

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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DEVELOP DON'T DESTROY BROOKLYN, et al., : Index No. 100686/06

Petitioners - Plaintiffs : IAS Part 35

- against - : Justice Edmead

EMPIRE STATE DEVELOPMENT CORPORATION and :
FOREST CITY RATNER COMPANIES, :

Respondents - Defendants. :
:

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AFFIRMATION OF DAVID PAGET

DAVID PAGET affirms, under the penalties of perjury pursuant to Rule 2106 of the Civil Practice Law and Rules, as follows:

1. I am an attorney admitted to practice in the State of New York and am a member of the law firm of Sive, Paget & Riesel, P.C. I make this affirmation to set forth the relevant facts concerning my retention by respondent Empire State Development Corporation ("ESDC") with respect to the preparation of an environmental impact statement ("EIS") for the proposed Atlantic Yards Arena and Redevelopment Project ("Atlantic Yards") in Brooklyn, as well as my prior retention by respondent Forest City Ratner Companies ("Forest City"), the developer of the Atlantic Yards project, at an earlier stage of the project.

2. Sive, Paget & Riesel, P.C. is the world's oldest environmental law firm, having specialized in the practice of environmental law for more than forty years. The firm represents a broad array of clients, including corporations, public authorities, state

and local governments, major cultural and medical institutions, prominent professional sports organizations, developers and individuals in connection with a wide range of environmental issues. Its members regularly publish and widely lecture in the area of environmental law and related subjects.

3. I have practiced law since 1964. After serving for 5-1/2 years as an Assistant United States Attorney for the Southern District of New York, my practice has been almost exclusively in the field of environmental law and related administrative law and litigation. I have developed a particular expertise regarding the preparation of EISs required for large, complex projects pursuant to the federal National Environmental Policy Act ("NEPA") and its New York State and New York City counterparts, the State Environmental Quality and Review Act ("SEQRA") and the City Environmental Quality Review ("CEQR") process.

4. For more than ten years, I have co-chaired the American Law Institute/American Bar Association's annual national program on NEPA, SEQRA and other state environmental review acts. I regularly lecture on NEPA, SEQRA and CEQR issues at law schools and continuing legal education seminars.

5. I have represented ESDC for nearly thirty years on a continuing array of major projects, providing advice concerning, among other things, the preparation of EISs. For example, I have represented ESDC with respect to the preparation of EISs for such past projects as the Jacob Javits Convention Center, the Hudson River Park, the Marriott Marquis, the Bank of America building, the Queens West development, the redevelopment of Times Square and the proposed relocation of the New York Stock Exchange. In addition, I presently represent ESDC in connection with the development

of the Brooklyn Bridge Park, the redevelopment of Governors Island and the expansion of the Javits Convention Center.

6. In or about December 2003, a representative of Forest City contacted me and informed me that Forest City wished to retain my firm for the purpose of providing advice concerning the nature, scope and preparation of the environmental studies, reports and other submissions that would likely be required by ESDC in connection with the review of the Atlantic Yards project. At the time of my firm's retention by Forest City, Forest City was represented by the firm of Fried Frank Harris Shriver & Jacobson as its counsel in connection with the Atlantic Yards project, and the Fried Frank firm has continued to serve in that capacity to this day.

7. At or very shortly after the time that my firm was retained by Forest City, it became clear that, for a variety of reasons relating to ESDC's unique role in the planning and development of major projects in New York State and the special powers granted to it by the Legislature, ESDC's involvement in the Atlantic Yards project would be essential. It was also clear that, as a result of the central role that would have to be played by ESDC in the project, ESDC would almost certainly be designated as the SEQRA "Lead Agency" for the project.

8. In light of these facts, and in view of my extensive prior work for ESDC, I always understood and expected that if the Atlantic Yards project went forward to the point of formal environmental review, ESDC would be likely to seek to retain my firm -- as it had in connection with numerous major projects in the past -- for advice and assistance regarding the preparation of the EIS. I therefore always understood that my representation of Forest City would be of limited duration, and that my firm would

ultimately be representing ESDC. In fact, very shortly after my retention, in February 2004, I said so explicitly at a meeting with representatives of Forest City and the Fried Frank firm, and the Forest City representatives indicated that they understood and agreed that this would be the case.

9. Indeed, in February 2004, Forest City and ESDC entered into an initial cost reimbursement agreement that explicitly recited, on the first page of the agreement, that Forest City would be paying "certain costs incurred by [ESDC]" in connection with the Atlantic Yards project, and further provided that "[Forest City] has requested that [ESDC] authorize and/or oversee the following services to be performed in connection with the Project . . . *Legal services to be provided by Sive, Paget & Riesel, P.C. in connection with the environmental analysis of the Project* (Emphasis added) A copy of this agreement is annexed hereto as Exhibit A.

10. I provided advice to Forest City, from time to time, from the time of my initial retention in December 2003 until September 2005, with long periods of inactivity in between. These periods of inactivity were attributable to, among other things, Forest City activities that were not the subject of my firm's representation, such as the negotiation of the cost reimbursement agreement described in the preceding paragraph, and the negotiation of a much more detailed Memorandum of Understanding with ESDC in connection with the project. Neither I nor my firm had any involvement in the negotiation or drafting of either of these documents. In both of those instances, Forest City was represented by the Fried Frank firm.

11. In September 2005, I was advised by an ESDC representative that ESDC wished to retain my firm with respect to the proposed Atlantic Yards project commencing

on October 1, 2005. On behalf of my firm, I subsequently executed a retainer letter with ESDC dated October 24, 2005, a copy of which is attached hereto as Exhibit B, which confirmed our retention for this project effective as of that date. From and after October 1, 2005, I and my firm have at all times advised only ESDC concerning the Atlantic Yards project. The reference formerly on my Sive, Paget & Riesel website biography to representing Forest City on this project, which petitioners include in their papers, is outdated and has been amended to indicate our representation of ESDC in the matter. At no time have we simultaneously represented both Forest City and ESDC concerning the project.

12. Indeed, at no time was I ever in a position adverse to that of ESDC in connection with any aspect of this project. While the petitioners in this action attempt to create the impression that my initial representation of Forest City and my later retention by ESDC constituted the representation of "adverse" interests and gave rise to a "conflict of interest," this fundamentally misconstrues the role of ESDC and the nature of the environmental review process. ESDC (whose formal name is the New York State Urban Development Corporation) was created by the New York State Urban Development Corporation Act (the "UDC Act"), N.Y. Unconsol. L. §§ 6251 et seq. (McKinney 1979). Under the UDC Act, ESDC is charged with the mission of promoting Statewide economic development. It is given broad powers to effectuate this statutory mandate, including the power to condemn and acquire property, to override local zoning and planning laws, and to provide resources to acquire and construct commercial, recreational and housing facilities. Thus, where ESDC decides, as it has in the case of Atlantic Yards, that a project has merit and should be undertaken in furtherance of its statutory mission, it

is a proponent of that project and its interests are not adverse to the project developer or any other project proponents.

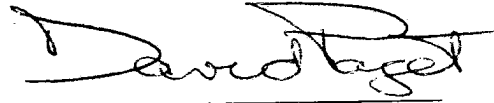
13. This is not altered where, as in the present case, ESDC is the "Lead Agency" under SEQRA, charged with responsibility for preparing the EIS for the project. Indeed, the SEQRA regulations expressly provide that the project sponsor (Forest City here) has the option to prepare the Draft EIS (6 NYCRR § 617.9(a), which clearly shows the non-adversarial character of the SEQRA process. As Lead Agency for the Atlantic Yards project, ESDC's interest is in achieving strict compliance with all of the substantive and procedural requirements of SEQRA, and preparing an EIS that thoroughly addresses all relevant environment aspects and impacts of the project. As the developer, Forest City has precisely the same interest -- if for no other reason than to assure that the project, if ultimately approved, will be able to withstand any legal challenge from persons or entities who, like petitioners here, may be opposed to it.

14. For these reasons, I respectfully suggest that petitioners are mistaken in their contention that there is a "conflict of interest" in my representation of ESDC, as a result of my firm's earlier representation of Forest City on this project. Moreover, both Forest City and ESDC were at all times fully apprised of my involvement in the project, and consented thereto. Accordingly, although none of the parties perceived any conflict, if any conflict existed it has been waived.

15. Since March 18, 2004 other lawyers at my firm have advised Forest City with respect to a federal Clean Air Act compliance issue, and since September 22, 2003 other lawyers at my firm have advised Forest City with respect to an oil spill. These matters are entirely unrelated to the Project, and neither matter involved ESDC. The

billings on these matters have been very small (approximately \$23,000 in the case of the Clean Air Act matter and approximately \$4,000 in the case of the oil spill).

Affirmed under the penalties of perjury this 8th day of February, 2006.

A handwritten signature in black ink, appearing to read "David Paget", written in a cursive style.

David Paget

Exhibit A

FOREST CITY RATNER COMPANIES
One Metrotech Center North
Brooklyn, New York 11201

February 18, 2004

EMPIRE STATE DEVELOPMENT
CORPORATION
633 Third Avenue, 37th Floor
New York, New York 10017
Attn: Charles Gargano, Chairman

Re: Atlantic Yards Brooklyn Arena – Mixed-Use Development

Dear Chairman Gargano:

This letter sets forth the agreement of Forest City Ratner Companies (“FCR”) to pay certain costs incurred by the New York State Urban Development Corporation (“UDC”) doing business as Empire State Development Corporation (“ESD”) with respect to the proposed Atlantic Yards – Brooklyn Arena Mixed-Use Development Project (the “Project”). It is expected that the Project will entail the development of an 18,000 to 20,500 seat arena, up to approximately 2.1 million zoning square feet of commercial development, up to approximately 5,500 units of residential development and up to approximately 350,000 zoning square feet of retail on a site identified in Exhibit “A” hereto. For purposes of this letter, ESD shall include UDC or any subsidiary created by UDC to facilitate the Project.

1. Scope of Work FCR has requested that ESD authorize and/or oversee the following services to be performed in connection with the Project (collectively, the “Scope of Work”):

- (a) Services to be provided by AKRF, Inc. (“AKRF”) in connection with the environmental analysis for the Project.;
- (b) Legal services to be provided by Sive, Paget & Riesel, P.C. in connection with the environmental analysis of the Project;

- (c) Services to be provided by a design review consultant(s) to review, on behalf of ESD, the design for the Project prepared by FCR's design consultant;
- (d) Services to be provided by real estate counsel retained by ESD to assist in the preparation of transaction documents for the Project;
- (e) Services to be provided by condemnation counsel retained by ESD to assist with the proposed acquisition, by condemnation, of properties within the Project site;
- (f) Services to be provided by fee, fixture and relocation appraisers with respect to the proposed condemnation and services by such other consultants necessary or appropriate to facilitate the proposed condemnation, including relocation and property management services related thereto;
- (g) Services related to the holding of any public hearings required, or deemed appropriate by ESD, in furtherance of the Project; and
- (h) Services to be provided by counsel retained by ESD in connection with any litigation related to the Project or the foregoing Scope of Work.

2. Obligation to Pay Costs In order to induce ESD to authorize and oversee the Scope of Work, FCR hereby agrees to pay all Costs (as hereafter defined), and FCR hereby waives any rights it may otherwise have to challenge the amount of any bill for any Costs.

The term "Costs" shall mean:

- (a) actual costs billed for performance of the Scope of Work by any third party consultant or contractor;
- (b) any other actual out-of-pocket costs which may be incurred from time to time by ESD arising, directly or indirectly, from ESD's authorization and oversight of the Scope of Work, including, without limitation, costs imposed as a matter of law whether pursuant to the Eminent Domain Procedure Law or otherwise (including attorneys' fees and expenses). Specifically, FCR agrees to defend and indemnify ESD from and against all liabilities (statutory or otherwise), obligations, claims, demands, penalties, causes of action, costs, expenses (including attorney's fees and expenses), losses and injuries in any manner relating to or arising from ESD's authorization and oversight of the Scope of Work, including any enforcement of any such indemnity by ESD, all and any of which shall constitute "Costs"; and

- (c) actual costs for services related to the Project that are outside of the Scope of Work but have been in approved, in writing, by FCR.

The term "Costs" shall not include any costs that may be incurred by the New York City Economic Development Corporation ("EDC"), The City of New York (the "City") or any agency of the City with respect to the Scope of Work, and payment of any such costs shall be subject to a separate agreement, if any, among FCR and EDC and/or the City. Where practicable, ESD shall use reasonable efforts to: (i) coordinate with other public parties in the engagement of consultants so as to reduce Costs; (ii) obtain fee and costs estimates from consultants and provide the same to FCR in order to enable FCR to better budget costs and anticipate future expenditures; and (iii) obtain the benefit of discounts offered to ESD by consultants. It is understood that, subject to applicable law, the payment of Costs by FCR under this letter shall not, in and of itself, preclude FCR from including such Costs in a subsequent public financing of the project and/or portions thereof (if any).

3. No Obligation Notwithstanding this Letter, the parties hereto recognize and agree that ESD shall have no obligation to commence, continue or conclude the Scope of Work. Specifically, the parties hereto recognize and agree that ESD: (a) may halt the Scope of Work at any time in its sole discretion; and (b) shall have the right, but not the obligation, to halt the Scope of Work at any time FCR fails to fund the Costs as set forth in this Letter (but by not halting the Scope of Work, ESD shall not be deemed to have waived its right to payment of, or FCR's obligation to pay, Costs).

4. Imprest Account As security for the foregoing obligation of FCR to pay Costs, FCR shall pay to ESD \$500,000 simultaneously with the execution of this Letter, and ESD agrees to hold such funds, in an interest-bearing account (the "Imprest Account") to be used by ESD solely for the payment of Costs. ESD shall have the right to draw against the principal and any accrued interest in the Imprest Account, from time to time, for the payment of Costs. At any time when the remaining balance of the Imprest is \$100,000 or less, ESD shall notify FCR, in writing, and request that FCR replenish the Imprest Account to its original amount. If FCR fails within twenty (20) business days after such notice to replenish the Imprest Account (or if the balance therein has been reduced to zero), ESD may cease any uncompleted Scope of Work until such time as FCR delivers to ESD such additional funds. Notwithstanding any failure to deliver further requested Imprest funds, FCR shall remain liable for the payment of all then incurred Costs. ESD shall inform FCR of the Costs paid from the Imprest Account and/or the balance remaining therein within ten (10) business days after written request from FCR, not to be made more often than quarterly, together with reasonable supporting documentation for Costs incurred. Upon completion or other termination of the Scope of Work and payment of all then incurred Costs, ESD shall provide FCR with a final accounting of the Imprest Account and return any funds remaining in the Imprest Account (inclusive of any unspent interest) to FCR. Notwithstanding anything in this Letter to the contrary, FCR shall have the right at any time to request termination of the Imprest Account so long as all then incurred Costs have been paid, and upon and after such request, ESD shall have the right to cease any uncompleted Scope of Work (and FCR shall have no obligation with respect to any of the Scope of Work ESD elects to complete) and ESD shall return all funds remaining in the Imprest Account (inclusive of any unspent interest) to FCR.

5. Continuing Obligation FCR's obligation to pay all Costs and to defend and indemnify ESD, as set forth in paragraph 2 above, shall survive any termination or other conclusion of: (i) the Scope of Work; (ii) the Imprest Account; or (iii) this Letter.

6. Waivers FCR hereby agrees and acknowledges that ESD:

(a) shall not incur any liability to FCR as a result of: (i) this Letter (other than ESD's express obligations hereunder); (ii) the authorization and oversight of the Scope of Work; and (iii) any discussions had with FCR in connection with the Scope of Work; and FCR agrees that it waives all claims it may otherwise have against ESD with respect thereto;

(b) shall not be deemed to have approved any FCR proposal concerning the Project until, and only if, such approval is set forth in writing by ESD and approved by the Board of Directors of ESD and by any other required public authorities, including but not limited to the City and EDC to the extent required; and

(c) has not made any representations whatsoever to FCR concerning the: (i) outcome of the Scope of Work; or (ii) approval of any FCR proposal concerning the Project by the Board of Directors of ESD or by any other required public authorities, including but not limited to the City and EDC.

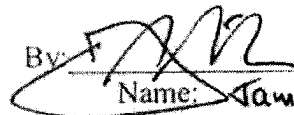
7. Miscellaneous This Letter constitutes the entire agreement among the parties concerning ESD authorization and oversight of the Scope of Work and all prior or contemporaneous understandings or oral agreements had among the parties with respect to ESD authorization and oversight of the Scope of Work are hereby merged in this Letter. This Letter may not be amended orally, but only by a written agreement signed by the parties hereto. This Letter shall be governed and construed in accordance with the laws of the State of New York.

If the foregoing accurately sets forth our understanding with respect to the subject matter of this Letter, kindly sign this Letter in the space set forth below and return an originally signed copy to me, whereupon this Letter shall become a binding agreement among the parties hereto.

Very truly yours,

FOREST CITY RATNER COMPANIES

By: RATNER GROUP, INC.

By: 
Name: James P. Stucky
Title: Exec. V.P.

AGREED AND ACCEPTED THIS 25
DAY OF Feb, 2004:

NEW YORK STATE URBAN DEVELOPMENT CORPORATION D/B/A
EMPIRE STATE DEVELOPMENT CORPORATION

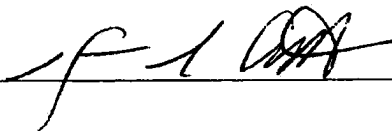
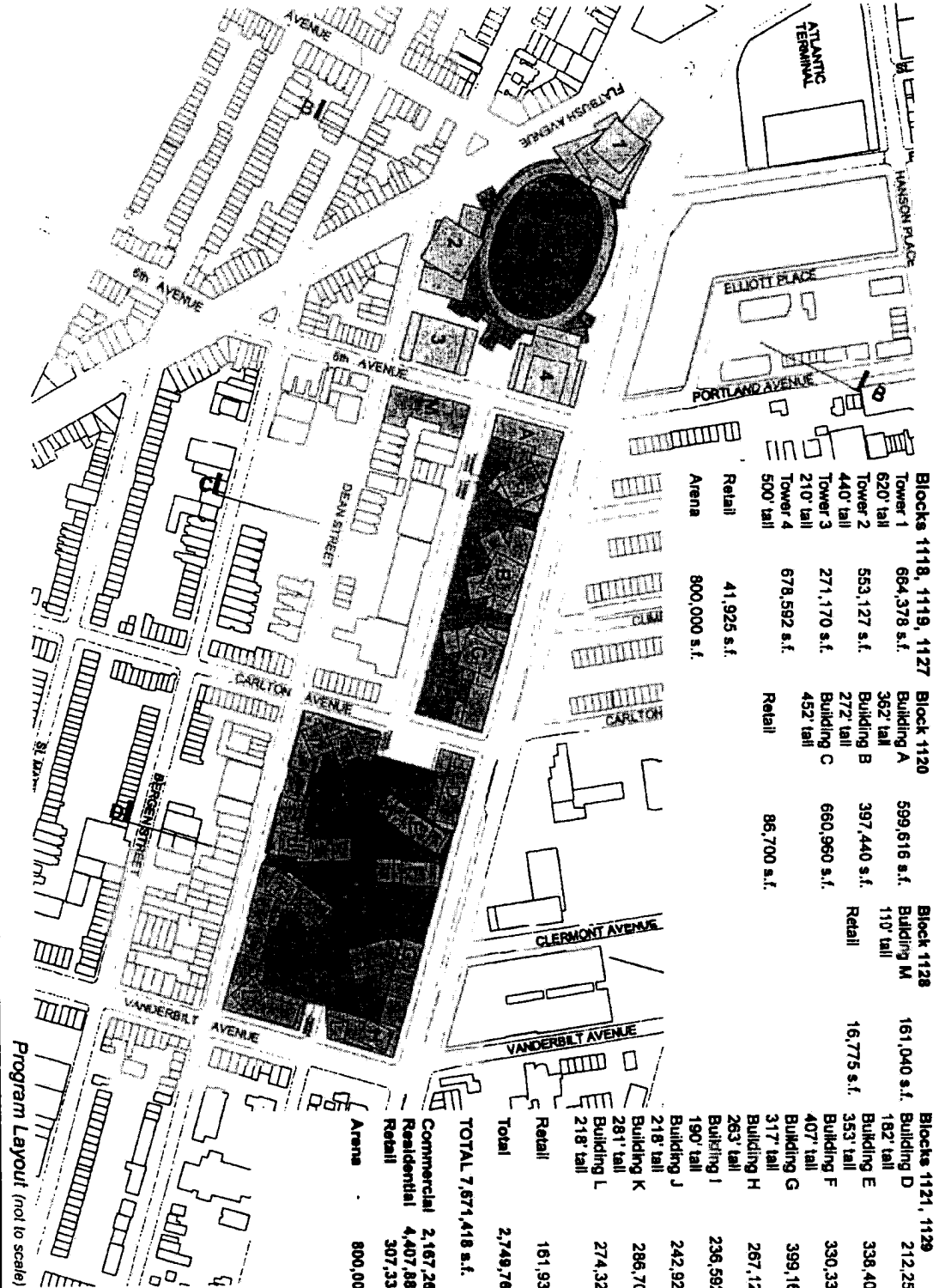
By: 

Exhibit A

Site Plan

BROOKLYN ATLANTIC YARDS



Area Summary

Block	Building	Tall	Area (s.f.)
Blocks 1118, 1119, 1127	Tower 1	620'	684,378
	Tower 2	440'	553,127
	Tower 3	210'	271,170
	Tower 4	500'	678,592
Block 1120	Building A	362'	599,616
	Building B	272'	397,440
	Building C	452'	660,960
Block 1128	Building M	110'	161,040
	Retail		16,775
Blocks 1121, 1129	Building D	182'	212,256
	Building E	353'	338,400
	Building F	407'	330,336
	Building G	317'	399,168
	Building H	263'	267,120
	Building I	190'	236,592
	Building J	218'	242,928
	Building K	281'	286,704
	Building L	218'	274,320
	Retail		161,936
	Total		2,749,760

Residential Buildings
Commercial Buildings

TOTAL	7,671,416 s.f.
Commercial	2,167,267 s.f.
Residential	4,407,880 s.f.
Retail	307,336 s.f.
Arena	800,000 s.f.

Program Layout (not to scale)

Exhibit B

Empire State Development

Anita W. Laremont
Senior Vice President - Legal
and General Counsel

October 24, 2005,

David Paget, Esq.
Sive, Paget & Riesel, P.C.
460 Park Avenue
New York, NY 10022

Dear Mr. Paget:

The New York State Urban Development Corporation ("UDC"); doing business as the Empire State Development Corporation ("ESDC"), has authorized the retention of Sive, Paget & Riesel, P.C. (the "Firm") as of October 1, 2005, to provide legal services to ESDC for environmental and related legal matters with respect to the proposed Atlantic Yards Arena and Redevelopment Project.

You will be the attorney who will have principal responsibility for assuring timely delivery of the aforesaid legal advice and counseling.

ESDC will compensate the Firm for such legal services at the Firm's ordinary billing rates. Attached hereto as Schedule B is a current hourly rate schedule for all individuals in the Firm expected to perform services on this matter. From time to time you may amend the schedule. You shall notify ESDC in advance of any increase in the rate schedule. In addition to the foregoing, ESDC will reimburse the Firm for its reasonable out-of-pocket disbursements incurred in connection with the services rendered by it hereunder.

The Firm will submit monthly billings, which shall describe in detail the services rendered with respect to each matter, the names of all attorneys and paraprofessionals who have worked on the matter, the number of hours expended by each such person of each matter, the hourly rate charged for each person, and an itemization of disbursements for which reimbursement is requested, together with such other documentation as ESDC may require. Bills shall be in the attached format. Time shall be billed on a 1/10th of an hour basis. Original billings shall be submitted directly to the General Counsel c/o Empire State Development Corporation, 633 Third Avenue, New York, NY 10017. Reimbursable expenses shall be billed currently (following month) and in any event within 60 days of being incurred.

Empire State Development Corporation

633 Third Avenue New York, New York 10017-6754 Tel 212 803 3750 Fax 212 803 3775

This retainer may be canceled at will by either party. In the event of cancellation the Firm shall be compensated as set forth above for services rendered through the date of termination.

The terms and conditions set forth in the annexed Schedule A, "Conditions Applicable to UDC Consultant Agreements for Law Firms" are incorporated in, and made a part of, this retainer.

If the foregoing is acceptable to you, please so indicate by signing one copy in the space provided below, and returning it to me together with a list of each individual whom you expect will regularly bill time to this matter, their titles and hourly billing rate. Thank you.

Very truly yours,

NEW YORK STATE URBAN
DEVELOPMENT CORPORATION D/B/A
EMPIRE STATE DEVELOPMENT
CORPORATION

By: Anita W. Laremont

Anita W. Laremont
Senior Vice President – Legal and
General Counsel

By: Charles A. Gargano

Charles A. Gargano
Chairman and Chief Executive Officer

APPROVED:

SIVE, PAGET & RIESEL, P.C.

By: David Paget

David Paget

Date: 12/4/05

Schedule B
Hourly Rate Schedule

David Paget	\$550
Mark Chertok	480
Dan Chorost	350
All Paralegals	95

SCHEDULE A

**CONDITIONS APPLICABLE TO ESDC AGREEMENTS
[LAW FIRMS AND OTHER SPECIAL CONSULTANTS]**

**ESDC IS THE NEW YORK STATE URBAN DEVELOPMENT CORPORATION
D/B/A EMPIRE STATE DEVELOPMENT CORPORATION**

ARTICLE I

RELATION OF CONSULTANT TO ESDC

- 1.1 SUPERVISION BY ESDC.** The services to be performed by Consultant under this Agreement shall be subject to the general supervision and direction of ESDC provided that neither ESDC's exercise nor failure to exercise such supervision and direction shall relieve the Consultant of any of its obligations or responsibilities for its acts or failure to this Agreement.
- 1.2 CONSULTANT'S PERSONNEL.** The Consultant shall designate in writing to ESDC one individual, satisfactory to ESDC, who shall be responsible for coordinating all of the services to be rendered by the Consultant and who shall be ESDC's normal point of contact with the Consultant on matters relating to such services. Such individual shall be replaced upon ESDC's written request.
- 1.3 APPROVAL OF SUBCONSULTANTS.** The Consultant shall not employ, contract with or use the services of any consultant, special contractors, or other third parties (collectively "Subconsultant") in connection with the performance of its obligations under this Agreement without the prior written consent of ESDC. The Consultant shall inform ESDC in writing of the name, proposed service to be rendered, and compensation of the Subconsultant, and of any interest it may have in the proposed Subconsultant.
- 1.4 CONSULTANT AS INDEPENDENT CONTRACTOR.** Notwithstanding any other provisions of this Agreement, the Consultant's status (and that of any Subconsultant) shall be that of an independent contractor and not that of an agent or employee of ESDC. Accordingly, neither the Consultant nor any Subconsultant shall hold itself out as, or claim to be acting in the capacity of an employee, or agent of ESDC.

1.5

CONFLICT-OF-INTEREST. The Consultant represents that:

(a) The Consultant has not now, and will not acquire, any interest, direct or indirect, present or prospective, in the project to which the Consultant's work relates or the real estate which is the subject of the project, or in the immediate vicinity thereof and has not employed and will not knowingly employ in connection with work to be performed hereunder, any person or entity having any such interest during the term of this Agreement.

(b) No officer, employee, agent or director of ESDC, or any of its subsidiaries shall be admitted to any share or part hereof or to any benefit to arise herefrom.

(c) No officer, employee, agent or director of ESDC, or any of its subsidiaries shall participate in any decision relating to this Agreement which affects his personal interest or the interests of any corporation, partnership, or association in which he is directly or indirectly interested; nor shall any officer, agent, director or employee of ESDC, or any of its subsidiaries have any interest, direct or indirect, in this Agreement or the proceedings thereof.

ARTICLE II

DOCUMENTS AND RECORDS

2.1 **MAINTENANCE OF RECORDS.** The Consultant shall, until three years after completion of its services hereunder or termination of this Agreement by ESDC, maintain and shall require each Subconsultant to maintain (a) complete and correct records of time spent by Consultant (and Subconsultant) in the performance of its obligations under this Agreement and (b) complete and correct books and records relating to all out-of-pocket expenses incurred under this Agreement, including, without limitation, accurate cost and accounting records specifically identifying the costs incurred by Consultant (and Subconsultant) in performing such obligations. Said time records shall specify the dates and numbers of hours or portions thereof spent by Consultant (and Subconsultant) in performing its obligations hereunder. Consultant shall make such books and records available to ESDC or its authorized representatives for review and audit at all such reasonable times as ESDC shall from time to time request. Consultant shall submit duplicate copies of time records and substantiation of out-of-pocket expenses at the time of submission of Consultant invoices in accordance with this Agreement.

ARTICLE III

TERMINATION

3.1 OPTIONAL TERMINATION BY ESDC. ESDC at anytime, in its sole discretion, may terminate this Agreement or postpone, delay, all or any part of the Agreement upon written notice to the Consultant. In the event of such termination, postponement, or delay, ESDC shall pay the Consultant for reasonable professional time and out-of-pocket expenses incurred by Consultant to the date notice of such action is received by Consultant. The Consultant agrees to cause any agreement or contract entered into by Consultant with any Subconsultant to provide for an optional termination by Consultant similar to the provision of this Section 3.1.

ARTICLE IV

PROVISIONS REQUIRED BY LAW

4.1 CONSULTANT TO COMPLY WITH LEGAL REQUIREMENTS. The Consultant in performing its obligations and in preparing all documents required under this Agreement shall comply with all material applicable laws and regulations. All provisions required by such laws and regulations to be included in this Agreement shall be deemed to be included in this Agreement with the same effect as if set forth in full.

4.2 CONSULTANT TO OBTAIN PERMITS, ETC. Except as otherwise instructed in writing by ESDC, the Consultant shall obtain and comply with all legally required licenses, consents, approvals, orders, authorizations, permits, restrictions, declarations and filings required to be obtained by ESDC or the Consultant in connection with this Agreement.

4.3 NON-DISCRIMINATION.

The Consultant during the performance of this Agreement, specifically agrees that the Consultant will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, age, disability or marital status.

ARTICLE V

OTHER STANDARD PROVISIONS

5.1 GOVERNING LAW. This Agreement shall be construed and enforced in accordance with the laws of the State of New York.

5.2 **ENTIRE AGREEMENT/AMENDMENT.** This Agreement constitutes the entire Agreement between the parties hereto and no statement, promise, condition, understanding, inducement, or representation, oral or written, expressed or implied, which is not contained herein shall be binding or valid and this Agreement shall not be changed, modified or altered in any manner except by an instrument in writing executed by the parties hereto.

5.3 **CONFIDENTIALITY.** Consultant hereby agrees that all data, recommendations, reports and other materials developed in the course of this study are strictly confidential between Consultant and ESDC and Consultant may not at any time reveal or disclose such data, recommendations or reports in whole or in part to any third party without first obtaining permission from ESDC, other than as required by law. Notwithstanding the preceding sentence, Consultant shall cooperate fully with such third parties as ESDC may designate by written request. Such cooperation shall include making available to such parties, data, information and reports used or developed by Consultant in connection with this study.

5.4 **MISCELLANEOUS.** The parties hereto agree that this Schedule A shall be controlling in the event of any inconsistencies or conflicts between the terms of this Schedule A and any part of the Agreement.

ARTICLE VI

BILLING POLICY

6.1 **INVOICES.** The Consultant is required to submit detailed documentation in support of Consultant's request for reimbursement. All invoices and their accompanying documentation must be forwarded to:

Senior Vice President - Legal Department
New York State Urban Development Corporation
d/b/a Empire State Development Corporation
633 Third Avenue
New York, New York 10017.

Invoices shall be made on the Consultant's own invoice forms or letterhead and must include ESDC's contract and project numbers, if any. Consultant shall also include federal identification number with their first invoice, and a list of each individual who is expected regularly to bill time to this matter, his/her title and hourly billing rate. Invoices shall be in the form attached to this Schedule A. Time shall be billed on a 1/10th of an hour basis.

6.2

REIMBURSABLE EXPENSES.

Consultant's monthly invoices should present out-of-pocket expenses on a daily, itemized basis, grouped by general category. The Consultant must submit supporting documentation for each individual expense item over \$250. Out-of-pocket expenses will be reimbursed only in accordance with the attached Schedule of Maximum Allowances for ESDC Legal Retainer Agreements.

6.3

NON-REIMBURSABLES.

The following will not be reimbursed:

- a) Flight insurance
- b) Valet Services (except five or more consecutive days)
- c) Personal expenses of any type
- d) Expenses paid for ESDC employees
- e) Travel to any ESDC office to "deliver vouchers or pick up check".

6.4

NO REIMBURSEMENT FOR SALES TAX CHARGES

ESDC is a public benefit corporation and as such is exempt from all sales and use taxes in New York State. ESDC will not reimburse the Consultant for sales or use taxes over \$10.00 incurred in connection with the contract. If the Consultant will make purchases of goods or services that involve sales or use taxes in excess of that amount, the Consultant must, in advance of making such purchases, obtain a sales tax certification from ESDC so that no such taxes are incurred.

6.5

GENERAL.

- (a) All receipts must be legible. Illegible receipts will not be reimbursed.
- (b) Whenever possible original receipts should be presented for reimbursement.

At any time or times until three years after completion of Consultant's services or earlier termination of this Agreement by ESDC, ESDC may have the vouchers and statements of cost audited. Each payment therefor made shall be subject to reduction for amounts included in the related voucher which are found by ESDC on the basis of such audit, not to constitute allowable cost. Any such payment may be reduced for overpayments or increased for underpayment, as the case may be.

[FIRM LETTERHEAD]

Date _____
Bill # _____
ESD Contract No: _____

To: Empire State Development Corporation
633 Third Avenue
New York, New York 10017
Attn: General Counsel

Matter Name/No.: _____

FOR PROFESSIONAL SERVICES rendered through (date) \$ _____

FOR PROFESIONAL FEES

<u>Date</u>	<u>Timekeeper</u>	<u>Hours*</u>	<u>Fees**</u>	<u>Description of Services</u>
2/1/00	Partner A	0.30	82.50	Review Court decision.
2/4/00	Partner B	1.20	330.00	Review of Appraisals.
2/6/00	Associate A	0.20	50.00	Review copies of maps.
2/15/00	Associate B	0.20	50.00	Conference re: appraisals.
2/16/00	Legal Asst. A	2.00	180.00	Prepare and file court documents.
TOTAL HOURS:		4.30	\$692.50	

TOTAL FEES: \$692.50

TIMEKEEPER SUMMARY

<u>Timekeeper</u>	<u>Rate</u>	<u>Hours</u>	<u>Fees</u>
<u>Partners</u>			
Partner A	275.00	0.30	\$ 82.50
Partner B	275.00	<u>1.20</u>	<u>330.00</u>
Partner Totals		1.50	\$412.50
<u>Associates</u>			
Associate A	250.00	0.20	50.00
Associate B	250.00	<u>0.20</u>	<u>50.00</u>
Associate Totals		0.40	\$100.00
<u>Legal Assistants</u>			
Legal Assistant A	90.00	<u>2.00</u>	<u>180.00</u>
Legal Assistant Totals		2.00	\$180.00
Total All Timekeepers		<u>4.30</u>	<u>\$692.50</u>

* Billing on 1/10th of an hour preferred.
 ** # of hours x the applicable rate.

Examples of Charges and Disbursements (grouped by category):***

<u>Date</u>	<u>Description</u>	<u>Amount</u>
	PHOTOCOPY CHARGES:	
2/1/00	Photocopy 2400 copies @ 0.10	240.00
2/16/00	Photocopy 1400 copies @ 0.10	<u>140.00</u>
	TOTAL PHOTOCOPY CHARGES 3800 @ 0.10	\$380.00
	FAX CHARGES:	
2/15/00	4 pgs @ \$1.00 to (name of individual)	4.00
2/16/00	3 pgs @ 1.00 each to (names of 3 individuals)	<u>9.00</u>
	TOTAL FAX CHARGES 13 pgs @ 1.00	\$13.00
	FEDEX CHARGES	
2/1/00	Fedex to General Counsel of ESD	18.25
2/15/00	Fedex to Deputy General Counsel of ESD	<u>18.25</u>
	TOTAL FEDEX CHARGES	\$36.50
	TOTAL CHARGES AND DISBURSEMENTS	<u>\$429.50</u>
	TOTAL FOR MATTER (MATTER NAME):	<u>\$1,122.00</u>

***Please note any individual line item over \$250 requires back-up.

**SCHEDULE OF MAXIMUM REIMBURSEMENT ALLOWANCES FOR
ESDC LEGAL RETAINER AGREEMENTS**

January 2000

Consultant will be reimbursed for the following types of expenses at the following maximum rates. Reimbursable expenses must be billed currently and in any event within 60 days of being incurred:

<u>TYPE OF EXPENSE</u>	<u>RATE OF REIMBURSEMENT</u>
Secretarial	None (unless overtime)
Word Processing	None (unless overtime and then up to \$50/hr)
Local Telephone Expenses	None
Taxis or Private Cars	Actual cost up to \$50; amounts over \$50 must be submitted for approval on a case-by-case basis.
Meal Charges	Actual cost of evening or overtime meals in the office up to \$30 and reasonable cost of outside catering service for meetings.
Time Spent Preparing Bills	None
Long Distance Telephone	Actual cost
Photocopying	Firm's standard rate, up to \$.25/page; Actual cost if out sourced.
Fax Transmission	None for incoming faxes; Firm's standard rate, up to \$1.00/page for outgoing faxes
Computer Research	Actual cost (No overhead)
Out-of-Town Travel	Reasonable expenses, to be submitted for approval on a case-by-case basis.
Postage and Overnight Mail	None for individual letters; FedEx and other special delivery services will be reimbursed at actual cost
Messenger Service	Actual cost up to \$15.