) "Director." The Director or the Executive Director of the Division.
- (e) "Directory." The directory of certified businesses prepared by the Director for use by Owner and contractor in complying with the provisions of the Executive Law of the State of New York, Article 15-A.
- (f) "MBE/WBE Required Participation Plan." The plan previously submitted by a Consultant to Owner listing the certified MBEs and/or WBEs which the Contractor intends to use in the performance of this agreement in order to ensure that MBEs and WBEs are awarded a fair share of the total dollar value that is to be paid for the Work.
- (g) "Minority Group Member." A United States citizen or permanent resident alien who is and can demonstrate membership in one of the following groups:
  - (1) Black persons having origins in any of the Black African racial groups;
  - (2) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American descent of either Indian or Hispanic origin, regardless of race;
  - (3) Native American or Alaskan native persons having origins in any of the original peoples of North America; or
  - (4) Asian and Pacific Islander persons having origins in any of the Far East countries, South East Asia, the Indian subcontinent or the Pacific Islands.
- (h) "Minority-owned Business Enterprise" ("MBE"). A business enterprise, including a sole proprietorship, partnership or corporation that is:
  - (1) at least 51 percent owned by one or more Minority Group Members;
  - (2) an enterprise in which such minority ownership is real, substantial and continuing;

- (3) an enterprise in which such minority ownership has and exercises the authority to control and operate, independently, the day-to-day business decisions of the enterprise; and
- (4) an enterprise authorized to do business in the State of New York and is independently owned and operated.

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

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

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

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

**26.2 Equal Employment Opportunities for Minority Group Members and Women**

- (a) During the performance of the Work, Contractor agrees as follows:
  - (1) Contractor shall not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age,

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disability or marital status; shall undertake or continue existing programs of affirmative action to ensure that Minority Group Members and women are afforded equal employment opportunities without discrimination; and shall make and document its good faith effort to achieve prompt and full utilization of Minority Group Members and women at all levels and in all segments of its work force where deficiencies exist.

- (2) At the request of Owner, Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of Contractor's obligations herein.
  - (3) Contractor shall state in all solicitations or advertisements for employees that in the performance of the Work, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.
  - (4) Contractor and any Subcontractor shall be required to submit compliance reports in accordance with this Section 26 relating to their operations and the implementation of the Affirmative Action Program in effect as of the date of execution of this Agreement..
- (b) Contractor shall include the provisions of subdivision (a) of this section in every Subcontract in such a manner that the provisions will be binding upon each Subcontractor as to the Work in connection with this contract's execution.
- (c) (1) The provisions of this section shall not be binding upon Contractor or its Subcontractors in the performance of Work or the providing of services, or any other activities that are unrelated, separate or distinct from this Agreement as expressed by its terms.
- (2) The requirements of this section shall not apply to any employment outside New York State, or application for employment outside such state, or solicitations, or advertisements therefore, or any existing programs of affirmative action regarding employment outside New York State and the effect of contract provisions required by this section shall be so limited.
- (d) The parties agree to be bound by provisions of Article 15-A, Section 317 of the

Executive Law of the State of New York and by the regulations adopted pursuant thereto.

The parties agree to be bound by provisions of Article 15-A, Section 317 of the Executive Law of the State of New York and by the regulations adopted pursuant thereto.

### 26.3 Workforce Participation

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

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

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

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

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

(f) Compliance reports with respect to the Utilization Plan ("Utilization Compliance Reports") which shall be submitted to Owner's Affirmative Action officer on a monthly basis and shall be in accordance with the following:

(1) Owner may require that Contractor submit Utilization Compliance Reports for the duration of this contract to Owner regarding Contractor's operation and implementation of the Utilization Plan portion of the Affirmative Action Program in effect as of the date of

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execution of this Agreement.

- (2) The Utilization Compliance Reports shall include information on any Subcontractor involved in the performance of the contract with regard to the Subcontractor's compliance with the Affirmative Action Program.
- (3) The Utilization Compliance Reports shall include, but are not limited to the following:
  - (i) a breakdown of the Subcontractors by ethnic background, gender or such other categories as may be required by Owner;
  - (ii) the actions the Contractor and Subcontractors have taken to meet the components of the Affirmative Action Program;
  - (iii) how Contractor and Subcontractors intend to utilize participation of Minority Group Members and women in their workforce in connection with the performance of the Work and timetables therefor during the remainder of their performance of the Work.

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

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

(a) Contractor shall make good faith efforts to attain the participation of 20% MBE and WBE in the total dollar value of the Work.

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

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

venture's profits (or losses) which are to accrue to the MBE and WBE joint venturer(s) under the joint venture agreement; and

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

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

- (1) MBE/WBE Compliance Reports shall be submitted to Owner and shall include information with respect to:

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

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

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

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

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

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

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

- (2) MBE/WBE Compliance Reports which shall be submitted to the

Affirmative Action Officer on a monthly basis.

- (3) MBE/WBE Compliance Reports shall also include, but not be limited to, the following information:
- (i) the name, address and telephone number of each certified MBE and WBE which Contractor is using or intends to use to comply with the MBE/WBE Required Participation Plan.
  - (ii) a brief description of the contract scope of work to be performed for the Contractor by each certified MBE and WBE and the scheduled dates for performance;
  - (iii) a statement of whether the Contractor has a written agreement with each certified MBE and WBE which Contractor is using or intends to use, and if requested, copies of such agreements;
  - (iv) the actual total cost of the contract scope of work to be performed by each certified MBE and WBE for this Agreement; and
  - (v) The actual amounts of any payments made by Contractor to each certified MBE and WBE as of the date the MBE/WBE Compliance Report was submitted.

(d) The parties agree to be bound by provisions of Article 15-A, Section 317 of the Executive Law of the State of New York and by the regulations promulgated thereunder.

(e) Contractor shall provide Owner with Monthly Workforce Utilization Reports, by the last calendar day of each month, in the form of "Exhibit E" hereto. Failure to provide such reports shall be an event of default of contractor's obligations pursuant to Article 15.1 (a) (1) hereof.

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

## 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 shall comply fully with all applicable laws, rules and regulations pertaining to the Project or the Work.

**27.3 Applicable Law, Forum and Jurisdiction**

This Agreement shall be governed by the laws of the State of New York. All actions or proceedings relating, directly or indirectly, to this Agreement shall be litigated only in courts located within the County of New York. Consultant, any guarantor of the performance of its obligations hereunder ("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 Consultant and any successor at Consultant'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 two days after such process is so mailed.

**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 Owner, Construction Manager, Architect, or the State of New York 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 against any member, officer, employee, lessee, consultant or agent of Owner, Construction Manager, Architect, or the State of New York. By execution of this Agreement, Contractor agrees to look solely to Owner with respect to any claim which may arise. It is hereby understood by and between the parties hereto that Owner shall only be liable to the extent of monies available to Owner.

**27.6 Protection of Lives and Health**

(a) Contractor's and Subcontractor'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

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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 Owner in writing of any injury which results in hospitalization or death.

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

**27.7 Waiver of Immunity Clause**

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

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

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

**27.8 Prohibited Interests**

No official of Owner who is authorized in such capacity and on behalf of Owner to negotiate, make, accept, or approve, or take part in negotiating, making, accepting, or approving any architectural, engineering, inspection, construction or material supply contract or any subcontract in connection with the work, shall become directly or indirectly

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interested personally in the Agreement. Contractor is advised that no official or employee of Owner is permitted to indirectly solicit, accept, or receive gifts [from Contractor] having a value of seventy-five dollars or more whether in the form of money, service, loan, travel, entertainment, hospitality, thing or promise, or in any other form, under circumstances in which it could reasonably be inferred that the gift was intended to influence him, or could reasonably be expected, to influence him, in the performance of his official duties or was intended as a reward for any official action on his part; and Contractor hereby agrees to refrain from offering any such gifts. No officer, employee, architect, attorney, engineer, inspector or consultant of or for Owner who is authorized in such capacity and on behalf of Owner 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 material supply contract, subcontract, insurance contract, or any other contract pertaining to the Work.

**27.9 Labor Provisions**

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

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

- (1) no laborer, workman or mechanic, in the employ of Contractor, Subcontractor 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

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number of apprentices in each trade or occupation employed by Contractor or any Subcontractor 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 shall be paid in accordance with the provisions of the Labor Law. All payments shall be made in cash, except a payment may be made by check upon a certificate of the Industrial Commissioner of the State of New York.

(e) Contractor agrees that, in case of underpayment of wages to any worker engaged in the Work by Contractor or any Subcontractor, Owner 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 Owner may disburse such amount so withheld by Owner 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 Owner pursuant to other provisions of the Contract Documents.

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

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

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

- (1) in the hiring of employees for the performance of Work under this Agreement or any subcontract hereunder, or for the manufacture, sale or distribution of materials, equipment or supplies hereunder, but limited to operation performed within the territorial limits of the State of New York, no Contractor, Subcontractor, nor any person acting on behalf of such Contractor or Subcontractor, 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, nor any person on behalf of such Contractor or Subcontractor 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 Owner 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 Owner 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 Non-discrimination.** By signing this contract, Contractor agrees that it:

(a) will not engage in any unlawful discrimination against any employee or job applicant because of race, creed, color, national origin, sex, age, disability, marital status or sexual orientation with respect to all employment decisions including, but to limited to, recruitment, hiring, compensation, fringe benefits, leaves, promotion, upgrading, demotion, downgrading, transfer, training and apprenticeship, layoff and termination and all other terms and conditions of employment;

(b) will not engage in any unlawful discrimination in the selection of contractors on the basis of the owner's, partner's or shareholder's race, creed, color, national origin, sex, age, disability, marital status or sexual orientation;

(c) will state in all solicitations or advertisements for employees placed by or on behalf of Contractor (i) that all qualified job applicants will receive consideration for employment without unlawful discrimination based on race, creed, color, national origin, sex, age, disability, marital status or sexual orientation, or (ii) that Contractor is an equal opportunity employer;

(d) will inform its employees in writing that it "treats all employees and job applicants without unlawful discrimination as to race, creed, color, national origin, sex, age, disability, marital status or sexual orientation in all employment decisions, including but not limited to recruitment, hiring, compensation, training and apprenticeship, transfer, lay-off and termination and all other terms and conditions of employment," and that "[i]f you feel that you have been unlawfully discriminated against, you may call or write Division of Labor

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Services of the Department of Business Services, General Counsel's Office, 110 William Street, New York, New York 10038 (212-513-6300);” and

(e) will cause each Subcontractor to agree to each of the aforesaid items (a) through (d).

**27.11. E. O. 50 Provisions.** This Agreement is subject to the requirements of Executive Order No. 50 (April 25, 1980) (§10-14) as revised (“E.O.50”) and the Rules and Regulations promulgated thereunder. No contract will be awarded unless and until these requirements have been complied with in their entirety.

(a) By signing this Agreement, Contractor agrees that it:

(i) will not discriminate unlawfully against any employee or applicant for employment because of race, creed, color, national origin, sex, age, handicap, marital status, sexual orientation or citizenship status with respect to all employment decisions including, but not limited to, recruitment, hiring, upgrading, demotion, downgrading, transfer, training, rates of pay or other forms of compensation, layoff, termination, and all other terms and conditions of employment;

(ii) will not discriminate in the selection of subcontractors on the basis of the owner’s, partners’ or shareholders’ race, color, creed, national origin, sex, age, handicap, marital status or sexual orientation or citizenship status;

(iii) will state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that all qualified applicants will receive consideration for employment without regard to race, creed, color, national origin, sex, age, handicap, marital status, sexual orientation or citizenship status, or it is an equal employment opportunity employer;

(iv) will send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or memorandum of understanding, written notification of its equal employment opportunity commitments under E.O. 50 (§10-14) and the rules and regulations promulgated thereunder;

(v) will furnish before the contract is awarded all information and reports including an Employment Report which are required by E.O. 50 (§10-14), the rules and regulations promulgated thereunder, and orders of the Director of the Division of Labor Services (the “Division”). Copies of all required reports are available upon request from the contracting agency; and

(vi) will permit the Division to have access to all relevant books, records and accounts for the purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(b) Contractor understands that in the event of its noncompliance with the nondiscrimination clauses of this Agreement or with any such rules, regulations, or orders, such noncompliance shall constitute a material breach of the Agreement and noncompliance with E.O. 50 (§10-14) and the rules and regulations promulgated thereunder. After a hearing held pursuant to the rules of the Division, the Director may direct the imposition by the contracting agency head of any or all of the following sanctions:

- (i) disapproval of the Contractor;
- (ii) suspension or termination of the Contract;
- (iii) declaring the Contractor in default; or
- (iv) in lieu of any of the foregoing sanctions, the Director may impose an employment program.

The Director of the Division may recommend to the contracting agency head that a contractor who has repeatedly failed to comply with E.O 50 (§10-14) and the rules and regulations promulgated thereunder be determined to be nonresponsible.

(c) Contractor agrees to include the provisions of the foregoing paragraphs in every subcontract or purchase order in excess of New York City's small purchase limit established by rule of New York City's Procurement Policy Board to which it becomes a party unless exempted by E.O. 50 (§10-14) and the rules and regulations promulgated thereunder, so that such provisions will be binding upon each subcontractor or vendor. Contractor will take such action with respect to any subcontract or purchase order as may be directed by the Director of the Division of Labor Services as a means of enforcing such provisions including sanctions for noncompliance.

(d) The Contractor further agrees that it will refrain from entering into any contract or contract modification subject to E.O. 50 (§10-14) and the rules and regulations promulgated thereunder with a subcontractor who is not in compliance with the requirements of E.O. 50 (§10-14) and the rules and regulations promulgated thereunder.

## 27.12 Disputes Resolution Procedure

(a) The provisions of this Article shall constitute Contractor's sole means for challenging any determination, order or other action of the Owner or otherwise asserting against Owner 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 27.12. With respect to any Dispute which relates in whole or primary part to technical issue(s) under

this Agreement including, without limitation, determinations as to the acceptability or fitness of any Work, the meaning or interpretation of the Contract Documents, the question of whether any Work falls within the scope of the Specifications set forth in the Contract Documents, the acceptability of any proposed substitutions, modifications or other submission under this Agreement, the disapproval of proposed Subcontractors or Materialmen (to the extent such disapproval is related to technical issues), the extension of time to the extent related to a technical matter, the question of whether Substantial Completion or Final Completion has been achieved. The parties hereby authorize the Vice President, Internal Audit of the Owner (hereinafter referred to as the "Arbiter"), acting personally, to render a final and binding decision.

(c) All Disputes shall be initiated through a written submission by either party (such submission to be hereinafter referred to as the "Dispute Notice") to the Arbiter within ten (10) days of the determination which is the subject of the Dispute. Within ten (10) days after the submission of such Dispute Notice, the party initiating the Dispute shall provide the Arbiter with all evidence and other pertinent information in support of the party's position and/or claim. Within thirty (30) days from the date of the Dispute Notice, the party against whom the Dispute Notice was filed shall submit any and all materials which it deems pertinent to the Arbiter. Upon submission of a Dispute Notice to the Arbiter, the Arbiter shall render its decision in writing and deliver a copy of same to the parties within a reasonable time not to exceed sixty (60) days after the receipt of all materials. In rendering such decision, the Arbiter may seek such technical or other expertise as it shall deem necessary or appropriate (notifying both parties to the Dispute when he 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 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.

#### **27.13 Additional Provisions Relating to the Prosecution of Claims for Money Damages**

(a) Except as otherwise provided in this Agreement, if Contractor claims or intends to claim compensation for any damage or loss sustained by reason of any act, neglect, fault or default of Owner, Contractor shall furnish a written notice to the Arbiter setting forth the nature of the claim and the extent of the damage sustained within seven (7) days of the occurrence of such loss or damages. This written notice shall constitute Contractor's

submission to the Arbiter for the purposes of requesting the Arbiter's determination in accordance with Section 27.12 above. Any such claim shall state as fully as then possible all information relating thereto and shall be supported by any then available documentation, including daily records showing all costs incurred. Such information shall be supplemented with any and all further information, including information relating to the quantum of losses or damages sustained, as soon as practicable after it becomes or reasonably should become known to the Contractor.

(b) Any claim for compensation or monetary damages, the successful prosecution of which necessarily depends upon a technical determination favorable to Contractor, may not proceed unless and until Contractor first obtains such a favorable determination with respect to the technical issue and must be made within five (5) business days of such determination; moreover, Contractor must submit to the Arbiter any documentation or proof in support of the monetary claim within fifteen (15) days of such determination in order to proceed with such a claim.

(c) Compliance with the provisions hereof shall constitute a condition to the Contractor's submission of a Dispute pursuant to Section 27.12 with respect to any claim for compensation and the Contractor shall be deemed to have waived any claim not submitted in accordance herewith.

(d) Any final determination of the Arbiter with respect to a Dispute initiated pursuant to this Article 27 shall be subject to review solely in the form of a challenge following the decision by the Arbiter in a Court of competent jurisdiction of the State of New York, County of New York, under Article 78 of the New York Civil Practice Law and Rules or a United States Court located in New York City under the procedures and laws applicable in that court, it being understood the review of such Court shall be limited to the question of whether or not the Arbiter's determination is arbitrary, capricious or lacks a rational basis. No evidence or information shall be introduced or relied upon in such proceeding which has not been duly presented to the Arbiter in accordance with said Article 27.

#### **27.14 Limitation on Actions**

(a) Subject to the provisions of Section 27.13, no action or proceeding shall lie or shall be maintained by Contractor against Owner, 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 moneys due pursuant to Section 5.7 hereof, or arising exclusively from or pertaining exclusively to work performed after the date of issuance of the Certificate of Substantial Completion, unless such action or proceeding is commenced no later than six (6) months after the issuance of the Certificate of Final completion to Contractor; or (iii) if this Agreement is terminated by Owner 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 27.14 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 Owner, Construction Manager or Architect except in the Supreme Court of the State of New York, County of New York.
- (d) Nothing in this Section 27.14 shall be construed to suggest that Contractor, under any circumstances, may bring an action or proceeding against Construction Manager or Architect.

#### **27.15 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 Owner, Construction Manager or Architect. Contractor agrees that no default, act or omission of Owner, 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 Owner 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 Owner. Except as provided in this Section 27.15, 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 Owner, Construction Manager or Architect saving only Contractor's right to money damages.

#### **27.16 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.

#### **27.17 Signs and Parking**

Contractor agrees that it shall not display on or about the site any sign, trademark or other advertisement without the written approval of Construction Manager. Contractor shall not and shall not permit any of its Subcontractors or Materialmen to park any vehicles on the Site.

#### **27.18 Entire Agreement**

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

### **27.19 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 Owner, Architect, Construction Manager or Contractor including, but not limited to, the making of any payment nor 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.

### **27.20 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.

### **27.21 Compliance with "Buy-American" Statutes**

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

### **27.22 Permitted Successors**

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

### **27.23 MacBride Fair Employment Principles**

If the amount payable to Contractor under this agreement is greater than \$15,000, Contractor hereby certifies that it and/or any individual or legal entity in which it holds a 10% or greater ownership interest, and any individual or legal entity that holds a 10% or greater ownership in it, either have no business operations in Northern Ireland; or shall take lawful steps in good faith to conduct any business operations they have in Northern Ireland in accordance with the MacBride Fair Employment Principles relating to nondiscrimination in

employment and freedom of workplace opportunity regarding such operations in Northern Ireland, as set forth in Section 165 (5.) of New York's State Finance Law, and shall permit independent monitoring of their compliance with such Principles.

**27.24 Termination for Failure to Disclose Under E.O. 127**

**Not applicable**

**27.25 Termination for Failure to Disclose Under NYS Finance Law §139k**

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

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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: \_\_\_\_\_

NAME OF CONTRACTOR IN CAPS

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
FEIN # \_\_\_\_\_

RFP Information for Proposers

Pier A Renovations Phase 3 Core & Shell

## APPENDIX II:

### **FORM OF PERFORMANCE AND PAYMENTS BONDS**

**PERFORMANCE BOND**

**KNOW ALL MEN BY THESE PRESENTS:**

That \_\_\_\_\_  
(Here insert the name and address of the Contractor)

as Principal, hereinafter called Contractor, and \_\_\_\_\_

(Here insert the name and address of the Surety)

as Surety, hereinafter called Surety, are held and firmly bound unto Battery Park City Authority, as Obligee, hereinafter called Owner, having an office at One World Financial Center, New York, New York, 10281, in the amount of \_\_\_\_\_ and \_\_\_\_\_/100 Dollars (\$ \_\_\_\_\_) (the "Contract Price"), for the payment whereof Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, CONTRACTOR has by written agreement  
dated \_\_\_\_\_ entered into a Contract with Owner for  
construction of \_\_\_\_\_

in accordance with the Contract Documents and any changes thereto, which are made a part hereof, and are hereinafter referred to as the "Contract".

1. If the Contractor performs the Contract, the Surety and the Contractor shall have no obligation under this Bond, except to participate in conferences as provided in Subparagraph 2.1.

2. If there is no Owner default, the Surety's obligation under this Bond shall arise after:

- 2.1 The Owner has notified the Contractor and the Surety at its address described above that the Owner is considering declaring Contractor in default.
- 2.2 The Owner has declared Contractor in default and formally terminated the Contractor's right to complete the Contract.
- 2.3 The Owner has agreed to pay the Balance of the Contract Price to the Surety in accordance with the terms of the Contract or to a contractor selected to perform the Contract in accordance with the terms of the Contract.

3. When the Owner has satisfied the conditions of Paragraph 2., the Surety shall promptly and at the Surety's expense take the following actions:

- 3.1 arrange for the Contractor, with consent of the Owner, to perform and complete the Contract; or
- 3.2 undertake to perform and complete the Contract itself, through its agents or through independent contractors; or
- 3.3 obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Contract, arrange

for a contract to be prepared for execution by the Owner and the contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Contract, and pay to the Owner the amount of damages as described in Paragraph 5. in excess of the Balance of the Contract Price incurred by the Owner resulting from the Contractor's default.

4. If the Surety does not proceed with reasonable promptness, the Surety shall be deemed to be in default on this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner.

5. After the Owner has terminated the Contractor's right to complete the Contract, and if the Surety elects to act under Subparagraph 3.1, 3.2, or 3.3 above, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Contract. To the limit of the amount of this Bond, but subject to commitment by the Owner of the Balance of the Contract Price to mitigation of costs and damages on the Contract, the Surety is obligated without duplication for:

- 5.1 the responsibilities of the Contractor for correction of defective work and completion of the Contract;
- 5.2 additional legal, design, professional, and delay costs resulting from the Contractor's default and resulting from the actions or failure to act of the Surety under Paragraph 3.; and
- 5.3 liquidated Damages, or if no liquidated damages are specified in the Contract, actual damages caused by delayed performance or non-performance of the Contractor.

6. The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators or successors.

7. The Surety hereby waives notice of any changes, including changes of time, to the Contract or to related subcontracts, purchase orders, and other obligations.

8. Notice to the Surety, the Contractor and the Owner shall be mailed or delivered to the respective addresses shown above.

9. Definitions:

- 9.1 **Balance of the Contract Price:** The total amount payable by the Owner to the Contractor under the Contract after all proper adjustments have been made, including allowance to the Contractor of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Contract.
- 9.2 **Contract:** The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes thereto.
- 9.3 **Contractor Default:** Failure of the Contractor, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Contract.

**9.4 Owner Default:** Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Contract or to perform and complete or comply with the other terms thereof.

Any suit under this Bond must be instituted before the expiration of two (2) years from the date on which final payment is made under the Contract.

Signed as of this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_\_

**IN THE PRESENCE OF:**

\_\_\_\_\_  
**(Principal)** \_\_\_\_\_  
**(Surety)** \_\_\_\_\_

By: \_\_\_\_\_  
**(Signature)** \_\_\_\_\_  
By: \_\_\_\_\_  
**(Signature)** \_\_\_\_\_

\_\_\_\_\_  
**(Title)** \_\_\_\_\_  
**(Title)** \_\_\_\_\_

**ACKNOWLEDGMENT OF PRINCIPAL, IF A CORPORATION**

**STATE OF NEW YORK**

**COUNTY OF \_\_\_\_\_ )ss:**

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year 19\_\_\_\_\_,

before me personally came \_\_\_\_\_ to me known,  
who, being by me duly sworn, did depose and say that (s) he resides at  
\_\_\_\_\_, that (s) he is the

of \_\_\_\_\_, the  
corporation described in and which executed the above instrument and that (s) he signed  
her/his name thereto by order of the Board of Directors of said corporation.

---

Notary Public

**ACKNOWLEDGMENT OF PRINCIPAL, IF A PARTNERSHIP**

**STATE OF \_\_\_\_\_)**

**COUNTY OF \_\_\_\_\_ )ss:**

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year 19\_\_\_\_\_,

before me personally came \_\_\_\_\_, to me known

and known to me to be a member of the firm  
described in and who executed the foregoing instrument, and (s) he duly acknowledged to  
me that (s) he executed the same for and in behalf of said firm for the uses and purpose  
mentioned therein.

---

Notary Public

**ACKNOWLEDGMENT OF PRINCIPAL, IF AN INDIVIDUAL**

STATE OF \_\_\_\_\_)

COUNTY OF \_\_\_\_\_)ss:

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year 19\_\_\_\_,  
before me personally came \_\_\_\_\_, to me  
known and known to me to be a member of the firm \_\_\_\_\_  
\_\_\_\_\_, described in and who executed the foregoing instrument,  
and (s)he duly acknowledged to me that (s) he executed the same.

\_\_\_\_\_  
Notary Public

**ACKNOWLEDGMENT OF SURETY**

STATE OF NEW YORK

COUNTY OF \_\_\_\_\_)ss:

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year 19\_\_\_\_, before me  
personally came \_\_\_\_\_, to  
me  
known, who, being by me duly sworn, did depose and say that (s)he resides at  
\_\_\_\_\_, that (s)he is  
the

of \_\_\_\_\_, the corporation described in and which executed the above  
instrument and that (s)he signed her/his name thereto by order of the Board of Directors  
of said corporation.

\_\_\_\_\_  
Notary Public

**LABOR AND MATERIAL PAYMENT BOND**

**KNOW ALL MEN BY THESE PRESENTS:**

That  
(Here insert the name and address of the Contractor)

as Principal, hereinafter called Principal, and \_\_\_\_\_

(Here insert the name and address of Surety)

(Address)

as Surety, herein after called Surety, are held and firmly bound unto Battery Park City Authority, as Obligee, hereinafter called Owner, having an office at One World Financial Center, 24th Floor, New York, New York, 10281 for the use and benefit of the claimants as herein below defined, in the amount of

\_\_\_\_\_ and \_\_\_\_\_ /100 Dollars (\$ \_\_\_\_\_ ).

WHEREAS, Principal has by written agreement dated \_\_\_\_\_  
entered in a Contract with Owner for construction of \_\_\_\_\_

in accordance with the Contract Documents and any changes thereto, which are made a part hereof, and are hereinafter referred to as the Contract.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that if the Principal shall promptly make payment to all claimants as hereinafter defined, for all labor and material used or reasonably required for use in the performance of the Contract, then this obligation shall be void; otherwise such obligation shall remain in full force and effect, subject, however, to the following conditions:

1. A claimant is defined as one having a direct contract with the Principal or with a Subcontractor of the Principal for labor, material, or both used or reasonably required for use in the performance of the Contract, labor and material being construed to include that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental of equipment directly applicable to the Contract.

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Appendix II

2. The above named Principal and Surety hereby jointly and severally agree with the Owner that every claimant as herein designed, who has not been paid in full before the expiration of a period of ninety (90) days after the date on which the last of such claimant's work or labor was done or performed, or materials were furnished by such claimant, may sue on this bond for the use of such claimant, prosecute the suit to final judgment for such sum or sums as may be justly due claimant and have execution thereon. The Owner shall not be liable for the payment of any costs or expenses of any such suit.
3. No suit or action shall be commenced hereunder by any claimant:
  - a) unless a claimant other than one having a direct contract with the Principal, shall have given written notices to any two (2) of the following: 1) the Principal 2) the Owner, or 3) the Surety above named, within ninety (90) days after such claimant did or performed the last of the work or labor, or furnished the last of the materials for which said claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were furnished, or for whom the work or labor was done or performed. Such notice shall be served by mailing the same by registered mail or certified mail, postage prepaid, in an envelope addressed to the Principal, Owner, or Surety, at any place where an office is regularly maintained by said Principal, Owner, or Surety for the transaction of business, or served in any manner in which legal process may be served in the State in which the aforesaid project is located, save that such service need not be made by a public officer.
  - b) after the expiration of one (1) year following the date on which Principal ceased work of said Contract, however, if any limitation embodied in this Bond is prohibited by any law controlling the construction hereof such limitations shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.
  - c) other than in a State court of competent jurisdiction as and for the county or other political subdivision of the State in which the project, or any part thereof, is unused, or in the United States District Court for the district in which the project, or any part thereof, is situated and not elsewhere.
  - d) the project or any part thereof, is situated or in the United States District Court for the district in which the project, or any part thereof, is situated, and not elsewhere.
4. The penal sum of this Bond is in addition to any other Bond furnished by the Contractor and in no way shall be impaired or affected by any other Bond.
5. The amount of this Bond shall be reduced by and to the extent of any payment or payments made in good faith hereunder, inclusive of the payment by Surety of Mechanics' Liens which may be filed or record against said improvement, whether or not claim for the amount of such lien be presented under and against this Bond.

Signed this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_\_  
IN THE PRESENCE OF:

(Principal)

(Surety)

By: \_\_\_\_\_  
(Signature)

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_ (Title)

\_\_\_\_\_ (Title)

**ACKNOWLEDGMENT OF PRINCIPAL, IF A CORPORATION**

**STATE OF NEW YORK**)ss:

**COUNTY OF \_\_\_\_\_)**

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year  
19\_\_\_\_, before me personally came \_\_\_\_\_ to  
me known, who, being by me duly sworn, did depose and say that (s) he resides at \_\_\_\_\_

, that (s) he

is the \_\_\_\_\_ of \_\_\_\_\_,  
the corporation described in and which executed the above instrument and that (s)he  
signed her/his name thereto by order of the Board of Directors of said corporation.

\_\_\_\_\_  
Notary Public

**ACKNOWLEDGMENT OF PRINCIPAL, IF A PARTNERSHIP**

**STATE OF \_\_\_\_\_)ss:**

**COUNTY OF \_\_\_\_\_)**

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year 19\_\_\_\_, before me  
personally came \_\_\_\_\_, to me

known and known to me to be a member of the firm \_\_\_\_\_,  
described in and who executed the foregoing instrument, and (s)he duly acknowledged to  
me that (s) he executed the same for and in behalf of said firm for the uses and purpose  
mentioned therein.

\_\_\_\_\_  
Notary Public

**ACKNOWLEDGMENT OF PRINCIPAL, IF AN INDIVIDUAL**

STATE OF \_\_\_\_\_ )ss:

COUNTY OF \_\_\_\_\_)

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year

19\_\_\_\_\_, before me personally came \_\_\_\_\_,

to me known and known to me to be a member of the firm

, described in and  
who executed the foregoing instrument, and (s)he duly acknowledged to me that (s) he  
executed the same.

\_\_\_\_\_  
Notary Public

**ACKNOWLEDGMENT OF SURETY**

**STATE OF NEW YORK**

COUNTY OF \_\_\_\_\_ )ss:

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year 19\_\_\_\_\_,

before me personally came \_\_\_\_\_, to me  
known, who, being by me duly sworn, did depose and say that (s)he resides at  
the \_\_\_\_\_ of \_\_\_\_\_, that (s)he is

the corporation described in and which executed the above instrument and that (s)he  
signed her/his name thereto by order of the Board of Directors of said corporation.

\_\_\_\_\_  
Notary Public

RFP Information for Proposers

Pier A Renovations Phase 3 Core & Shell

## APPENDIX III:

### PROMPT PAYMENT POLICY

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PROMPT PAYMENT POLICY  
OF THE  
BATTERY PARK CITY AUTHORITY

**Section 9002.1. Statement of Policy and Purpose.** The Battery Park City Authority is a body corporate and politic, constituting a public benefit corporation, established by Chapter 343 of the Laws of 1968. This Prompt Payment Policy is adopted pursuant to Section 2880 of the Public Authorities Law, requiring each public benefit corporation to promulgate rules and regulations detailing its policy with respect to making prompt payment to contractors.

**Section 9002.2. Definitions.** For the purpose of this Part, the following terms shall have the following meanings unless the context shall clearly indicate otherwise:

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

Office of the Treasurer  
Battery Park City Authority  
One World Financial Center  
24th Floor  
New York, NY 10281-1097  
Attn: Accounts Payable
- (e) "Prompt Payment" shall mean payment of a debt due and owing by the Authority pursuant to a Contract before interest accrues thereon pursuant to the provisions of this Part.
- (f) "Proper Invoice" shall mean a written request or invoice for contract payment setting forth the description, price and quantity of goods, property or services provided by a Contractor, such request or invoice being both in accordance with the terms of the Contract and in such form, and supported by such other substantiating documentation, as the Authority may reasonably require.

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- (g) "Receipt of a Proper Invoice" shall mean either
- (i) the date on which a Proper Invoice is received by the Designated Payment Office; or
  - (ii) the date on which the Authority receives the purchased goods, property or services covered by the Proper Invoice, whichever is later.

(h) "Set-off" shall mean the reduction by the Authority of a payment due to a Contractor by an amount equal to the amount of an unpaid legally enforceable debt owed by the Contractor to the Authority.

Section 9002.3. Applicability. This Part shall apply to all Contracts entered into on or after April 29, 1988.

Section 9002.4. (a) Payment Request Procedure. Contractors owed money by the Authority shall deliver a Proper Invoice to the Designated Payment Office. The Designated Payment Office will log the receipt date of each invoice, and send it to the department unit within the Authority that received the goods, property or services from the Contractor for review and verification of the Contractor's performance in accordance with the Contract. Contractors with Contracts which provide for payment at specific dates or intervals shall also be required to provide a Proper Invoice which certifies that the obligations required under such Contract have been performed prior to such date(s) or during such interval(s) and review and verification of the work of these Contractors will take place upon receipt of such Proper Invoice; payment shall be made in accordance with the terms of such Contracts.

(b) Prompt Payment Schedule. The schedule of the time in which the Authority will make prompt payment under a Contract is as follows:

- (i) for invoices received on or before June 30, 1989, payment will be made by the Authority within 45 calendar days after Receipt of a Proper Invoice;
- (ii) for invoices received on or after July 1, 1989, payment will be made by the Authority within 30 calendar days, excluding legal holidays, after Receipt of a Proper Invoice;
- (iii) for contracts which provide for payment at one or more specific dates or intervals, payment will be made in accordance with the terms of such Contracts, but interest shall only be payable if payment is not made within the time provided in (i) and (ii) above; and
- (iv) this schedule will not apply in those instances where payment is being delayed by reason of any of the exceptions listed in Section 9002.4(e) or where the time in which to make payment is being tolled for any of the reasons listed in Section 9002.4(f) herein, in which cases the time for payment shall be as there provided.

(c) Interest Computation. If the Authority fails to make payment in accordance with the prompt payment schedule set forth in Section 9002.4(b) above, the Authority will pay interest to the affected Contractor at the rate equal to that set by the State Tax Commission for corporate taxes pursuant to Section 1096(e) of the Tax Law.

(d) Funds Available to Pay Interest Penalties. The Authority will pay interest as provided herein with monies expenses pursuant to its approved budget.

(e) Extension of Payment Time. Any of the following facts, conditions or situations are determined by the Authority to be exceptions to the prompt payment schedule set forth in Section 9002.4(b) and to justify extensions of the time by which payment must be made (the amount of time of such extension being as established by the Authority's Treasurer consistent with this Part, with notice provided to the Contractor):

- (j) Statutory or Contract provisions requiring an inspection period or an audit prior to payment;
- (ii) the absence of a state appropriation which is necessary to authorize payment;
- (iii) a requirement for federal government examination of a Proper Invoice prior to payment;
- (iv) Extraordinary delay between the time of the provision of goods, property or services by a Contractor and the receipt of a Proper Invoice by the Authority;
- (v) failure by a Contractor to submit documents required by the Contract or reasonably required by the Authority prior to payment;
- (vi) where time is taken in the processing of an invoice by the State Department of Taxation and Finance, the State Division of the Budget, the Office of the State Comptroller, or any other entity external to the Authority that is or may be required by statute, regulation or Contract to approve or process Authority payments.

(f) Defects or Improprieties. The following facts or conditions toll the prompt payment schedule set forth in Section 9002.4(b):

- (i) a reasonable belief by the Authority in the existence of any defect(s), including any incompleteness or failure of compliance with the terms of the Contract, in or with respect to the goods, property or services delivered;
- (ii) a reasonable belief by the Authority in the existence of any defect(s) in the invoice; or
- (iii) a reasonable belief by the Authority in suspected impropriety of any kind.

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

Section 9002.5. (a) Annual Report. After the completion of each fiscal year ending after January 1, 1989, the Authority shall prepare an annual report on the scope and implementation of this prompt payment policy. The report shall include, but not be limited to, the following:

- (i) A listing of the types or categories of contracts which the Authority entered into during the twelve month fiscal year covered by the report with an indication whether each such type or category of contract was subject to this prompt payment policy, and if it was not, the reason(s) why not;
- (ii) the number and amount of interest payments made for contracts, arranged according to each such type or category;

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(iii) the number of interest chargeable days, and the total number of days taken to process each late contract payment; and

(iv) a summary of the principal reasons why such late payments occurred.

(b) Within ninety (90) days after the completion of each such fiscal year, copies of this annual report shall be filed with the State Comptroller, the State Director of the Budget, the Chairman of the Senate Finance Committee and the Chairman of the Assembly ways and Means Committee.

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

Section 9002.6. (a) Amendment. The Authority shall have the power to amend this Part by promulgating amended rules and regulations at any time, and within thirty days of the adoption of any such amendments hereto, the Authority shall file copies with the State Comptroller, the State Director of the Budget, the Chairman of the Senate Finance Committee, and the Chairman of the Assembly Ways and Means Committee.

(b) Contract Incorporation. The policy statement in effect at the time that a Contract is entered into is hereby incorporated into and made a part of that Contract.

(c) Public Access. The Authority shall make copies of this policy statement available to the public upon reasonable request at the Authority's main office. The Authority shall also provide a copy of this policy statement to each Contractor at or prior to the time a Contract is entered into.

(d) Inapplicability. This policy is not applicable to payments due and owing by the Authority to any other governmental entity, agency, public benefit corporation or the employees thereof when acting in or incidental to their public employment capacity, to interest on judgements rendered by a court against the Authority pursuant to any other provision of law, or to situations where the Authority exercises a legally authorized Set-off against all or part of a payment due a Contractor.

(e) Legal Processes. The Authority is under no liability to pay interest pursuant to this policy for any period after a Contractor has filed a claim, given notice of an intention to file a claim or commenced legal action seeking any payment of interest; interest during such period shall only be paid as directed by the court in accordance with such other provisions of law as may be applicable

(f) Interpretation. This Part shall be interpreted consistent with and to fulfill the purposes of Section 2880 of the Public Authority Law.

RFP Information for Proposers

Pier A Renovations Phase 3 Core & Shell

**APPENDIX IV:**

**STATEMENT OF NON-COLLUSION**

**STATEMENT OF NON-COLLUSION:**

- I. 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.
- II. A Proposal shall not be considered for award nor shall any award be made where subparagraphs IA, IB, and IC above have not been complied with; provided however, that if in any case Proposer cannot make the foregoing certification, the Proposer shall so state and shall furnish with its Proposal a signed statement which sets forth in detail the reasons therefor. Where subparagraphs IA, IB, and IC above have not been complied with, Proposer 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 subparagraph IB above.
- III. 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 and Title)

Address

City and State

Corporate I.D. Number

Federal I.D. 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

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

NAME OF MEMBERS OR PARTNERS

LEGAL RESIDENCE

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If Proposer is a **Corporation** complete the following:

NAMES OF ALL-OFFICERS

LEGAL RESIDENCE

President

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Vice President

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Secretary

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Treasurer

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Title

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Title

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Exhibit  
Part 3

**BATTERY PARK CITY AUTHORITY  
MBE/WBE REQUIRED PARTICIPATION PLAN**

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

CONTRACTOR:	DATE
NAME:	
ADDRESS:	
CONTACT PERSON:	PHONE #
FEDERAL I.D. NO:	FAX #
IS THIS FIRM AN MBE/WBE?	<input type="checkbox"/> MBE <input type="checkbox"/> WBE

**MBE/WBE INFORMATION**

SUB-CONTRACTOR:	FEDERAL I.D. #
NAME:	WORK TO BEGIN:
ADDRESS:	
PHONE NUMBER:	TO FINISH ON:
CONTACT PERSON:	
ESTIMATED DOLLAR AMOUNT TO BE AWARDED TO MBE/WBE:	
SCOPE OF WORK TO BE DONE BY MBE/WBE	

**MBE/WBE INFORMATION**

SUB-CONTRACTOR:	FEDERAL I.D.#
NAME:	WORK TO BEGIN
ADDRESS:	
PHONE NUMBER:	TO FINISH ON:
CONTACT PERSON:	
ESTIMATED DOLLAR AMOUNT TO BE AWARDED TO MBE/WBE:	
SCOPE OF WORK TO BE DONE BY MBE/WBE:	

**Exhibit  
Part 4**

**BATTERY PARK CITY AUTHORITY  
UTILIZATION PLAN  
WORKFORCE PERCENTAGE INFORMATION**

Please fill out utilization plan for minority and female employees of Consultant.

TRADE(S):		%	
MINORITY WORKFORCE:		%	
FEMALE WORKFORCE		%	

APPENDIX V:

GENERAL DESCRIPTION  
& SCOPE OF WORK

## **APPENDIX V: GENERAL DESCRIPTION & SCOPE OF WORK – GENERAL CONSTRUCTION**

### **General Description**

Pier A is located at the southwest tip of Manhattan, between Battery Park City and historic Battery Park. Built in 1886 through an initiative by the New York City Department of Docks to improve New York's waterfront, it served as a central operation center to regulate harbor activity. In the 1950's the removal of then-called Department of Marine and Aviation and the Harbor Police from Pier A, ended the pier's long history as the control center for the harbor. Pier A was listed on the National Register of Historic Places in 1975 and was officially designated as a NYC landmark in 1977. A restoration of Pier A began in the 1990's that included structural repairs/modifications, a façade restoration, and updated mechanical, electrical, and plumbing service, but due to financial problems was only partially completed.

Pier A consists of a 3-story Headhouse structure and a 2-story Piershed structure. The overall plan dimensions of the pier are 45ft wide by 325 ft long, for a 14,300 square ft footprint area. The Headhouse building has a footprint of about 4,000 square ft. In 1997, a new concrete paved timber pier with promenade and timber support structure was constructed around the Piershed. The promenade has a width of 22 ft on the north side and 38ft on the south side.

The original structure is composed of 8 masonry sub-pier foundations, constructed of concrete and granite, which support a composite pier deck. The composite pier deck was constructed using riveted steel girders encased in concrete jack arches. The promenade is composed of a cast-in-place concrete deck supported by timber stringers. Repairs to the sub-pier foundations have been completed under a previous contract.

The Hugh L. Carey Battery Park City Authority (the Authority) in coordination with the New York City Economic Development Corporation (EDC) intends to develop Pier A with the intent of leasing the facility to other tenants. The Authority has been designated as the developer of the structure by EDC. The first phase of this work (the non-structural interior demolition), and the second phase of this work (the pier deck replacement) will have been completed prior to the start of Phase III (core and shell).

**Scope of Work** Note: This is a non-smoking project.

The core and shell construction is Phase III of the Pier A Renovation Project. The work has been designed by H3 Hardy Collaborative Architecture and Weidlinger Associates. The drawings and specifications will be available on H3 Hardy Collaborative's ftp site for downloading on Tuesday, June 3, 2010 at 3PM. This core and shell restoration will prepare the building for a tenant build out, which will follow this work. The scope of work for the project is not limited to but generally consists of the following:

- Perform demolition as outlined in construction documents in preparation for new construction
- Remove steel bar assemblies at approximately 16 window locations (first and second floors), as well as any miscellaneous steel remaining from previous building use that conflicts with this work.
- Perform any necessary lead paint and/or asbestos abatement required in conjunction with this demolition. A report designating the location of any hazardous materials is included in this RFP. This report, in conjunction with the site walk through, is to be used by this contractor to confirm the extent of required abatement. All abatement to be performed in compliance with OSHA regulations.

- Perform removal of materials that have been water damaged and found to contain mold. A report indicating the areas found to contain various types of mold has been included in this RFP. All removals to be performed in compliance with OSHA regulations.
- Perform structural modifications as outlined in the construction documents to allow for the addition of fire stairs, etc.
- Structural support system for underwater work referenced in "Underwater Plan" to be excluded until further information is published (in the form of a forthcoming addendum).
- Provide new concrete slab as detailed on construction documents, coordinate installation of this slab with contractor installing radiant heating system. Polish new and existing concrete slab, polished finish to be in accordance with project specifications.
- Provide all new construction including but not limited to partitions, doors, windows, and interior finishes as outlined in the construction documents.
- Backer rod, sealant, flashing, etc. to be provided in accordance with construction documents as part of work at existing window locations. These existing windows date back to the prior renovation started in the 90's, and there are a number of broken window panes. This contractor is to allow for replacement of the glazing in 10 window panes (see allowances on bid sheet).
- Historic restoration of interior elements such as restoration of historic walls, including refinishing of wood trim, anaglypta wall covering, repair of interior windows, doors and hardware.
- Patch and repair all walls called out in restoration drawings as "existing plaster wall, typ."
- Historic restoration of exterior elements such as pediments, pilaster moldings, window trim, and metal siding as indicated on construction documents
- Provide for any chopping and patching at existing slab and exterior walls for entry of utilities.
- Provide all protection, scaffolding, etc. as required to complete the work of this contract.
- This contractor is responsible for reviewing the full set of construction documents and allowing for coordination with all other trades.
- This contractor will be responsible for general site maintenance, cleanup, and garbage disposal for all trades on site. Submission of a waste management plan, and continuous tracking of waste removal is required in accordance with the LEED protocol outlined in the project specifications.
- This will be a LEED project to be certified by the USGBC. This contractor must review, understand and provide all required submissions as outlined in the project specifications required for this certification.

#### **ADDITIONAL CONTRACT REQUIREMENTS**

##### **1- The Contractor is responsible for the M/WBE requirements and the goals as set forth below:**

- o The General Construction Contractor shall be required to make every good faith effort to achieve a Minority Subcontractor participation goal of 20%, and Woman Subcontractor participation goal of 5% of the total dollar value of the Work (determined as set forth in the Agreement) through the utilization of MBEs and/or WBEs.

o All other Contractors shall be required to make every good faith effort to achieve a Minority Subcontractor participation goal of 10%, and Woman Subcontractor participation goal of 5% of the total dollar value of the Work (determined as set forth in the Agreement) through the utilization of MBEs and/or WBEs.

o All Contractors will be required to make every good faith effort to achieve a participation goal of 30% of the total number of employees required for the Work who are Minority Group Members and a participation goal of 5% of the total number of employees required for the Work who are women, which the Contractor will use to perform the Work.

**2- Please find the following additional clarifications regarding the BIM modeling process:**

[1] H3, with its associated engineers, has documented the design intent for Pier A in a Building Information Model (BIM). The BIM is composed of several sub-models, organized by profession (Architectural, Structural, etc.). The models are as follows:

[a] The *Architectural model* is in the form of a Revit Architecture 2009 .rvt file.

[b] The *Structural model* is in the form of a Revit Structure 2009 .rvt file.

[c] The *Mechanical model* is in the form of a generic 2009 .ifc (Industry Foundation Classes) file.

[d] The *Electrical model* is in the form of a generic 2009 .ifc (Industry Foundation Classes) file.

[e] The *Plumbing model* is in the form of a generic 2009 .ifc (Industry Foundation Classes) file.

[f] The *Fire Protection model* is in the form of a generic 2009 .ifc (Industry Foundation Classes) file.

[2] These aggregate models compose the BIM, and they will be supplied to the contractor(s) for completion and execution of Integration Drawings as described in Spec Section 013300. They are not completed to the level of specificity that the contractor needs to submit Integrated Drawings.

[3] The contractor is to purchase an *AIA E202 – 2008 Building Information Model Protocol Exhibit* form before Integration Drawings are produced and in order to delineate responsibilities for the completion of the BIM for Integration Drawings. This document will detail the level of completion of the above models and the level of completion the contractor is to add to these models.

[4] At the time of execution of the *AIA E202 – 2008 Building Information Model Protocol Exhibit* form, H3 will declare:

[a] The H3-supplied BIM model to be at a “Level of Development” of LD300.

Page 3 of 3

[b] The contractor is expected to improve the model’s a “Level of Development” of LD500. Among other work the contractor must provide:

[i] This work will include the addition of framed openings in floors, ceilings, walls, etc. for clash-detection purposes with ducts, pipes, etc.

[ii] Contractor will demonstrate completed LD500 model with all equipment detailed in the construction documents. Contractor may add/alter provided Model Elements, or provide new ones to execute this work.

[iii] Contractor is to execute “hard” clash-detection between all improved constituent models (detailed in Section 1) to confirm no conflicts exist in the design. These detections are to be executed algorithmically (not visually) in the Navisworks Manage 2009 software or an approved equal.

[c] The Model Content Requirements for LD500 will be expanded to include “Fabrication of constructed assemblies can be executed from the LD500 model.”

**Due to the fact that previous progress was made regarding the BIM process for the GC Contract, the successful bidder is requested to retain the services of Q5: The Fifth Quarter to continue the progress. Q5, 660 Main Street, Woburn, MA 01801. 781-939-0415**

### **3- OSHA TRAINING**

All laborers, workers and mechanics working on site must be certified as having successfully completed the OSHA 10 hour construction safety and health course. Details on this course and how to arrange for this training are included in the attachment to this addenda.

### **4- SCHEDULE**

A 12 month schedule will be associated to this project/contract from the time of contract execution. The successful contractor shall be responsible for preparing the master schedule for the project with the input of the other 3 prime contractors. Monthly schedule updates are expected throughout the duration of the project. The contractor shall organize his approach to ensure that all related outdoor restoration work is performed within the 12 months in weather conditions favorable for the application of all products associated to the restoration based on manufacturers suggested specifications. The schedule should indicate a mobilization date of August 1, 2010.

### **5- SUBMITTALS**

In an effort to expedite the startup of your work and while a contract has been fully executed, BPCA will issue a letter of intent with a prescribed dollar value for the purposes of the contractor to immediately commence the submittal process and conduct a kickoff meeting.

RFP Information for Proposers

Pier A Renovations Phase 3 Core & Shell

APPENDIX VI:

PROPOSAL & AWARD SCHEDULE

## **APPENDIX VI: Proposal & Award Schedule**

The following dates are important for the successful submission of the Proposal. All questions regarding the Work are to be in written form and submitted to Chris Carter, carterc@liro.com, The LiRo Group, Construction Manager on or before the date indicated below. Additional questions will not be accepted after this date. All questions will be answered via addenda issued in accordance with the dates indicated below.

Pre-award interviews will be held with selected Proposer(s) on the dates indicated below between the hours of 9:00 a.m. and 4:00 p.m. Each Proposer should schedule this date.

<b>Document Posting on FTP Site</b>	<b>June 3, 2010 @ 3PM</b>
<b>(Note: Any documents retrieved sooner may not be accurate bidding set)</b>	
<b>Pre-proposal Conference/Walk thru</b>	<b>June 9, 2010 10AM</b>
<b>All Questions to LiRo</b>	<b>June 22, 2010 by 2:00 PM</b>
<b>Final Addenda Issued</b>	<b>June 25, 2010 by 5:00 PM</b>
<b>Proposal Due</b>	<b>June 30, 2010 <u>no later than</u> 5:00 PM</b>
<b>Pre-Award Meetings</b>	<b>First week of July (TBD)</b>
<b>Notice to Proceed/Kickoff Meeting</b>	<b>Second week of July (TBD)</b>

APPENDIX VII:

SUBMITTALS TO ACCOMPANY PROPOSAL

## **SUBMITTALS TO ACCOMPANY PROPOSALS**

The Proposer must submit 3 complete double sided printed copies of the Proposal and one CD, including the material set forth below. The printed proposal must be submitted in a bound book and tabbed indicating the sections outlined below. All sections must be included for proposal to be considered.

1. Letter of Surety for 100% of Contract price
2. Exhibit Part 3: MBE/WBE Required Participation Form from Appendix IV
3. Exhibit Part 4: MBE/WBE Utilization Plan Form from Appendix IV
4. Statement of Non-Collusion from Appendix IV
5. Certification sheet from Appendix VIII
6. Prevailing Wage Rates from Appendix VIII
7. All enclosed forms within from Appendix IX (No exceptions)
8. References
9. Current (within 6 months) Audited Financial Statement
10. Addenda and Signed acknowledgment of Addenda (if issued for the Project).
11. Cost Proposal from Appendix VIII
12. List of all Subcontractors including non- MBE/WBE
13. List of Manufacturers and/or Suppliers
14. Approach to the Work: This should briefly address the Proposer's conceptual step-by-step approach towards completion of the work and outline the proposed procedures for the executing the work.
15. Bar Chart Schedule for Completion of the Work: This should include sequencing of the Work, manpower staffing level, work shifts, and show all project milestones and successful overall completion.
16. List of Equipment: This list to include all equipment, storage facilities, temporary facilities, etc. that pertain to this project.

## APPENDIX VIII:

### THE PROPOSAL

General Construction

RFP for Construction Work

General Construction

BPCA Pier A Phase 3 Core & Shell

## APPENDIX VIII: THE PROPOSAL

### Form of Cost Proposal

(Proposer to submit executed Cost Proposal on its letterhead)

Date:

Battery Park City Authority  
One World Financial Center – 24<sup>th</sup> Floor  
New York, NY 10282

Attention: Ms. Venus Callendar  
Contract Administrator

Dear Ms. Callendar:

The undersigned (the "Proposer") hereby proposes to provide all specified work necessary to perform the Core and Shell Renovation of Pier A, Manhattan, New York. The Proposer agrees to commence the Work immediately upon notification of award of Contract in accordance with the terms stipulated in the following pages, for the sum written below.

#### A. Base Proposal

1. A lump sum amount of \$ \_\_\_\_\_ Dollars and \_\_\_\_\_ Cents to perform all work as stated in the scope of work and plans and specifications.

#### B. Unit Prices and Labor Rates

1. The Proposer has submitted with its proposal, unit cost schedule for both additions and deductions, according to the attached of items, for the Scope of Work in Appendix V.
2. The Proposer has submitted with its proposal labor rates for all trades, including all costs except overhead and profit. Prices shown include base hourly rate, overtime rate, insurance and benefits.

Name of Proposer:

By: \_\_\_\_\_

Title: \_\_\_\_\_

## Appendix VIII: The Proposal (Con't)

### CONTRACT #1 General Construction

**BID PRICING INSTRUCTIONS:** Provide bid amounts as indicated, in the spaces provided below. The undersigned bidder ("Bidder") proposes to furnish all labor, materials, tools, supplies, equipment, services, insurance, overhead and profit and to pay all applicable taxes and to perform all Work as provided in the Contract Documents for the complete performance of the above referenced Contract ("Contract").

<b>Breakout Pricing</b>		
<b>Provide pricing associated to the work referenced</b>		
<b>(To be included in the base proposal)</b>		
<b>A</b>		
#1	All new base molding, chair rail, wainscoting and crown molding as detailed on titled sheet "Profile Legend" in addition to all veneer plaster finishing of walls receiving such molding.	\$
#2	Restoration of all historic walls as per Finish Plan and R Series Drawings.	\$
#3	All scope of work within your contract related to the purchase, structural preparation and installation of Elevator #2.	\$
<b>B</b>	<b>Unit Pricing</b>	
#1	Exterior metal siding	\$ SF
#2	Wood sheeting	\$ SF
#3	Plaster repair	\$ SF
#4	Gypsum wall board	\$ SF
#5	Suspended Black iron Gypsum Ceiling	\$ SF
#6	2x2 ACT Ceiling	\$ SF
#7	Painting – walls	\$ SF

#8	Painting - ceiling	\$ SF
#9	Wood flooring WD-1	\$ SF
#10	CT-1	\$ SF
#11	CT-2	\$ SF
#12	CONC-1	\$ SF
#13	CONC-2	\$ SF
#14	Wood CR-1	\$ SF
#15	Wood CR-2	\$ SF
#16	Wood B-2	\$ SF
#17	Wood B-3	\$ SF
#18	Wood B-4	\$ SF
C	<b>Add Alternate Pricing (NOT to be included in base proposal)</b>	
#1	All required Structural work for support of Geothermal System	\$
D	<b>Contract Allowances (To be included in the base proposal)</b>	
#1	Elevator Cab Interiors	\$50,000.00
#2	Q5 BIM Consultant	\$100,000.00
#3	Controlled Inspections by a BPCA approved firm	\$50,000.00

RFP for Construction Work

General Construction

BPCA Pier A Phase 3 Core & Shell

**Labor Rates**

The following labor rates are to be listed by craft and classification (Foreman, Journeyman, etc.) and are to include base wages, benefits, taxes, insurance and payroll costs complete. Any craft not listed that this contractor anticipates will be required to perform the work of this contract are to be added to this list. Overhead and profit are not to be included. All rates listed to be held to project completion.

<b><u>CRAFT</u></b>	<b><u>CLASSIFICATION</u></b>	<b><u>HOURLY RATE</u></b>	<b><u>OVERTIME</u></b>
---------------------	------------------------------	---------------------------	------------------------

**LABORER**

\_\_\_\_\_

**CARPENTER** \_\_\_\_\_

**LABORER** \_\_\_\_\_

**LABORERS -**

**ASSISTANT** \_\_\_\_\_

**OPERATING**

**ENGINEER** \_\_\_\_\_

**FIELD**

**SUPERVISOR** \_\_\_\_\_

**FOREMAN** \_\_\_\_\_

**OTHER** \_\_\_\_\_

**OTHER** \_\_\_\_\_

Attach a list of additional labor categories and rates as required.

<Name of Company>

<Name of Proposer>

Signed

Date

By: <Printed Name>

RFP Information for Proposers

Pier A Renovations Phase 3 Core & Shell

## APPENDIX IX:

### STATEMENT OF QUALIFICATIONS FORMS

With/Vendor Responsibility Questionnaire Instructions, NYS  
Finance Law §139 Mandatory Forms, and W-9

## PROPOSER'S QUALIFICATIONS

All questions must be answered and the data given must be clear and comprehensive. If necessary, questions may be answered on separate attached sheets. The Proposer may submit any additional information he desires.

### **Part A**

1. Name of Proposer: \_\_\_\_\_
2. Permanent Main Office Address: \_\_\_\_\_
3. When Organized: \_\_\_\_\_
4. If a corporation, where incorporated:
5. a. NAME AND ADDRESS OF PARTNERS  
(If Proposer is a FIRM, state here the name and residence of each partner thereof)  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- b. If Proposer is a CORPORATION, fill in the following blanks:  
Name and Address of President \_\_\_\_\_  
\_\_\_\_\_  
Name and Address of Vice President: \_\_\_\_\_  
\_\_\_\_\_  
Name and Address of Secretary: \_\_\_\_\_  
\_\_\_\_\_
6. Does any other Contractor, vendor or person have, hold or may derive any actual or beneficial percentage of interest in any other form of ownership of the Proposer in an amount of 5% or more? If yes, provide \_\_\_\_\_ %.  
If yes, please provide: Name \_\_\_\_\_  
Address: \_\_\_\_\_
7. Provide your Dunn & Bradstreet identification number and the latest Dunn & Bradstreet credit report or a similar credit report and audited copies of Contractor's most recent balance sheet, income statement, statement of changes in

financial position, notes to the financial statements and other financial statements. State the name and address of your principal bank and a bank officer who can respond to inquiries.

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8. Provide your Employer Identification Number.
9. State whether you can provide ten million dollars in liability insurance and if not, state how much could be provided.  
Yes \_\_\_\_\_ No \_\_\_\_\_ Other Amount \_\_\_\_\_
10. State whether or not you can provide payment and performance bonds, the amounts (both single and aggregate), and the name of your bonding company.

Yes \_\_\_\_\_ Bonding company:  
No \_\_\_\_\_  
Amounts \_\_\_\_\_

(BONDING ASSISTANCE FOR MBEs AND WBEs IS AVAILABLE FROM THE NEW YORK JOB DEVELOPMENT AUTHORITY BONDING ASSISTANCE EXPERIMENTS (BAX) PROGRAM, 212-818-1700, AS WELL AS THE REGIONAL ALLIANCE FOR SMALL CONTRACTORS, 212-435-6506).

#### **PART B**

1. Proposers will furnish the following information, on separate sheets, for four (4) similar projects that involved underwater construction, concrete placement and commercial diving:

Project Name  
Project Location  
Detailed Description of Project  
Contact Person & Phone Number  
Contract Amount  
Duration of Project & Completion Date

2. Provide a list on work on separate sheet which Contractor presently has under contract indicating the name of the owner, present completion status, anticipated completion date and the dollar value.
6. a. What contracts has Contractor had with the State of New York, the City of New York, the federal government or any public agencies or authorities in the past 5 years?

Nature of Work	Contracting Agency	Contract # (If Known)	Date of Contract	Contract Amount	Agency Supervisor
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What subcontracts has Contractor had with contractors doing business with the State of New York, the City of New York, the federal government or any public agencies or authorities in the past 5 years?

Nature of Work	Prime Cntr.	Supervision	Contracting Agency	Contract # (If Known)	Date of Contract	Subcontract Amount
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Itemize the work you intend to perform with your own forces and items which you propose to subcontract.

Provide current resumes for Contractor's key management personnel which are not included in the list requested above. HVAC and Electrical Contractors: Detail in-house engineering staff, size, number of employees and their qualifications.

7. In the past 5 years, have any principals of Contractor been a principal in a business entity not listed on the stock exchange or in the NASDAQ system that has filed a petition in bankruptcy or reorganization or has had bankruptcy proceedings initiated against it?

Yes \_\_\_\_\_ No \_\_\_\_\_

If yes, give the name of the filing, the court, the County and the reason for filing:

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8. In the past five years has (i) Contractor, (ii) any firm which owns 5% or more of Contractor, or 5% or more of which is owned by Contractor, or (iii) any person listed in Part A been the subject of any of the following actions by any government agency\*:

- a. been suspended, debarred, disqualified, had its prequalification revoked or otherwise been declared ineligible to bid?

Yes \_\_\_\_\_ No \_\_\_\_\_

- b. been barred from proposing or denied a contract as a result of refusal of any such person to testify before a grand jury or administrative board?

Yes \_\_\_\_\_ No \_\_\_\_\_

- c. been barred from proposing or denied a contract as a result of failure to meet statutory affirmative action or MBE/WBE requirements?

Yes \_\_\_\_\_ No \_\_\_\_\_

- d. been denied contract despite being the low Proposer for any other reason?

Yes \_\_\_\_\_ No \_\_\_\_\_

- e. been defaulted on any contract?

Yes \_\_\_\_\_ No \_\_\_\_\_

- f. had a contract terminated?

Yes \_\_\_\_\_ No \_\_\_\_\_

- g. failed to complete a Contract awarded to you?

Yes \_\_\_\_\_ No \_\_\_\_\_

- h. been given a final unsatisfactory performance determination or deemed a poor performer (by letter or formal proceedings)?

Yes \_\_\_\_\_ No \_\_\_\_\_

- i. been prevented or barred from proposing for any other reason?  
Yes \_\_\_\_\_ No \_\_\_\_\_
- j. been denied a contract for failure to obtain surety or otherwise provide required security?  
Yes \_\_\_\_\_ No \_\_\_\_\_
- k. had liquidated damages assessed against it upon completion of a contract?  
Yes \_\_\_\_\_ No \_\_\_\_\_

\* GOVERNMENT AGENCIES include city, state, federal public agencies, quasi-public agencies, authorities and corporations, public development corporations and local development corporations.

If the answer to any portion of question #10 is yes, please provide all relevant details, including the name of a contact person at the governmental agency.

9. a. Has any principal of Contractor been convicted of a felony or misdemeanor within the past 10 years?  
Yes \_\_\_\_\_ No \_\_\_\_\_  
If yes, state details:

Date of Conviction \_\_\_\_\_

Court of Conviction \_\_\_\_\_ State \_\_\_\_\_

Disposition (plea/conviction and sentence) \_\_\_\_\_

Index or Docket # \_\_\_\_\_

- b. Are any criminal charges presently pending against any principal of Contractor ?  
Yes \_\_\_\_\_ No \_\_\_\_\_  
If yes, state details:

Date of Charges \_\_\_\_\_ Court \_\_\_\_\_ State \_\_\_\_\_

Index or Docket # \_\_\_\_\_

Pending Charges \_\_\_\_\_

- 
- c. Are any civil charges presently pending against any principal of Contractor ?  
Yes \_\_\_\_\_ No \_\_\_\_\_

If yes, state details:

Date of Charges \_\_\_\_\_ Court \_\_\_\_\_ State \_\_\_\_\_

Index or Docket # \_\_\_\_\_

Pending Charges \_\_\_\_\_

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10. To your knowledge, has Contractor, or any principal of Contractor, or any business entity in which any principal of Contractor has been a principal, been the subject of an investigation (civil or criminal) by any governmental agency or public authority within the past 10 years?

Are any criminal charges presently pending against any principal of Contractor ?

Yes \_\_\_\_\_ No \_\_\_\_\_

If yes, state name of agency, and details of investigation:

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11. Is Contractor a business entity in which any principal of Contractor is a principal presently involved in any litigation (civil or criminal) with or against the State of New York, the City of New York, the federal government or any of their agencies or authorities?

Yes \_\_\_\_\_ No \_\_\_\_\_

If yes, provide the following::

Caption of Case

Court

Index Number

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12. Within the previous 10 years, have you or any person listed in Part A the subject of any of the following:

- any criminal investigation, felony indictment or conviction concerning collusion or fraud in obtaining a contract for public work?

Yes \_\_\_\_\_ No \_\_\_\_\_

- any criminal investigation, felony indictment or conviction concerning formation of or any business association with an allegedly false or fraudulent women's, minority, or disadvantaged business enterprise (WBE, MBE, DBE)?

Yes \_\_\_\_\_ No \_\_\_\_\_

- suspension or revocation of any professional engineering or other professional license?  
Yes \_\_\_\_\_ No \_\_\_\_\_
- any determination of a willful Labor violation (either federal or State)  
Yes \_\_\_\_\_ No \_\_\_\_\_
- any decertification, denial, or forfeiture of Women's Business Enterprise, Minority Business Enterprise, or Disadvantaged Business Enterprise Status?  
Yes \_\_\_\_\_ No \_\_\_\_\_

If you answered "yes" to any of the above questions, on a separate page, describe fully the details of the investigations, date and disposition of the action (answers should also cover any related or subsidiary firms).

13. To your knowledge, is Contractor, or any principal or employee of Contractor, or any other person listed in your answers in Part A, a former employee of Battery Park City Authority?

Yes \_\_\_\_\_ No \_\_\_\_\_

If yes, state the name of the principal, employee or shareholder of Contractor and give the title of the position held while at the Authority and the date of termination from services at the Authority.

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### **EO-127**

16. Has any New York State agency or authority made a finding of non-responsibility regarding the Contractor in the last five years? (Please circle): No Yes
17. If yes, was the basis for the finding of the Contractor's non-responsibility due to the intentional provision of false or incomplete information required by Executive Order Number 127? (Please circle): No Yes
18. If yes, please provide details regarding the finding of non-responsibility below.  
Covered Agency or Authority: \_\_\_\_\_  
Year of Finding of Non-responsibility: \_\_\_\_\_  
Basis of Finding of Non-Responsibility: \_\_\_\_\_

19. Has any NYS Agency or Authority terminated a procurement contract with the Contractor due to the intentional provision of false or incomplete information required by Executive Order Number 127? (Please circle):

No                  Yes

**Part C**

1. Has any officer or partner of your organization ever been an officer or partner of an other organization that failed to complete a Contract? \_\_\_\_\_

If yes, state name of individual, other organization and reason:

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2. Has any officer or partner of your organization ever failed to complete a Contract handled in his own name?

If yes, state name and reason therefor:

---

3. In what other lines of business do officers or partners of your organization have financial interest?
- 

4. Provide the name of the individual who will provide personal supervision of this project?

Name	Title	Office Phone number
------	-------	---------------------

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5. Do you have, or can you obtain, sufficient men and equipment to instate this Contract as required by the "Bid Proposal"? \_\_\_\_\_
- 

3. Provide names and phone numbers of references in Construction Equipment and Suppliers:
- 
- 
- 

7. In emergencies, either day or night, what telephones should be called for immediate action?

Day

Night

8. List, on a separate sheet, all major equipment that you own (O) or plan to lease (L) to perform all work on this project.
9. Successful Proposer shall provide the OWNER at the signing of the Agreement, the following information:
  - a. Table of Organization of the CONTRACTOR showing the names and addresses of all individuals serving on the Board of Directors or comparable body of the CONTRACTOR.

**Part D**

In connection with the submission of this Bid for \_\_\_\_\_

(Name of Proposer)

I, \_\_\_\_\_ the \* (applicant herein), (an officer or agent of the corporate applicant) namely its \_\_\_\_\_ \*(swears) or (affirms) under the penalties of perjury that:

1. The following persons have a direct or indirect interest in this bid:

NAME

ADDRESS

DATE OF BIRTH MO/D/YR.

(In case of corporations, all officers of the corporation and stockholders owning more than 5% of the corporate stock must be listed. Attach an additional sheet, if necessary).

2. The following person(s) listed in (1.) above are related by blood or marriage to an officer or employee of the OWNER.

NAME	RELATIONSHIP	NAME/POSITION OF EMPLOYEE/OFFICER

## **CONTRACTOR'S CERTIFICATION**

Contractor understands and agrees that if, based upon this Statement of Qualifications and any other information as to Contractor which the Authority may obtain, the Authority invites Contractor to submit a proposal, such invitation shall not preclude the Authority from subsequently concluding, based upon additional information or further analysis of the information previously submitted, that the Contractor is not qualified to perform the work. Further, Contractor understands that the Authority reserves the right, in its sole and absolute discretion, to elect not to select a proposal from a firm conditionally prequalified pursuant to this request for qualifications or to elect to contract for the performance of such work in such a manner as the Authority may deem to be in the public interest.

Conditional prequalification of Contractor pursuant to this request for qualifications will create no legal or equitable rights in favor of the Contractor, including, without limitation, rights of enforcement or reimbursement. Failure by the Authority for any reason to execute a contract or negotiate with the Contractor conditionally prequalified pursuant to this request for qualifications will not constitute any liability on the part of the Authority or any of its members, officers, employees, agents or contractors.

Submission of this Statement will constitute a waiver by Contractor of any claim against any of the foregoing for any costs incurred or for any matters arising hereunder in connection with the conditional prequalification of (or failure to conditionally prequalify) any Contractor, and permission by the Contractor for the Authority to contact any private or governmental agency concerning the experience, financial condition and background of Contractor and its principals.

**Contractor certifies that all information provided to the Agency with respect to Executive Order Number 127 is complete, true and accurate.**

False statements made herein are punishable as a Class A misdemeanor pursuant to 210.45 of the Penal Law.

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Legal Name of Person/Firm/Corporation

By: \_\_\_\_\_  
Contractor's Signature

## NYS FINANCE LAW §139 MANDATORY FORMS PACKET INSTRUCTIONS

In your packet, you have 5 forms:

1. Language for Inclusion in Solicitation

\*This document must be included in all RFP's, Bid documents or Mandatory Forms packet if there is no RFP. (1 page)

2. Language to Obtain Offerer's Affirmation of Understanding of and Agreement pursuant to State Finance Law §139-j (3) and §139-j (6) (b)

\*This form must be included in the Mandatory Forms Packet. (1 page)

3. Language to Obtain an Offerer's Certification of Compliance with State Finance Law §139-k(5)

\*This form must be included in the Mandatory Forms Packet. (1 page)

4. Language to Obtain the Offerer's Disclosure of Prior Non-Responsibility Determinations

\*This form must be included in the Mandatory Forms Packet. (3 pages)

5. Contract Termination Provision

\*This document must be included in the Mandatory Forms Packet.

*This form must be included in the Mandatory Forms Packet*

## **Language to Obtain the Offerer's Disclosure of Prior Non-Responsibility Determinations**

### **Background:**

New York State Finance Law §139-k (2) obligates Battery Park City Authority to obtain specific information regarding prior non-responsibility determinations with respect to State Finance Law §139-j. This information must be collected in addition to the information that is separately obtained pursuant to State Finance Law §163(9). In accordance with State Finance Law §139-k, an Offerer must be asked to disclose whether there has been a finding of non-responsibility made within the previous four (4) years by any Governmental Entity due to: (a) a violation of State Finance Law §139-j or (b) the intentional provision of false or incomplete information to a Governmental Entity. The terms "Offerer" and "Governmental Entity" are defined in State Finance Law § 139-k (l). State Finance Law §139-j sets forth detailed requirements about the restrictions on Contacts during the procurement process. A violation of State Finance Law §139-j includes, but is not limited to, an impermissible Contact during the Restricted Period (for example, contacting a person or entity other than the Designated Contact Person, when such contact does not fall within one of the exemptions).

As part of its responsibility determination, State Finance Law §139-k (3) mandates consideration of whether an Offerer fails to timely disclose accurate or complete information regarding the above non-responsibility determination. In accordance with law, no Procurement Contract shall be awarded to any Offerer that fails to timely disclose accurate or complete information under this section, unless a finding is made that the award of the Procurement Contract to the Offerer is necessary to protect public property or public health, or public safety, and that the Offerer is the only source capable of supplying the required Article of Procurement within the necessary timeframe. See State Finance Law §139-j (10) (b) and 139-k (3).

## **Offerer's Disclosure of Prior Non-Responsibility Determinations**

Name of Individual or Entity/Offerer Seeking to Enter into the Procurement Contract.

Address:

Name and Title of Person Submitting this Form:

Project Name:

Date:

1. Has any Governmental Entity made a finding of non-responsibility regarding the individual (you) or entity (your company/firm) seeking to enter into the Procurement Contract in the previous four (4) years?

(Please circle): No      Yes

If yes, please answer the next questions:

2. Was the basis for the finding of non-responsibility due to a violation of State Finance Law §139-j?  
(Please circle): No      Yes

3. Was the basis for the finding of non-responsibility due to the intentional provision of false or incomplete information to a Governmental Entity?

(Please circle): No      Yes

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 as necessary)

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? (Please circle): No      Yes

6. If yes, please provide details below.

Governmental Entity: \_\_\_\_\_

Date of Termination or Withholding of Contract: \_\_\_\_\_

Basis of Termination or Withholding: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Add additional pages as necessary)

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

By: \_\_\_\_\_  
(Signature)

Name: \_\_\_\_\_  
(Print Name)

Date: \_\_\_\_\_

Title: \_\_\_\_\_

## **Contract Termination Provision**

### **Background:**

A Contract Termination Provision shall be included in each Procurement Contract governed by State Finance Law §139-k. New York State Finance Law §139-k(5) provides that every procurement contract award subject to the provisions of State Finance Law §139-k and 139-j shall contain a provision authorizing Battery Park City Authority, and its subsidiaries and affiliates, to terminate the contract in the event that the certification under §139-k is found to be intentionally false or intentionally incomplete. This statutory contract language authorizes termination. "Governmental Entity" and "procurement contract" are defined in State Finance Law §139-k (1) and includes BPCA, its subsidiaries and affiliates.

## **Contract Termination Provision**

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

## **Vendor Responsibility Questionnaire Instructions**

In your packet you have 2 forms:

- The Standard Vendor Responsibility Questionnaire  
(consisting of 4 pages and a Certification page)  
and
- The Certificate of No Change form (1 page)

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 the information requested in the form (such as legal status, tax status, and debarment status).

You must answer every question on the questionnaire.

NOTE: You will fill out the "Certificate of No Change" form 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.

**STATE OF NEW YORK**  
**Council of Contracting Agencies**  
**Standard Vendor Responsibility Questionnaire**

**1. LEGAL BUSINESS NAME:** \_\_\_\_\_

**2. FEDERAL EMPLOYER ID NO. (FEIN):** \_\_\_\_\_

**3. D/B/A — Doing Business As (if applicable):** \_\_\_\_\_  
**COUNTY FILED:** \_\_\_\_\_

**4. WEBSITE ADDRESS (if applicable):** \_\_\_\_\_

**5. PRINCIPAL PLACE OF BUSINESS ADDRESS:** \_\_\_\_\_

**6. TELEPHONE NUMBER:** \_\_\_\_\_ **7. FAX NUMBER:** \_\_\_\_\_

**8. AUTHORIZED CONTACT FOR THIS QUESTIONNAIRE:**

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Telephone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_

E-mail: \_\_\_\_\_

**9. TYPE OF BUSINESS:** (please check appropriate box and provide additional information):

- |   |   |
|---|---|
| a) <input type="checkbox"/> Corporation                     | State of Incorporation:                   |
| b) <input type="checkbox"/> Sole Proprietor                 | State/County filed in: _____              |
| c) <input type="checkbox"/> General Partnership             | State/County filed in: _____              |
| d) <input type="checkbox"/> Not-for-Profit Corporation      | Charities Registration Number: _____      |
| e) <input type="checkbox"/> Limited Liability Company (LLC) | Jurisdiction filed: _____                 |
| f) <input type="checkbox"/> Limited Partnership             | State/County filed in: _____              |
| g) <input type="checkbox"/> Other — Specify: _____          | Jurisdiction Filed (if applicable): _____ |

**10. IF NOT INCORPORATED OR FORMED IN NEW YORK STATE, PLEASE PROVIDE A COPY OF AUTHORIZATION TO DO BUSINESS IN NEW YORK STATE FILED WITH THE NEW YORK STATE DEPARTMENT OF STATE (DOS). Note; if your firm is currently applying for authorization to do business in New York State please provide a copy of a letter from DOS indicating your application is in process.**

**11. LIST 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:**

- a) \_\_\_\_\_
- b) \_\_\_\_\_
- c) \_\_\_\_\_
- d) \_\_\_\_\_
- e) \_\_\_\_\_
- f) \_\_\_\_\_
- g) \_\_\_\_\_
- h) \_\_\_\_\_

**12. AUTHORIZED CONTACT FOR THE PROPOSED CONTRACT:**

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Telephone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_

E-mail: \_\_\_\_\_

**STATE OF NEW YORK**  
**Council of Contracting Agencies**  
**Standard Vendor Responsibility Questionnaire**

VENDOR FEIN: \_\_\_\_\_

**13. 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 QUESTIONS 1-3 ABOVE?**

Yes  No

If yes, 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 piece of paper and attach to this response.

**14. 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<sup>1</sup> 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 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

<sup>1</sup>"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.

**STATE OF NEW YORK**  
**Council of Contracting Agencies**  
**Standard Vendor Responsibility Questionnaire**

VENDOR FEIN: \_\_\_\_\_

- (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 New York State Department of Environmental Conservation, or a federal, state or local government enforcement determination involving a violation of federal, state or local laws?  Yes  No
- (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, notice, violation order, pending administrative hearing or proceeding or determination for violations of:  
 - federal, state or local health laws, rules or regulations  
 - unemployment insurance or workers' compensation coverage or claim requirements  
 - ERISA (Employee Retirement Income Security Act)  
 - federal, state or local human rights laws  
 - federal INS (Immigration and Naturalization Service) and Alienage laws  
 - Sherman Act or other federal anti-trust laws  Yes  No  
 Yes  No  
 Yes  No  
 Yes  No  
 Yes  No  
 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?  Yes  No
- (s) a finding of non-responsibility by an agency or authority due to the intentional provision of false or incomplete information as required by Executive Order 127?  Yes  No

**FOR EACH YES ANSWER TO QUESTIONS 14 a-s, PROVIDE DETAILS ON ADDITIONAL SHEETS REGARDING THE FINDING, INCLUDING BUT NOT LIMITED TO CAUSE, CURRENT STATUS, RESOLUTION, ETC.**

STATE OF NEW YORK  
Council of Contracting Agencies  
Standard Vendor Responsibility Questionnaire

VENDOR FEIN: \_\_\_\_\_

15. DURING THE PAST THREE YEARS, HAS THE VENDOR FAILED TO:

- (a) FILE RETURNS OR PAY ANY APPLICABLE FEDERAL, STATE OR  
LOCAL GOVERNMENT TAXES?

Yes  No

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:

(b) FILE RETURNS OR PAY NEW YORK STATE UNEMPLOYMENT INSURANCE?  Yes  No

If yes, indicate the years the company failed to file/pay the insurance and the current status of the liability:

16. HAVE ANY BANKRUPTCY PROCEEDINGS BEEN INITIATED BY OR AGAINST THE  
VENDOR OR ITS AFFILIATES WITHIN THE PAST SEVEN 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?  Yes  No

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: \_\_\_\_\_

17. DOES VENDOR HAVE THE FINANCIAL RESOURCES NECESSARY TO  
FULFILL THE REQUIREMENTS OF THE PROPOSED CONTRACT?

Yes  No

STATE OF NEW YORK  
Council of Contracting Agencies  
Standard Vendor Responsibility Questionnaire

VENDOR FEIN: \_\_\_\_\_

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 the Hugh L. Carey Battery Park City Authority that the information given above is true, accurate and complete. It is further acknowledged that the Hugh L. Carey Battery Park City Authority 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 the Hugh L. Carey Battery Park City Authority 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 the intentional submission of false or misleading information may constitute a felony under Penal Law Section 210.35 or Section 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 contract termination.

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Name of Business

---

Signature of Officer

---

Address

---

Typed Copy of Signature

---

City, State, Zip

---

Title

Sworn before me this \_\_\_\_\_  
day of \_\_\_\_\_, 20\_\_\_\_\_.  
  

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Notary Public  
Registration No. \_\_\_\_\_  
State of: \_\_\_\_\_

## STANDARD VENDOR RESPONSIBILITY PROFILE

**Part I. - Complete for all contract transactions**

1. Contract Name or Purchase Order Number
2. Vendor Name:
3. Vendor Federal Employer Identification Number:
4. Contract Amount: \$
5. Description of Contract:
6. Responsibility Determination – The contracting agency has reviewed the proposed contractor and made the following determination regarding the proposed contractor's responsibility:
  - Responsible
  - The proposed contractor meets the appropriate standards.
  - Responsibility issues identified have been addressed by remedial actions of the vendor to the satisfaction of the contracting agency. [1]
  - Responsibility issues identified have been addressed by a formal agreement with the vendor to the satisfaction of the contracting agency. [1]
  - Non-Responsible - The proposed contractor was found non-responsible. [1]

*[1] Attach and list in item 12 below additional documentation, if needed.*

7. Did the contracting agency require vendor disclosure in each of the following areas?

Legal Authorization  Integrity  Financial & Organizational Capacity  Performance

8. What methods were used to obtain these disclosures and any other information used in making the responsibility determination?

Standard Vendor Responsibility Questionnaire.  
 Statement of Qualifications

9. Identify any vendor responsibility issues found:

No issues known or found.  
 Issues found. Describe on separate sheet.

10. Attachments

Completed Vendor Questionnaire (required if one was used in the procurement)  
 Other (list)

The Hugh L. Carey Battery Park City Authority has undertaken an affirmative review of the proposed contractor's responsibility and based upon such review, is proceeding with the contract award to this contractor.

Signature: \_\_\_\_\_  
Date: \_\_\_\_\_  
Printed Name of Signor: \_\_\_\_\_  
Title: \_\_\_\_\_  
Phone Number: \_\_\_\_\_  
E-Mail Address: \_\_\_\_\_

## Vendor Responsibility Checklist

Contract Name: \_\_\_\_\_ Bid Date: \_\_\_\_\_

Vendor Name: \_\_\_\_\_

Reviewer(s): \_\_\_\_\_

Review start date: \_\_\_\_\_ End date: \_\_\_\_\_ Contract amount: \_\_\_\_\_

1. Vendor's principal place of business is located in: Alaska, Hawaii, Louisiana, South Carolina, West Virginia or Wyoming  Yes  No
2. Did Vendor answer all questions on the Standard Vendor Responsibility Questionnaire?  Yes  No
3. Did Vendor answer YES to any question listed under Question 14 on the Standard Vendor Responsibility Questionnaire?  
a. If Yes, was additional information obtained to determine responsibility of the Vendor?  Yes  No
4. Checked Department of Labor list of willful violators on Contracts requiring Prevailing Wage Rates be paid and confirmed the Vendor is not debarred?  
Web link for DOL Debarred list - <http://www.labor.state.ny.us/pdf/debarred.pdf>  Yes  No
5. Checked Department of State Corporations Website to confirm registration for any Vendor that is a Corporation, Limited Partnership or Limited Liability Company?  
[http://appsext5.dos.state.ny.us/corp/public/enter\\_search](http://appsext5.dos.state.ny.us/corp/public/enter_search)  Yes  No
6. A response in the Standard Vendor Responsibility Questionnaire indicates further investigation through Internet searches is necessary?  
a. If Yes, was an Internet search conducted to determine responsibility of the vendor?  Yes  No  
 Yes  No
7. Checked U.S. Government list of excluded parties to confirm that vendor is not debarred from federal procurement and non-procurement programs? <http://epis.gov/>  Yes  No

### **REMARKS:**

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- THIS VENDOR APPEARS TO BE RESPONSIBLE  
 THIS VENDOR DOES NOT APPEAR TO BE RESPONSIBLE  
(DETAILS ON ACCOMPANYING SHEET)

## 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 \_\_\_\_\_ to \_\_\_\_\_ 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: \_\_\_\_\_ Fax Number: \_\_\_\_\_  
E-mail: \_\_\_\_\_

Signature

Print Name

Title

Sworn before me this \_\_\_\_\_ day  
of \_\_\_\_\_, 20\_\_\_\_\_.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Notary Public  
Registration No. \_\_\_\_\_  
State of: \_\_\_\_\_

**W-9**

Form  
(Rev. October 2007)  
Department of the Treasury  
Internal Revenue Service

## Request for Taxpayer Identification Number and Certification

Give form to the requester. Do not send to the IRS.

**Print or type**  
**See Specific Instructions on page 2.**

Name (as shown on your income tax return)

Business name, if different from above

Check appropriate box:  Individual/Sole proprietor     Corporation     Partnership  
 Limited liability company. Enter the tax classification (D=disregarded entity, C=corporation, P=partnership) ► \_\_\_\_\_  
 Other (see instructions) ► \_\_\_\_\_

Exempt payee

Address (number, street, and apt. or suite no.)

Requester's name and address (optional)

City, state, and ZIP code

List account number(s) here (optional)

### **Part I Taxpayer Identification Number (TIN)**

Enter your TIN in the appropriate box. The TIN provided must match the name given on Line 1 to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

**Note.** If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

**Social security number**

or

**Employer identification number**

### **Certification**

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
3. I am a U.S. citizen or other U.S. person (defined below).

**Certification instructions.** You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the Certification, but you must provide your correct TIN. See the instructions on page 4.

**Sign Here**

Signature of  
U.S. person ►

Date ►

### **General Instructions**

Section references are to the Internal Revenue Code unless otherwise noted.

### **Purpose of Form**

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.

**Note.** If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

**Definition of a U.S. person.** For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,
- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations section 301.7701-7).

**Special rules for partnerships.** Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.

The person who gives Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States is in the following cases:

- The U.S. owner of a disregarded entity and not the entity,

- The U.S. grantor or other owner of a grantor trust and not the trust, and
- The U.S. trust (other than a grantor trust) and not the beneficiaries of the trust.

**Foreign person.** If you are a foreign person, do not use Form W-9. Instead, use the appropriate Form W-8 (see Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities).

**Nonresident alien who becomes a resident alien.** Generally, only a nonresident alien individual may use the terms of a tax treaty to reduce or eliminate U.S. tax on certain types of income. However, most tax treaties contain a provision known as a "saving clause." Exceptions specified in the saving clause may permit an exemption from tax to continue for certain types of income even after the payee has otherwise become a U.S. resident alien for tax purposes.

If you are a U.S. resident alien who is relying on an exception contained in the saving clause of a tax treaty to claim an exemption from U.S. tax on certain types of income, you must attach a statement to Form W-9 that specifies the following five items:

1. The treaty country. Generally, this must be the same treaty under which you claimed exemption from tax as a nonresident alien.
2. The treaty article addressing the income.
3. The article number (or location) in the tax treaty that contains the saving clause and its exceptions.
4. The type and amount of income that qualifies for the exemption from tax.
5. Sufficient facts to justify the exemption from tax under the terms of the treaty article.

**Example.** Article 20 of the U.S.-China income tax treaty allows an exemption from tax for scholarship income received by a Chinese student temporarily present in the United States. Under U.S. law, this student will become a resident alien for tax purposes if his or her stay in the United States exceeds 5 calendar years. However, paragraph 2 of the first Protocol to the U.S.-China treaty (dated April 30, 1984) allows the provisions of Article 20 to continue to apply even after the Chinese student becomes a resident alien of the United States. A Chinese student who qualifies for this exception (under paragraph 2 of the first protocol) and is relying on this exception to claim an exemption from tax on his or her scholarship or fellowship income would attach to Form W-9 a statement that includes the information described above to support that exemption.

If you are a nonresident alien or a foreign entity not subject to backup withholding, give the requester the appropriate completed Form W-8.

**What is backup withholding?** Persons making certain payments to you must under certain conditions withhold and pay to the IRS 28% of such payments. This is called "backup withholding." Payments that may be subject to backup withholding include interest, tax-exempt interest, dividends, broker and barter exchange transactions, rents, royalties, nonemployee pay, and certain payments from fishing boat operators. Real estate transactions are not subject to backup withholding.

You will not be subject to backup withholding on payments you receive if you give the requester your correct TIN, make the proper certifications, and report all your taxable interest and dividends on your tax return.

#### **Payments you receive will be subject to backup withholding if:**

1. You do not furnish your TIN to the requester.
2. You do not certify your TIN when required (see the Part II instructions on page 3 for details).
3. The IRS tells the requester that you furnished an incorrect TIN,

4. The IRS tells you that you are subject to backup withholding because you did not report all your interest and dividends on your tax return (for reportable interest and dividends only), or

5. You do not certify to the requester that you are not subject to backup withholding under 4 above (for reportable interest and dividend accounts opened after 1983 only).

Certain payees and payments are exempt from backup withholding. See the instructions below and the separate instructions for the Requester of Form W-9.

Also see *Special rules for partnerships* on page 1.

## **Penalties**

**Failure to furnish TIN.** If you fail to furnish your correct TIN to a requester, you are subject to a penalty of \$50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.

**Civil penalty for false information with respect to withholding.** If you make a false statement with no reasonable basis that results in no backup withholding, you are subject to a \$500 penalty.

**Criminal penalty for falsifying information.** Willfully falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment.

**Misuse of TINs.** If the requester discloses or uses TINs in violation of federal law, the requester may be subject to civil and criminal penalties.

## **Specific Instructions**

### **Name**

If you are an individual, you must generally enter the name shown on your income tax return. However, if you have changed your last name, for instance, due to marriage without informing the Social Security Administration of the name change, enter your first name, the last name shown on your social security card, and your new last name.

If the account is in joint names, list first, and then circle, the name of the person or entity whose number you entered in Part I of the form.

**Sole proprietor.** Enter your individual name as shown on your income tax return on the "Name" line. You may enter your business, trade, or "doing business as (DBA)" name on the "Business name" line.

**Limited liability company (LLC).** Check the "Limited liability company" box only and enter the appropriate code for the tax classification ("D" for disregarded entity, "C" for corporation, "P" for partnership) in the space provided.

For a single-member LLC (including a foreign LLC with a domestic owner) that is disregarded as an entity separate from its owner under Regulations section 301.7701-3, enter the owner's name on the "Name" line. Enter the LLC's name on the "Business name" line.

For an LLC classified as a partnership or a corporation, enter the LLC's name on the "Name" line and any business, trade, or DBA name on the "Business name" line.

**Other entities.** Enter your business name as shown on required federal tax documents on the "Name" line. This name should match the name shown on the charter or other legal document creating the entity. You may enter any business, trade, or DBA name on the "Business name" line.

**Note.** You are requested to check the appropriate box for your status (individual/sole proprietor, corporation, etc.).

### **Exempt Payee**

If you are exempt from backup withholding, enter your name as described above and check the appropriate box for your status, then check the "Exempt payee" box in the line following the business name, sign and date the form.

Generally, individuals (including sole proprietors) are not exempt from backup withholding. Corporations are exempt from backup withholding for certain payments, such as interest and dividends.

**Note.** If you are exempt from backup withholding, you should still complete this form to avoid possible erroneous backup withholding.

The following payees are exempt from backup withholding:

1. An organization exempt from tax under section 501(a), any IRA, or a custodial account under section 403(b)(7) if the account satisfies the requirements of section 401(f)(2).

2. The United States or any of its agencies or instrumentalities,

3. A state, the District of Columbia, a possession of the United States, or any of their political subdivisions or instrumentalities,

4. A foreign government or any of its political subdivisions, agencies, or instrumentalities, or

5. An international organization or any of its agencies or instrumentalities.

Other payees that may be exempt from backup withholding include:

6. A corporation,

7. A foreign central bank of issue,

8. A dealer in securities or commodities required to register in the United States, the District of Columbia, or a possession of the United States,

9. A futures commission merchant registered with the Commodity Futures Trading Commission,

10. A real estate investment trust,

11. An entity registered at all times during the tax year under the Investment Company Act of 1940,

12. A common trust fund operated by a bank under section 584(a),

13. A financial institution,

14. A middleman known in the investment community as a nominee or custodian, or

15. A trust exempt from tax under section 664 or described in section 4947.

The chart below shows types of payments that may be exempt from backup withholding. The chart applies to the exempt payees listed above, 1 through 15.

IF the payment is for ...	THEN the payment is exempt for ...
Interest and dividend payments	All exempt payees except for 9
Broker transactions	Exempt payees 1 through 13. Also, a person registered under the Investment Advisers Act of 1940 who regularly acts as a broker
Barter exchange transactions and patronage dividends	Exempt payees 1 through 5
Payments over \$600 required to be reported and direct sales over \$5,000 <sup>1</sup>	Generally, exempt payees 1 through 7 <sup>2</sup>

<sup>1</sup>See Form 1099-MISC, Miscellaneous Income, and its instructions.

<sup>2</sup>However, the following payments made to a corporation (including gross proceeds paid to an attorney under section 6045(f), even if the attorney is a corporation) and reportable on Form 1099-MISC are not exempt from backup withholding: medical and health care payments, attorneys' fees, and payments for services paid by a federal executive agency.

## Part I. Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. If you are a resident alien and you do not have and are not eligible to get an SSN, your TIN is your IRS individual taxpayer identification number (ITIN). Enter it in the social security number box. If you do not have an ITIN, see *How to get a TIN* below.

If you are a sole proprietor and you have an EIN, you may enter either your SSN or EIN. However, the IRS prefers that you use your SSN.

If you are a single-member LLC that is disregarded as an entity separate from its owner (see *Limited liability company (LLC)* on page 2), enter the owner's SSN (or EIN, if the owner has one). Do not enter the disregarded entity's EIN. If the LLC is classified as a corporation or partnership, enter the entity's EIN.

**Note.** See the chart on page 4 for further clarification of name and TIN combinations.

**How to get a TIN.** If you do not have a TIN, apply for one immediately. To apply for an SSN, get Form SS-5, Application for a Social Security Card, from your local Social Security Administration office or get this form online at [www.ssa.gov](http://www.ssa.gov). You may also get this form by calling 1-800-772-1213. Use Form W-7, Application for IRS Individual Taxpayer Identification Number, to apply for an ITIN, or Form SS-4, Application for Employer Identification Number, to apply for an EIN. You can apply for an EIN online by accessing the IRS website at [www.irs.gov/businesses](http://www.irs.gov/businesses) and clicking on Employer Identification Number (EIN) under Starting a Business. You can get Forms W-7 and SS-4 from the IRS by visiting [www.irs.gov](http://www.irs.gov) or by calling 1-800-TAX-FORM (1-800-829-3676).

If you are asked to complete Form W-9 but do not have a TIN, write "Applied For" in the space for the TIN, sign and date the form, and give it to the requester. For interest and dividend payments, and certain payments made with respect to readily tradable instruments, generally you will have 60 days to get a TIN and give it to the requester before you are subject to backup withholding on payments. The 60-day rule does not apply to other types of payments. You will be subject to backup withholding on all such payments until you provide your TIN to the requester.

**Note.** Entering "Applied For" means that you have already applied for a TIN or that you intend to apply for one soon.

**Caution:** A disregarded domestic entity that has a foreign owner must use the appropriate Form W-8.

## Part II. Certification

To establish to the withholding agent that you are a U.S. person, or resident alien, sign Form W-9. You may be requested to sign by the withholding agent even if items 1, 4, and 5 below indicate otherwise.

For a joint account, only the person whose TIN is shown in Part I should sign (when required). Exempt payees, see *Exempt Payee* on page 2.

**Signature requirements.** Complete the certification as indicated in 1 through 5 below.

**1. Interest, dividend, and barter exchange accounts opened before 1984 and broker accounts considered active during 1983.** You must give your correct TIN, but you do not have to sign the certification.

**2. Interest, dividend, broker, and barter exchange accounts opened after 1983 and broker accounts considered inactive during 1983.** You must sign the certification or backup withholding will apply. If you are subject to backup withholding and you are merely providing your correct TIN to the requester, you must cross out item 2 in the certification before signing the form.

**3. Real estate transactions.** You must sign the certification. You may cross out item 2 of the certification.

**4. Other payments.** You must give your correct TIN, but you do not have to sign the certification unless you have been notified that you have previously given an incorrect TIN. "Other payments" include payments made in the course of the requester's trade or business for rents, royalties, goods (other than bills for merchandise), medical and health care services (including payments to corporations), payments to a nonemployee for services, payments to certain fishing boat crew members and fishermen, and gross proceeds paid to attorneys (including payments to corporations).

**5. Mortgage interest paid by you, acquisition or abandonment of secured property, cancellation of debt, qualified tuition program payments (under section 529), IRA, Coverdell ESA, Archer MSA or HSA contributions or distributions, and pension distributions.** You must give your correct TIN, but you do not have to sign the certification.

### What Name and Number To Give the Requester

For this type of account:	Give name and SSN of:
1. Individual	The individual
2. Two or more individuals (joint account)	The actual owner of the account or, if combined funds, the first individual on the account <sup>1</sup>
3. Custodian account of a minor (Uniform Gift to Minors Act)	The minor <sup>2</sup>
4. a. The usual revocable savings trust (grantor is also trustee) b. So-called trust account that is not a legal or valid trust under state law	The grantor-trustee <sup>3</sup>
5. Sole proprietorship or disregarded entity owned by an individual	The actual owner <sup>3</sup>
For this type of account:	Give name and EIN of:
6. Disregarded entity not owned by an individual	The owner
7. A valid trust, estate, or pension trust	Legal entity <sup>4</sup>
8. Corporate or LLC electing corporate status on Form 8832	The corporation
9. Association, club, religious, charitable, educational, or other tax-exempt organization	The organization
10. Partnership or multi-member LLC	The partnership
11. A broker or registered nominee	The broker or nominee
12. Account with the Department of Agriculture in the name of a public entity (such as a state or local government, school district, or prison) that receives agricultural program payments	The public entity

<sup>1</sup> List first and circle the name of the person whose number you furnish. If only one person on a joint account has an SSN, that person's number must be furnished.

<sup>2</sup> Circle the minor's name and furnish the minor's SSN.

<sup>3</sup> You must show your individual name and you may also enter your business or "DBA" name on the second name line. You may use either your SSN or EIN (if you have one), but the IRS encourages you to use your SSN.

<sup>4</sup> List first and circle the name of the trust, estate, or pension trust. (Do not furnish the TIN of the personal representative or trustee unless the legal entity itself is not designated in the account title.) Also see Special rules for partnerships on page 1.

**Note.** If no name is circled when more than one name is listed, the number will be considered to be that of the first name listed.

### Privacy Act Notice

Section 6109 of the Internal Revenue Code requires you to provide your correct TIN to persons who must file information returns with the IRS to report interest, dividends, and certain other income paid to you, mortgage interest you paid, the acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA, or Archer MSA or HSA. The IRS uses the numbers for identification purposes and to help verify the accuracy of your tax return. The IRS may also provide this information to the Department of Justice for civil and criminal litigation, and to cities, states, the District of Columbia, and U.S. possessions to carry out their tax laws. We may also disclose this information to other countries under a tax treaty, to federal and state agencies to enforce federal nontax criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism.

You must provide your TIN whether or not you are required to file a tax return. Payers must generally withhold 28% of taxable interest, dividend, and certain other payments to a payee who does not give a TIN to a payer. Certain penalties may also apply.

### Secure Your Tax Records from Identity Theft

Identity theft occurs when someone uses your personal information such as your name, social security number (SSN), or other identifying information, without your permission, to commit fraud or other crimes. An identity thief may use your SSN to get a job or may file a tax return using your SSN to receive a refund.

To reduce your risk:

- Protect your SSN,
- Ensure your employer is protecting your SSN, and
- Be careful when choosing a tax preparer.

Call the IRS at 1-800-829-1040 if you think your identity has been used inappropriately for tax purposes.

Victims of identity theft who are experiencing economic harm or a system problem, or are seeking help in resolving tax problems that have not been resolved through normal channels, may be eligible for Taxpayer Advocate Service (TAS) assistance. You can reach TAS by calling the TAS toll-free case intake line at 1-877-777-4778 or TTY/TDD 1-800-829-4059.

#### Protect yourself from suspicious emails or phishing schemes.

Phishing is the creation and use of email and websites designed to mimic legitimate business emails and websites. The most common act is sending an email to a user falsely claiming to be an established legitimate enterprise in an attempt to scam the user into surrendering private information that will be used for identity theft.

The IRS does not initiate contacts with taxpayers via emails. Also, the IRS does not request personal detailed information through email or ask taxpayers for the PIN numbers, passwords, or similar secret access information for their credit card, bank, or other financial accounts.

If you receive an unsolicited email claiming to be from the IRS, forward this message to [phishing@irs.gov](mailto:phishing@irs.gov). You may also report misuse of the IRS name, logo, or other IRS personal property to the Treasury Inspector General for Tax Administration at 1-800-366-4484. You can forward suspicious emails to the Federal Trade Commission at: [spam@uce.gov](mailto:spam@uce.gov) or contact them at [www.consumer.gov/idtheft](http://www.consumer.gov/idtheft) or 1-877-IDTHEFT(438-4338).

Visit the IRS website at [www.irs.gov](http://www.irs.gov) to learn more about identity theft and how to reduce your risk.

APPENDIX X:  
CONSTRUCTION DRAWINGS  
AND  
SPECIFICATIONS

**Battery Park City Authority  
Pier A**

*Please refer to the indexes on all FTP uploaded  
drawings and specifications.*

***Proposals to be based on drawings  
and specifications dated June 3,  
2010.***