

- (b) FCRC shall employ the following measures in the construction of the Project:
- (i) Using equipment that meets the sound level standards specified in the Noise Code;
  - (ii) Using construction equipment that meets the noise emission levels specified in Table 17c-3 of the FEIS, "Construction Equipment Noise Emission Levels," where such levels are more stringent than those imposed by the Noise Code;
  - (iii) Scheduling work that would generate high noise levels during weekday daytime hours to extent feasible, rather than during weekday nighttime or weekend hours, unless required as a result of safety or other agency requirements;
  - (iv) To the extent feasible, scheduling equipment and material deliveries during weekday daytime hours, rather than during weekday nighttime or weekend hours;
  - (v) As early as practicable in the construction period and wherever feasible, using electrical-powered equipment, such as electric scissor lifts and electric articulating boom lifts, rather than diesel-powered equipment for construction activities;
  - (vi) Situating noisier equipment, such as generators, cranes, tractor trailers, concrete pumps, concrete trucks and dump trucks at locations that are removed from sensitive receptor locations and are shielded from sensitive receptor locations wherever feasible. For example, during the early construction phases of the Project, delivery trucks and dump trucks are to be located approximately 20 feet below grade to take advantage of the shielding benefits of grade differences. Once building foundations are completed, delivery trucks are to be located adjacent to noisy streets (i.e., Atlantic Avenue, Flatbush Avenue and 6<sup>th</sup> Avenue) rather than at quieter streets, such as Dean Street and Pacific Street, where there are residences;
  - (vii) A minimum 8 foot perimeter barrier (constructed of 3/4" thick plywood), with a 16 foot barrier (of 3/4" thick plywood) adjacent to sensitive locations, including locations along Pacific Street, Dean Street, and Flatbush Avenue opposite residences and the Brooklyn Bear's Pacific Street Community Garden, and, where practicable, truck deliveries shall take place behind these barriers. Noisy delivery trucks, such as concrete trucks, are to be operated behind the barriers;
  - (viii) Where practicable, use of quiet construction procedures;
  - (ix) Requiring all contractors and subcontractors to properly maintain their equipment and have quality mufflers installed; and

- (x) Where practicable, noise curtains and equipment enclosures shall be utilized to provide shielding from significant noise-generating equipment to sensitive receptor locations.
- (c) FCRC shall make available double-glazed or storm windows and alternative ventilation (e.g., air conditioning) for those residential locations where the FEIS identified significant noise impacts and such windows and air conditioning are not currently installed, subject to the consent of the owners and tenants of such residences, and subject to applicable laws, rules and regulations. All such windows and alternative ventilation shall be provided without charge and with free installation.
- (d) As described in the FEIS, and subject to the consent of the respective property owners, FCRC shall make available and install, free of charge (i) interior-fitted storm windows (or suitable alternative windows) for the Pacific Street side of the Pacific Branch of the Brooklyn Public Library and (ii) storm windows for the second floor of the Temple of Restoration windows facing Dean Street (if such windows do not already have storm windows).
- (e) FCRC shall work with the Parks Department to supplement its planned improvements to the Dean Playground with a comfort station open to the general public.
- (f) Noise mitigation measures shall be implemented – where such measures have been accepted by building owners and their tenants – in a timely manner so as to avoid the significant adverse noise impacts identified in the FEIS where practicable.

#### 4. Air Quality

- (a) FCRC shall require its contractors to implement dust suppression measures, including the following:
  - (i) Limiting on-site speed to five miles per hour. Signage of the 5-mile per hour limit shall be posted at all site entrances and along routes within the sites.
  - (ii) Using sleeves and wetting during demolition activities, and wetting equipment. All demolition activities, including but not limited to building, roadway, and pavement demolition, shall utilize dust suppression. All drop transfer operations shall be via closed sleeves and into sealed bins. Sleeves shall have no openings other than the loading chute. During all breaking up of material such as concrete, an employee shall be assigned to wet the surface while the activity is taking place.
  - (iii) Watering unpaved surfaces, including haul roads and excavation faces. All unpaved haul roads and excavation surfaces shall be continuously watered by watering trucks or constant misting, so that surfaces remain damp at all times when in use during

construction. Gravel cover shall be applied to unpaved surfaces which are regularly traveled.

- (iv) Covering or water-misting of stockpiled materials. All stockpiled dry materials (e.g., sand, aggregate) shall be water-misted; sprayed with non-hazardous, biodegradable suppressing agent; covered; or otherwise enclosed.
  - (v) Loading of any dry material which may release dust from trucks shall be accompanied by manual water spraying of the material.
  - (vi) Covering all trucks carrying loose material such as debris, excavate or fill, and verifying that covers on all such trucks have been properly sealed. Outgoing trucks shall be inspected at the gate, and not allowed to exit if covers are not properly sealed.
  - (vii) Washing the wheels of all trucks as they exit from the site. A washing station shall be constructed at each truck exit, whereby truck wheels shall be washed, and the water shall be contained and recycled to avoid tracking mud out of the site.
- (b) FCRC shall implement a diesel emissions reduction program, which shall include minimizing the use of diesel engines and maximizing the use of electric engines in lieu of diesel. In particular, FCRC shall:
- (i) ensure sufficient grid power is available to each site as early as practicable and commission permanent grid power service for Buildings 2 and 3 prior to the peak period of construction (currently scheduled for the third quarter of 2007);
  - (ii) ensure the distribution of power throughout the Project at all locations where electric engines are to be used, in order to avoid the use of portable or stationary generators where practicable;
  - (iii) use only electric engines where practicable (e.g., welders, compressors, electric saws, forklifts, etc.);
  - (iv) ensure that all contractors plug into the grid where available and do not use portable generators (diesel or gasoline, small or large); and
  - (v) ensure that generators will not be used for tasks where grid power is available, and that diesel engines will not be used for tasks that can be performed with electric engines.
- (c) FCRC shall require its contractors to limit all unnecessary idling of vehicles and non-road engines, ensure that engines are shut off when not in use, and enforce idling limits on queueing trucks.
- (d) FCRC shall require the use of ultra-low sulfur diesel ("ULSD") fuel (i.e., fuel having less than 15 parts per million (15 ppm) sulfur content) for all equipment having diesel engines.

- (e) FCRC shall employ best available tailpipe emissions reduction technologies, including utilization of diesel particulate filters ("DPF") (or, subject to ESDC approval, improved technologies verified by EPA or the California Air Resources Board to reduce particle emissions by at least 85%) on all nonroad engines of 50 hp or greater and on all concrete trucks and concrete pump trucks. All nonroad engines used for the construction work shall be inspected and labeled where practicable to confirm that DPF is installed and functioning and that the engine is to be fueled only with ULSD. FCRC shall bar any non-complying equipment from the work site or expeditiously bring into compliance any equipment found to not be in compliance. Notwithstanding the foregoing, if with respect to a specific nonroad engine of 50 hp or greater, FCRC determines that it would not be practicable to equip the engine with a DPF and that use of the engine is required for the construction to proceed, FCRC shall use a substitute particulate control technology such as a diesel oxidation catalyst instead of a DPF upon the concurrence of ESDC that the DPF is impracticable for the type of equipment needed for the construction work.
  - (f) To the extent practicable, FCRC shall require that all stationary engines be located at least 50 feet from locations such as sidewalks, residential or school windows, and building air intakes.
5. FCRC shall submit to ESDC for review and approval, not to be unreasonably withheld, a written plan to adequately and reasonably demonstrate compliance with the foregoing construction air quality measures (the "CAQM Compliance Plan") during construction. The CAQM Plan shall be submitted before intensive construction work at the project site begins and, if not approved by ESDC as submitted, there shall be a consultation between FCRC and ESDC with respect to the submission and, after such consultation, the CAQM Plan shall be revised as required to conform to reasonable ESDC revisions. Elements of the CAQM Compliance Plan shall include: (i) incorporation into construction contracts appropriate terms requiring the contractors to implement the air quality measures contemplated by the FEIS; (ii) periodic meetings between FCRC's construction manager and the relevant contractors to discuss implementation of the air quality measures; (iii) practicable documentation requirements; (iv) recordkeeping with respect to the equipment and vehicles used during construction; and (v) compliance monitoring by a field engineer (to be employed by FCRC's construction manager) whose principal responsibility would be to monitor compliance. If deemed appropriate as construction proceeds, the CAQM Compliance Plan may be revised from time-to-time with the written approval of FCRC and ESDC.
  6. FCRC shall implement a rodent control program approved by the New York City Department of Buildings.
  7. Prior to and during the course of remediation or excavation, FCRC shall implement a CHASP and, during excavation, shall implement a Community Air Monitoring Plan.

8. FCRC shall maintain an on-site construction coordinator to function as a liaison between FCRC and the community with respect to construction-related issues. The coordinator shall be available to consider specific concerns raised by the community with respect to the construction issues and seek to resolve such concerns.

O. ENFORCEMENT

1. The Project Documentation shall provide that ESDC shall have the right to enforce FCRC's compliance with the commitments set forth above.
2. ESDC shall have the right to enter the Project site at all reasonable times, subject to safety and operational constraints, to monitor FCRC's and FCRC's contractors' compliance with the terms of such commitments.
3. FCRC and FCRC's general contractor shall meet with ESDC, at ESDC's request, to discuss the compliance and implementation of the obligations and measures set forth in this memorandum.
4. During the period in which the Project buildings, or any one of them, are being constructed, FCRC shall provide funding for the reasonable costs of an environmental monitor (which shall be a qualified consulting firm with subconsultants, as appropriate) to be selected by and retained by ESDC to:  
(i) monitor FCRC's compliance with certain provisions of this memorandum; (ii) review any submittals made by FCRC pursuant to such provisions and advise ESDC with respect thereto; and (iii) provide ESDC with periodic written reports concerning FCRC's implementation of such provisions. The certain provisions referred to in the preceding sentence are paragraphs: E (with respect to protection of cultural resources near the project site from being impacted by construction on the project site); G.2 (pertaining to Hazardous Materials); I.9 (pertaining to reviewing the effectiveness of any modified design for stormwater management facilities); J.2 (pertaining to reviewing alternative fuels or boiler technologies); J.4 (pertaining to reviewing the location of HVAC intakes in the event that the design of the relevant Project buildings changes from the design subject to air dispersion modeling in the FEIS); K.6 (pertaining to decisionmaking with respect to the funding of TEAs in the event that FCRC and NYCDOT do not reach agreement on this issue); L.2 (pertaining to the adjustment of demand management measures); and N.1, N.2.d, N.2.e, N.2.f, N.3.b, N.3.c, N.3.d, N.3.f, N.4, N.5, N.6 and N.7 (pertaining to construction). The obligation set forth in this paragraph shall cease upon completion of the Phase II buildings. This memorandum shall not make FCRC responsible for the cost or time expended by any ESDC personnel or consultant otherwise hired by or in the employment of ESDC. This memorandum is without prejudice to other funding discussions that may occur between ESDC and FCRC.
5. Where ESDC review and approval is required under this memorandum, ESDC shall review, comment and make its determination on an expedited basis where practicable but in any event within twenty (20) days of the date a request for ESDC approval is made. In the event ESDC has not acted on any request within such twenty (20) day period, such request shall be deemed approved by ESDC.

**EXHIBIT M**

NON-DISCRIMINATION AND AFFIRMATIVE ACTION PROVISIONS

(see attached)

## NON-DISCRIMINATION AND AFFIRMATIVE ACTION REQUIREMENTS

### I. Policy

It is the policy of the State of New York and ESDC, to comply with all federal, State and local laws, policies, orders, rules and regulations which prohibit unlawful discrimination because of race, creed, color, national origin, sex, sexual orientation, age, disability or marital status, and to take affirmative action to ensure that Minority and Women-owned Business Enterprises (M/WBEs), Minority Group Members and women share in the economic opportunities generated by ESDC's participation in projects or initiatives, and/or the use of ESDC funds.

- 1) The Developer represents that its equal employment opportunity policy statement incorporates, at a minimum, the policies and practices set forth below:
  - (a) The Developer shall (i) not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, sexual orientation, age, disability or marital status, (ii) undertake or continue existing programs of affirmative action to insure that Minority Group Members and women are afforded equal employment opportunities without discrimination, and (iii) make and document its conscientious and active efforts to employ and utilize Minority Group Members and women in its workforce on Contracts. Such action shall be taken with reference to, but not limited to, recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff or termination, rates of pay or other forms of compensation, and selection for training or retraining, including apprenticeship and on-the-job training.
  - (b) At the request of the AAO, the Developer shall request each employment agency, labor union, or authorized representative of workers with whom it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative does not unlawfully discriminate, and that such union or representative will affirmatively cooperate in the implementation of the Developer's obligations herein.
- (2) Commencing not more than 30 days after the later of (i) execution of a Contract, or (ii) start of construction work related to that Contract, the Developer shall cause the Contracting Party to submit to the AAO a Monthly Employment Utilization Report (Schedule A-1) of the workforce actually utilized on the Contract, itemized by ethnic background, gender, and Federal Occupational Categories or other appropriate categories specified by the AAO.

The Developer shall include, or cause to be included, the provisions of clauses (1) through (2) in every Contract or purchase order that it enters into in order to fulfill its obligations under this Agreement, in such a manner that such provisions will be binding upon each and every Contracting Party with respect to any Contract or Subcontract.

### II. Goals for Minority and Women-Owned Business Enterprise Participation

- (a) The Developer is required to use its best efforts to achieve an MBE participation goal of 20% and a WBE participation goal of 10% of the total dollar value of construction work ("Hard Costs") including demolition performed in furtherance of the Atlantic Yards Land Use Improvement and Civic Project (the "Project"). Hard Costs shall exclude architectural, engineering, legal, design and other consultant costs that are typically not considered to be hard costs as well as permit fees, survey costs and inspection costs (collectively referred to as "Soft Costs"). The Developer shall make a good faith effort to retain MBE's and WBE's for work that constitute Soft Costs.
- (b) The goal for M/WBE participation in the performance of the work is expressed as a percentage of the aggregate Contract price.

- (c) The total dollar value of the work performed by M/WBEs will be determined as: (i) the dollar value of the work subcontracted to M/WBEs; (ii) where the Contracting Party is a joint venture, association, partnership or other similar entity including one or more M/WBEs -- the contract price multiplied by the percentage of the entity's profits/losses which are to accrue to the M/WBE(s) under the Contracting Party's agreement; or (iii) where the M/WBE is the Contracting Party -- the contract price.
- (d) The Developer shall include, or cause to be included, the provisions of clauses (a) through (c) in every Contract or purchase order that it enters into in order to fulfill its obligations under this Agreement, in such a manner that such provisions will be binding upon each and every Contracting Party with respect to any Contract or Subcontract.

### III. Goals for Minority and Female Workforce Participation

- (a) Developer is required to use its best efforts to achieve the overall goal of 35% minority and 10% female workforce (M/FWF) participation in the work performed in furtherance of the construction of the Project, including demolition.
- (b) The M/FWF participation goals are expressed as a percentage equal to the person hours of training and employment of minority or female workers, as the case may be, used by any Contracting Party, divided by the total person hours of training and employment of all workers (including supervisory personnel).
- (c) The required participation for minority and female employment and training must be substantially uniform throughout the work.
- (d) The Developer shall not participate in, nor allow, the transfer of minority or female employees or trainees from employer-to-employer or from project-to-project for the sole purpose of meeting the obligations herein.
- (e) In striving to achieve the goals for M/FWF participation, Developer shall use its best efforts to identify and employ qualified minority and female supervisory personnel and journey persons.
- (f) The non-working hours of trainees or apprentices may not be considered in meeting the goals for M/FWF participation contained herein unless: (i) such trainees or apprentices are employed by Contracting Party during the training period; (ii) the Contracting Party has made a commitment to employ the trainees or apprentices at the completion of their training, subject to the availability of employment opportunities; and (iii) the trainees are trained pursuant to an approved training program.
- (g) The Developer shall include, or cause to be included, the provisions of clauses (a) through (f) in every Contract or purchase order that it enters into in order to fulfill its obligations under the Contract, in such a manner that such provisions will be binding upon each and every Contracting Party with respect to any Contract or Subcontract.

### IV. Reporting Requirements

The Developer will permit access to its relevant books, records and accounts, and require access to the relevant books, records and accounts of each Contracting Party, with respect to this Agreement, by the AAO solely for purposes of investigation to ascertain compliance with the provisions herein. The Developer shall periodically file, or cause to be filed, reports, substantially in the format attached hereto as Schedule A-1 and A-2 (MBE/WBE Compliance Report to be filed monthly), with the AAO detailing compliance with the provisions of these non-discrimination and affirmative action clauses. Accuracy of the information contained in the reporting documentation shall be certified, to the best of his or her knowledge, by an appropriate owner or officer of the Contracting Party.

## V. Non-Compliance and Sanctions

In the event that the Developer or a Contracting Party violates any of the provisions herein, ESDC may require that the following sanctions and remedies for non-compliance be imposed:

- (a) Within twenty (20) days after the end of each calendar month, the AAO will review the Monthly Employment Utilization Report and the MBE/WBE Compliance Report filed with the AAO to assess compliance with the established program. If the Contracting Party has failed to file the required monthly reports and/or if in the reasonable judgment of the AAO, an analysis of the reports reveals apparent underutilization as a result of a failure to use best efforts, the AAO may notify the Developer and Contracting Party in writing (the "First Notice"), which notice shall describe the nature and extent of the apparent failure to use best efforts.
- (b) If the AAO's review and analysis of the Contracting Party's reports filed in the month next following the month in which the Contracting Party received the First Notice reveals that there continues to be apparent underutilization as a failure to use best efforts, then the AAO may notify the Contracting Party and Developer in writing (the "Second Notice") which notice shall describe the nature and extent of the continuing failure to use best efforts and will arrange a conference (on ten business days advance notice) which the Contracting Party and Developer must attend, at which the AAO will identify in consultation with the Developer, specific reasonable and practicable corrective measures from among those available to demonstrate best efforts which the Contracting Party will undertake.
- (c) If the AAO's review and analysis of the Contracting Party's reports filed in the month next following the month in which the Contracting Party received the Second Notice reveals continuing apparent underutilization as a result of a failure to use best efforts and if the Contracting Party has not already undertaken the specific corrective measures agreed upon to demonstrate its best efforts, the AAO may notify the Contracting Party and Developer in writing (the "Final Notice"), which notice shall describe the nature and extent of the continuing failure to use best efforts. Upon receipt of the Final Notice, the Contracting Party and Developer shall be required to comply with the following sanctions and remedies for compliance:
  - (1) The Contracting Party and Developer shall attend a hearing with the AAO.
  - (2) After any such hearing, and a determination by the AAO that the Contracting Party has failed to comply with any of these provisions (i.e. use best efforts to comply with the provisions herein), and the passage of time in which to remedy such failure has transpired, then ESDC, in its sole discretion, with notice to the Developer, may declare an Event of Default. .