BATTERY PARK CITY PARKS CONSERVANCY CORPORATION
Meeting of the Directors
One World Financial Center – 24th Floor
New York, NY 10281
January 31, 2011

Directors Present
William C. Thompson, Jr., Chairman
Frank J. Branchini, Director
Fernando A. Mateo, Director
Robert J. Mueller, Director
Andy K. Shenoy, Director

Conservancy Staff in Attendance: Gayle M. Horwitz, Vice President
Tessa Huxley, Executive Director
Betty Chin, Director of Administration & Finance
Abigail M. Ehrlich, Director of Parks Programming and Community Center
Carl D. Jaffee, Secretary
Vincent McGowan, Assistant Executive Director
Robert M. Serpico, Treasurer
Randolph Tancer, Human Resources Manager

Battery Park City Authority Staff in Attendance:
Daniel Baldwin, Senior Development Counsel
Lauren Brugess, Administrative Assistant
Megan Churnetski, Assistant General Counsel and Assistant Corporate Secretary
Gwen Dawson, Director, Strategic Planning
Sidney Druckman, Director, Special Projects
Allyson Ford, Special Counsel
Stephanie Gelb, Vice President, Planning & Design
Steven E. Harper, Vice President, Safety & Site Management
Robert Holden, Vice President, Human Resources & Administration
Carl D. Jaffee, Senior Development Counsel and Corporate Secretary
Susan Kaplan, Director, Sustainability
Wilson Kimball, Senior Vice President, Operations
Karl Koenig, Controller
Peter McCourt, Director, Planning & Design
Lisa Miller, Vice President, Internal Audit and Compliance
Stan Molinski, Director, Information Technology
Leticia Remauro, Vice President, Community Relations, Affirmative Action and Press

Others in Attendance: Terese Loeb Kreuzer, Downtown Express
Dianne Renzulli, The Battery Park City Broadsheet
Raiden Renzulli, The Battery Park City Broadsheet
David Cheikin, Brookfield Properties LLC
Lawrence Graham, Brookfield Properties LLC
Sabrina Kanner, Brookfield Properties LLC
Julie Shapiro, DNAInfo
Terese Loeb Kreuzer, Downtown Express
Warren Ruppel, Marks Paneth & Shron
Steven Faber, PFM Asset Management

The meeting of the Directors convened at 11:30 a.m.

The first item on the agenda was approval of the minutes of the October 26, 2010 meeting.

Upon a motion made by Mr. Branchini and seconded by Mr. Mateo, the following resolution was unanimously adopted:

**APPROVAL OF MINUTES OF THE OCTOBER 26, 2010 MEETING**

BE IT RESOLVED, that the minutes of the meeting of the Directors of the Conservancy held on October 26, 2010 are hereby approved.

* * *

The next item on the agenda, presented by Ms. Horwitz, was a request for approval of the Procurement Policy for Fiscal Year 2010.

The policy contains minor revisions from that approved by the Directors in 2009, she said. Upon review by the procurement working group of the Authority, any recommendations for further changes to the Conservancy policy will be presented to the Directors. Ms. Horwitz explained that the working group will be made up of both Conservancy and Authority employees.

Upon a motion made by Mr. Shenoy and seconded by Mr. Mateo, the following resolution was unanimously adopted:

**APPROVAL OF REVISED PROCUREMENT POLICY**

BE IT RESOLVED that the revised Battery Park City Parks Conservancy Procurement Policy as described above, and as detailed in the attachment hereto, hereby is approved.

* * *

There being no further business, the meeting thereupon adjourned at 11:35 a.m.

Respectfully submitted,

Carl D. Jaffee
Secretary

Attachment:
Battery Park City Parks Conservancy Procurement Policy

January 31, 2010

BATTERY PARK CITY PARKS CONSERVANCY

Guidelines Regarding the Use, Awarding,
Monitoring and Reporting of Procurement Contracts

The following guidelines (the "Guidelines") are applicable with respect to the use, awarding, monitoring and reporting of procurement contracts of the Battery Park City Parks Conservancy (the "Conservancy").

Certain statutes referenced herein (the "Pertinent Statutes") apply to state agencies, public authorities and/or other state or local governmental entities. Since the Conservancy does not fall within these categories, the Pertinent Statutes do not apply to the Conservancy. However, as a matter of best practices, the Directors of the Conservancy have determined that the Conservancy should use these Statutes as standards of performance, as if they were applicable to the Conservancy. The Guidelines reflect this determination.

Certain provisions of these Guidelines refer to participation in the Conservancy's procurement procedures by the Affirmative Action and Internal Audit Departments of its affiliate, Battery Park City Authority ("BPCA"). At the Conservancy's request, to avoid duplicative expenses, BPCA has agreed to perform these services, for the benefit of the Conservancy.

A. DEFINITIONS. As used in these Guidelines,

1) "Competitive Procurement Method" shall include:

a) solicitations, including requests for proposals, requests for information, requests for quotations and requests for qualifications;

b) the purchase of office supplies and assorted inexpensive hardware items, including but not limited to nails, screws, nuts, bolts, and irrigation couplers, having a unit cost of not more than $15.00, if the issuance of a solicitation is reasonably expected to result in no more than nominal savings, obtaining at a minimum three (3) quotations from different providers or firms;

c) procurement made pursuant to centralized contracts let by State public entities pursuant to a competitive process, including those contracts of the New York State Office of General Services;

d) procurement of goods, personal services or Conservancy program work from a Contractor where the price to be charged by the Contractor is less than that what would be charged for the same purchase made pursuant to a centralized contract let by the New York State Office of General Services; or

e) any other competitive method of procurement that is consistent with these Guidelines.

2) "Contractor" means a person or organization that enters into a Procurement Contract with the Conservancy.

3) "Personal Services Contract" means a Procurement Contract to provide a personal service of consulting, professional, or technical nature to the Conservancy for a fee, commission, or other compensation by a person or organization that is not providing the service as an officer or employee of the Conservancy, BPCA, or another state agency, in relation to the Conservancy's operation, management, and administration of its offices or personnel; acquisition, construction, management operation, maintenance, or disposition of facilities under its ownership or control; or dissemination of publications or other information. Personal services of a consulting, professional, or technical nature include, but are not limited to, legal, accounting, management consulting, planning, training, statistical, research, public relations, architectural, engineering, surveying, or other similar personal services.

4) "Procurement Contract" means a written agreement for the acquisition of goods or services of any kind, which, actually or by estimation, will total $5,000 or more. "Procurement Contract" shall not include: memberships in various industry groups, professional societies and similar cooperative associations, nor any cooperative projects or procurement activities conducted or sponsored by such organizations in which the Conservancy participates; direct purchase advertising through radio, television or print media; tuition, conferences, seminars and other comparable activities; or transportation or other travel-related expenses.

B OVERVIEW OF CONTRACTOR SELECTION PROCESS.

1) The Conservancy shall use its best efforts to secure offers from Contractors by using a Competitive Procurement Method and to select from such offers the Contractor offering the most favorable terms, weighing expected ability to perform against projected costs. To this end, the Conservancy shall:

a) solicit offers in writing from several persons or organizations known, believed, or reputed to be qualified in the area of supplying the goods, personal services, or Conservancy program work to be provided or performed, except that for office supplies such quotations may be secured by telephone or catalog and other items generally purchased in the ordinary course of business or which do not require a detailed bid or description of materials or specifications;

b) evaluate those offers received on the basis of such information as the Conservancy has received about, as may be relevant, each offerer's technical or professional qualifications, financial stability, past performance for the Conservancy, staff, equipment, and facilities availability, experience, reputation, and other factors bearing on expected capability and quality of performance, possible conflicts of interest, and contract price or fee structure; and

c) document the processes by which a Contractor is selected by making a record summarizing the nature and scope of the goods, personal services, or Conservancy program for which the work is sought, the name of each person or organization submitting, or requested to submit, a bid or proposal, the price or fee bid, and the basis for selection of the Contractor.

2) In any instance, the Directors of the Conservancy may, by resolution, waive use of the Competitive Procurement Method for selecting Contractors if they determine such waiver to be in the best interests of the Conservancy.

3) The Directors of the Conservancy, upon adoption of these Guidelines, hereby waive use of the Competitive Procurement Method for selecting Contractors in those instances when:

a) the goods, personal services, or Conservancy program work involved are expected to cost $15,000 or less;

b) for any Conservancy program work where the contract is based upon an unsolicited proposal, submitted at the sole initiative of the offerer, not duplicating work then being performed or in the project planning request stage, and involving unique, innovative, or unusual meritorious methods or ideas;

c) the President or his designee determines that:

i) the interest of the Conservancy for timely procurement of the goods, personal services, or Conservancy program work involved precludes selection of a Contractor pursuant to such procedure;

ii) even though two or more Contractors could supply the required goods, personal services or Conservancy program work, one particular Contractor has unique or exceptionally scarce qualifications or experience, specialized equipment, or facilities not readily available from other sources, or patents, copyrights, or proprietary data; or

iii) there is only one source for a required good, personal service, or Conservancy program work;

provided, that, in the instances described above, the Conservancy shall nonetheless make a record summarizing the nature and scope of the goods, personal services, or Conservancy program work involved, the name of the Contractor, the contract price or fee, and the basis for waiver and selection of the Contractor.

For purposes of annual review by the Directors of contracts which provide for a period of performance by the Contractor in excess of one year, such contracts shall be specifically identified in the report the Treasurer submits to the Directors.

Independent auditors for the Conservancy shall be retained only with the prior approval of the Directors of the Conservancy.

The Conservancy may use its Competitive Procurement Method to select multiple Contractors to provide goods, personal services, and Conservancy program work. Individual task work orders may be awarded to these Contractors on an as-needed basis.

C. SELECTION CRITERIA.

Except as specifically waived in accordance with the provisions of Section C3 of the Guidelines, Procurement Contracts shall be awarded as follows:

1) General Policy. Procurement Contracts are to be awarded on a competitive basis to the maximum extent possible, in accordance with the following general procedures:

a) Advertising.

i) Procurement Contract opportunities must be advertised in appropriate media outlets specified by the President unless the contract is exempt (*see* Section C3). A minimum of 15 business days shall be allowed between the publication of such advertisement and the due date of the bid or proposal.

ii) In order to maximize M/WBE participation, all ads shall be reviewed in advance of publication by the Affirmative Action Department of BPCA to ensure that the Conservancy is aware of all available business opportunities for M/WBE's.

b) Solicitation. Awards are to be made, where practicable, upon receipt and evaluation of proposals or bids obtained from at least three qualified persons/firms. Such proposals shall be solicited as follows:

i) Requests for Proposals: Where practicable, written Requests for Proposals ("RFPs") shall be issued by the Conservancy. RFPs shall set forth the nature of the services or goods the Conservancy is seeking to procure, including drawings and specifications where available, and shall solicit proposed prices, fees, charges or billing rates, where appropriate. RFPs shall contain such other information and shall request from proposers such other information as the Conservancy may deem necessary or desirable. Written RFPs or solicitations of bids shall be issued for all Procurement Contracts for construction work.

ii) Telephone or letter solicitation: Proposals may be solicited from Contractors by letter or telephone, where the Internal Control Officer (*see* Section E4 below) determines that the issuance of an RFP is impracticable or unnecessary, such as in emergency or sole source situations. A record must be made of telephone conversations.

iii) All proposals shall comply with the regulations of State Finance Law § 139 in order to be considered. (*See* Section K).

iv) Guidelines for Receipt and Opening of Proposals. Set forth below are guidelines for receipt and opening of proposals for goods and services. These guidelines pertain only to receipt and opening of proposals and not to the subsequent evaluation process.

(1) The RFP/advertisement shall clearly state the date, time, and place, by which proposals will be accepted. Proposals must be delivered to the Conservancy Headquarters.

(2) For the Conservancy, one person shall be the designated Staff member in-charge of the acceptance of the proposals. The Conservancy shall also have a back-up designee, who is trained in the process of proposal package acceptance.

(3) All proposals must be received at one designated location within the Conservancy, and immediately upon receipt, the envelope shall be stamped with the time and the date received.

(4) Sealed proposals shall be immediately secured when received by locking them in a cabinet or secure location.

(5) A log of when proposals are received, secured, and distributed ("Bid Log") shall be maintained at the front desk. The Bid Log shall have a stitched binding and pre-numbered pages. Comments on the condition of the envelope shall also be recorded in the Bid Log.

(6) A formal opening of proposals must occur, where all proposals shall be opened at the same time.

(7) The person who secures the proposals in the locked cabinet shall also be the person to remove and distribute proposals for opening. During the opening, proposals shall be signed out, in the Bid Log, by the person removing them.

(8) As the proposals are opened, the price information shall be listed on a bid matrix.

(9) A list of the names of the people present at the opening of the Proposals shall be prepared and signed by the attendees. This list shall become part of the procurement record for each contract.

(10) At the opening of all proposals, the staff member in charge of receiving proposals, as well as the relevant Department Director, shall be present, together with at least the following: the Internal Control Officer,the Director of Administration and Finance, the Executive or Assistant Director and BPCPC's legal advisor..

(11) Proposals shall not be accepted in electronic or facsimile form.

c) Prequalification. Where appropriate, persons/firms may be prequalified before or at the time proposals are solicited or prices or fees are requested from proposers according to criteria appropriate for each project, including, where applicable, special or technical expertise, current workload capacity, past performance for the Conservancy or on other projects, responsibility and proposed fees, price, charges or billing rates. The Conservancy may determine not to select a person/firm where information is obtained which indicates that the person/firm is not qualified, responsive or responsible, based upon appropriate criteria for the project.

d) Evaluation. Analysis of proposals and/or bids submitted shall be documented in reasonable detail. For Personal Services Contracts, the technical merits of the proposals and the experience and capabilities of the person/firms will be significant factors in selecting the Contractor,

provided that the price, fees, charge or billing rate for performing the services is reasonable and competitive. For contracts for goods, the person/firm selected should usually be the one which has submitted the lowest financial proposal and which is qualified for the work and meets the commercial and technical requirements of the RFP, bid documents or other solicitation. Awards to other than the low proposer or bidder shall include in such documentation the reason the low proposer or bidder was not selected.

e) Records Retention.

i) All unsuccessful bids to which a contract is not awarded shall be accompanied by the original packaging/envelopes in which the bids were received and retained for 6 years.

ii) Feasibility studies, successful bids, plans, specifications and designs, project descriptions, in-progress and completion photographs, inspection reports, environmental impact statements, annual project statements; fiscal and other final reports, significant change orders, and significant correspondence shall be permanently retained.

2) Minority Business Participation.

a) To promote and assist participation by minority businesses, the Conservancy shall follow the provisions of Article 15A of the New York State Executive Law that would apply to the selection and awarding of procurement contracts if the Conservancy were subject to said Law. The Conservancy shall identify those areas or types of contracts for which minority or women-owned business enterprises may best provide proposals so as to promote and assist participation by such enterprises and facilitate a fair share of the awarding of contracts to such enterprises.

b) For the purposes of this section, a Minority-owned Business Enterprise ("MBE") means any business enterprise, including a sole proprietorship, partnership or corporation that is:

i) at least fifty-one percent owned by one or more minority group Members or in the case of a publicly-owned business at least fifty-one percent of the common stock or other voting interests of which is owned by one or more minority group Members;

ii) an enterprise in which the minority ownership is real, substantial and continuing;

iii) an enterprise in which the minority ownership has and exercises the authority to control independently the day-to-day business decisions of the enterprise; and

iv) an enterprise authorized to do business in New York State, independently owned and operated, and not dominant in its field.

v) In order to be considered an MBE, a firm must be so certified by the Empire State Development Corporation.

c) For the purposes of this section, a minority group member means a United States citizen or permanent resident alien who is and can demonstrate Membership in one of the following groups:

i) Black persons having origins in any of the Black African racial groups not of Hispanic origin:

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

iii) Asian and Pacific Islander persons having origins in any of the Far East, Southeast Asia, the Indian sub-continent or the Pacific Islands; or

iv) Native American persons having origins in any of the original peoples of North America.

d) For the purposes of this section, a Women-owned Business Enterprise ("WBE") means a business enterprise, including a sole proprietorship, partnership or corporation which is:

i) at least fifty-one percent owned by one or more United States citizens or permanent resident aliens who are women or in the case of a publicly-owned business at least fifty-one percent of the common stock or other voting interests of which is owned by United States citizens or permanent resident aliens who are women;

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

iii) an enterprise in which the women ownership has and exercises the authority to control independently the day-to-day business decisions of the enterprise; and

iv) an enterprise authorized to do business in New York State, independently owned and operated and not dominant in its field.

v) In order to be considered a WBE, a firm must be so certified by the Empire State Development Corporation.

3) Waiver of Selection Criteria. Procurement Contracts may be exempt from Competitive Procurement Methods and awarded to persons/firms on a non-competitive basis when circumstances such as the following exist:

a) In the event of an emergency or when other extraordinary circumstances exist which make competition impracticable or inappropriate;

b) In the event that only one source for the goods or services is available;

c) In the event that legal services or other specialized services are required for which a certain person/firm's expertise is unique;

d) In the event that continuation of existing services is desirable to provide continuity to the orderly development and fiscal management of project;

e) In the event that a person/firm has superior qualifications to perform the service or providing the goods at a cost that is determined to be fair and reasonable;

f) In the event that information is obtained which indicates that persons/firms which were invited to submit proposals are not qualified, responsive or responsible based upon the appropriate criteria for the project; or

g) In the event that the Procurement Contract pertains to required annual operating expenditures such as payments required by law, compliance obligations, payment to utility providers and those required by contracts, agreements and leases (e.g. payments to City, State, BPCA; rent; credit rating agencies, etc.). Where applicable, certain of these expenses shall receive a permanent exemption from advertising. The expenses shall be itemized and categorized by type and submitted in bulk to Parks CSC (as defined in Section D1) as For Your Information Memos ("FYIs"). Where applicable, certain expenses shall receive a sole/ single source designation and/or permanent exemption from advertising.

N.B. Each of these exempt Procurement Contracts shall be presented to the Parks CSC by means of FYIs.

D. APPROVAL PROCESS.

1) Contract Selection Committee.

a) There shall be a Contract Selection Committee (the "Parks CSC"), which shall review the process by which recommended persons/firms were and the process for generating, evaluating and approving changes to all existing contracts.

b) The members of the Parks CSC shall be selected from time to time by the President.

c) The Parks CSC may enact rules governing its voting procedures and establishing the number of votes necessary for Parks CSC action.

d) Material submitted to the Parks CSC shall be done so under cover of a Parks CSC Checklist (*see* Exhibit A) and a memorandum explaining the purpose of the contract, the selection process used and any other supporting documentation.

e) Change Orders.

All change orders shall be approved as follows:

i) Any change order that will be equal to, or greater than 5% of the original contract amount must be approved by the Parks CSC.

ii) Materials regarding a change order will be submitted to the CSC under cover of a Change Order Checklist (*see* Exhibit C) for review and will include a memorandum explaining the purpose of the change order and any other supporting documentation.

iii) For any change order approval, the CSC will make a determination, based on material presented by the requesting department head (or his/her designee). That material will include the purpose of the change order and its financial impact. All such decisions will be recorded in the minutes of the CSC.

iv) The BPCPC President will review and approve the change order before it is enacted.

2) For any procurement approval, the Parks CSC must determine, based on material presented by the requesting department head (or his/her designee) that the following process occurred or that these events were not applicable owing to an exemption:

a) The required ad was placed in accordance with requirements specified by the President or a proper exemption was granted. In the event of an exemption, a post-award ad must be placed;

b) The proposals were received by the Conservancy by the date and time specified in the ad;

c) Identical job specifications and scope of work (to the degree that they have been formulated prior to interviews with proposers) were distributed to all interested proposers;

d) The proposer has provided financial statements or other financial information determined to be the equivalent by the Treasurer;

e) Necessary background checks, including LexisNexis and Vendex inquiries, or their equivalents, were performed on public document data bases for the chosen proposer;

f) References were supplied and checked;

g) Proposer supplied a statement of non-collusion;

h) Proposer submitted forms equivalent to forms required under § 139 of the State Finance Law, as follows: Offerer's Affirmation of Understanding and Agreement pursuant to State Finance Law § 139-j(3) and § 139-j(6)(b), and Offerer's Disclosure of Prior Non-Responsibility Determinations;

i) Qualifications were reviewed and carefully evaluated;

j) The BPCA Internal Audit Department and the Conservancy Internal Control Officer approved the proposals;

k) The BPCA Affirmative Action Department approved proposer's Workforce Participation and M/WBE Plan forms;

l) Proposer supplied applicable insurance documentation;

m) Proposer submitted Vendor Responsibility Questionnaire; and

n) A Vendor Payment Report was obtained.

3) Awards of Procurement Contracts and/or the waiver of the selection criteria shall be approved as follows:

a) All recommendations by staff members for entering into a Procurement Contract in the actual or estimated amount of $15,000 or more shall be reviewed by the Parks CSC.

b) For any such Procurement Contract under which the recommended Contractor is other than the lowest financial proposer or bidder, the staff member initiating the contract shall provide a written explanation of why the lowest bidder or proposer was not selected, together with appropriate documentation.

c) Contracts of three years or more in duration shall be approved by the President.

d) Contracts for amounts up to and including $5,000 shall be approved by the Executive Director.

e) Contracts for amounts exceeding $5,000, up to and including $150,000, shall be approved by the President.

f) Contracts in amounts exceeding $150,000 shall be approved by the President and by the Directors.

g) Each such officer or employee is authorized to approve and execute amendments (including but not limited to change orders) to contracts, provided such amendment would not cause the total amount of the contract to which it applies (after taking into account all previous amendments thereto) to exceed the maximum amount of a contract authorized to be approved by such officer or employee.

h) For contracts exceeding $150,000, the President shall approve amendments (including, without limitation, change orders) that do not in the aggregate exceed 5% of the contract amount previously approved by the Directors, in writing before the work contemplated in the proposed amendment begins. If the amendment exceeds 5% it shall become effective only if approved by the Directors. All amendments must be approved by the BPCPC CSC before going to the President and/or the Directors for approval.

i) For contracts in an original amount not exceeding $150,000, if an amendment (when combined with prior amendments, if any) exceeds 50% of the original contract amount,

i) it shall become effective only if approved by the Parks CSC; and

ii) if such amendment causes the aggregate amount of the contract to equal or exceed $150,000, it shall become effective only if approved by the Directors.

j) All contracts made by a department head on his/her own behalf (e.g. professional dues) must be approved by the Executive Director, except that contracts made by the Executive Director on his/her own behalf must be approved by the President.

4) Generally, formal contract documents should be fully executed and delivered by both parties prior to commencement of work. However, letters of intent may be issued to Contractors by the President prior to the execution of Procurement Contracts. Such letters of intent may authorize Contractors to proceed with preliminary work pending the execution of the Procurement Contract, and shall expressly provide that the Contractor is granted no rights against the Conservancy in the event a contract is not executed except for the reasonable value of the preliminary work to be performed, not to exceed an amount set forth in the letter of intent.

5) Generally, Procurement Contracts for personal services which management reasonably anticipates will exceed $150,000 in the aggregate over the life of the contract and which either contemplate a type of scope, service or work product which is generic to the on-going activities and needs of the Conservancy (such as surveys, accounting, legal or other professional services of a general nature) or by their very nature are intended to be continuing over a period of time, shall be authorized by the Directors prior to entering into the agreement. At the time of presentation to the Directors, the Directors shall be provided with an estimated total budget cap for a period of not more than three (3) years, with an explanation as to the renewable or continuing aspect of such proposed contracts. Contracts within this category may not be continued for a total of more than three (3) years from the date of the original agreement without a written review by management as to the continuing need for the services.

6) Contracts and amendments entered into in response to a "field emergency" are exempt from the requirement that they be fully executed and delivered by both parties prior to the commencement of work, and, in the case of contracts exceeding $150,000, that they receive prior Directors' approval. A "field emergency" is a situation resulting from an unforeseen field condition that threatens to significantly disrupt or delay a project, or create or perpetuate an unsafe condition or environment, as determined by the Executive Director, and as approved, prior to commencement, by the President. The Executive Director shall prepare a weekly report of all emergency field activity, and shall provide to the President on a periodic basis, but no less often than monthly, a report of all such field emergency contracts and amendments. The President shall provide a report of such contracts and amendments to the Directors and shall submit all such contracts and amendments exceeding $150,000 to the Directors for their approval at the meeting next following the authorization of the work necessitated by the field emergency. Except as specifically provided in this paragraph, all such contracts and amendments shall be subject to these Guidelines.

7) Commitment Request Form.

Upon completion of the approval process, the contract shall be circulated under cover of a Commitment Request Form ("CRF") and a Procurement Contract Approval Form ("PCAF") (*see* Exhibit B).

Prior to execution of the contract by the appropriate officer of the Conservancy, the CRF must be signed and approved by the Conservancy's President, Treasurer, Executive Director, Internal Control Officer, originating department head, and a representative of BPCA's M/WBE Department. The

PCAF must be signed by the Conservancy's President. Written justification for any exemption from the Competitive Procurement Method and/or the advertising requirement or the basis of any management decision to extend a Procurement Contract beyond three (3) years must accompany the CRF.

E. MONITORING OF PROCUREMENT CONTRACTS.

1) Each contract awarded must contain a scope of work or services to be provided and identify the product to be delivered, if any, the use of corporate supplies and facilities, and the use of corporate personnel, and must establish starting and completion dates for major components of the contract.

2) The Executive Director shall be responsible for monitoring the performance of the contract to assure that the contract is performed efficiently and in accordance with its terms.

F. PROCUREMENT CONTRACTS INVOLVING FORMER OFFICERS OF BPCA AND THE CONSERVANCY.

The Conservancy shall not enter into Procurement Contracts with its former officers or employees, with former officers or employees of BPCA, or with firms employing such officers or employees, except to the extent, (i) that their employment would not be barred by the New York Public Officers Law Section 73 (8) if the Conservancy were a state agency, and (ii) that if requested, an opinion has been obtained from BPCA's ethics officer that such employment is permissible. All such contracts shall in any event require the approval of the President.

G. IMPLEMENTATION OF GUIDELINES.

1) The Treasurer of the Conservancy shall be responsible for:

a) Preparing for approval by the President (or designee thereof) such supplemental procedures as may be required to effectively implement the approved Guidelines and

b) Monitoring compliance with these Guidelines.

2) The BPCA Vice President, Affirmative Action shall be responsible for monitoring the provisions of Section C2 of these Guidelines.

3) Upon recommendation by the President, the Directors shall appoint an Internal Control Officer who shall be responsible for ensuring compliance with these Guidelines.

4) The BPCA Internal Audit Department shall be responsible for monitoring the implementation of these Guidelines.

H. REPORTING.

1) Semi-Annual Reports. The Treasurer shall prepare and file with the President reports of new contracts, the selection process used, and the status of all existing Procurement Contracts on a semi-annual basis.

2) Annual Reports. The Conservancy shall cooperate with BPCA in its preparation of reports regarding contract procurement.

I. THIRD PARTY RIGHTS; EFFECT ON AWARDED CONTRACTS.

These Guidelines are intended for the guidance of officers and employees of the Conservancy only, and nothing contained herein is intended or shall be construed to confer on any person, firm or corporation any right, remedy, claim or benefit under, or by reason of, any requirement or provision hereof.

Nothing contained in these Guidelines shall be deemed to alter, affect the validity of, modify the terms of or impair any contract or agreement made or entered into in violation of, or without compliance with, these Guidelines.

J. ADVERTISING.

Procurement Contracts in the amount of fifteen thousand dollars ($15,000) or more must be advertised in the New York State Contract Reporter, unless exempt from the advertising requirement for one of the following reasons:

1) it is awarded on an "emergency or critical" basis, or

2) it would "serve no useful purpose" (i.e. is not feasible) to advertise, such as a sole or single source contract, or

3) it is being re-bid or re-solicited for substantially the same goods or services, within 45 business days after the date bids or proposals were originally due.

Nevertheless, a notice of the letting or the award of a contract must be published for contracts exempt from advertising. The notice must state the reason for the exemption and be placed as soon as practicable.

K. STATE FINANCE LAW SECTION 139.

The Conservancy shall follow the requirements of State Finance Law Section 139 as if it were a "governmental entity," within the meaning of said Law. It shall make a record of all contacts made between the Conservancy and its potential Contractors/consultants and shall use that information in making "responsibility" determinations when deciding whether to award a Procurement Contract to that Contractor/consultant. The Conservancy and all potential Contractors/consultants of the Conservancy agree to the following:

1) The Conservancy shall record identifying information about contacts by persons or organizations regarding the procurement process and made during the "restricted period" (the time from the

determination to proceed with a procurement, through the final award of the Procurement Contract). The Conservancy shall also inquire and record whether the person or the organization that made the contact was the offerer or was retained, employed or designated on behalf of the offerer to appear before or contact the Conservancy. *See* State Finance Law §139-k (4).

2) All recorded contacts shall be included in the Procurement record for the Procurement Contract. *See* State Finance Law §139-k (4).

3) The Conservancy shall incorporate a summary of its policies and prohibitions regarding permissible contacts during a covered procurement and copies of rules and regulations and applicable guidelines and procedures regarding permissible contacts during its solicitations (i.e. Ads and RFPs). *See* State Finance Law §139-j (6).

4) An offerer/bidder (or its representative) is restricted from making contacts from the earliest notice of intent to solicit offers [i.e. from ad publication] through final award and approval of the Procurement Contract by the Conservancy ("Restricted Period") to other than designated staff (the "Designated Contact"). If a Contractor or consultant makes such a contact during the restricted period, he/she may be found to be "non-responsible".

5) Certain findings of non-responsibility can result in rejection for contract award.

6) With respect to procurements covered by this Section K, the Conservancy shall obtain a certification by the offerer that all information provided to the Conservancy with respect to content referred to in this Section K is complete, true and accurate. Every potential Contractor must provide the Conservancy with an Affirmation of Understanding of and an Agreement that it will comply with Conservancy's procedures relating to permissible contacts during procurement. *See* State Finance Law §139-j (3) and §139-j (6) (b).

7) An offerer shall 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. *See* State Finance Law §139-k.

8) As part of the Conservancy's responsibility determination, it shall consider whether an offerer fails to timely disclose accurate or complete information regarding the above non-responsibility determination. *See* State Finance Law §139-k (3).

9) 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).

10) Every Procurement Contract subject to the provisions of this Section K shall contain a provision authorizing the Conservancy, and its subsidiaries and affiliates, to terminate the contract in the event that the certification required in this Section K(10) is found to be intentionally false or intentionally incomplete. *See* State Finance Law §139-k and 139-j.

11) Contractors must disclose to the Conservancy the identity of persons or organizations retained, employed or designated by them to attempt to influence a procurement process.

12) These requirements apply to any Procurement Contract with an annual estimated value in excess of $15,000. They also apply to any amendments to any Procurement Contract having an annual value in

excess of $15,000, if such amendment requires a change in the scope of the Procurement Contract and the department requesting the amendment needs to seek formal approvals of the amendment.

L. NEW YORK STATE BUSINESS ENTERPRISE.

1) The Conservancy shall promote the participation by New York State business enterprises and New York State residents in Procurement Contracts by:

a) Advertising in the NY State Contract Reporter when contract amounts are likely to be equal to or greater than $15,000;

b) Collecting and consulting the specifications of New York State business enterprises in developing specifications for any Procurement Contract for the purchase of goods where possible, practicable, feasible and consistent with open bidding. The Conservancy shall, where feasible, make use of the stock item specification forms prepared by the New York State Commissioner of General Services, and where necessary, consult with such Commissioner in developing such specifications and make such determinations;

c) With respect to Procurement Contracts greater than $1 million, Contractors shall, as supplementary materials to their bids, document their efforts to encourage the participation of New York State business enterprises as suppliers and subcontractors on Procurement Contracts equal to or greater than $1 million, attest to compliance with the Federal Equal Employment Opportunity Act of 1972 (P.L. 92-261), as amended and document their efforts to provide notification to New York State residents of employment opportunities through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing for such notification in such manner as is consistent with existing collective bargaining contracts or agreements;

d) Including in all bid documents provided to potential bidders a statement that information concerning the availability of New York State subcontractors and suppliers is available from the New York State Department of Economic Development, including the directory of certified minority and women-owned businesses; and

e) Providing for the notification of New York State residents of employment opportunities arising in New York State out of Procurement Contracts let by the Conservancy in an amount estimated to be equal to or greater than $1 million, and promulgating procedures which will assure compliance by Contractors with such notification by requiring Contractors to submit post-award compliance reports documenting their efforts to provide such notification through listing any such positions with the Job Service Division, or providing for such notification in such manner as is consistent with existing collective bargaining contracts or agreements.

2) As used in this Section L, the following terms shall have the following meanings, unless a different meaning appears from the context:

a) "New York State business enterprise" shall mean a business enterprise, including a sole proprietorship, partnership, or corporation, which offers for sale or lease or other form of exchange, goods which are sought by the Conservancy and which are substantially

manufactured, produced of assembled in New York State, or services which are sought by the Conservancy and which are substantially performed within New York State.

b) "New York resident" shall mean a natural person who maintains a fixed, permanent and principal home located within New York State and to which such person, whenever temporarily located, always intends to return.

M. MEAL REIMBURSEMENT PURSUANT TO A CONTRACT OR PURCHASE ORDER:

When a Contractor/consultant is eligible for meal reimbursement, amounts will adhere to the guidelines created by the New York State Office of the State Comptroller, as they may be updated from time to time. The guidelines can be found at: http://www.osc.state.ny.us/agencies/travel/meals.htm

N. EFFECTIVE DATE.

These Guidelines, and amendments hereto shall take effect on and apply to contracts entered into after the date of approval by the Directors, except as otherwise provided by law.