

DRAFT - February 2, 2004

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

February 2, 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 __ square feet of commercial development, up to __ square feet of residential development and up to __ 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 and, if necessary, with respect to any litigation related to environmental review for 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; and
- (g) Services related to the holding of any public hearings required, or deemed appropriate by ESD, in furtherance of the Project.

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; and
- (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".
- (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.

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 \$_____ 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 \$_____ or less, ESD shall notify FCR, in writing, and request that FCR replenish the Imprest Account to its original amount. If FCR fails within five (5) business days after such notice to replenish the Imprest Account, 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. ESDC shall inform FCR of the Costs paid from the Imprest Account within ten (10) business days after written request from FCR, not to be made more often than quarterly, and shall provide supporting documentation to the extent received by ESD and appropriate. 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; (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: THE RATNER GROUP, INC.

By: _____
Name:
Title:

AGREED AND ACCEPTED THIS _____
DAY OF _____, 2004:

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

By: _____
Charles Gargano
Chairman

Exhibit A

Site Plan