

APPENDIX A
MEMORANDUM OF UNDERSTANDING

MEMORANDUM OF UNDERSTANDING

**By and Between the State of New York and the City of New York
regarding**

BROOKLYN BRIDGE PARK

This Memorandum of Understanding, dated as of May 2, 2002, between THE STATE OF NEW YORK ("STATE") AND THE CITY OF NEW YORK ("CITY") sets forth the intention of the parties hereto (together the "PARTIES"), subject to all applicable legal requirements, to cooperate in the creation, development and operation of Brooklyn Bridge Park on approximately 67 acres of land stretching along the East River for 1.3 miles from Atlantic Avenue to Jay Street north of the Manhattan Bridge (the "Project").

WHEREAS, The State of New York and the City of New York share a common determination to preserve and provide public access to waterfront areas in order to allow for recreation and public enjoyment and to enhance economic development; and

WHEREAS, The Port Authority of New York and New Jersey has agreed to transfer parcels of real property for dedication to the Project, including Piers 1-5 adjacent to the East River on the Brooklyn Waterfront for purposes of creating a public park; and

WHEREAS, The State of New York and the City of New York own certain other parcels of land in the immediate vicinity which are also suitable for use as a public park; and

WHEREAS, As more fully described in section III hereof, the Downtown Brooklyn Waterfront Local Development Corporation ("Brooklyn Waterfront LDC"), doing business as the Brooklyn Bridge Park Development Corporation, has developed an Illustrative Brooklyn Bridge Park Master Plan ("Illustrative Master Plan"), dated September 2000, in relation to the Project with extensive public consultation and input and with the support of the State of New York and the City of New York; and

WHEREAS, The Illustrative Master Plan sets forth a unified vision of a sustainable public park providing recreational, cultural and educational opportunities for residents of Brooklyn, The City of New York, and the State of New York to enjoy for generations to follow;

NOW THEREFORE, The Governor of the State of New York and the Mayor of the City of New York do hereby agree to bring the vision of a sustainable public park to fruition in a cooperative manner as set forth in this Memorandum of Understanding.

I. PURPOSE

The STATE and CITY believe that a final plan and project implementation can best be carried out by cooperation among the PARTIES, along with continued public participation in the Project's planning, development and ongoing operation. The PARTIES agree that various agencies and instrumentalities of the STATE, including the New York State Urban Development Corporation, doing business as the Empire State Development Corporation ("ESDC") and the Office of Parks, Recreation and Historic Preservation ("State Parks"), together with the various agencies and instrumentalities of the City, including the New York City Economic Development Corporation ("EDC"), Parks Department ("City Parks") and the New York City Department of City Planning ("City Planning"), will assist in the improvement and redevelopment of the Project area, as more fully described below.

The CITY and STATE, acting through their respective instrumentalities, desire to participate with each other in the plan review, site acquisition, clearance, development, reconstruction, rehabilitation and operation of the Project and, subject to the terms of this Memorandum of Understanding and to all applicable legal requirements, pledge their cooperation to each other in order to carry out these important public purposes.

II. PROJECT AREA

The Project area consists of approximately 67 acres of property in the borough of Brooklyn bounded by the East River, beginning on Atlantic Avenue and continuing to Jay Street, north of the Manhattan Bridge. These boundaries are generally depicted in the Illustrative Master Plan. The STATE and CITY will each seek to acquire and dedicate to the Project or assist in committing to the Project the use of any lands held by the STATE and CITY respectively, including appropriate lands under water adjacent to the Project area. The Parties agree that the boundaries of the Project Area may be altered as is necessary for the implementation of the Project, subject to completion of the General Project Plan and environmental review of such Project. The Project may require development and implementation of certain mitigation measures outside the Project boundaries.

III. GENERAL PRINCIPLES

In addition to any other specific commitments and obligations set forth in this Memorandum of Understanding, the Parties hereby agree to be guided by the following general principles in their future cooperation in the creation, development and operation of Brooklyn Bridge Park.

The Parties agree that the Project will be guided by the provisions contained in the Illustrative Master Plan subject to any refinements thereto arising from the completion of the planning and environmental review processes for the Project. The Illustrative Master Plan sets forth a vision for a sustainable park providing recreational, cultural and educational opportunities for residents and visitors.

The Parties further agree that, in accordance with the Illustrative Master Plan, no less than eighty (80) percent of the Project will be reserved as open space and will be dedicated as parkland that is subject to the protective provisions of State and City law pertaining to park properties.

The Parties further agree that, consistent with the Illustrative Master Plan, the development of appropriate commercial uses may occur within the Project area, provided that all revenues derived from such uses shall be used exclusively for the maintenance and operation of the Project.

IV. BROOKLYN BRIDGE PARK DEVELOPMENT CORPORATION

There shall be created a new subsidiary of the Empire State Development Corporation, incorporated as Brooklyn Bridge Park Development Corporation ("BBPDC"), which shall be responsible for the development of the Project. The BBPDC shall be separate and distinct from Brooklyn Waterfront LDC.

BBPDC shall be governed by an eleven (11) member board of directors, six (6) of whom shall be appointed by the Governor and five (5) of whom shall be appointed by the Mayor of the City of New York. Of the eleven board members, the Mayor and Governor shall each designate at least one director that shall serve ex officio (by reason of his or her State or City office). One of the six (6) directors appointed by the Governor shall be the Chair of the Empire State Development Corporation who shall serve as the Chair of the BBPDC Board. One of the five (5) directors appointed by the Mayor shall be the Deputy Mayor for Economic Development and Rebuilding who shall serve as the Vice Chair of the BBPDC Board.

BBPDC's by-laws shall specifically set forth its procedures, powers and duties, which shall be exercised by a majority vote for all actions, except as specifically set forth herein. Said by-laws shall also include a requirement that at least one vote from a director serving ex officio designated by the Mayor and one vote from a director serving ex officio designated by the Governor shall be required for the following major actions taken by the Board: (i) selection of an Executive Director; (ii) adoption of a Master Plan and General Project Plan; (iii) approval of any contracts valued in excess of \$1,000,000; (iv) adoption of an operating plan, including annual operating and capital budgets, (v) creation of an advisory entity and appointment of the members thereof; and (vi) approval of agreements with project developers.

V. PLANNING

The PARTIES agree that BBPDC, pursuant to its authorities under the New York State Urban Development Corporation Act, set forth in Chapter 54 of the Laws of 1968 (the "UDC Act"), shall develop a General Project Plan, guided by the Illustrative Master Plan, that shall constitute the development plan for the Project.

The PARTIES acknowledge that the State Environmental Quality Review Act (hereinafter "SEQRA") process shall be triggered by State "action" and that the development of the General Project Plan constitutes an "action" under SEQRA. ESDC shall act as lead agency under the State Environmental Quality Review Act ("SEQRA"), undertaking the environmental review to conform to applicable statutes and regulations of the New York State Department of Environmental Conservation ("DEC"). State Parks, or the State Historic Preservation Office shall review the impact of the General Project Plan on any National or State Registered or Eligible Properties. New York City Landmarks Preservation Commission or other appropriate City agency shall review the impact of the General Project Plan on City landmarks.

The PARTIES also agree that BBPDC shall seek extensive public input, through consultation with an advisory board and/or interested local community groups in developing the General Project Plan. BBPDC, acting in furtherance of ESDC's obligation under Section 16 of the New York State Urban Development Corporation Act to consult and cooperate with municipalities in the planning and development of its projects, will consider EDC or such other entity as the CITY may designate as the CITY's representative for the Project. State Parks and City Parks will be active participants in the design and master planning of the Park.

The BBPDC shall have responsibility for providing liaison with the community, including the advisory board and local community group(s) and board(s) for the Project area. The EDC will manage and coordinate the process of obtaining all necessary City approvals.

The PARTIES agree that BBPDC shall construct or cause to be constructed all necessary Project improvements in accordance with the General Project Plan.

VI. OPEN SPACE PARKLAND

Upon completion of construction of the Project or phases thereof, the state-owned areas designated as open space under the General Project Plan shall be transferred to the jurisdiction of State Parks and shall be afforded the protections of state law relating to the non-alienation of State park lands. The Tobacco Warehouse and lands of the existing Empire Fulton Ferry State Park shall remain under the jurisdiction of State Parks.

The City-owned areas designated as open space under the General Project Plan shall be managed in cooperation with the State-owned areas designated as open space with the intention of providing a unified and seamless park experience for park visitors. The combined open space areas of the Project shall constitute no less than eighty (80) percent of the total project area.

VII. COMMERCIAL DEVELOPMENT

All commercial development within the Project area shall be guided by the character and quality of commercial development specified in the Illustrative Master Plan, as further defined in the General Project Plan. All revenues, including rent and payments in lieu of taxes derived from commercial development or existing commercial uses within the Project area shall be dedicated to the maintenance and on-going operational needs of the Project.

VIII. PUBLIC CONTRIBUTION

The STATE affirms that it will contribute and spend \$85 million after the date of this Memorandum of Understanding, within and for the benefit of the entire Project area, pursuant to one or more subsequent detailed agreements among the Parties and contingent upon receipt of such funds from the Port Authority of New York and New Jersey for use in connection with the Project.

The CITY affirms that it will contribute and spend \$65 million after the date of this Memorandum of Understanding, within and for the benefit of the entire project area pursuant to one or more subsequent detailed agreements between the Parties and contingent upon the STATE's receipt of funding from the Port Authority of New York and New Jersey for use in connection with the Project.

It is acknowledged and understood that in the event the CITY makes additional contributions of capital investment in the Project which results in the City's total capital contributions to equal or exceed the total capital contributions of the STATE, one additional or new BBPDC Board seat shall be appointed by the CITY to reflect the respective capital contributions of the PARTIES at such time.

IX. PUBLIC REVIEW

The public review process shall be as specified in the UDC Act, the State Environmental Quality Review Act, this Memorandum of Understanding, and any other applicable laws and regulations, and will include such additional public review as agreed to between the PARTIES.

X. EXCLUSIVE BENEFIT

This Memorandum of Understanding is for the sole and exclusive benefit of the PARTIES hereto and no other person or entity is intended to be a beneficiary hereof nor may such person or entity claim or be entitled to any right or benefit of any nature whatsoever in connection herewith.

XI. LIABILITY

No officer, agent or employee of the STATE or CITY or any of their respective agencies or instrumentalities shall be charged with any liability in connection with this Memorandum of Understanding.

XII. PUBLICITY

All publicity concerning the project shall be coordinated with both PARTIES and shall be undertaken by them jointly.

XIII. EFFECTIVE DATE

This Memorandum of Understanding is effective as of the date of its signing, May 2, 2002, at the future site of Brooklyn Bridge Park, Brooklyn, New York.

THE CITY OF NEW YORK

By: Michael R. Bloomberg

Michael R. Bloomberg
Mayor of the City of New York

THE STATE OF NEW YORK

By: George E. Pataki

George E. Pataki
Governor of the State of New York