


# REQUEST FOR PROPOSALS

# FOR

# NETWORK SERVICES

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## I. SUMMARY

Battery Park City Authority d/b/a Hugh L. Carey Battery Park City Authority ("BPCA" or the "Authority"), a New York State public benefit corporation created pursuant to the New York State Public Authorities law, is seeking proposals (individually a "Proposal" and collectively the "Proposals") from Managed Service Providers (individually a "Proposer" and collectively the "Proposers") to provide BPCA with Network Services which shall include, but not be limited to (1) ongoing maintenance, (2) on-call support work; (3) future buildout; and (4) training and consultation. A detailed scope of work for which the selected Proposer will be responsible is attached as Exhibit A (the "Work").

Created in 1968, BPCA is a New York State public benefit corporation responsible for financing, developing, constructing, maintaining, and operating Battery Park City as a richly diversified mixed use community providing residential and commercial space, with related amenities such as parks, plazas, recreational areas, and a waterfront esplanade. A summary of BPCA's structure, mission, and history, as well as the Battery Park City project area, may be viewed at: http://bpca.ny.gov/. Public information regarding BPCA's finances, budget, internal controls, guidelines, and policies may be viewed at: http://bpca.ny.gov/public-information/. Information relating to the Battery Park City Parks Conservancy Corporation ("BPCPC"), BPCA's affiliate, may be viewed at: http://bpcparks.org/.

New York State-certified Minority-Owned Business Enterprises ("MBE"), Women-Owned Business Enterprises ("WBE") and Service-Disabled Veteran-Owned Business Enterprises ("SDVOB") are encouraged to submit Proposals.

## II. GENERAL PROVISIONS

This request for Proposals, including attachments, exhibits, and any amendments or addenda (collectively, the "RFP") is subject to the rights reserved by BPCA, including, but not limited to BPCA's right to:

- withdraw and/or cancel this RFP at any time before final award of the contract;
- request clarification and/or additional information from any or all Proposers;
- amend any term or requirement of this RFP at any time before award of a contract (Proposers may amend their Proposals, as directed by BPCA, if BPCA materially alters or amends the RFP after submission of Proposals);
- alter any key dates or deadlines related to this RFP;
- award the Work, in whole or in part, to one or more Proposers with or without interviews or negotiations;
- reject any Proposal that does not strictly conform to the requirements of this RFP;
- conduct an interview with any or all of the Proposers to aid the evaluation process;
- negotiate potential contract terms with any Proposer;

BPCA is not liable or responsible in any way for any expenses incurred in the preparation of a Proposal in response to this RFP. All information submitted in response to this RFP is subject to the Freedom of Information Law, Article 6 of the New York State Public Officers Law ("FOIL"), which requires public access to certain documents possessed by BPCA, unless a specific exemption applies. Proposers are responsible for identifying any information in their respective Proposals considered to be confidential and exempt from FOIL. BPCA, however, is obligated to disclose information consistent with the requirements of FOIL, NYS Public Officers Law Section 87.

## III. TIMETABLE & DESIGNATED CONTACT

### *A. Key Dates*

Subject to change at BPCA's discretion, the following are key dates for this RFP:

- RFP issued: January 30, 2023

- Pre-Proposal Meeting: February 10, 2023 11:00 a.m. The pre-proposal meeting will be held via audio-visual conference. Please RSVP to emily.birdseye@bpca.ny.gov by 12:00 p.m. on Thursday, February 9, 2023, 5:00 p.m.

- Deadline to submit questions to BPCA: February 15, 2023 by 4:00 p.m. (by email only)

  All questions regarding this RFP should be submitted in writing via email to the "Designated Contact": Emily Birdseye, Assistant Contracting Officer, Battery Park City Authority, at emily.birdseye@bpca.ny.gov.

- BPCA's response to substantive questions: February 23, 2023

- PROPOSAL DUE DATE: March 2, 2023 by 3:00 p.m. (the "Due Date")

### *B. Anticipated Contract Term*

The anticipated term of the contract awarded pursuant to this RFP (the "Contract") will be five (5) BPCA reserves the right to terminate the Contract at any time, with or without cause, in accordance with the terms of the Contract. BPCA's sample form of contract is attached as Exhibit G.

## IV. GENERAL REQUIREMENTS

### *A. Minimum Qualification Requirements*

The following are the minimum qualification requirements for this RFP. Proposals that fail to meet these requirements will be rejected.

1) Proposer must have an office in New York State (a New York City office is preferred);

2) The Proposer must be lawfully authorized perform the Work in the State of New York;

3) Proposer must have at least twenty (20) years of experience in performing the Work.

### *B. MBE/WBE/SDVOB Participation, Joint Ventures, and Sub-contracting Goals*

Contractor requirements and procedures for business participation opportunities for New York State certified MBEs/WBEs/SDVOBs and equal employment opportunity requirements relating to minority group members and women are attached as Exhibit B. For questions relating to MBE/WBE/SDVOB participation, joint ventures and sub-contracting goals *only*, please contact the "MBE/WBE/SDVOB Designated Contact" Mr. Thierry Byron Thierry.Byron@bpca.ny.gov or 212-417-4415.

### *C. Restricted Period*

New York State's State Finance Law sections 139-j and 139-k apply to this RFP, restricting Proposers' contacts with BPCA. Proposers are restricted from making any contact (defined as oral, written or electronic communications with BPCA under circumstances where a reasonable person would infer that a communication was intended to influence BPCA's conduct or decision with respect to a procurement) relating to this RFP with anyone other than the Designated Contact, as specified in Section III.A., or MBE/WBE/SDVOB Designated Contact, as specified in Section IV.B., from the time of Proposer's receipt of notice of this RFP through the date of the Final Award as defined in BPCA's Procurement Guidelines (the "Restricted Period"). BPCA employees must record certain contacts during the Restricted Period, including,

but not limited to, any oral or written communications that could reasonably be seen as intended to influence BPCA's conduct or award of this RFP. Upon notice of an improper contact, BPCA shall make a determination regarding the Proposer's eligibility to continue participating in this RFP.

### *D. Submission of Proposals*

**Proposals must be received by BPCA no later than 3:00 p.m. on March 2, 2023.**

- Each Proposer must e-mail their Technical Proposal to the following e-mail address: **technicalproposals@bpca.ny.gov**

  The Technical Proposal must be clearly labeled as "Proposal Enclosed – Network Services."

- Each Proposer must also e-mail their Cost Proposal to the following e-mail address: **costproposals@bpca.ny.gov**

  The Cost Proposal must be separately attached and clearly labeled as "Cost Proposal for Network Services."

- **Each Proposer is responsible for the successful delivery and receipt of their Proposal. BPCA is not accepting Proposals sent via messenger, overnight courier, or certified mail to BPCA offices.** If a Proposer has already sent a Proposal via one of these methods, please e-mail the Proposal to the above e-mail address by the Due Date. If a Technical Proposal's file size is too large to submit by e-mail, the Proposer must make alternate electronic accommodations (e.g., linking to a file sharing website), which shall also be transmitted through technicalproposals@bpca.ny.gov. Please contact the Designated Contact prior to the Due Date in order to ensure successful transmission of the documents prior to the Due Date.

- Proposals *must* arrive at the time and place specified herein. Please leave ample time for submission. Late Proposals, no matter the cause of their lateness, will NOT be accepted. Hard copy or faxed Proposals will NOT be accepted. A Proposer may, after submitting a Proposal, amend its Proposal by submitting an amended Proposal, clearly labeled "Amended Proposal – Consulting Services Related to Internal Controls, Technology, Finance, and Accounting," as long as the amended Proposal is submitted by the Due Date.

- Only electronic versions of documents, preferably PDF documents, will be accepted. Scans of documents requiring ink signatures or requiring notarization are acceptable.

## V. PROPOSAL FORMAT AND CONTENTS

### *A. Proposal Format*

The Proposal must:

- Be formatted to 8½" x 11" sized pages;
- Have numbered pages; and
- Be no longer than ten (10) single-sided pages, exclusive of the Cover Letter, Cost Proposal, and Required Attachments.

### *B. Proposal Content*

In addition to the separately sealed Cost Proposal, described in Section VIII. below, each Proposal must include the following in the order listed:

1) Cover Letter, signed by a person within the firm who is authorized to bind the Proposer, which includes representations that:

   (a) Except as disclosed in the Proposal, no officer or employee of the Proposer is directly or indirectly a party to or in any other manner interested financially or otherwise in this RFP;

   (b) Proposer satisfies all of the minimum qualification requirements in Section IV.A; and

   (c) Proposer has reviewed BPCA's form of contract, attached as Exhibit G to this RFP, and either has no objections or has detailed their objections in an appendix to their Proposal.

2) Executive Summary.

3) Responses to the Questions as well as all of the Information Required (Sections VI.A. and B.).

4) Required Attachments (Section VI. C.).

**BPCA reserves the right to reject any Proposals that fail to include any required item described in this Section V. B., including Cover Letters that are unsigned or fail to include each of the above representations (including an appendix, if applicable).**

## VI. INFORMATION REQUIRED

### *A. Questions and Information Sought Relating to the Work*

1) Describe your firm's background, services, size, and history as these factors are relevant to the Work, with an emphasis on providing services to public entities.

2) Describe your proposed approach and methodology for the Work.

3) Please describe your experience performing the Work.

4) Describe the training and/or other instructional material your firm will provide to BPCA staff.

5) List each key member of the team that you intend to assign to this engagement and include for each listed individual: (a) area(s) of specialization; (b) title and/or position within your firm; (c) the services to be performed.

6) Identify the person who will be the lead project manager (the "Lead PM") and primary contact in providing services to BPCA, and any other persons who will be listed as a "key person" in any contract with BPCA.

7) Identify any subcontractors you intend to use for this engagement, and describe the services to be performed by each subcontractor.

8) Describe your proposed team's experience with similar work for other public entities, with an emphasis on New York State public entities.

9) Clearly identify any information in your Proposal that you believe to be confidential and exempt from FOIL, and state the reasons. Please note that this question is for informational purposes only, and BPCA will determine, in its sole discretion, whether requested documents are exempt from disclosure under FOIL.

10) Identify any and all exceptions taken to BPCA's standard form of contract, attached as Exhibit G, explaining the reasons for such exceptions. Such exceptions must be detailed in an appendix to your Proposal labeled, "Appendix: Objections to BPCA Form of Contract." No exceptions to the Contract will be considered by BPCA after submission of the Proposals. BPCA maintains the right to reject Proposals based on non-conformance with the standard form of Contract.

11) Provide at least three (3) client references for whom your firm has performed similar work to that requested in this RFP. For each client, describe the project, the project's date, and services performed, and provide the name, address, and telephone number for a person at client's firm familiar with such work.

12) Describe all of the various compliance frameworks supported by your firm (for instance HIPAA , PCI, PII, etc.).

13) Describe your firm's approach to both on-boarding and off-boarding on clients.

***B. Questions and Information Sought Relating to Proposer's Firm & Eligibility***

14) Within the past three (3) years, have there been any significant developments in your firm such as changes in ownership or restructuring? Do you anticipate any significant changes in the near future? If so, please describe.

15) How does your firm identify and manage conflicts of interest?

16) Are there any potential conflict of interest issues posed by your firm's performance of the Work on behalf of BPCA?

17) Has your firm or have any of the firm's partners/employees been disciplined or censured by any regulatory body within the last five (5) years? If so, please describe the relevant facts.

18) Within the last five (5) years, has your firm, or a partner or employee in your firm, been involved in litigation or other legal proceedings relating to the provision of professional services? If so, please provide an explanation and the current status or disposition of the matter.

19) List any professional or personal relationships your firm's leads may have with BPCA's Board Members and/or employees. A list of which is attached as Exhibit F.

20) If selected, will your firm assign any person to this engagement who was previously an employee of BPCA or BPCPC? If so, please: i) identify when (month and year) that person's employment at BPCA/BPCPC terminated, and ii) describe that person's involvement, if any, with matters related to this RFP during his/her employment at BPCA/BPCPC.

21) In the past five (5) years, have any public sector clients terminated their working relationship with your firm? If so, please provide a brief statement of the reasons. Provide the name of the client and provide a contact person, address and telephone number.

### *C. Required Attachments*

1) Mandatory Forms:

Each Proposal must include a completed copy of all "Mandatory Forms" found at: https://bpca.ny.gov/wp-content/uploads/2015/03/Mandatory-Forms.pdf. The Mandatory Forms include the following:

a) NYS Standard Vendor Responsibility Questionnaire, notarized and signed by the individual(s) authorized to contractually bind the Proposer, indicating the signer's title/position within the firm.*

b) State Finance Law § 139 Form 1, signed by the individual(s) authorized to contractually bind the Proposer.*

c) W-9 form.

d) Statement of Non-Collusion.

e) MBE/WBE/SDVOB Utilization Plans. Please note that all such plans must be submitted even if Proposer is a MBE/WBE/SDVOB.

2) Response to the question regarding the use of New York State businesses set forth in Section XII.

3) Completed MBE/WBE and EEO Policy Statement and Diversity Practices Questionnaire (attached as part of Exhibit [X]).

4) Financial Statements:

Provide a copy of your firm's most recent Audited Financial Statements (within the last year) or where an audited financial statement is not available, the most recent tax return. In the event you do not have an audited financial statement you must provide a statement to that effect and summary financial information for the calendar year most recently ended certified by an authorized officer.

5) Acknowledgement of Addenda:

Attach a completed and signed Acknowledgement of Addenda Form, attached as Exhibit E, acknowledging receipt of all addenda to this RFP, if any, issued by BPCA before the Due Date. Addenda are posted by BPCA as necessary and can be found on the BPCA website at www.bpca.ny.gov. It is the responsibility of each Proposer to check the BPCA website for addenda and to review addenda prior to submitting any proposal in response to this RFP.

6) Appendices:

a) Attach professional biographies for all principals or project managers identified in your Proposal.

b) Attach a proposed project plan for onboarding and knowledge transfer.

c) Attach a sample contract or retainer agreement your firm uses for the provision of services to governmental clients.

## VII. INSURANCE REQUIREMENTS

### 1) General Requirements

The total cost of the required insurance listed in paragraphs 2) and 3) below, must be incorporated into the Cost Proposal. The additional insured protection afforded BPCA, BPCPC, and the State of New York must be on a primary and non-contributory basis. All policies must include a waiver of subrogation in favor of BPCA, BPCPC, and the State of New York, no policies may contain any limitations / exclusions for New York Labor Law claims, and cross liability coverage must be provided for BPCA, BPCPC, and the State of New York.

All of the carriers that provide the below required insurance must be rated "A-:VII" or better by A.M. Best and must provide direct written notice of cancellation or non-renewal to BPCA, BPCPC, and the State of New York at least 30 days before such cancellation or non-renewal is effective, except for cancellations due to non-payment of premium, in which case 10 days written notice is acceptable.

### 2) Insurance Requirements for the Selected Proposer

The selected Proposer will be required to obtain and provide proof of the types and amounts of insurance listed below: (i) as a condition precedent to the award of the contract for the Project; and (ii) continuing throughout the entire Term. The insurance policies listed below must also conform to the applicable terms of the Contract, as shown in BPCA's sample form of contract attached.

- Commercial General Liability Insurance, written on ISO Form CG 00 01 or its equivalent and with no modification to the contractual liability coverage provided therein, shall be provided on an occurrence basis and limits shall not be less than:

    - $7,000,000 per occurrence
    - $7,000,000 general aggregate which must apply on a per location / per project basis
    - $7,000,000 products/completed operations aggregate

    BPCA, BPCPC, and the State of New York must be protected as additional insureds on ISO Form CG 2010 (11/85) or its equivalent on policies held by the selected Proposer and any of its subcontractors. The General Aggregate limit must apply on a per project basis on the primary General Liability policy should a combination of primary and Umbrella/Excess liability policies be utilized to secure the required total limits of coverage.

- Automobile Liability Insurance with a combined single limit of not less than $1,000,000. Coverage must apply to the Proposer's owned, hired, and non-owned vehicles and protect BPCA, BPCPC, and the State of New York as additional insured.

- Workers' Compensation, Employer's Liability, and Disability Benefits shall not be less than statutory limits, including United States Longshore and Harbor Workers Act coverage as applicable to the operations of the Proposer.

- Professional Liability ("Errors & Omissions") Insurance must be maintained at a limit of not less than $1,000,000 each claim.
- Third Party Crime Insurance insuring against claims that arise from the theft of BPCA and or BPCPC property, including but not limited to money and securities at a limit of not less than $500,000.

- Data Breach and Privacy/Cyber Liability: Contractors are required to maintain during the term of this Contract and as otherwise required herein, Network and Privacy/Cyber Liability Insurance, including coverage for failure to protect confidential information and failure of the security of the Contractor's computer systems or the Authorized Users' systems due to the actions of the Contractor which results in unauthorized access to the Authorized User(s) or their data. Said insurance shall be maintained in the following limits: $2,000,000.

- Said insurance shall provide coverage for damages arising from, but not limited to the following:

    - Breach of duty to protect the security and confidentiality of nonpublic proprietary corporate information;
    - Personally identifiable nonpublic information (e.g., medical, financial, or personal in nature in electronic or non-electronic form);
    - Privacy notification costs, breach response sublimit should be at least 50% of the liability limit
    - Regulatory defense and penalties;
    - Website media liability; and
    - Cyber theft of customer's property, including but not limited to money and securities.
    - Computer network systems attacks
    - Denial or loss of service
    - Introduction, implantation or spread of malicious software code
    - Unauthorized access and use of computer systems
    - Other necessary and customary coverages.

    If policy or policies are written on a claims-made basis, coverage must be in place for a period of at least 12 months after the completion or termination of the Agreement.

    Certificates of Insurance and Additional Insured Endorsements reflecting applicable limits, sub-limits, self-insured retention or deductibles will be provided to BPCA. BPCA will be named as an Additional Insured and will be provided with a waiver of subrogation by endorsement to the required Cyber Liability policy. All insurance carrier(s) must carry an A.M. Best rating of at least A-, Class VIII.

- **Technology Errors and Omissions insurance** with a limit of not less $2,000,000 for damages arising from computer related services including, but not limited to, the following:

    - Consulting;
    - Data processing;
    - Programming;
    - System integration;
    - Hardware or software development;
    - Installation;
    - Distribution or maintenance;
    - Systems analysis or design;
    - Training; and
    - Staffing or other support services.

    The policy shall include coverage for third party fidelity including cyber theft and protect BPCA, BPCPC, and the State of New York as "Additional Insured".

**3) Insurance Requirements for all Subcontractors**

Any subcontractor(s) utilized by the selected Proposer will be required to obtain the types and amounts of insurance listed below: (i) as a condition of commencing any Work; and (ii) continuing throughout the duration of the subcontractor's Work. The insurance policies listed below must also conform to the applicable terms of the Contract, as shown in BPCA's sample form of contract attached:

- **Commercial General Liability Insurance**, written on ISO Form CG 00 01 or its equivalent and with no modification to the contractual liability coverage provided therein, shall be provided on an occurrence basis and limits shall not be less than:

    - $1,000,000 per occurrence
    - $2,000,000 general aggregate which must apply on a per location / per project basis
    - $2,000,000 products/completed operations aggregate

BPCA, BPCPC, and the State of New York must be protected as additional insureds on ISO Form CG 2010 (11/85) or its equivalent on policies held by all subcontractors. Should the subcontractor's work include construction activities of any kind then the subcontractor must maintain Products / Completed Operations coverage for no less than three years after the construction work is completed and continue to include Additional Insured protection for BPCA, BPCPC & The State of New York for the prescribed timeframe. When providing evidence of insurance the subcontractor must include a completed Acord 855 NY form. Securing the required limits via a combination of primary and umbrella/excess liability policies is allowed. The General Aggregate limit must apply on a per project basis on the primary General Liability policy should a combination of primary and Umbrella/Excess liability policies be utilized to secure the required total limits of coverage.

- Automobile Liability Insurance with a combined single limit of not less than $1,000,000. Coverage must apply to the subcontractor's owned, hired, and non-owned vehicles and protect BPCA, BPCPC, and the State of New York as additional insured.

- Workers' Compensation, Employer's Liability, and Disability Benefits shall not be less than statutory limits, including United States Longshore and Harbor Workers Act coverage as applicable to the operations of the subcontractor.

- Subcontractors will also be required to obtain all other insurances listed in Section (2) unless otherwise approved in writing by BPCA prior to commencement of any Subcontractor's work.

## VIII. COST PROPOSAL; FORMAT AND REQUIRED INCLUSIONS

Each Cost Proposal must state monthly cost for all services listed in Exhibit A: Scope of Work.

| | |
|---|---|
| Monthly Fee: | $_____.00 |

The Cost Proposal must be submitted per the requirements stated in Section VI.D.

## IX. SELECTION PROCESS

### *A. Evaluation*

Each timely submitted Proposal will be reviewed for compliance with the form and content requirements of this RFP. A committee of BPCA employees selected by BPCA (the "Committee") will then review and evaluate the Proposals in accordance with the evaluation criteria set forth below. While only Committee members will score the evaluation criteria, the Committee may consult an outside expert for advisement on the evaluation of matters requiring technical expertise. Before final selection, BPCA must determine that the proposed selected Proposer is responsible, in accordance with applicable law and BPCA's Procurement Guidelines, which may be viewed at: http://bpca.ny.gov/public-information/.

### *B. Interviews*

BPCA reserves the right to decide whether to interview any or all of the Proposers. The Committee may conduct interviews for many reasons, including to further assess a Proposer's ability to perform the Work or provide specific services, or to seek information related to any other evaluation criteria. The proposed Lead PM, as well all other key personnel proposed to perform the Work, must be available to participate in the interview.

### *C. Evaluation Criteria for Selection*

Selection will be based upon the following criteria:

1) Technical Evaluation:

A) Technical knowledge and experience ..... 30%
B) Experience performing work for government agencies, NYS authorities and similar organizations ..... 20%
C) Project staffing and project team ..... 20%
D) Responsiveness ..... 10%
E) Robustness and quality of equipment and infrastructure ..... 10%
F) Response to Diversity Practices Questionnaire: ..... 10%

2) Cost Proposal evaluation.

### *D. Basis for Contract Award*

The Contract will be awarded to the highest technically rated Proposer whose Proposal is determined to be responsive and in the best interests of BPCA, subject to a determination that the Cost Proposal is fair, reasonable, and provides the best value to BPCA given the requirements of the project.

## X. NON-COLLUSION

By submitting a Proposal, each Proposer warrants and represents that any ensuing Contract has not been solicited or secured directly or indirectly in a manner contrary to the laws of the State of New York, and that said laws have not been violated and shall not be violated as they relate to the procurement or the performance of the Contract by any conduct, including the paying or giving of any fee, commission, compensation, gift, or gratuity or consideration of any kind, directly or indirectly, to any member of the board of directors, employee, officer or official of BPCA.

## XI. IRAN DIVESTMENT ACT

By submitting a Proposal or by assuming the responsibility of any Contract awarded hereunder, each Proposer certifies that it is not on the "Entities Determined To Be Non-Responsive Bidders/Offerers Pursuant to The New York State Iran Divestment Act of 2012" list ("Prohibited Entities List") posted on the New York State Office of General Services website at: http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf and further certifies that it will not utilize any subcontractor/consultant that is identified on the Prohibited Entities List on this Contract. The selected Proposer agrees that should it seek to renew or extend any Contract awarded hereunder, it must provide the same certification at the time the Contract is renewed or extended. The selected Proposer also agrees that any proposed assignee of the Contract will be required to certify that it is not on the Prohibited Entities List before BPCA may approve a request for assignment of the Contract.

During the term of any Contract awarded hereunder, should BPCA receive information that a person (as defined in State Finance Law §165-a) is in violation of the above-referenced certifications, BPCA will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the New York State Iran Divestment Act of 2012 within 90 days after the determination of such violation, then BPCA shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, seeking compliance, recovering damages, or declaring the selected Proposer in default of the awarded Contract.

BPCA reserves the right to reject any request for renewal, extension, or assignment for an entity that appears on the Prohibited Entities List prior to the renewal, extension, or assignment of the Contract, and to pursue a responsibility review with the selected Proposer should it appear on the Prohibited Entities List hereafter.

## XII. ENCOURAGING USE OF NEW YORK STATE BUSINESSES IN CONTRACT PERFORMANCE

New York State businesses have a substantial presence in State contracts and strongly contribute to the economies of the state and the nation. In recognition of their economic activity and leadership in doing business in New York State, Proposers for this Contract for commodities, services or technology are strongly encouraged and expected to consider New York State businesses in the fulfillment of the requirements of the Contract. Such partnering may be as subcontractors, suppliers, protégés or other supporting roles.

Proposers are strongly encouraged, to the maximum extent practical and consistent with legal requirements, to use responsible and responsive New York State businesses in purchasing commodities that are of equal quality and functionality and in utilizing services and technology. Furthermore, Proposers are reminded that they must continue to utilize small, minority and women-owned businesses, consistent with current State law.

Utilizing New York State businesses in State contracts will help create more private sector jobs, rebuild New York's infrastructure, and maximize economic activity to the mutual benefit of the contractor and its New York State business partners. New York State businesses will promote the contractor's optimal performance under the Contract, thereby fully benefiting the public sector programs that are supported by associated procurements.

Public procurements can drive and improve the State's economic engine through promotion of the use of New York businesses by its contractors. The State therefore expects bidders/proposers to provide maximum assistance to New York businesses in their contracts. The potential participation by all kinds of New York businesses will deliver great value to the State and its taxpayers.

Proposers can demonstrate their commitment to the use of New York State businesses by responding to the question below. Each proposer must include a response to this question with their proposal. Please note that a "yes" response requires supporting information. If yes, identify New York State businesses that will be used and attach identifying information.

**Will New York State businesses be used in the performance of this contract?**

**_____Yes _____No**

**EXHIBIT A**

**(Scope of Work)**

The work to be performed under this Contract shall include the maintenance of and support for the network and related equipment of the Battery Park City Authority ("BPCA"), inclusive of routers, switches, Wide Area Network ("WAN") environment, firewalls, and related equipment, software, and infrastructure (collectively, the "Network") as shown in more detail on the attached Exhibit B: Current Network Diagram. The work will be performed at the various Network sites which include 200 Liberty Street, 24th Floor, New York, NY 10281, 75 Battery Place, New York, NY 10280, 200 Rector Street, New York, NY 10280, 6 River Terrace, New York, NY 10282, the Battery Park City Ballfields, and the Rockefeller Park House (the "Sites")

As more fully set forth below, the various facets of the work shall include Ongoing Maintenance, On-Call Support Work, Future Buildout, and Training and Consulting Services as directed by the Authority and which shall include, but may not be limited to, the following:

## 1. Ongoing Maintenance

(a) Proposer shall work with BPCA staff to install, set up, and maintain configurations to deliver the required services as directed by the Authority. Proposer shall be responsible for supporting, administering, managing, and performing the provisioning of equipment and software comprising the Network.

(b) System Monitoring and Performance Management

i. Proposer will configure infrastructure components to ensure optimum operating performance.

ii. Proposer shall centrally monitor the performance of infrastructure components, where possible, to identify performance degradation, capacity, and hardware/software problems and respond to identified performance tuning, problems, and capacity needs.

iii. Proposer shall monitor, measure, and report on the performance of the WAN environment.

iv. Proposer shall work to enhance and continuously improve the performance of the Network.

v. Proposer shall identify and recommend product and enhancement opportunities for improved performance.

vi. Proposer shall monitor, measure, analyze and report actual systems performance and report on capacity inadequacies.

vii. Proposer shall investigate and correct reported or observed system performance degradation or malfunctions and record for each the downtime, hardware or software involved, nature of the problem, causes, nature of the fix and product provider.

viii. Proposer shall coordinate and recommend system upgrades and upgrades to hardware configurations based on performance and capacity.

(c) Managed Third Parties ("MTP")

i. Proposer shall work with their own MTP(s) as applicable, including monitoring operational day-to-day network delivery, monitoring performance, escalating events for resolution, and maintaining technical support relationships;
ii. Proposer shall work with BPCA to establish and manage new and existing contractual relationships between BPCA and MTP as needed to provide the Services;
iii. Proposer shall escalate MTP performance failures to MTP management as necessary to achieve timely resolution.
iv. Proposer shall monitor and manage the MTP's efforts to remedy any failure;
v. Proposer shall communicate the status of MTP services to BPCA.

(d) Capacity Management

i. Proposer shall provide additional capacity as required to meet Moves, Adds, and Change (or "MAC") requests;
ii. Provide capacity to meet project requirements as required.
iii. Proposer shall monitor WAN infrastructure capacity and plan and implement sufficient infrastructure capacity.
iv. On an ongoing basis, manage the capacity of the Network to respond to BPCA's operational requirements as they evolve over time;
v. Proposer shall monitor and report on Network capacity utilization as it relates to established capacity thresholds, on a continuing basis and upon request by the BPCA.
vi. Proposer shall monitor and measure the physical capacity and performance of the Network and report to BPCA when requested;
vii. Proposer shall upgrade, remove, or add capacity to the Network as necessary.
viii. Proposer shall participate in joint capacity planning reviews with the BPCA.

(e) Management Tools

i. Proposer shall install, configure and test the management tools used by Proposer to support problem management (e.g., to generate automatic alerts for critical outages).

(f) WAN Environment

i. The Proposer will be responsible for the installation support, shared management, and shared control of the WAN environment.

(g) Asset Management and Inventory Maintenance

i. Proposer shall maintain an inventory of all Network components. Such inventory will gather information for on-site components, configuration, and software.
ii. Proposer shall provide BPCA with updates to the inventory that result from other processes including performance management, fault management, configuration, and capacity planning. Updates from these processes will be tracked through work order activity. BPCA will need the changes to the inventory in an agreed format.

iii. Proposer shall provide the necessary information to populate the inventory with information regarding the Network;
iv. Proposer shall manage an inventory of spares made available for the purpose of facilitating the maintenance of critical Service components.

(h) Software Maintenance and Upgrades

i. Proposer shall be responsible for testing, certifying, configuring and deploying upgrades to any installed software to the latest version available from the software vendor.
ii. Proposer shall schedule and coordinate testing of network systems software changes with the BPCA.
iii. Upon request from BPCA, Proposer shall distribute and implement Firmware upgrades and patches to the distributed network equipment as necessary to meet BPCA's business requirements.
iv. Proposer shall ensure that software distribution windows are managed to ensure minimal distribution impacts on business operations and performance unless otherwise agreed with BPCA.
v. Proposer shall ensure that the software installed are appropriately licensed.
vi. Proposer shall ensure that all software distributions are reconciled to ensure completion.
vii. Proposer shall ensure that all software distributions are virus-free.
viii. Proposer shall assist BPCA in performing any such upgrades that should be required including both onsite and offsite service.
ix. Proposer shall inform BPCA and take corrective action, as appropriate, for failed software distributions and problems resulting from software distribution.
x. Proposer shall take corrective action to overcome failed or problematic software or data distribution.
xi. Proposer shall uninstall software, as directed by BPCA, and remove it and any associated documentation to an area designated by BPCA; and
xii. Proposer shall provide verification of each completed software distribution, installation, or de-installation, and update the asset management and software license management system(s) for that Software Supplier.
xiii. Proposer shall recommend changes to the applications software for BPCA approval to improve system performance; any upgrade process shall be documented by proposer through a ticketing solution application that will track the analysis, testing and deployment process as defined above.

(i) Security Services

i. BPCA will work with the Proposer to co-manage physical security for the Network as necessary to satisfy BPCA's business and operational requirements. The Proposer shall be responsive to BPCA changes in its Network security requirements as they may change over time. The vendor will comply with relevant BPCA information security policies and government regulations.

ii. On an ongoing basis, Proposer shall identify the Proposer's subcontractors and personnel who are to be granted access to specific operations or BPCA facilities related to the Network.
iii. Proposer shall follow a standard equivalent to the BPCA physical security standard for the Network.
iv. Proposer shall follow all security procedures in effect at the Sites including those set by BPCA or its landlords.
v. Proposer shall immediately report breaches of security evident during site visits to BPCA. Such breaches are to include all unauthorized attempts to use or obtain physical access to BPCA's Network resources and information.
vi. Proposer shall perform all necessary to work to detect, firewall, and block the propagation of network viruses, malware, or other intrusions.

(j) Backup Requirements
i. Proposer shall ensure that network configuration and operating system are fully backed up so that they can be reinstalled without delay in an emergency.
ii. Proposer shall assist with the installation and decommissioning of equipment and associated hardware and software.
iii. Proposer shall assist with the facilitation of scheduled hardware maintenance. The schedule will be set upon contract execution.
iv. Proposer shall assist with the physical placement and movement of hardware, cables, connectors, and installations.
v. Proposer shall maintain and distribute configuration diagrams and associated documentation.
vi. Proposer shall assist with testing the recovery procedures required to re-establish, in the event of a failure, the functionality of systems included in the agreement, in compliance with BPCA's requirements including the BPCA Continuity of Operations Plan and other applicable policies and standard operating procedures.
vii. Proposer shall prepare, test, and document backup and recovery procedures for BPCA.
viii. Proposer shall implement recovery processes and procedures, as required to ensure timely recovery following any environmental failure.

(k) Technology Refresh Planning and Implementation:
i. Proposer shall install Network equipment and software and monitor the fulfillment of each order for accuracy.
ii. Proposer shall store, deliver and unpack all items of equipment and remove and dispose of all packaging.
iii. Proposer shall configure, install and test all equipment and software and transfer data and software configurations as required before commissioning in the production environment.
iv. Proposer shall provide connectivity for the equipment and software at or before the time of installation.
v. Proposer shall remove BPCA software and data from displaced or retired equipment to the extent required by BPCA's security procedures.

vi. Proposer shall ensure that BPCA is aware of all needs to promptly disconnect and end Network services and remove related equipment no longer needed by BPCA upon the termination of services at a site.
vii. Proposer shall ensure secure disposal (shredding or recycling) of any hardware removed from BPCA location.
viii. Proposer shall track and update the asset inventory based on the asset management lifecycle of networking devices.

**2. On-Call Support Work**

(a) Proposer shall provide in-depth technical support for Network as required by the Authority including, but not limited to the operating systems, equipment, components, and standard software. This shall include problem tracking, problem source identification, problem impact determination, bypass and recovery support, problem resolution, management reporting, and trend analysis specific to the management of networking devices (router, switches, Wide Area Network ("WAN") environment, firewalls).

(b) Help Desk Services

i. Proposer shall provide a single point of contact ("SPOC") Help Desk including contact phone number, fax number, director e-mail, and browser chat for all technology issues and general inquiries.
ii. Proposer's SPOC Help Desk support services shall include providing accurate documentation within a centralized solution and responding to BPCA IT issues such as:
    1. Handling routine hardware, software, and usage problems;
    2. Assignment of Unique Problem Identifier for each support contact;
    3. Gathering relevant end user information;
    4. Obtaining of resource status;
    5. Accessing online information;
    6. Responding to end-user requests with accurate and appropriate information;
    7. Transferring calls to the appropriate support group, although coordination and ownership of the problem and escalation management remains with the Level 1 support;
    8. Informing the end user of the status;
    9. Calling the end user for further information;
    10. Closing the call, with the end user's agreement and ensuring the end user survey is completed;
    11. Escalating delays in problem resolution;
    12. Notify users of system unavailability (scheduled and non-scheduled);
    13. Report all suspected viruses to BPCA in a timely manner; and assist BPCA in removing viruses.
    14. Volume and resolution of issues.
    15. Types of issues.
    16. Time to resolution.

iii. The SPOC Help Desk shall maintain all relevant information that will facilitate knowledge of BPCA's business and technology environment.
iv. Proposer shall ensure that all Help Desk support staff are trained and skilled in all current and new technologies for the managed hardware and software related to the Network.
v. Proposer shall provide a record of each calls received by the Help Desk. Such record shall include the details of:
    1. Call volumes and duration;
    2. Problem trends;
    3. Call abandon rate and wait times;
    4. Level 1 resolution rate;
    5. Problem resolution time;

(c) Hardware, Software, and Equipment Support
i. Proposer shall process warranty claims, as applicable.
ii. Proposer shall coordinate and schedule maintenance activities with the BPCA and MTP.
iii. Proposer shall ensure that maintenance personnel follow documented recovery procedures; in the event of a system or device outage that require to be restored.
iv. Proposer shall maintain accurate documentation on the current location and status of sections of Network under repair.
v. Proposer shall update the problem management and asset management systems with relevant maintenance information.
vi. Proposer shall diagnose and resolve complex network, operational and software problems.
vii. Proposer shall provide troubleshooting and problem resolution for all components of the Network.
viii. Proposer shall resolve problems with long-term fix or if problem cannot be resolved within an acceptable time frame, an alternative solution must be available in order to get BPCA working with the long-term fix implemented at a later time.
ix. Proposer shall identify and resolve user Network problems including the management and execution of any Service Levels agreed upon in existing third-party vendor maintenance agreements.
x. Proposer shall interface with MTP vendors for planning and problem resolution.
xi. Proposer shall be responsible for the provision of any spare parts required to complete any repairs to the managed network equipment.

(d) Physical Boundaries and Demarcation Points.
i. Proposer shall provide BPCA with full and complete access to Network at any time.

(e) Reporting
i. Proposer shall, in a mutually agreed format, provide documentation, configuration details, or other data necessary for BPCA to perform their various business activities and functions.

ii. Proposer shall provide monthly problem reports to BPCA including information on problems, owner, location, Service Level Agreement (SLA) commitments achieved, and status of any issues, including their impact on the required service level.

iii. Level 1 Incident Support:
    1. A Level 1 Incident shall be defined as a service disruption affecting a single user.
    2. Entering problem information into a problem record;
    3. Performing incident source identification and severity impact level;
    4. Providing feedback to BPCA;
    5. Invoking proper incident resolution resources;
    6. Dispatching on-site service resources, where applicable;
    7. Monitoring resolution status and document actions taken;
    8. Manage escalation or critical situation procedures;
    9. Compiling and maintaining the incident resolution system;
    10. Confirming incident resolution with the end-user before closure;
    11. Maintaining a second and third-level "contacts list" system including site access requirements for business and after-hour site access;

iv. Level 2 Incident Support:
    1. A Level 2 Incident shall be defined as a service disruption affecting a multiple users.
    2. Performing problem analysis, trending, and reporting;
    3. Accepting problems not completed by Level 1 support personnel;
    4. Investigating severe and recurring problems to determine the root cause, expediting problem resolution, and using historical data, to minimize the recurrence of duplicate or similar incidents;
    5. Working with vendors to resolve problems;
    6. Contacting other support groups and organizations;
    7. Interfacing with other systems, data networks, and operating system environment personnel;
    8. Escalating delays in problem resolution
    9. Focusing on making fixes available to the first-level support team to decrease resolution times.

v. Proposer shall be responsible for providing BPCA with updated site information for Network as necessary.

**3. Future Buildout**

(a) Whenever directed by the Authority or otherwise required for the performance of the work to add a new Site onto the Network, Proposer will conduct a physical survey of that Site to determine Site features, implementation readiness, and specific installation needs for required standards as described below. Proposer will deliver to BPCA a report including

any information recorded in a database in the network management system (a "Site Survey") as more fully described below:

(b) Site Survey information will include definitions and clarification of:
   i. Current Network Services;
   ii. Telecommunications vendor point of entry;
   iii. Boundaries of responsibility;
   iv. Power/UPS requirements;
   v. Space requirements;
   vi. Equipment-related special requirements;
   vii. Cabling and wiring requirements; and
   viii. Relevant environmental requirements.

(c) Proposer shall deliver the equipment, stage and configure new equipment, manage the installation of the equipment and test the Network as required.

(d) Moves, Additions, and Changes ("MACs")
   i. Proposer shall perform all MACs only with direct written approval by BPCA.
   ii. On approval of any MACs, BPCA will be required to assist in the supervision, management, and implementation of changes related to the Network as necessary to satisfy BPCA's business and operational requirements.
   iii. Proposer shall receive, log and track the completion of service requests affected by MAC and provide related information BPCA.
   iv. Proposer shall coordinate and communicate with BPCA concerning scheduling and requirements, so as to eliminate the business impact on end-users;
   v. Proposer shall schedule the execution of the MACs.
   vi. For MACs, Proposer shall dispatch and manage the performance of appropriate technicians.
   vii. Proposer shall provide the necessary technical support to complete the MACs.
   viii. Proposer shall physically move any equipment, as required, and install any necessary in-scope cabling where appropriate.
   ix. Proposer shall notify BPCA of the completion of the MACs.
   x. Proposer shall confirm correct implementation of the MACs with BPCA.
   xi. Proposer shall track the completion of the MACs in a management system used by the proposer and be able to update relevant inventory and configuration information.

(e) Change Management

Proposer shall perform the change management functions below:
   i. Accept and enter authorized change requests into an information system used by the proposer for the purpose of tracking changes to the environment in accordance with BPCA processes, procedures, and methodologies;
   ii. For each change affecting the environment the Proposer shall:
      1. Assess the necessity and impact of the proposed change on performance, security, connectivity, and overall operation;

2. Develop acceptance test criteria and test the change. Documentation of a back out plan necessary in the event we need to roll back to original settings.
3. BPCA will need to approve all change requests during a CAB meeting before testing begins and before deployment to production. Proposer shall work with BPCA to resolve acceptance test issues;
4. Schedule and manage testing and implementation of the change, including communication to and coordination with other affected functions in accordance with the change management procedures;
5. Verify the successful implementation of the change. Notify the change requestor and customers of the outcomes following the change implementation;
6. Ensure diligence is applied in deciding upon time of day and day of the week for the implementation of change so that provision of service is continued;
7. Ensure all potential and/or actual business impacts expected as a consequence of the implementation of change are communicated to and understood by BPCA.
8. Ensure potential conflicts between changes are identified and resolved in advance of implementation; and
9. Ensure changes are bundled to ensure Services are not subject to more outages than are sensible or necessary.
10. Proposer shall work with BPCA to communicate the effect and impact, and compatibility of any changes to the hardware and software managed to ensure minimal business impact of such changes.

**4. Training and Consultation**

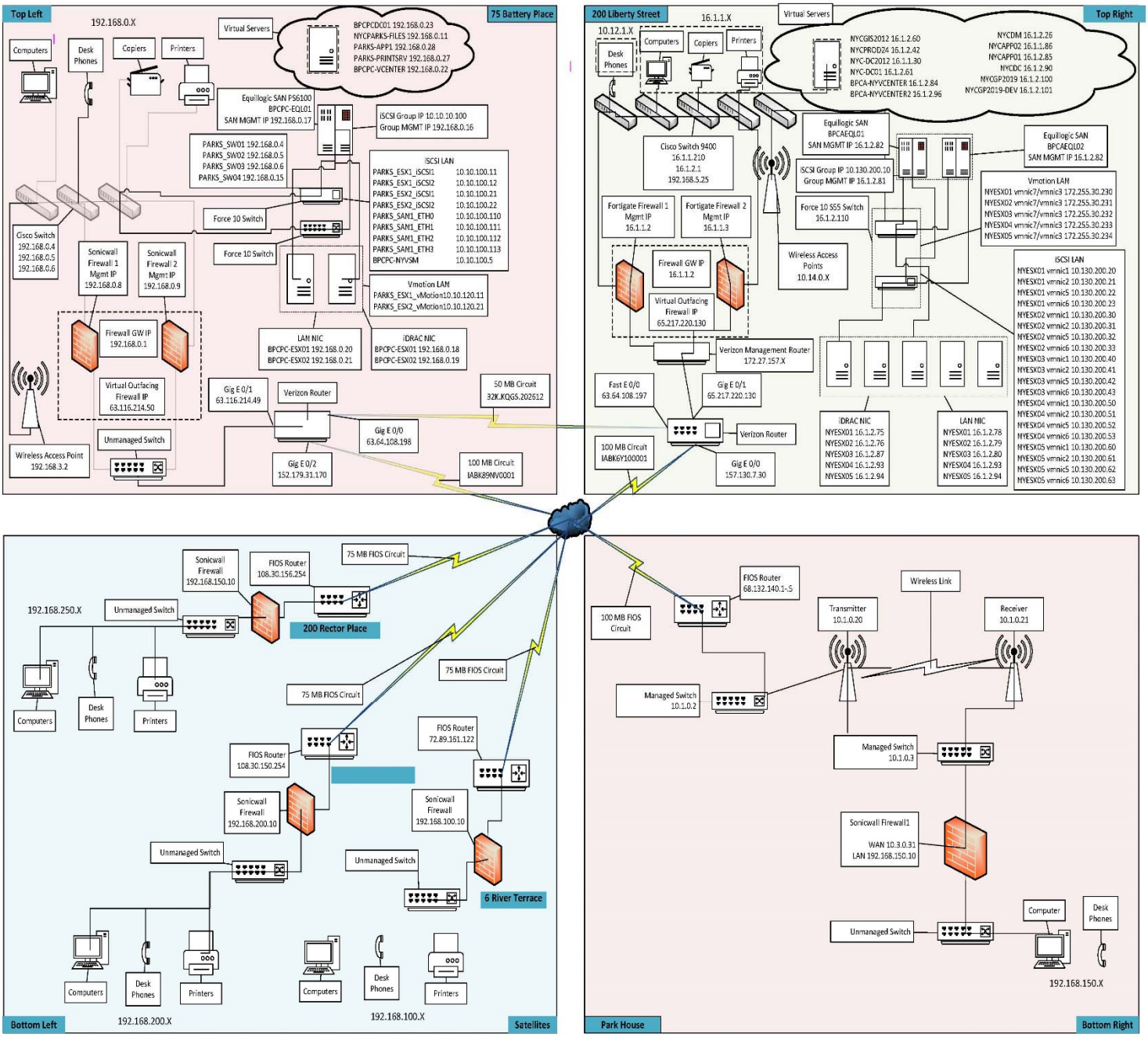
(a) Proposer shall advise BPCA of new technologies that may provide BPCA a business benefit or improvements in efficiency.
(b) Proposer shall provide information that may be necessary to enable the BPCA to develop strategies and architecture policies and guidelines, undertake benchmarking of services provided, and perform application development functions.

**5. Service Level Agreement**

(a) Proposer shall maintain a single point of contact to interface with and coordinate problem determination and resolution with BPCA and MTP.
(b) The regular business hours for Ongoing Maintenance, Training and Consultation, and Future Buildout services under this agreement shall be Monday – Friday, 07.30 AM to 07.30 PM.
(c) Proposer shall provide On-Call Support services 24 hours a day, seven days a week.
(d) Proposer shall replace broken hardware within four (4) hours. Not to exceed the SLA replacement windows + 4 hours.

# EXHIBIT B

## (Current Network Diagram)



# EXHIBIT C

(BPCA CYBERSECURITY REQUIREMENTS)

## 1. PURPOSE:

To establish Cyber Security requirements and guidelines that can be used consistently to ensure a secure network for the Battery Park City Authority ("BPCA" or the "Authority").

## 2. II. SCOPE:

This procedure applies to all BPCA staff and affiliates (e.g., contractors, vendors, solution providers), which have access to or manage BPCA information and systems. This policy encompasses all systems (in the cloud, offsite or on-premises), automated and manual, for which the Battery Park City Authority has administrative responsibility, including systems managed or hosted by third parties on behalf of the Authority and addresses all information, regardless of the form or format, which is created or used in support of business and operational activities of the Authority.

## 3. Cloud Requirements, contractor shall:

a. Cloud services provider proposed for housing BPCA data offsite shall be compliant with the following standards: ISO27001, ISO27017, ISO27018, SOC2 Type 2 and FedRAMP.
b. Ensure that BPCA data and processing is isolated from other customers.
c. Ensure that BPCA data remain within the continental United States at all times.

## 4. General Requirements, contractor shall:

a. PCI DSS (Payment Card Industry Data Security Standards) compliance shall be required when accepting or processing payment cards or handling Personally Identifiable Information.
b. ICS/SCADA environments, including onboard or vehicle systems, shall be designed in accordance to NIST SP 800-82 R2.
c. Securely destroy BPCA data in all formats (e.g., Server, Disk, CD/DVD, backup tape, and paper) when requested by the Authority. Data shall be permanently deleted and be unrecoverable. Certificates of destruction must be retained by Vendor and made available to BPCA upon request.
d. All contractors with access to BPCA data must sign and submit a non-disclosure agreement (NDA) which NDA shall specify that in no event shall any BPCA data be disclosed to any entity not covered by the NDA.

## 5. Operating Systems, contractor shall:

a. Use only commercially supported Operating Systems and maintain timely security patching.
b. Configure Operating Systems based on the CIS Hardening Standard, (https://www.cisecurity.org/cisbenchmarks) with non-essential services disabled. Exceptions to the Hardening standard must be documented and approved through the Change Control process or BPCA's IT department.

c. Configure the Operating System with BPCA specific standards for local and network password management (Password Aging, Password Expiration, Password Length, Multifactor, etc.).
d. Use volume encryption for Operating System and all volumes storing data.
e. Ensure that Operating System protection tools are installed and centrally managed to mitigate exploits, malware, malicious code, or viruses.
f. Ensure that Clear-text and weak cipher protocols are disabled and not used for data transfer
g. Ensure that Network Interface Cards are not multi-homed or used for routing.
h. Ensure that Inbound internet sourced traffic to systems is terminated at a DMZ.
i. Ensure that Internet-bound traffic from system utilizes a proxy or other form of security inspection.
j. Ensure that Split tunneling is not enabled while connected to the BPCA network (access to non-BPCA internet while connected to BPCA resources).
k. Ensure that Operating System is registered with appropriate records in IP Address Management, DNS, and with BPCA IT.

6. **Authentication, contractor shall:**
   a. Develop a plan for identity management consisting of role-based user accounts which isolate access to BPCA data. All account activities, to include role changes, must be logged.
   b. Ensure that all credentials are not passed over the network in clear-text or with weak encryption ciphers.
   c. Use secure, dedicated, and privileged-access workstation (PAW) to administer BPCA Systems.
   d. Use Multifactor Authentication for administrative users on cloud/internet-facing BPCA System components.
   e. Integrate application authentication into Identity Management Solution (IDMS) via SAML 2.0.
   f. Ensure that users utilize Multifactor Authentication to access the system(s) and application(s) via the Internet.
   g. Ensure accounts not accessed within 90 days are either automatically disabled or have their passwords expired.
   h. Perform annual role reviews of active accounts (applicable to non-BPCA managed environments).

7. **Encryption, contractor shall:**
   a. Ensure that all encryption methods for data-in-motion and data-at-rest meet or exceed FIPS-140/NIST standards.
   b. Ensure that data transfers between hosts are encrypted.
   c. Ensure that OS/data volumes in the cloud are encrypted.
   d. Ensure that data files that contain PII are encrypted.

e. Ensure that PII data residing in databases are encrypted.
f. Ensure data backups are encrypted.
g. Ensure that encryption key management system is on a separate platform from the data and its application (keys are not stored with data).
h. Provide exclusive ownership of encryption keys to BPCA.

8. **Networking, contractor shall:**
   a. Ensure that Intrusion Prevention Systems are implemented on networks with connectivity to the Internet and networks with sensitivity zones and/or trust boundaries.
   b. Ensure that public cellular-based solutions employ a private cellular cloud meeting segregation requirements outlined in this document.
   c. Ensure that systems are deployed in a multi-tier firewall segmented network architecture
      - User Workstations
      - Operational application/system servers
      - Backup and Storage
      - Development
      - QA and Testing
      - Programmable Logic Controllers
      - Sensors
      - Wireless Systems
      - Internet of Things (IOT)

   d. Ensure that listening ports/services are protected by firewalls and filters to inspect traffic between segments and hosts.
   e. Ensure that management of systems are restricted through firewall or access control lists over secure protocols and that they are managed over a secure network or VPN.
   f. Perform annual firewall rule audits (applicable to non-BPCA managed environments).
   g. Disable unused functions on network devices.
   h. Implement a tiered firewalled architecture that is restricted to communications where all traffic is monitored, alarmed, and filtered.
   i. Implement appropriate security controls to ensure the integrity and confidentiality of data flowing across the network.

9. **Control System End Devices, contractor shall:**
   a. Provide physical and cyber security features including, but not limited to, authentication, encryption, access control, event and communication logging, monitoring, and alarming to protect the device and configuration computer from unauthorized modification or use.
   b. Clearly identify the physical and cyber security features and provide the methodologies for maintaining the features, including the methods to change settings from the Vendor-configured or manufacturer default conditions.

c. Verify that the addition of security features does not adversely affect connectivity, latency, bandwidth, response time, and throughput, including during the SAT when connected to existing equipment.
d. Remove or disable all software components that are not required for the operation and maintenance of the device.
e. Provide, within a pre-negotiated period, appropriate software and service updates and/or workarounds to mitigate all vulnerabilities associated with the product and to maintain the established level of system security.

**10. <u>Vulnerability Management, contractor shall:</u>**

a. Ensure that all system components (Hardware, Software, Hypervisor, Operating System, Database, Network/Firewall Equipment, etc.) are managed within a vulnerability management and patching program. Documentation and reporting on program activities and gaps must be made available to BPCA upon request.
b. Ensure that third-party security assessments are conducted on an annual basis for the system and provided to the Authority.
c. Ensure that periodic penetration tests are performed to assess system configuration and security vulnerabilities for remediation.
d. Submit biannual security reports to BPCA detailing vulnerability management, penetration tests, security incidents, and enhancements and changes to the infrastructure.
e. Keep all system components updated to vendor supported releases and maintain current security updates. To the extent possible, critical patches should be installed within one week of patch release. Deviations must be documented and a "plan to cure" developed to bring the patch level current.
f. Allow BPCA to conduct an independent Penetration Test upon request.

**11. <u>Incident Management, contractor shall:</u>**

a. Submit and document an Incident Management Plan to guide the response and recovery process in the event of a security breach.
b. Ensure that all security incidents are promptly reported to the Authority. Any incident involving compromised Personally Identifiable Information (PII), must be reported within 1 hour of detection.
c. Fully cooperate through technical assistance and logs to investigate security incidents when required.

**12. <u>Mobile, contractor shall:</u>**

a. Deploy a centralized mobile device management solution to manage all mobile devices permitted to store, transmit or process BPCA data.
b. Ensure the use of encryption for devices permitted to store, transmit or process BPCA data.
c. Ensure that password policies, applicable to mobile devices are documented and enforced.

13. **Application Security, contractor shall:**
    a. Ensure that any software delivered to BPCA adheres to industry standards and best practices for architectural standardization, secure coding standards, and security testing procedures.
    b. Employ threat modeling techniques in the design and assessment phases of the Software Development Life Cycle (SDLC) for systems delivered to BPCA, and incorporate realistic security scenarios during application security assessment.
    c. Perform static analysis scans as part of security-focused reviews and validation of the use of secure coding standards.
    d. Perform dynamic scans as part of applications testing, production deployment, regular health checks, change management requests and audits.
    e. Conduct overall application and systems cybersecurity assessment, which may include penetration testing, evaluating external infrastructure, perimeter assessment, web application testing, internal network assessments, wireless security testing and red teaming.
    f. Have a notification and alert process for vulnerabilities, as well as a documented response plan for addressing newly identified vulnerabilities. Remediation may include patches, updates, security fixes, component replacements, or other steps as dictated by the situation.
    g. Ensure that any open-source, 3rd-party, commercial components used as part of any deliverables have been validated through security assessments and remain as such during their operational use.
    h. Ensure that application APIs have been validated through security assessments and security measures are in place to protect both data and application. Such measures may include gateways, secure protocol, authentication, and keys.
    i. Use, at minimum, industry standard security logging standard for the Applications, and ensure that logging profiles are available and configurable to log events at various levels for various purposes (debugging, verbose, illegal requests, failed access, etc.)

14. **NYS Policy Compliance, contractor shall:**
    a. Comply with applicable New York State Policies, Standards and Procedures as listed at: https://its.ny.gov/eiso/policies/security
    b. Comply with Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy, Security and Breach Notification Rules.
    c. Comply with Federal Risk and Authorization Management Program (FedRAMP) if cloud computing is utilized (http://www.gsa.gov/portal/category/102371).
    d. Comply with all applicable NYS laws and regulations related to privacy protections.

15. **Privacy and Security Plan, contractor shall:**
    a. Without written authorization from the Authority, shall not divulge to third parties any confidential information obtained by the Contractor or its agents, distributors, resellers,

subcontractors, officers or employees in the course of performing contract work, including, but not limited to, security procedures, business operations information or commercial proprietary information.

b. Develop a security and privacy plan in accordance with attachment 1-ITSEC. The Contractor will also be expected to complete the System Security Plan (SSP) based on NIST 800-53 security and privacy controls and complete the section for each control indicating how the control is met.

| **TERMS & ABBREVIATIONS** | |
|---|---|
| **CIS** | Center for Internet Security |

| | |
|---|---|
| **FedRAMP** | The Federal Risk and Authorization Management Program. Government-wide program that provides a standardized approach to security. |
| **Government Compliant** | Cloud services that are compliant for hosting U.S. Federal, State and local agencies and are isolated from commercial, public and other cloud services. (e.g., AWS GovCloud; Azure Government). |
| **ISO 271001** | Specification for information security management system (ISMS). ISMS is a framework of policies and procedures that includes all legal, physical and technical controls involved in an organization's information risk management program. |
| **ISO 271017** | Provides guidance on the information security aspects of cloud computing, recommending the implementation of cloud-specific information security controls that supplement the guidance of the ISO 27002 and ISO 27001 standards. |
| **ISO 271018** | Code of practice that focuses on protection of personal data in the cloud. This provides implementation guidance on ISO 27002 controls applicable to public cloud Personally Identifiable Information (PII). |
| **SIEM** | Security information and event management |
| **SOC 2 Type II** | Service Organization Controls. SOC 2 concerns the internal controls in place at the third-party service organization. Type II reports, concern policies and procedures over a period of time – systems must be evaluated for a minimum of six months. |
| **API** | Application Programming Interface |
| **BPCA Data** | Any and all data maintained by the Authority, including, but not limited to, data related to its finances, operations, engineering, taxes, employees, customers, suppliers and the business. |

# EXHIBIT D

## CONTRACTOR REQUIREMENTS AND PROCEDURES FOR PARTICIPATION BY NEW YORK STATE-CERTIFIED MBEs/WBEs/SDVOBs AND EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITY GROUP MEMBERS AND WOMEN

### NEW YORK STATE LAW

Pursuant to New York State Executive Law Article 15-A and Parts 140-145 of Title 5 of the New York Codes, Rules and Regulations BPCA is required to promote opportunities for the maximum feasible participation of New York State-certified MBEs/WBEs (collectively, "MWBE(s)") and the employment of minority group members and women in the performance of BPCA contracts. Pursuant to New York State Executive Law Article 17-B and 9 NYCRR §252, BPCA recognizes its obligation under the law to promote opportunities for maximum feasible participation of certified SDVOBs.

### Business Participation Opportunities for MWBEs

For purposes of this solicitation, BPCA hereby establishes the following MWBE participation goals, based on the current availability of MWBEs:

**Overall goal for total MWBE participation: 30%**

**NYS-Certified Minority-Owned Business ("MBE") Participation: 15%**

**NYS-Certified Women-Owned Business ("WBE") Participation: 15%**

A contractor ("Contractor") on any contract resulting from this procurement ("Contract") must document its good faith efforts to provide meaningful participation by MWBEs as subcontractors and suppliers in the performance of the Contract. To that end, by submitting a response to this RFP, the Proposer agrees that BPCA may withhold payment pursuant to any Contract awarded as a result of this RFP pending receipt of the required MWBE documentation. The directory of MWBEs can be viewed at: https://ny.newnycontracts.com. For guidance on how BPCA will evaluate a Contractor's "good faith efforts," refer to 5 NYCRR § 142.8.

The Proposer understands that only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be applied towards the achievement of the applicable MWBE participation goal. The portion of a contract with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be 25 percent of the total value of the contract]

In accordance with 5 NYCRR § 142.13, the Proposer further acknowledges that if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in a Contract resulting from this RFP, such finding constitutes a breach of contract and BPCA may withhold payment as liquidated damages.

Such liquidated damages shall be calculated as an amount equaling the difference between: (1) all sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and (2) all sums actually paid to MWBEs for work performed or materials supplied under the Contract.

By submitting a bid or proposal, a Proposer agrees to demonstrate its good faith efforts to achieve the applicable MWBE participation goals by submitting evidence thereof through the New York State Contract System ("NYSCS"), which can be viewed at https://ny.newnycontracts.com, provided, however, that a Proposer may arrange to provide such evidence via a non-electronic method by contacting Thierry Byron at Thierry.Byron@bpca.ny.gov or 212-417-4415. Please note that the NYSCS is a one-stop solution for all of your MBE/WBE and Article 15-A contract requirements. For additional information on the use of the NYSCS to meet the Proposer's MBE/WBE requirements, please see the attached MBE/WBE guidance from the New York State Division of Minority and Women's Business Development, "Your MWBE Utilization and Reporting Responsibilities Under Article 15-A.".

Additionally, a Proposer will be required to submit the following documents and information as evidence of compliance with the foregoing:

A. An MWBE Utilization Plan with their bid or proposal. Any modifications or changes to an accepted MWBE Utilization Plan after the Contract award and during the term of the Contract must be reported on a revised MWBE Utilization Plan and submitted to BPCA for review and approval.

B. BPCA will review the submitted MWBE Utilization Plan and advise the Proposer of BPCA acceptance or issue a notice of deficiency within 30 days of receipt.

C. If a notice of deficiency is issued, the Proposer will be required to respond to the notice of deficiency within seven (7) business days of receipt by submitting to Thierry Byron at BPCA, by email at Thierry.Byron@bpca.ny.gov, a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by BPCA to be inadequate, BPCA shall notify the Proposer and direct the Proposer to submit, within five (5) business days, a request for a partial or total waiver of MWBE participation goals. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.

D. BPCA may disqualify a Proposer as being non-responsive under the following circumstances:

1) If a Proposer fails to submit an MWBE Utilization Plan;

2) If a Proposer fails to submit a written remedy to a notice of deficiency;

3) If a Proposer fails to submit a request for waiver; or

4) If BPCA determines that the Proposer has failed to document good faith efforts.

The successful Proposer will be required to attempt to utilize, in good faith, any MBE or WBE identified within its MWBE Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract Award may be made at any time during the term of the Contract to BPCA, but must be made no later than prior to the submission of a request for final payment on the Contract.

The successful Proposer will be required to submit a quarterly M/WBE Contractor Compliance & Payment Report to BPCA, by the 10th day following each end of quarter over the term of the Contract documenting the progress made toward achievement of the MWBE goals of the Contract.

**Business Participation Opportunities for SDVOBs**

**For purposes of this solicitation, BPCA hereby establishes an overall goal of 6%** for SDVOB participation. A Proposer must document good faith efforts to provide meaningful participation by SDVOBs as subcontractors or suppliers in the performance of the Contract and Proposer agrees that BPCA may withhold payment pending receipt of the required SDVOB documentation. The directory of New York State Certified SDVOBs can be viewed at: http://www.ogs.ny.gov/Core/docs/CertifiedNYS_SDVOB.pdf. For guidance on how BPCA will determine a Contractor's "good faith efforts," refer to 9 NYCRR §252.2(f)(2).

In accordance with 9 NYCRR §252.2(s), the Proposer acknowledges that if it is found to have willfully and intentionally failed to comply with the SDVOB participation goals set forth in the Contract, such finding constitutes a breach of Contract and Contractor shall be liable for damages as specified in the Contract.

Such damages shall be calculated based on the actual cost incurred by BPCA related to BPCA's expenses for personnel, supplies and overhead related to establishing, monitoring and reviewing certified SDVOB programmatic goals.

A. Additionally, a Proposer agrees to submit a Utilization Plan with their bid or Proposal as evidence of compliance with the foregoing. Any modifications or changes to the Utilization Plan after the Contract award and during the term of the Contract must be reported on a revised Utilization Plan and submitted to BPCA.

B. BPCA will review the submitted Utilization Plan and advise the Proposer of BPCA's acceptance or issue a notice of deficiency within 30 days of receipt.

C. If a notice of deficiency is issued, Proposer agrees that it shall respond to the notice of deficiency within seven (7) business days of receipt by submitting to Thierry Byronat BPCA, by email at Thierry.Byron@bpca.ny.gov, a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by BPCA to be inadequate, BPCA shall notify the Proposer and direct the Proposer to submit, within five (5) business days, a request for a partial or total waiver of SDVOB participation goals. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or Proposal.

D. BPCA may disqualify a Proposer as being non-responsive under the following circumstances:

   1) If a Proposer fails to submit a Utilization Plan;

   2) If a Proposer fails to submit a written remedy to a notice of deficiency;

   3) If a Proposer fails to submit a request for waiver; or

   4) If BPCA determines that the Proposer has failed to document good faith efforts.

The successful Proposer shall attempt to utilize, in good faith, any SDVOB identified within its Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to the Contract award may be made at any time during the term of the Contract to BPCA, but must be made no later than prior to the submission of a request for final payment on the Contract.

The successful Proposer is required to submit a Contractor's SDVOB Contractor Compliance & Payment Report to BPCA on a monthly basis over the term of the Contract documenting the progress made toward achievement of the SDVOB goals of the Contract.

**Equal Employment Opportunity Requirements**

By submission of a bid or proposal in response to this solicitation, the Proposer agrees with all of the terms and conditions of the attached MWBE Equal Employment Opportunity Policy Statement. The Proposer is required to ensure that it and any subcontractors awarded a subcontract for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work"), except where the Work is for the beneficial use of the Proposer, undertake or continue programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, equal opportunity shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, and rates of pay or other forms of compensation. This requirement does not apply to: (i) work, goods, or services unrelated to the Contract; or (ii) employment outside New York State.

The Proposer will be required to submit a Minority and Women-owned Business Enterprise and Equal Employment Opportunity Policy Statement, Form # 4, to BPCA with its bid or proposal.

If awarded a Contract, Proposer shall submit a Workforce Utilization Report and shall require each of its Subcontractors to submit a Workforce Utilization Report, in such format as shall be required by BPCA on a monthly basis during the term of the Contract.

Pursuant to Executive Order #162, contractors and subcontractors will also be required to report the gross wages paid to each of their employees for the work performed by such employees on the contract utilizing the Workforce Utilization Report on a quarterly basis.

Further, pursuant to Article 15 of the Executive Law (the “Human Rights Law”), all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor and sub-contractors will not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

**Please Note: Failure to comply with the foregoing requirements may result in a finding of non-responsiveness, non-responsibility and/or a breach of the Contract, leading to the withholding of funds, suspension or termination of the Contract or such other actions or enforcement proceedings as allowed by the Contract.**

NEW YORK STATE OF OPPORTUNITY | Division of Minority and Women's Business Development

## Your MBE/WBE Utilization and Reporting Responsibilities Under Article 15-A

The New York State Contract System ("NYSCS") is your one stop tool compliance with New York State's MBE/WBE Program. It is also the platform New York State uses to monitor state contracts and MBE/WBE participation.

### GETTING STARTED

To access the system, please login or create a user name and password at https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp?TN=ny&XID=7562. If you are uncertain whether you already have an account set up or still need to register, please send an email to the customer service contact listed on the Contact Us & Support page, or reach out to Thierry Byron at Thierry.Byron@bpca.ny.gov or 212-417-4415. For verification, in the email, include your business name and contact information.

### VENDOR RESPONSIBILITIES

As a vendor conducting business with New York State, you have a responsibility to utilize minority- and/or women-owned businesses in the execution of your contracts, per the MBE/WBE percentage goals stated in your solicitation, incentive proposal or contract documents. NYSCS is the tool that New York State uses to monitor MBE/WBE participation in state contracting. Through the NYSCS you will submit utilization plans, request subcontractors, record payments to subcontractors, and communicate with your project manager throughout the life of your awarded contracts.

There are several reference materials available to assist you in this process, but to access them, you need to first be registered within the NYSCS. Once you log onto the website, click on the **Help & Support >>** link on the lower left hand corner of the Menu Bar to find recorded trainings and manuals on all features of the NYSCS. You may also click on the **Help & Tools** icon at the top right of your screen to find videos tailored to primes and subcontractors. There are also opportunities available to join live trainings, read up on the "Knowledge Base" through the Forum link, and submit feedback to help improve future enhancements to the system. Technical assistance is always available through the **Contact Us & Support** link on the NYSCS website (https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp?TN=ny&XID=7562).

For more information, contact Thierry Byronat Thierry.Byron@bpca.ny.gov or 212-417-4415.

**MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES**

**EQUAL EMPLOYMENT OPPORTUNITY POLICY STATEMENT**

## MBE/WBE AND EEO POLICY STATEMENT

I, _____ (the "Contractor"), agree to adopt the following policies with respect to the project being developed at, or services rendered to, the Battery Park City Authority ("BPCA").

### MBE/WBE

This organization will and will cause its contractors and subcontractors to take good faith actions to achieve the MBE/WBE contract participations goals set by the State for that area in which the State-funded project is located, by taking the following steps:

(1) Actively and affirmatively soliciting bids for contracts and subcontracts from qualified State certified MBEs or WBEs, including solicitations to MBE/WBE contractor associations.

(2) Requesting a list of State-certified MBEs/WBEs from BPCA and soliciting bids from these MBEs/WBEs directly.

(3) Ensuring that plans, specifications, request for proposals and other documents used to secure bids will be made available in sufficient time for review by prospective MBEs/WBEs.

(4) Where feasible, dividing the work into smaller portions to enhance participations by MBEs/WBEs and encourage the formation of joint venture and other partnerships among MBE/WBE contractors to enhance their participation.

(5) Documenting and maintaining records of bid solicitation, including those to MBEs/WBEs and the results thereof. The Contractor will also maintain records of actions that its subcontractors have taken toward meeting MBE/WBE contract participation goals.

(6) Ensuring that progress payments to MBEs/WBEs are made on a timely basis so that undue financial hardship is avoided, and that bonding and other credit requirements are waived or appropriate alternatives are developed to encourage MBE/WBE participation.

### EEO

(a) This organization will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing diversity programs to ensure that minority group members are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts.

(b) This organization shall state in all solicitation or advertisements for employees that in the performance of the State contract all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex disability or marital status.

(c) At the request of BPCA, this organization shall request that each employment agency, labor union, or authorized representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of this organization's obligations herein.

(d) The Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. The Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

(e) This organization will include the provisions of sections (a) through (d) of this agreement in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the State contract.

Agreed to this _____ day of _____, 2016

By _____

Print: _____ Title: _____

_____ is designated as the Consultant's Minority Business Enterprise Liaison responsible for administering the Minority and Women-Owned Business Enterprises - Equal Employment Opportunity (MBE/WBE - EEO) program.

**MBE/WBE Contract Goals**

**30%** Minority and Women's Business Enterprise Participation

___% Minority Business Enterprise Participation

___% Women's Business Enterprise Participation

**EEO Contract Goals** (if applicable)

___% Minority Labor Force Participation

___% Female Labor Force Participation

_____
(Authorized Representative)

Title: _____

Date: _____

**Diversity Practices Questionnaire**

I, _____, as _____ (title) of _____ company (the "Company"), swear and/or affirm under penalty of perjury that the answers submitted to the following questions are complete and accurate to the best of my knowledge:

1. Does your Company have a Chief Diversity Officer or other individual who is tasked with supplier diversity initiatives? Yes or No

If Yes, provide the name, title, description of duties, and evidence of initiatives performed by this individual or individuals.

2. What percentage of your Company's gross revenues (from your prior fiscal year) was paid to New York State certified MBEs/WBEs as subcontractors, suppliers, joint-ventures, partners or other similar arrangement for the provision of goods or services to your Company's clients or customers?

3. What percentage of your Company's overhead (i.e. those expenditures that are not directly related to the provision of goods or services to your Company's clients or customers) or non-contract-related expenses (from your prior fiscal year) was paid to New York State certified MBEs/WBEs as suppliers/contractors?[1]

4. Does your Company provide technical training[2] to MBEs/WBEs? Yes or No

If Yes, provide a description of such training which should include, but not be limited to, the date the program was initiated, the names and the number of MBEs/WBEs participating in such training, the number of years such training has been offered and the number of hours per year for which such training occurs.

5. Is your Company participating in a government approved M/WBE mentor-protégé program?

If Yes, identify the governmental mentoring program in which your Company participates and provide evidence demonstrating the extent of your Company's commitment to the governmental mentoring program.

6. Does your Company include specific quantitative goals for the utilization of MBEs/WBEs in its non-government procurements? Yes or No

If Yes, provide a description of such non-government procurements (including time period, goal, scope and dollar amount) and indicate the percentage of the goals that were attained.

7. Does your Company have a formal M/WBE supplier diversity program? Yes or No

If Yes, provide documentation of program activities and a copy of policy or program materials.

8. Does your Company plan to enter into partnering or subcontracting agreements with New York State certified MBEs/WBEs if selected as the successful Proposer? Yes or No

[1] Do not include onsite project overhead.

[2] Technical training is the process of teaching employees how to more accurately and thoroughly perform the technical components of their jobs. Training can include technology applications, products, sales and service tactics, and more. Technical skills are job-specific as opposed to soft skills, which are transferable.

If Yes, complete the attached Utilization Plan

All information provided in connection with the Diversity Practices Questionnaire is subject to audit and any fraudulent statements are subject to criminal prosecution and debarment.

Signature of Owner/Official _____

Printed Name of Signatory _____

Title _____

Name of Business _____

Address _____

City, State, Zip _____

STATE OF _____

COUNTY OF ) ss:

On the _____ day of _____, 20__, before me, the undersigned, a Notary Public in and for the State of _____, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to this certification and said person executed this instrument.

_____
Notary Public

**EXHIBIT E**

**(Acknowledgement of Addenda)**

**RFP TITLE: _____**

**Complete Part I or Part II, whichever is applicable, and sign your name in Part III.**

**Part I**

Listed below are the dates of issue for each Addendum received in connection with this RFP:

Addendum # 1, Dated _____, ____

Addendum # 2, Dated_____, ____

Addendum # 3, Dated_____, ____

Addendum # 4, Dated _____, ____

Addendum # 5, Dated_____, ____

Addendum # 6, Dated_____, ____

**Part II Acknowledgement of No Receipt**

_____ No Addendum was received in connection with this RFP

**Part III**

Proposer's Name: _____

Proposer's Authorized Representative:

Name: _____

Title: _____

Signature: _____

**EXHIBIT F**
**List of BPCA & BPCPC Board Members and Employees**

**LIST OF BOARD MEMBERS**

Donald Capoccia
Lester Petracca
Louis J. Bevilacqua
Catherine McVay Hughes
Martha J. Gallo
Anthony Kendall

**LIST OF EMPLOYEES**

Betzayda Abreu
Francis Caamano
Curtis Afzal
Elsa Alvarez
Dana Anders
Anthony Andriano
Stephen Arciold
Sharmila Baichu
Marie Baptiste
Brett Beecham
Freddy Belliard
Marieke Bender
Yipin Benon
Marcus Billips
Emily Birdseye
Nidia Blake
LaToya Brooks-Jones
Nancy Buivid
Anthony Buquicchio
Peter Campbell
Frances Caperchi
Monica Centeno
Rita Chadha
Julissa Cooke
Sarah Fisher-Curtin
Fiona Cutting
Gwen Dawson
Nicole Dawson
Gilbert DePadua
Phillip DeSantis
Josha DeVoto
Paul Diaz-Larui
Tonasia Dopson
Abigail Ehrlich
Maria Ellison
Richard Faraino
Anitra Fauntleroy
Claudia Filomena
Tamara Flores
Pamela Frederick
James Gallagher
Abigail Goldenberg
Anastasia Gonzalez
Lenron Goode
Sakina Graves
Ned Greenberg
Evelyn Gregg
Johnathan Gross
Robert Hansen
Paul Hart
Nicole Heater
Sankar Heerah
Raul Hernandez
Alex Hing
Brendan Hoey
Keiry Holguin
Craig Hudon
Jake Jacevicius
Amy Jogie
William John
Jasmine Johnson
Benjamin Jones
Jamie Joyeaux
Roland Kemp
Ann Ketring
Karl Koenig
Varun Kohli
Michael LaMancusa
Rene Lopcy
Janira Lopez
Rodolfo Machuca
Robert Maggi
Evelin Maisonet
Kevin McCabe
Justin McLaughlin-Williams
Leah McMillan
Princess McNeil
Brian Meikle
Vanessa Mesine
Nazima Mohamed
Ronnie Mohammed
Jose Morales
Dana Morgera
Franco Morizio
Irene Moulketis
Eric Munson
Lauren Murtha
Jahmeliah Nathan
Robert Nesmith
Siu May Ng
Yoshihiro Nishida
Anne O'Neill
Kevin O'Toole
Stauart Ohleyer
Maril Ortiz
Bienvenido Osorio
Hector Oyola
Willem Paillant
Roman Lora
Nimisha Haribaran Patel
Gladys Pearlman
Dahlia Pena
Katherine Powell
Sandra Power
Robert Quon
Jason Rachnowitz
Madelin Ramirez
Aline Reynolds
Chad Rimer
Manual Rivera
Nelson Rogers
Jose Rosado
Holly Ross
Joel Rufino
Kwabena Safo
Carlos Santiago
Micah Sapperstein
Nicholas Sbordone
Jean Schwartz
Bradley Schleyer
Iphigenia Seong
Rekha Sewraj-Kumar
Sean Simon
Kemnarine Singh
Sarah Smedley
Shinay Stewart
Jerome Sturiano
Lance Super
Markus Sztejnberg
Mimi Taft
Alexis Torres
Michelle Torres
Ryan Torres
Douglas Van Horn
Christian Vargas
Noe Velasquez
Evangelio Villalobos
Sharon Wade
David Wallace
Annalise Warren
Eric White

Paul Whitworth
Dwight Williams
Al Wright
Erin Yokoi
Alaura Zayas

**EXHIBIT G**

(BPCA SAMPLE FORM OF CONTRACT)

CONSULTANT AGREEMENT

between

HUGH L. CAREY BATTERY PARK CITY AUTHORITY

and

[CONSULTANT]

Dated as of _____

Contract No. [CONTRACT #]

([PROJECT NAME])

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EXHIBIT A - SCOPE OF WORK

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EXHIBIT C - FORM OF TIME SHEET **[if applicable]**

EXHIBIT D - MBWE AND EEO POLICY STATEMENT

SAMPLE

**CONSULTANT AGREEMENT**

AGREEMENT (the "Agreement") made as of _____ by and between BATTERY PARK CITY AUTHORITY d/b/a HUGH L. CAREY BATTERY PARK CITY AUTHORITY, (the "Owner"), a body corporate and politic, constituting a public benefit corporation, having a place of business at 200 Liberty Street, 24th Floor, New York, New York 10281, and **[COMPANY],** formed under the laws of the State of **[INCORP. STATE]**, having an office at **[CITY, STATE AND ZIP]** (the "Consultant").

W I T N E S S E T H:

WHEREAS, Owner has fee title to certain real property located in the City, County and State of New York, generally known as Battery Park City; and

WHEREAS, Owner has developed Battery Park City, in individual parcels, with the goal of creating a richly diversified mixed use community providing residential and commercial space with related amenities such as parks, plazas, recreational areas and a waterfront esplanade; and

WHEREAS, Owner intends to retain the services of Consultant to perform **[describe services to be performed]** (the "Project"), and Consultant desires to perform such services for Owner.

NOW, THEREFORE, in consideration of the mutual promises herein contained, the parties hereby agree as follows:

**1. Scope of Work**

Consultant shall perform the services described in the Scope of Work attached hereto as Exhibit A (the "Work"). All Work shall be completed in accordance with the requirements furnished to Consultant by Owner, and shall be completed to Owner's satisfaction.

**2. Time for Performance**

Consultant shall perform the Work as expeditiously as is consistent with professional skill and the orderly progress of the Work, and in accordance with any schedule set forth in the attached Scope of Work. If a schedule approved by Owner is incorporated into this Agreement, said schedule shall not be exceeded by Consultant, except for reasonable cause. The term of this Agreement shall begin **[DATE TERM BEGINS]** (the "Commencement Date") and shall terminate not later than **[DATE TERM ENDS]** (the "Expiration Date") (such period from the Commencement Date to the Expiration Date is referred to herein as the "Term") unless this Agreement is otherwise terminated as hereinafter provided. Consultant shall complete the Scope of Work on or before **[DATE]**, unless the time for performance of the Work is extended by written agreement of Consultant and Owner.

**3. Compensation**

(a) Owner shall pay, and Consultant agrees to accept as full compensation for all Work performed under this Agreement, the not-to-exceed amount of **[$$$$$]** (the "Fee"), paid in

SAMPLE

accordance with the rates (the "Rates") attached hereto as Exhibit B. The Fee includes any and all reimbursable expenses, which shall not exceed **[$$$$$]** (the "Reimbursable Amount"), incurred by Consultant in performing the Work.

(b) Any reimbursable expenses shall be paid in accordance with Owner's standard policies for reasonable expenses actually incurred by Consultant in connection with the performance of the Work. Consultant shall submit copies of receipts or other supporting documentation for any qualifying expenses incurred.

(c) Consultant shall submit monthly requests for payment to Owner that shall:

(i) include the name, address, and telephone number of Consultant;

(ii) be accompanied by time sheets, in substantially the form provided in Exhibit C ("Form of Time Sheet"), attached hereto and made part hereof, containing a description of the work performed and indicating hours worked in each billing category; and

(iii) reference the project for which services were rendered.

(d) Owner shall pay Consultant no later than the 30th calendar day (excluding holidays) following Owner's receipt of a Proper Invoice (pursuant to, and as such term is defined in Owner's Prompt Payment Policy, a copy of which can be found at http://bpca.ny.gov/wp-content/uploads/2018/01/BPCA-Prompt-Payment-Policy-Fiscal-Year-2017.pdf). Any item(s) of Work indicated in any Exhibit hereto as attributable to a specific phase of the Work that is not performed during the specified phase shall not be compensated by Owner, but payment for any such items of Work shall remain available to Consultant if, with Owner's advance approval, such Work is actually performed during a subsequent phase of the Work, subject to the provisions of this Article 3 and Owner's approval of any request for payment. Owner may withhold from any payment an amount equal to any costs or damages incurred by Owner as a result of Consultant's negligence or breach of this Agreement.

(e) All requests for payment should be addressed as follows:

Office of the Treasurer
Battery Park City Authority
d/b/a Hugh L. Carey Battery Park City Authority
200 Liberty Street, 24th Floor
New York, NY 10281-1097
Attn.: Accounts Payable

A duplicate copy is to be sent to the attention of **[PROJECT MANAGER, TITLE]**.

## 4. Increase and Decrease in the Scope of Consultant's Work

Owner shall have the right to make changes to, increase or reduce the scope of Work, or extend the Term or any date set forth in the schedule referenced in Section 2 *supra*, at any time and for any reason, upon written notice to Consultant specifying the nature and extent of such changes. If Consultant believes that any work it has been directed to perform by Owner is beyond

SAMPLE

the scope of Work set forth in this Agreement and constitutes extra work, Consultant shall so notify Owner within ten (10) business days. Owner shall determine whether or not such work is in fact beyond the scope of the Work and is considered extra work. If Owner determines that such work constitutes extra work to Consultant or any Subconsultant (as defined in Section 25 of this Agreement), Owner will pay Consultant any additional reimbursable expenses approved pursuant to Owner's policy for reimbursable expenses, and such additional compensation only as mutually agreed in writing by Owner and Consultant at the time of such change.

**5. Consultant Cooperation**

(a) Consultant shall work with such firms or individuals as Owner shall designate from time to time in connection with the Work, and agrees to meet with such firms or individuals at such times as Owner may require in order to maintain an ongoing review process so as to expedite determinations and approvals required to be made in connection with the Work.

(b) Consultant shall render any assistance that Owner may require with respect to any claim or action arising from or in any way relating to Consultant's services during or subsequent to the Term of this Agreement, including, but not limited to, review of claims, preparation of technical reports and participation in negotiations, both before and after Consultant has completed performance of the Work under this Agreement and without any additional compensation therefor.

**6. Termination**

(a) *Termination for Convenience*. Owner, at any time, may terminate this Agreement in whole or in part. Any such termination shall be effected by mailing or delivering to Consultant a written notice of termination specifying the extent to which performance of the Work under this Agreement is terminated and the date upon which such termination becomes effective. Upon receipt of the notice of termination, Consultant shall act promptly to minimize any expenses resulting from said termination. Owner shall pay Consultant the costs actually incurred by Consultant, including any Fee for Work actually and satisfactorily performed up to the effective date of the termination, but in no event shall Consultant be entitled to compensation in excess of the total consideration of this Agreement. In the event of such a termination, Owner may take over the Work and prosecute same to completion by contract or otherwise, and may take possession of and utilize such work product, materials, appliances, and plant as may be on the site and necessary or useful to complete the Work. Except as otherwise provided herein, all of Owner's liability hereunder shall cease and terminate as of the effective date specified in such notice of termination.

(b) *Termination for Cause*. Owner may terminate this Agreement for cause if:

(i) Consultant shall fail to diligently, timely and expeditiously perform any of its obligations as set forth in the Agreement;

(ii) Any representation or warranty made or deemed to have been made under this Agreement by Consultant shall prove to be untrue in any material respect;

(iii) Consultant shall make a general assignment for the benefit of its creditors, or a receiver or trustee shall have been appointed on account of Consultant's insolvency, or Consultant otherwise shall be or become insolvent, or an order for relief shall have been entered

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against Consultant under Chapter 7 or Chapter 11 of Title 11 of the United States Code;

(iv) a breach of any covenant or agreement contained in Section 16 of this Agreement or any other section of this Agreement shall occur; or

(v) Consultant otherwise shall be in default hereunder;

by serving written notice upon Consultant of Owner's intention to terminate this Agreement. Such notice shall state: (1) the reason(s) for Owner's intention to terminate the Agreement, and (2) the effective date of termination, to be not less than three (3) calendar days after the date of the notice of termination. If Consultant shall fail to cure the reason(s) for termination or make arrangements satisfactory to Owner on or before the effective date of termination, this Agreement shall terminate on the date specified by Owner in the notice of termination. In the event of any such termination, Owner may take over the Work and prosecute same to completion by contract or otherwise, for the account and at the expense of Consultant, and Consultant shall be liable to Owner for all costs incurred by Owner by reason of said termination. In the event of such termination, Owner may take possession of and utilize such work product, materials, appliances, and plant as may be on the site and necessary or useful to complete the Work. Upon Owner's completion of the Work following a termination for cause, Consultant shall be entitled to such amount of the Fee that has not theretofore been paid to Consultant and that shall compensate Consultant for all Work actually and satisfactorily performed by it up to the date of termination, provided, however, that Owner shall deduct from any amount all additional costs and expenses that Owner may incur over those which Owner would have incurred in connection with the Work if Owner had not so terminated this Agreement for cause. Nothing contained in this Agreement shall limit in any manner any and all rights or remedies otherwise available to Owner by reason of a default by Consultant under this Agreement, including, without limitation, the right to seek full reimbursement from Consultant for all costs and expenses incurred by Owner by reasons of Consultant's default hereunder and which Owner would not have otherwise incurred if Consultant had not defaulted hereunder.

(c) Upon any termination of this Agreement in accordance with the provisions of this Section 6, Consultant shall, with respect to the Work which is the subject of such termination:

(i) discontinue all its services from and after the date of the notice of termination, except to attempt to cure any reason(s) for termination or as may be required to complete any item or portion or services to a point where discontinuance will not cause unnecessary waste of duplicative work or cost;

(ii) cancel, or if so directed by Owner, transfer to Owner all commitments and agreements made by Consultant relating to the Work, to the extent same are cancelable or transferable by Consultant;

(iii) transfer to Owner in the manner, to the extent, and at the time directed by Owner, all work product, supplies, materials and other property produced as a part of, or acquired in the performance of the Work; and

(iv) take other actions as Owner may reasonably direct.

(d) In the event that Consultant, having been terminated, thereafter obtains a

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determination, in a judicial or other action or proceeding, that such termination was unwarranted, without basis, or invalid for any reason, then the termination shall be deemed to have been one for the convenience of Owner and Consultant shall be entitled to be reimbursed and paid as provided in Subsection 6(b) but to no other payments or damages.

**7. Suspension**

Owner may, at any time and for any reason, order Consultant in writing to suspend, delay or interrupt performance of all or any part of the Work for a reasonable period of time as the Owner may determine. Upon receipt of a suspension order, Consultant shall, as soon as practicable, cease performance of the Work as ordered and take immediate affirmative measures to protect such Work from loss or damage. Consultant specifically agrees that such suspension, delay or interruption of the performance of Work pursuant to this Section 7 shall not increase the cost of performance of the Work of this Agreement. Owner may extend the Term or any date set forth in schedule referenced in Section 2 *supra*, to compensate Consultant for lost time due to suspension, delay or interruption, and such time extension shall be Consultant's sole compensation for same. Consultant shall resume performance of such Work upon the date ordered by Owner.

**8. Assignment**

(a) Consultant shall not by agreement, operation of law, or otherwise, assign, encumber, transfer, convey, sublet or otherwise dispose of this Agreement to any entity or person, in whole or in part, including but not limited to an assignment, transfer or conveyance by change in the control or change in the ownership of the Consultant or a change in control or change in the ownership of any entity owning or controlling the Consultant, without the prior written consent of Owner, which consent may be withheld, conditioned or delayed in the Owner's sole discretion. A "change in control" includes, but is not limited to, any change in the ownership or control of the Consultant or any entity owning or controlling the Consultant, whether such change results from a merger, or a sale, assignment or transfer of stock, or a sale of assets, or a sale, transfer or assignment of assets to an affiliate or subsidiary, or a sale, transfer or assignment of assets to an affiliate or subsidiary with a subsequent sale or transfer of such affiliate or subsidiary, or a transfer or change in control by contract or other such agreement.

(b) Any action by the Contractor which violates the provisions of section A, above, shall be deemed to be a material breach of the terms of this Agreement by the Consultant and Owner shall have all rights and remedies available to it under law and equity, including termination of the Agreement.

**9. Ownership of Documents**

(a) All material specifically prepared for the Project and excluding any intellectual property already owned by Consultant that is furnished by Consultant or any Subconsultants (including but not limited to all film, video, or digital assets, Hypertext Markup Language ("HTML") files, JavaScript files, flash files, etc.) in connection with the Work shall be deemed Works Made for Hire and become the sole property of Owner. Consultant shall provide a tangible copy of the Work to Owner in any form(s) to be specified by Owner. Such materials may be used by Owner, in whole or in part, or in modified form, for any and all purposes Owner may deem

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desirable without further employment of, or payment of any additional compensation to Consultant. Consultant hereby acknowledges that whatever participation Consultant has, or will have, in connection with any copyrightable subject matter that is the subject of the Work is and shall be deemed Work Made for Hire on behalf of the Owner and that the Owner shall be the sole owner of the Work, and all underlying rights therein, worldwide and in perpetuity. In the event that the Work, or any portion thereof, does not qualify or is deemed not to be Work Made for Hire, Consultant hereby irrevocably transfers and assigns to the Owner all of Consultant's right, title and interest, throughout the world, in and to the Work, including, without limitation, all of Consultant's right, title and interest in the copyrights to the Work, including the unrestricted right to make modifications, adaptations and revisions to the Work and hereby waives any so-called "moral rights" with respect to the Work. Consultant grants to Owner a royalty free, worldwide perpetual, irrevocable, nonexclusive license to reproduce, modify, and publicly display the Work.

(b) Any plans, drawings, or specifications prepared by or on behalf of Consultant for the Project shall become property of Owner, and Consultant may not use same for any purpose not relating to the Project without Owner's prior written consent. Consultant may retain such reproductions of plans, drawings or specifications as Consultant may reasonably require. Upon completion of the Work or the termination of this Agreement, Consultant shall promptly furnish Owner with a complete set of original record prints. All such original materials shall become property of Owner who may use them, without Consultant's permission, for any proper purpose including but not limited to additions or completion of the Project.

**10. <u>Insurance</u>**

(a) Consultant shall procure and maintain all of the insurance required under this Section 10 during the Term of this Agreement, except with respect to Completed Operations coverage, as described in Section 10(g) below.

(b) Consultant shall not commence performance of the Work until Consultant has obtained, and required each Subconsultant to obtain, all the insurance required under this Section 10 and until it has furnished to Owner the certificate or certificates of insurance required by Section 10(c) hereof.

(c) Consultant shall furnish to Owner, before or upon execution of this Agreement, attention: **[name]**, a certificate or certificates of the insurance required under this Section 10 and, upon Owner's request, certified copies of the original policies of insurance, within the time period required by Owner and before commencing performance of the Work. Such certificate or certificates shall be in form satisfactory to Owner and shall list the various coverages required under this Article. Consultant shall certify that the policy shall not be changed, canceled or reduced and that it shall be automatically renewed upon expiration and continued in force until two years after the Work is completed unless Owner is given 90 days' written notice to the contrary. Such certificates shall also include riders providing that violation of any of the terms of any policy shall not by itself invalidate such policy. Such policies and certificates must name as additional insureds Owner, Battery Park City Parks Conservancy Corporation ("BPCPC") and the State of New York.

(d) All insurance required to be procured and maintained must be procured from insurance companies that have a financial rating by A.M. Best Company as published in the most

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current key rating guide of A-:VII or better and which are authorized to do business in the State of New York.

(e) If at any time any of the required insurance policies should be canceled, terminated or modified so that insurance is not in effect as required, then Consultant shall suspend performance of the Work. If the Work is suspended then Owner may, at Owner's option, obtain insurance affording coverage equal to that required herein and the cost of such insurance shall be payable by Consultant to Owner.

(f) All additional insured protection afforded Owner, BPCPC, and the State of New York must be on a primary and non-contributory basis and all policies must include a waiver of subrogation in favor of Owner, BPCPC, and the State of New York.

(g) Consultant and Subconsultants shall secure in a form satisfactory to Owner the following:

(i) Worker's Compensation, Employer's Liability insurance (including United States Longshoreman & Harbor Workers and Jones Act coverages) and Disability Benefits during the Term for the benefit of such employees as are required to be insured by the applicable provisions of law and voluntary compensation for employees excluded from statutory benefits.

(ii) Commercial General Liability insurance, as follows:

(A) Coverage must be written on ISO Form CG 00 001 or its equivalent and with no modification to the contractual liability coverage provided therein, and shall be provided on an occurrence basis with limits not less than:

- $1,000,000 per occurrence
- $2,000,000 General Aggregate, which must apply on a per project basis
- $2,000,000 Products/Completed Operations aggregate

(B) Owner, BPCPC and the State of New York must be protected as additional insureds with coverage at least as broad as the combination of the most recent editions of ISO Forms CG 20 26 and CG 20 37 on policies held by the Consultant and any of its Subconsultants. Subconsultants may not use blanket additional insured endorsements to provide additional insured protection to Owner, BPCPC, and the State of New York "by written contract" but must use ISO Form CG 20 38 or its equivalent. The policy must provide coverage for defense and indemnification of claims and/or lawsuits, including third party actions, claims and/or lawsuits for bodily injury to the employees of Consultant or Subconsultants arising from the injured worker's employment with the Consultant or any of its Subconsultants

(C) Consultant and any of its Subconsultants must maintain Products/Completed Operations coverage for no less than three years after the Work is completed and continue to include Additional Insured protection for Owner, BPCPC & the State of New York for the prescribed timeframe and coverage shall contain, in addition to any other provisions required hereby, a provision that the policy shall not be changed, canceled or reduced. As a condition precedent to the making of final payment, Consultant shall furnish Owner with a then current certificate of insurance that confirms the Completed Operations coverage is in effect.

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(D) When providing evidence of this insurance the Consultant and any of its Subconsultants must include a completed Acord 855 NY form.

(iii) Automobile Liability insurance covering the use in connection with the Work of all owned, non-owned and hired vehicles. The coverage must protect Owner, BPCPC, and the State of New York as additional insureds under such policy and shall not be less than a $1,000,000 Combined Single Limit

(iv) Professional Liability ("Errors and Omissions") insurance must be maintained at a limit of not less than $1,000,000 per claim.

(v) Data Breach and Privacy/Cyber Liability Insurance including coverage for failure to protect confidential information and failure of the security of Consultant's computer systems or Owner's/BPCPC's systems due to the actions of Consultant which results in unauthorized access to Owner's and/or BPCPC's data. The limit applicable to this policy shall be no less than $1,000,000 per occurrence, and must apply to incidents related to the cyber theft of Owner's and BPCPC's property, including but not limited to, money and securities. Owner, BPCPC, and the State of New York must be protected as additional insureds on policies held by Consultant and any of its Subconsultants.

(vi) Technology Errors and Omissions insurance with a limit of not less $1,000,000 for damages arising from computer-related services including, but not limited to, the following:

- Consulting;
- Data processing;
- Programming;
- System integration;
- Hardware or software development;
- Installation;
- Distribution or maintenance;
- Systems analysis or design;
- Training; and
- Staffing or other support services.

The policy shall include coverage for third party fidelity including cyber theft and protect Owner, BPCPC, and the State of New York as additional insureds.

(vii) Valuable Papers insurance insuring, for the benefit of Consultant and Owner, all plans, designs, drawings, specifications, and documents used under this Agreement by Consultant in a total amount of not less than **[amount]**. Consultant may furnish full coverage under one policy, or may submit separate policies from any Subconsultant(s) for their proportionate shares of such coverage.

(viii) Comprehensive Crime/Employee Dishonesty insurance in a reasonable amount or an amount which is customary in the applicable industry, trade or profession. Coverage must extend to Third Parties.

(ix) Umbrella Liability insurance in an amount of not less than [amount].

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Owner, BPCPC, and the State of New York must be protected as additional insureds on policies held by the Consultant and any of its Subconsultants.

(h) The insurance required under subsections 10(g)(ii) and (iii) shall provide that the insurance company or an attorney approved and retained by the insurance company shall defend any suit or proceeding against Owner or any officers, agents or employees of Owner whether or not such suit is groundless, false or fraudulent. Notwithstanding the foregoing, Owner shall have the right to engage its own attorneys for the purpose of defending any suit or proceeding against it or its respective officers, agents or employees, and, in such event, Consultant shall, indemnify Owner for all attorneys' fees and disbursements and other costs incurred by it arising out of, or incurred in connection with, any such defense.

(i) Owner, at Owner's cost and expense, may, at its sole option, procure and maintain such insurance as shall in the opinion of Owner, protect Owner from contingent liability of Owner to others for damages arising from bodily injury, including death and property damages which may arise from operations under this Agreement. The procurement and maintenance of such insurance by Owner shall not in any way be construed or be deemed to relieve Consultant from, or to be a limitation on the nature or extent of, such obligations and risk.

## 11. Authority of Owner

The Work shall be subject to the general supervision, direction, control and approval of Owner or its authorized representative(s), whose decision shall be final and binding upon Consultant as to all matters arising in connection with or relating to this Agreement. Owner shall determine all matters relative to the fulfillment of this Agreement on the part of Consultant and such determination shall be final and binding on Consultant.

## 12. Entire Agreement

This Agreement, including all Exhibits hereto, constitutes the entire Agreement between Owner and Consultant, and any prior agreements or understandings between Owner and Consultant with respect to any portion of the Work are hereby merged into and with this Agreement. In the event of any conflict between the terms of this Agreement and any other agreement between Owner and Consultant, the terms of this Agreement shall be deemed to control.

## 13. Consultant as Independent Contractor

Notwithstanding any other provision of this Agreement, Consultant's status shall be that of an independent contractor and not that of a servant, agent or employee of Owner. Accordingly, Consultant shall not hold itself out as, nor claim to be acting in the capacity of, an officer, agent, employee or servant of Owner.

## 14. Maintenance, Audit and Examination of Accounts

Consultant shall, until the earlier of six (6) years after completion of the performance of the Work or six (6) years after termination of this Agreement, maintain, and require all Subconsultants to maintain, complete and correct books and records relating to all aspects of Consultant's obligations hereunder, including without limitation, accurate cost and accounting

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records specifically identifying the costs incurred in performing their respective obligations, and shall make such books and records available to Owner or its authorized representatives for review and audit at all such reasonable times as Owner may request. In the event that Consultant and/or any Subconsultants shall fail to comply with the provisions of this Section 14, and as a result thereof shall be unable to provide reasonable evidence of such compliance, Owner shall not be required to pay any portion of the Fee and Reimbursable Expenses then due or next becoming due, as the case may be, with respect to such items, and if such compensation has already been paid, Owner may require Consultant to refund any such payment made. Any excessive audit costs incurred by Owner due to Consultant's or any Subconsultant's failure to maintain adequate records shall be borne by Consultant.

**15. Acceptance of Final Payment; Release and Discharge**

Final payment shall be made to Consultant upon satisfactory completion and acceptance by Owner of the Work required under this Agreement, or all Work performed prior to the termination of this Agreement if terminated pursuant to Section 6 hereof, and upon submission of a certification that all Subconsultants have been paid their full and agreed compensation. The acceptance by Consultant of the final payment under this Agreement, or any final payment due upon termination of this Agreement under Section 6 hereof, shall constitute a full and complete waiver and release of Owner from any and all claims, demands and causes of action whatsoever that Consultant, and/or it successors and assigns have, or may have, against Owner under the provisions of this Agreement, unless a detailed and verified statement of claim is served upon Owner prior to the date final payment is tendered by Owner. It is expressly understood and agreed that Owner's or Consultant's termination of this Agreement pursuant to Section 6 hereof shall not give rise to any claim against Owner for damages, compensation or otherwise as a result of such termination, and that under such circumstances Owner's liability to make payments to Consultant on account of any and all Work shall be limited to the payments set forth in Section 6 hereof.

**16. Covenants, Representations and Warranties**

(a) Consultant represents and warrants to Owner that:

(i) no public official is directly or indirectly interested in this Agreement, or in the supplies, materials, equipment, work, labor or services to which it relates or in any of the profits thereof;

(ii) except as set forth in this Agreement, Consultant has, and shall have, no interest, direct or indirect, in the Project to which the Work relates; and

(iii) to the best of its knowledge, upon due inquiry, no officer, member, partner or employee of Consultant has, prior to the date of this Agreement, been called before a grand jury, head of a state agency, head of a city department or other city agency to testify in an investigation concerning any transaction or contract had with the State of New York, any political subdivision thereof, a public authority, or with any public department, agency or official of the State of New York of or any political subdivision thereof, and refused to sign a waiver of immunity against subsequent criminal prosecution or to answer any relevant question concerning such transaction or contract.

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(b) Consultant covenants and agrees that:

(i) recognizing that time for completion of the Work is of the essence, Consultant shall perform all of its obligations hereunder in a prompt and workmanlike manner and in accordance with the time periods for the Work set forth herein;

(ii) the personnel assigned and any Subconsultant(s) used by Consultant in the performance of the Work hereunder shall be qualified in all respects for such assignment, employment and use;

(iii) Consultant, in the performance of the Work, shall utilize the most efficient available methodology and technology for the purpose of reducing the cost and time of such performance;

(iv) Consultant shall comply with the provisions of all Federal, State and local statutes, laws, rules, ordinances and regulations that are applicable to the performance of this Agreement;

(v) should any claim be made or any action be brought against the Owner that is in any way related to the Work, Consultant shall diligently render to Owner any and all assistance specified in Section 5 of this Agreement that may be required by Owner as a result thereof; and

(vi) Consultant shall not commit its personnel to, nor engage in, any other projects during the term of this Agreement to the extent that such projects may adversely affect the quality or efficiency of the Work or would otherwise be detrimental to the conduct and completion of the Work, and Consultant shall provide sufficient numbers of qualified personnel as shall be required to perform the Work in the time requested by Owner. Consultant shall comply with any reasonable request by Owner to remove and/or replace any of Consultant's personnel from the Project.

(c) The parties make mutual representations that to the best of their knowledge that any materials provided by either party for inclusion in the Work shall not infringe upon the copyright or trademark of any third party.

**17. <u>Indemnity</u>**

To the fullest extent allowed by law:

(a) Consultant shall be liable to, and shall indemnify Owner, each Member, officer, agent and employee of Owner for, and shall hold each of the foregoing harmless from and against, any and all claims, losses, damages, expense, penalties, costs or other liabilities, including, without limitation, attorneys' fees, costs, disbursements and interest, arising out of the performance of the Work or Consultant's breach of this Agreement, including but not limited to any breach that that results in the unauthorized use or disclosure of Owner's Confidential Information, except to the extent such claim arises solely as a result of Owner's negligence or willful act, and Consultant agrees that it shall defend any suit or action brought against Owner or any Member, officer, agent or employees of Owner that is based on any loss or liability or alleged loss or liability indemnified herein.

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(b) Consultant shall be liable to, and shall indemnify Owner and each of the Members, officers, agents and employees of Owner for, and shall hold each of the foregoing harmless from and against, any and all claims made against any of the foregoing for infringement of any copyright, trademark or patent arising out of the use of any plans, designs and specifications furnished by Consultant in the performance of this Agreement.

## 18. Confidentiality

Consultant hereby agrees that data, recommendations, reports and other materials developed in the course of the Work are strictly confidential between Consultant and Owner and except as specifically provided herein, 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 written approval from Owner.

## 19. Cybersecurity

A. Definitions.

1. Authority: shall mean the Battery Park City Authority ("BPCA") and its subsidiaries and affiliates.

2. Authority Data: shall mean the following regardless of whether it is contained in existing or newly created in the future physical or electronic media at rest or in motion, any and all
    a. Personal Information as such term is defined herein;
    b. all other data, information and documentation of the Authority including current and revised technology assets and systems, procedures and methodologies for designing implementing or maintaining in general and specifically, with information technology and physical and electronic security;
    c. the Authority's owned, licensed, or subscribed inventions, ideas and designs, design documents, equipment technology and software;
    d. reports and studies whether prepared by Authority, the Contractor or a third-party and whether in development or completed; and
    e. data, information, documentation and material prepared by or for the Contractor, any subcontractor, or by their respective consultants, agents, officers or employees in connection with performance of the Work, whether prior or subsequent to execution of this Contract or Agreement, and
    f. the results of the Work.

3. Personal Information or Personal Identifiable Information: shall mean
    a. any representation of information that permits the identity of an individual to whom the information applies to be reasonably inferred by either direct or indirect means;

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b. information: (i) that directly identifies an individual (e.g., name, address, social security number or other identifying number or code, telephone number, email address, code, symbol, mark or other identifier) or (ii) by which the Authority or other agency intends to identify specific individuals in conjunction with other data elements, i.e., indirect identification. These data elements may include a combination of gender, race, birth date, geographic indicator, and other descriptors; and

c. information permitting the physical or online contacting of a specific individual shall be deemed Personally Identifiable Information.

4. Contractor: as used in this Article shall mean the vendor, contractor, individual or organization that enters into the Contract or Agreement to perform the Work pursuant to the Contract Documents.

5. Work: as used in this Article shall mean all the required obligations of the Contractor under the Contract or Agreement including but not limited to, the performance of any labor or services, the supplying of any goods, materials or personnel, the furnishing of any equipment, supplies or any other resources or requirements or deliverables necessary for the performance of the work and/or required by the Contract Documents including any scope of work and any modifications to the Contract or Agreement, if any.

B. Compliance with Applicable Laws, and Authority Security Policies and Procedures.

1. The Contractor, including its subcontractors, agents, officers, employees, and all other persons performing under this Contract or Agreement on behalf of the Contractor, shall comply with the applicable standards and policies set forth in the New York State Office of Information Technology Services Security Policies, which, are located at https://its.ny.gov/eiso/policies/security, in connection with the work, products, services and/or systems that the Contractor is providing to the Authority.

2. The Contractor shall deploy a system security plan (SSP) for ensuring the security of the Authority's systems and data. The SSP and associated technical, organizational and security measures shall align with the information security management system (ISMS) family of standards as published by the International Organization for Standardization (ISO) and the International Electrotechnical Commission (IEC), also known as the ISO/IEC 27000 series, the NIST cybersecurity framework, or the CIS Top 20 security framework, and SAE International applicable standards, as each may be modified or replaced from time to time.

3. The Contractor shall implement and maintain security measures that meet or exceed the BPCA Cybersecurity Requirements annexed hereto and incorporated herein by reference ("Baseline Cybersecurity Requirements"). At a minimum, the Contractor shall comply with the Baseline Cybersecurity Requirements.

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C. Data Privacy and Information Security.

The Contractor's existing methods and procedures shall be in compliance with these terms and conditions and the Baseline Cybersecurity Requirements. Should the Authority require the Contractor to make changes to its cybersecurity compliance during the term of the Contract or Agreement, the Contractor shall work with the Authority to agree on the changes to the cybersecurity compliance.

1. The Contractor shall provide the Authority, upon request, with information regarding the Contractor's compliance and implementation of the Baseline Cybersecurity Requirements.

D. Protection of Data; Notice.

1. The Contractor shall appoint a team of dedicated personnel to work with the Authority during any Security Incident Response (the "Cyber Incident Response Team"). The Cyber Incident Response Team shall be maintained by the Contractor for the duration of the Contract or Agreement. The Contractor shall within twenty-four hours (24) hours of the Authority's Notice of Award (or execution of the Contract or Agreement if no Notice of Award has been issued) provide, in writing, a list of the individuals on the Cyber Incident Response Team. Such list shall include the name of each team member together with a phone number and email address for each such member. In the event of any changes to team members or team member information, the Contractor shall provide such new information to the Authority, to the attention of the Project Manager, in writing.

2. The Vendor shall comply with the New York Stop Hacks and Improve Electronic Data Security Act (also known as the SHIELD Act) in the performance of the Work, as applicable, which, among other things, imposes on entities identified in the SHIELD Act:

    a. particular data breach notification requirements; and
    b. data security safeguards.

3. Unless otherwise provided by law or as further detailed in the Contract or Agreement, in the event of an any act, error or omission, negligence, misconduct, or breach that compromises or is suspected to compromise the security, confidentiality, or integrity of Authority Data or the physical, technical, administrative, or organizational safeguards put in place by the Vendor that relate to the protection of the security, confidentiality, or integrity of Authority Data, the Contractor shall, as applicable:

    a. promptly notify (i) the Project Manager and (2) the Authority by email to [EMAIL], as well as verbally by phone at [PHONE] as soon as practicable but no later than twenty-four (24) hours after initially becoming aware of such occurrence;

    b. perform or take any other actions required to comply with applicable law as a result of the occurrence;

    c. cooperate with the Authority in investigating the occurrence, including making available all relevant records, files, data reporting, and other

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materials reasonably required to comply with applicable law, in referring the occurrence to appropriate law enforcement agencies, and in issuing appropriate press releases and responding to the media;

d. in the case of Personally Identifiable Information (PII), (i) notify the Authority, to the attention of: (1) the Project Manager, within twenty-four (24) hours of a confirmed breach and (2) by email to [EMAIL], as well as verbally by phone at [PHONE]; and (ii) at the Authority's sole election, notify the affected individuals who comprise the PII as soon as practicable but no later than is required to comply with applicable law, or, in the absence of any legally required notification period, within seventy-two (72) hours of the Authority providing written notification to the Contractor requiring the Contractor to notify the affected individuals; and

e. provide to the Authority a detailed corrective action plan as soon as possible, but no later than within ten (10) calendar days of the occurrence, describing the measures the Contractor will undertake and the implementation schedule for such measures, to both resolve the breach and prevent a future occurrence. If the Contractor is unable to complete the corrective action within the required timeframe, in addition to the remedies provided herein, the Authority may contract with a third party to provide the required product, service or system until (i) corrective actions have been taken, (ii) the Authority is able to procure from the Contractor the product, service or system in a manner acceptable to the Authority, and/or (iii) until the Authority has completed a new procurement for a replacement product, service or system (the "Mitigation Efforts"). In such case, the Contractor shall reimburse the Authority for the reasonable costs related to the Mitigation Efforts following notice and demand for payment by the Authority.

f. The Contractor shall be responsible for recreating lost Authority Data, if any, in the manner and on the schedule set by the Authority without charge to the Authority.

E. Supply Chain Risk.

1. Upon commencement of the term of the Contract or Agreement, the Contractor shall establish, document, and implement risk management practices for supply chain delivery of work, products, services and systems provided under this Contract or Agreement, if any. The Contractor shall provide documentation on its: chain-of-custody practices, information protection practices, and integrity management program for components provided by sub-suppliers within fourteen days (14) of issuance of Notice of Award or, in the event there is not a Notice of Award issued, within fourteen (14) days of execution of the Contract or Agreement. The Authority may, in is sole discretion and upon the request of the Contractor, extend such time period upon good cause shown.

SAMPLE

2. The Contractor shall identify the countries where the development, production and maintenance for the work, products, services and systems provided under this Contract or Agreement is performed ("List of Supplier Countries"). The Contractor shall notify the Authority of changes to the List of Supplier Countries promptly but no less than seven (7) days after the Contractor knows or has reason to know that the list has changed.

F. Prohibition Against Offshore Work

1. If the Contractor is providing consulting and/or professional services including, but not limited to, software development or maintenance, the Contractor shall not perform any Work outside the United States or utilize any third party to perform (including its own employees) to provide any Work outside the United States.

2. Notwithstanding the foregoing, the Contractor may request that it be permitted to perform Work outside the United States, which determination shall be in the sole discretion of the Authority. In the event the Authority grants such request, the Contractor shall:

    a. In no event transmit, transfer, or otherwise store Authority Data outside of the United States.

    b. Access Authority Data only through virtual desktops provided by the Authority through other paths is strictly prohibited.

3. Enforce compliance with the Authority's IT security requirements on the devices connecting to the Authority's virtual desktops including:

    a. Not transfer Authority Data between virtual desktop and Contractor's device

    b. Not print Authority Data on non-Authority managed printers.

G. Cybersecurity Insurance.

The Contractor shall, at its own expense, procure and maintain in full force and effect during the term of this Contract or Agreement, a cybersecurity-related policy of insurance, as set forth by the Authority's schedule of insurance requirements; such policy shall have the minimum coverage set forth therein.

H. Patching Governance.

1. After Notice of Award but prior to the performance or delivery of any work, products, services and systems to the Authority or any connection of electronic devices, assets or equipment to the Authority's electronic equipment, the Contractor shall provide documentation regarding its patch management and vulnerability management/mitigation programs and update process (including third-party hardware, software, and firmware) for work, products, services, systems and any electronic device, asset, or equipment required to be connected to the assets of the Authority during the provision of products and services under this Contract or Agreement. This documentation shall be provided to the Authority,

to the attention of the (1) Project Manager, and (2) the Authority by email to [EMAIL], and shall include information regarding:

(a) the resources and technical capabilities to sustain this program and process such as the Contractor's method or recommendation for how the integrity of a patch is validated by the Authority and

(b) the Contractor's approach and capability to remediate newly reported zero-day vulnerabilities.

2. Unless otherwise approved by the Authority in writing, current or supported versions of the Contractor's work, products, services and systems ("Items") shall not require the use of out-of-date, unsupported, or end-of-life version of third-party components.

3. The Contractor shall verify and provide documentation to the Authority to the attention of the Project Manager that procured Items (including third-party hardware, software, firmware, and services) have appropriate updates and patches installed prior to delivery to the Authority.

I. Updates.

The Contractor shall provide appropriate software and firmware updates to remediate newly discovered vulnerabilities or weaknesses every thirty (30) calendar days, and within every fourteen (14) calendar days to the Authority, to the attention of the Project Manager, if an update is required to remediate critical vulnerabilities. If updates cannot be made available by the Contractor within these time periods, the Contractor shall provide mitigations and/or workarounds every forty-five (45) calendar days.

J. Cooperation with Authority Cybersecurity Reviews.

1. The Contractor acknowledges that the Authority has a significant interest in protecting and securing Authority Data and that maintaining cybersecurity is an essential element of the Work. The Contractor shall cooperate with the Authority's compliance and cybersecurity reviews during the term of the Contract or Agreement and shall provide (1) information; (2) responses to inquiries and questionnaires in written form, when requested, and (3) supporting documentation to facilitate the Authority's review(s). Such reviews will be coordinated by the Authority's Project Manager.

2. The Contractor shall submit to the Authority, to the attention of the Project Manager, the following: a SOC Type 2 Report within seven (7) days of Notice of Award or, if no Notice of Award is issued by the Authority, within seven (7) days of execution of the Contract or Agreement. When the Contractor's SOC Type 2 Report has expired, the Contractor shall submit an updated SOC Type 2 Report or, if a new report is not immediately available, a bridge letter from the Contractor's senior management, within seven (7) days after expiration of the preceding report. The obligations set forth herein shall be ongoing throughout the term of the Contract or Agreement.

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K. Destruction of Authority Data.

1. All Authority Data including, but not limited to, all copies and reproductions thereof and all documents and materials derived from such Authority Data including any data in electronic form (i.e. cloud hosted Authority Data, etc.) provided to, prepared by or for the Contractor or any of its employees, subcontractors, agents and representatives (collectively, the "Contractor Personnel") shall, irrespective of whether such is in writing or stored electronically, be returned to the Authority or irrevocably destroyed by the Contractor and the Contractor Personnel, at the Authority's election, promptly upon the earlier of: (i) the termination or expiration of the Contract or Agreement; or (ii) the Authority's request.

2. The Contractor shall, and shall cause its Contractor Personnel to, irrevocably destroy the Authority Data by: (i) shredding physical documents; (ii) wiping clean the device memory on all equipment, machines, databases, servers, cloud storage or other electronic media on which the Authority Data is located; and (iii) sanitize storage media, as well as temporary files and backup files on which the Authority Data is stored. The Authority may request certification that destruction has been irrevocably completed for all primary, backup and any other applicable systems or mediums from the Contractor which shall be promptly provided by the Contractor for itself and for the Contractor Personnel; but in no event, not later than fourteen (14) days following the Authority's request.

L. Subcontractor Compliance.

1. The Contractor shall flow down these Cybersecurity Terms and Conditions to its subcontractors, agents and representatives who perform any Work pursuant to the Contract or Agreement.

2. The Contractor shall ensure that each of its subcontractors, agents and representatives comply with these Cybersecurity Terms and Conditions.

M. Cybersecurity Training.

The Contractor shall ensure that any individual or individuals who have access to Authority Data under this Contract or Agreement shall undergo cybersecurity awareness training from a reputable training source. Such training shall be at the Contractor's cost and the Authority shall not be required to pay any costs related to such training. The Contractor shall maintain training records during the term of the Contract or Agreement and shall make such documents available to the Authority for inspection upon request of the Authority.

N. Conflict.

If there is a conflict between these Cybersecurity Terms and Conditions and the Contract Terms and Conditions, the most stringent provision shall apply.

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**20. Modification**

This Agreement may not be modified or amended, in whole or in part, unless in writing and executed by both Owner and Consultant.

**21. Waiver**

Except as otherwise provided in Section 15 of this Agreement, the parties may waive any of their rights hereunder without invalidating this Agreement or waiving any other rights hereunder, provided, however, that no waiver of, or failure to enforce or exercise any provision of this Agreement shall affect the right of any party thereafter to enforce such provisions or to exercise any right or remedy in the event of any other breach or default, whether or not similar.

**22. Severability**

If any term or provision of this Agreement or the application thereof to any person or entity, or circumstance shall, to any extent, be determined to be invalid or unenforceable, the remaining provisions of this Agreement, or the application of such terms or provisions to persons, entities or circumstances other than those as to which it is held to be invalid or unenforceable, shall in no way be affected thereby and each term or provision of this Agreement shall be valid and binding upon the parties, and enforced to the fullest extent permitted by law.

**23. New York Law/Forum Selection/Jurisdiction**

This Agreement shall be construed under, and be governed by, the laws of the State of New York. All actions or proceedings relating, directly or indirectly, to this Agreement shall be litigated only in courts located within the County of New York. Consultant, any guarantor of the performance of its obligations hereunder ("Guarantor") and their successors and assigns hereby subject themselves to the jurisdiction of any state or federal court located within such county, waive the personal service of any process upon them in any action or proceeding therein and consent that such process be served by certified or registered mail, return receipt requested, directed to the Consultant and any successor at Consultant's address hereinabove set forth, to Guarantor and any successor at the address set forth in the instrument of guaranty, and to any assignee at the address set forth in the instrument of assignment. Such service shall be deemed made two days after such process is so mailed.

**24. Provisions Required by Law**

Each and every provision of law and clause required by law to be included in this Agreement shall be deemed to be included herein, and this Agreement shall read and shall be enforced as though such provision(s) and/or clause(s) were so included.

**25. Notices**

Any notice, approval, consent, acceptance, request, bill, demand or statement required or permitted to be given hereunder (a "Notice") from either party to the other shall be in writing and transmitted either:

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(a) Via certified or registered United States mail, return receipt requested;
(b) By personal delivery; or
(c) By expedited delivery services.

In addition to one or more of the transmission methods listed above and in the interest of expediency, notices may be contemporaneously submitted by e-mal, but by which itself alone will not be deemed sufficient notice.

Such notices shall be addressed as follows or to such different addresses as the parties may from time to time designate:

**Battery Park City Authority**

[INSERT NAME OF CONTACT]
200 Liberty Street, 24th Floor
New York, NY 10281
[INSERT EMAIL ADDRESS]

With a copy to:

Abigail Goldenberg
General Counsel
200 Liberty Street, 24th Floor
New York, NY 10281
Abigail.goldenberg@bpca.ny.gov

**[INSERT NAME OF CONSULTANT]**

[insert contact info]

Either party may at any time change such address or add additional parties to receive a Notice by mailing, as aforesaid, to the other party a Notice thereof.

**26. Approval and Use of Subconsultants**

(a) Except as specifically provided herein, Consultant shall not employ, contract with or use the services of any consultants, contractors or other third parties (collectively, "Subconsultants") in connection with the performance of its obligations hereunder without the prior written consent of Owner to the use of each such Subconsultant, and to the agreement to be entered into between Consultant and any such Subconsultant. Consultant shall inform Owner in writing of any interest it may have in a proposed Subconsultant. No such consent by Owner, or employment, contract, or use by Consultant, shall relieve Consultant of any of its obligations hereunder.

(b) Consultant shall be responsible for the performance of the Work of any Subconsultants engaged, including the maintenance of schedules, coordination of their Work and resolutions of all differences between or among Consultant and any Subconsultants. It is expressly understood and agreed that any and all Subconsultants engaged by Consultant hereunder shall at

SAMPLE

all times be deemed engaged by Consultant and not by Owner.

(c) The fees of any Subconsultant retained by Consultant to perform any part of the Work required under this Agreement shall be deemed covered by the compensation stipulated in Section 3 above. Consultant shall pay its Subconsultants in full the amount due them from the proportionate share of each requisition for payment submitted by Consultant and paid by Owner. Consultant shall make payment to its Subconsultants no later than seven (7) calendar days after receipt of payment from Owner. Consultant shall indemnify, defend and hold Owner harmless with respect to any claims against Owner based upon Consultant's alleged failure to make payments to Subconsultants for Work under this Agreement.

(d) Upon the request of Owner, Consultant shall cause any Subconsultant employed by the Consultant in connection with this Agreement to execute a copy of this Agreement, wherein such Subconsultant shall acknowledge that it has read and is fully familiar with the terms and provisions hereof and agrees to be bound thereby as such terms and provisions are or may be applicable to such Subconsultants.

## 27. Employment and Diversity

27.1 *Participation by Minority and Women-Owned Business Enterprises*

(a) General Provisions

(i) Owner is required to implement the provisions of New York State Executive Law Article 15-A and Parts 140-145 of Title 5 of the New York Codes, Rules and Regulations ("NYCRR") for all contracts, as defined therein, with a value (1) in excess of $25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of $100,000 for real property renovations and construction.

(ii) Consultant agrees, in addition to any other nondiscrimination provision herein and at no additional cost to Owner, to fully comply and cooperate with Owner in the implementation of New York State Executive Law Article 15-A and the regulations promulgated thereunder. These requirements include equal employment opportunities for minority group members and women ("EEO") and contracting opportunities for New York State-certified minority and women-owned business enterprises ("MWBEs"). Consultant's demonstration of "good faith efforts" pursuant to 5 NYCRR § 142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the "Human Rights Law") and other applicable federal, state, and local laws.

(iii) Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility and/or a breach of contract, leading to the assessment of liquidated damages pursuant to Section 26.1(g) and such other remedies as are available to Owner.

(b) Contract Goals

(i) For purposes of this Contract, Owner hereby establishes an overall goal of XX% for MWBE participation, XX% for New York State-certified minority-owned business

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enterprise ("MBE") participation and XX% for New York State-certified women-owned business enterprise ("WBE") participation (collectively, "MWBE Contract Goals") based on the current availability of MBEs and WBEs.

(ii) For purposes of providing meaningful participation by MWBEs on the Agreement and achieving the MWBE Contract Goals established in Section 26.1(b)(i) hereof, Consultant should reference the directory of MWBEs at the following internet address: https://ny.newnycontracts.com.

(iii) Additionally, Consultant is encouraged to contact the Division of Minority and Women's Business Development at (212) 803-2414 to discuss additional methods of maximizing participation by MWBEs on this Agreement.

(iv) Consultant understands that only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be applied towards the achievement of the applicable MWBE participation goal. [FOR CONSTRUCTION CONTRACTS – The portion of a contract with an MWBE serving as a supplier that shall be deemed to represent the commercially useful function performed by the MWBE shall be 60% of the total value of the contract. The portion of a contract with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be the monetary value for fees, or the markup percentage, charged by the MWBE]. [FOR ALL OTHER CONTRACTS - The portion of a contract with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be 25% of the total value of the contract.]

(v) Consultant must document "good faith efforts," pursuant to 5 NYCRR § 142.8, to provide meaningful participation by MWBEs as Subconsultants and suppliers in the performance of this Agreement. Such documentation shall include, but not necessarily be limited to:

(A) Evidence of outreach to MWBEs;
(B) Any responses by MWBEs to Consultant's outreach;
(C) Copies of advertisements for participation by MWBEs in appropriate general circulation, trade, and minority or women-oriented publications;
(D) The dates of attendance at any pre-bid, pre-award, or other meetings, if any, scheduled by Owner with MWBEs; and,
(E) Information describing specific steps undertaken by Consultant to reasonably structure the Work to maximize opportunities for MWBE participation.

(c) Equal Employment Opportunity ("EEO")

(i) The provisions of Article 15-A of the Executive Law and the rules and regulations promulgated thereunder pertaining to equal employment opportunities for minority group members and women shall apply to this Agreement.

(ii) In performing the Agreement, Consultant shall:

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(A) Ensure that each Consultant and Subconsultant performing work on the Agreement shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.

(B) Consultant shall submit an EEO policy statement to Owner within seventy-two (72) hours after the date of the notice by Owner to award the Agreement to Consultant.

(C) If Consultant, or any of its Subconsultants, does not have an existing EEO policy statement, Owner may require Consultant or Subconsultant to adopt a model statement (see Exhibit D – Equal Employment Opportunity Policy Statement).

(D) Consultant's EEO policy statement shall include the following language:

(1) Consultant will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability, or marital status, will undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force.

(2) Consultant shall state in all solicitations or advertisements for employees that, in the performance of the contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

(3) Consultant shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of Consultant's obligations herein.

(4) Consultant will include the provisions of Sections 26.1(c)(ii)(D)(1) through (3), which provides for relevant provisions of the Human Rights Law, in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each Subconsultant as to the Work.

**[PLEASE NOTE THAT THIS REQUIREMENT "C" IS ONLY APPLICABLE WHERE A STATE AGENCY EXPECTS TO ENTER INTO A STATE CONTRACT WITH A TOTAL EXPENDITURE IN EXCESS OF $250,000. NOTE: THIS LANGUAGE SHOULD BE DELETED FROM THE FINAL CONTRACT]**

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(iii) Staffing Plan. To ensure compliance with this Section, Consultant shall submit a staffing plan to document the composition of the proposed workforce to be utilized in the performance of the Agreement by the specified categories listed, including ethnic background, gender, and Federal occupational categories. Consultant shall complete the staffing plan form (https://www.ogs.ny.gov/MWBE/Docs/EEO100.docx) and submit it as part of their bid or proposal or within a reasonable time, as directed by Owner.

**WORKFORCE UTILIZATION REPORTS SHALL BE COLLECTED ON A MONTHLY BASIS FOR CONSTRUCTION CONTRACTS AND A QUARTERLY BASIS FOR ALL OTHER CONTRACTS. NOTE: THIS LANGUAGE SHOULD BE DELETED FROM THE FINAL CONTRACT]**

(iv) Workforce Utilization Report

(A) Consultant shall submit a Workforce Utilization Report (https://its.ny.gov/sites/default/files/documents/eeo_workforce_utilization_report.xlsx) and shall require each of its Subconsultants to submit a Workforce Utilization Report, in such form as shall be required by Owner on a quarterly basis during the term of this Agreement.

(B) Separate forms shall be completed by Consultant and any Subconsultants.

(C) Pursuant to Executive Order #162, Consultants and Subconsultants are also required to report the gross wages paid to each of their employees for the work performed by such employees on the contract on a quarterly basis.

(v) Consultant shall comply with the provisions of the Human Rights Law, and all other State and Federal statutory and constitutional non-discrimination provisions. Consultant and its Subconsultants shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

(d) MWBE Utilization Plan

(i) Consultant represents and warrants that Consultant has submitted an MWBE Utilization Plan, or shall submit an MWBE Utilization Plan at such time as shall be required by Owner, through the New York State Contract System ("NYSCS"), which can be viewed at https://ny.newnycontracts.com, provided, however, that Consultant may arrange to provide such evidence via a non-electronic method to Owner, either prior to, or at the time of, the execution of the contract.

(ii) Consultant agrees to adhere to such MWBE Utilization Plan in the performance of the Work.

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(iii) Consultant further agrees that failure to submit and/or adhere to such MWBE Utilization Plan shall constitute a material breach of the terms of the Agreement. Upon the occurrence of such a material breach, Owner shall be entitled to any remedy provided herein, including but not limited to, a finding that Consultant is non-responsive.

(e) Waivers

(i) If Consultant, after making good faith efforts, is unable to achieve the MWBE Contract Goals stated herein, Consultant may submit a request for a waiver through the NYSCS, or a non-electronic method provided by Owner. Such waiver request must be supported by evidence of Consultant's good faith efforts to achieve the maximum feasible MWBE participation towards the applicable MWBE Contract Goals. If the documentation included with the waiver request is complete, Owner shall evaluate the request and issue a written notice of approval or denial within twenty (20) business days of receipt.

(ii) If Owner, upon review of the MWBE Utilization Plan, quarterly MWBE Consultant Compliance Reports described in Section 26.1(c)(iv)(C), or any other relevant information, determines that Consultant is failing or refusing to comply with the MWBE Contract Goals, and no waiver has been issued in regards to such non-compliance, Owner may issue a notice of deficiency to Consultant. Consultant must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE Contract Goals.

(f) Consultant is required to submit a quarterly MWBE Consultant Compliance Report through the NYSCS, provided, however, that Consultant may arrange to provide such report via a non-electronic method to Owner by the 10th day following the end of each quarter during the term of the Agreement.

(g) Liquidated Damages - MWBE Participation

(i) Where Owner determines that Consultant is not in compliance with the requirements of this Section 26.1 and Consultant refuses to comply with such requirements, or if Consultant is found to have willfully and intentionally failed to comply with the MWBE participation goals, Consultant shall be obligated to pay to Owner liquidated damages.

(ii) Such liquidated damages shall be calculated as an amount equaling the difference between:

(A) All sums identified for payment to MWBEs had Consultant achieved the contractual MWBE goals; and

(B) All sums actually paid to MWBEs for work performed or materials supplied under the Agreement.

(iii) In the event a determination has been made which requires the payment of liquidated damages and such identified sums have not been withheld by Owner, Consultant shall pay such liquidated damages to Owner within sixty (60) days after they are assessed. Provided, however, that if Consultant has filed a complaint with the Director of the Division of Minority and

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Women's Business Development pursuant to 5 NYCRR § 142.12, liquidated damages shall be payable only in the event of a determination adverse to Consultant following the complaint process.

27.2 *Participation by Service-Disabled Veteran-Owned Businesses*

(a) General Provisions

Article 17-B of the New York State Executive Law provides for more meaningful participation in public procurement by New York State-certified Service-Disabled Veteran-Owned Businesses ("SDVOB"), thereby further integrating such businesses into New York State's economy. Owner recognizes the need to promote the employment of service-disabled veterans and to ensure that certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of Owner contracts.

In recognition of the service and sacrifices made by service-disabled veterans and in recognition of their economic activity in doing business in New York State, Consultants are expected to consider SDVOBs in the fulfillment of the requirements of the Agreement. Such participation may be as Subconsultants or suppliers, as protégés, or in other partnering or supporting roles.

(b) Contract Goals

(i) Owner hereby establishes an overall goal of __% for SDVOB participation, based on the current availability of qualified SDVOBs. For purposes of providing meaningful participation by SDVOBs, the Consultant should reference the directory of New York State Certified SDVOBs found at: http://ogs.ny.gov/Core/docs/CertifiedNYS_SDVOB.pdf. Questions regarding compliance with SDVOB participation goals should be directed to Shinay Stewart at shinay.stewart@bpca.ny.gov or (212) 336-9353. Additionally, following execution of this Agreement, Consultant is encouraged to contact the Office of General Services' Division of Service-Disabled Veterans' Business Development at 518-474-2015 or VeteransDevelopment@ogs.ny.gov to discuss additional methods of maximizing participation by SDVOBs on the Agreement.

(ii) Consultant must document "good faith efforts" to provide meaningful participation by SDVOBs as subcontractors or suppliers in the performance of the Contract (see Section 26.2(d) below).

(c) SDVOB Utilization Plan

(i) In accordance with 9 NYCRR § 252.2(i), Consultants are required to submit a completed SDVOB Utilization Plan on Form SDVOB 100 (https://ogs.ny.gov/Veterans/Docs/2016/SDVOB_100_Utilization_Plan.docx) with their bid.

(ii) The Utilization Plan shall list the SDVOBs that Consultant intends to use to perform the Work, a description of the Work that Consultant intends the SDVOB to perform to meet the goals on the Agreement, the estimated dollar amounts to be paid to an SDVOB, or, if not known, an estimate of the percentage of Work the SDVOB will perform. By signing the Utilization

SAMPLE

Plan, Consultant acknowledges that making false representations or providing information that shows a lack of good faith as part of, or in conjunction with, the submission of a Utilization Plan is prohibited by law and may result in penalties including, but not limited to, termination of a contract for cause, loss of eligibility to submit future bids, and/or withholding of payments. Any modifications or changes to the agreed participation by SDVOBs after the contract award and during the term of the Agreement must be reported on a revised SDVOB Utilization Plan and submitted to Owner.

(iii) Owner will review the submitted SDVOB Utilization Plan and advise the Consultant of Owner acceptance or issue a notice of deficiency within 20 days of receipt.

(iv) If a notice of deficiency is issued, Consultant agrees that it shall respond to the notice of deficiency, within seven business days of receipt, by submitting to Owner a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by Owner to be inadequate, Owner shall notify Consultant and direct the Consultant to submit, within five business days of notification by Owner, a request for a partial or total waiver of SDVOB participation goals on Form SDVOB 200 (https://ogs.ny.gov/Veterans/Docs/2016/SDVOB_200_Waiver_Form.docx). Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.

(v) Owner may disqualify a Consultant's bid or proposal as being non-responsive under the following circumstances:

(A) If Consultant fails to submit an SDVOB Utilization Plan;
(B) If Consultant fails to submit a written remedy to a notice of deficiency;
(C) If Consultant fails to submit a request for waiver; or
(D) If Owner determines that Consultant has failed to document good faith efforts.

(vi) Consultant certifies that it will follow the submitted SDVOB Utilization Plan for the performance of SDVOBs on the Agreement pursuant to the prescribed SDVOB contract goals set forth above.

(vii) Consultant further agrees that a failure to use SDVOBs as agreed in the Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, Owner shall be entitled to any remedy provided herein, including but not limited to, a finding of Consultant non-responsibility.

(d) Waivers

(i) Prior to submission of a request for a partial or total waiver, Consultant shall speak to Shinay Stewart at shinay.stewart@bpca.ny.gov or (212) 336-9353 for guidance.

(ii) In accordance with 9 NYCRR § 252.2(m), a Consultant that is able to document good faith efforts to meet the goal requirements, as set forth in Section 26.2(e) below, may submit a request for a partial or total waiver on Form SDVOB 200 (https://ogs.ny.gov/Veterans/Docs/2016/SDVOB_200_Waiver_Form.docx), accompanied by

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supporting documentation. Consultant may submit the request for waiver at the same time it submits its SDVOB Utilization Plan. If a request for waiver is submitted with the SDVOB Utilization Plan and is not accepted by Owner at that time, the provisions of Section 26.2(c)(iii), (iv) and (v) will apply. If the documentation included with the Consultant's waiver request is complete, Owner shall evaluate the request and issue a written notice of acceptance or denial within 20 days of receipt.

(iii) Consultant shall attempt to utilize, in good faith, the SDVOBs identified within its SDVOB Utilization Plan, during the performance of the Work. Requests for a partial or total waiver of established goal requirements made subsequent to award of the Agreement may be made at any time during the term of the Agreement to Owner, but must be made no later than prior to the submission of a request for final payment.

(iv) If Owner, upon review of the SDVOB Utilization Plan and Monthly SDVOB Compliance Report determines that Consultant is failing or refusing to comply with the contract goals and no waiver has been issued in regards to such non-compliance, Owner may issue a notice of deficiency to the Consultant. The Consultant must respond to the notice of deficiency within seven business days of receipt. Such response may include a request for partial or total waiver of SDVOB contract goals. Waiver requests should be sent to Owner.

(e) Required Good Faith Efforts. In accordance with 9 NYCRR § 252.2(n), Consultants must document their good faith efforts toward utilizing SDVOBs on the Agreement. Evidence of required good faith efforts shall include, but not be limited to, the following:

(i) Copies of solicitations to SDVOBs and any responses thereto.

(ii) Explanation of the specific reasons each SDVOB that responded to Consultants' solicitation was not selected.

(iii) Dates of any pre-bid, pre-award or other meetings attended by Consultant, if any, scheduled by Owner with certified SDVOBs whom Owner determined were capable of fulfilling the SDVOB goals set in the Agreement.

(iv) Information describing the specific steps undertaken to reasonably structure the Work for the purpose of subcontracting with, or obtaining supplies from, certified SDVOBs.

(v) Other information deemed relevant to the waiver request.

(f) Monthly SDVOB Consultant Compliance Report

In accordance with 9 NYCRR § 252.2(q), Consultant is required to report Monthly SDVOB Consultant Compliance to Owner during the term of the Agreement for the preceding month's activity, documenting progress made towards achieving the SDVOB goals. This information must be submitted using form SDVOB 101 available at https://ogs.ny.gov/Veterans/Docs/2016/SDVOB_101_Monthly_Compliance%20_Report.docx and should be completed by the Consultant and submitted to Owner, by the 10th day of each month during the term of the Contract, for the preceding month's activity to: Shinay Stewart at shinay.stewart@bpca.ny.gov.

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(g) Breach of Contract and Damages

In accordance with 9 NYCRR § 252.2(s), any Consultant found to have willfully and intentionally failed to comply with the SDVOB participation goals set forth in this Agreement, shall be found to have breached the Agreement and Consultant shall pay damages as set forth therein.

**28. Responsibility**

(a) Consultant shall at all times during the Term of this Agreement remain responsible. Consultant agrees, if requested by Owner or Owner's designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.

(b) Owner or Owner's designee, in its sole discretion, reserves the right to suspend any or all activities under this Agreement, at any time, when it discovers information that calls into question Consultant's responsibility. In the event of such suspension, Consultant will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, Consultant must comply with the terms of the suspension order. Activity under the Agreement may resume at such time as Owner or its designee issues a written notice authorizing a resumption of performance under the Agreement.

(c) Upon written notice to Consultant, and a reasonable opportunity to be heard with appropriate officials or staff of Owner, this Agreement may be terminated by Owner or Owner's designee at Consultant's expense where Consultant is determined by Owner or its designee to be non-responsible. In such event, Owner or its designee may complete the contractual requirements in any manner it deems advisable, and pursue available legal or equitable remedies for breach.

**29. Interest of Others**

Nothing in this Agreement shall be construed to give any person other than Owner and Consultant any legal or equitable right, remedy or claim. This Agreement shall be held to be for the sole and exclusive benefit of Owner and Consultant.

**30. Executory Contract**

It is understood by and between the parties hereto that this Agreement shall be deemed executory to the extent of the monies available to Owner and no liability on account thereof shall be incurred by Owner beyond monies available for the purpose thereof. In no event shall any claim be asserted under this Agreement by Consultant or any Subconsultant against any member, officer, employee, lessee, consultant or agent of Owner or the State of New York. By execution of this Agreement, Consultant agrees to look solely to Owner with respect to any claim that may arise.

**31. Participation in International Boycott Prohibited**

Consultant agrees, as a material condition of this Agreement, that neither Consultant nor any substantially owned or affiliated person, firm, partnership or corporation has participated or is participating or shall participate in an international boycott in violation of the provisions of the

SAMPLE

United States Export Administration Act of 1969, as amended, or the United States Export Administration Act of 1979, as amended, or the Regulations of the United States Department of Commerce promulgated thereunder. This Agreement shall be rendered forfeited and void by the Comptroller of the State of New York if, subsequent to execution, such person, firm, partnership or corporation has been convicted of a violation of the provisions of either of such federal acts or such Regulations or has been found upon the final determination of the United States Commerce Department or any other appropriate agency of the United States to have violated the provisions of either of such federal acts or such Regulations.

**32. MacBride Fair Employment Principles**

If the amount payable to Consultant under this Agreement is greater than $15,000, Consultant hereby certifies that it and/or any individual or legal entity in which it holds a 10% or greater ownership interest, and any individual or legal entity that holds a 10% or greater ownership in it, either have no business operations in Northern Ireland, or shall take lawful steps in good faith to conduct any business operations they have in Northern Ireland in accordance with the MacBride Fair Employment Principles relating to nondiscrimination in employment and freedom of workplace opportunity regarding such operations in Northern Ireland, as set forth in Section 165(5) of the New York State Finance Law, and shall permit independent monitoring of their compliance with such Principles.

**33. Limitation Periods**

Any legal action or proceeding against Owner must be commenced no later than one (1) year after the earlier of: (a) the termination of this Agreement, or (b) the last day Consultant performed work physically at the site of the Work.

**34. Iran Divestment Act**

By signing this Agreement, each person and each person signing on behalf of any other party certifies, and in the case of a joint bid or partnership each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each person is not on the list created pursuant to paragraph (b) of subdivision 3 of Section 165-a of the State Finance Law.

**35. Termination for Failure to Disclose Under NYS Finance Law §139k**

Owner reserves the right to terminate this Agreement in the event it is found that the certification filed by Consultant pursuant to New York State Finance Law §139-k was intentionally false or intentionally incomplete. Upon such finding, Owner may exercise its termination right by providing written notification to the Consultant in accordance with the written notification terms of this contract.

**36. Comptroller's Approval**

If this contract is considered an eligible contract as defined by Title 2 of NYCRR Part 206, it is subject to the New York State Comptroller's approval, and therefore shall not be valid and enforceable until that approval has been obtained. A contract is considered "eligible" as defined

SAMPLE

by Title 2 of NYCRR Part 206, if it is not a specifically exempt contract, is executed by a state authority on or after March 1, 2010 where the aggregate consideration under the contract may reasonably be valued in excess of one million dollars, AND the contract is either (1) awarded on a single-source basis, sole-source basis or pursuant to any other method of procurement that is not a competitive procurement OR (2) supported in whole or part with funds appropriated from the Community Projects Fund (007).

**37. Binding Contract**

A binding contract between the parties shall exist only if and at such time as both parties have executed this document.

**38. Counterparts**

This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one instrument, but the Agreement shall not be deemed effective unless signed by all parties.

**39. Section Headings**

Section headings contained in this Agreement are for convenience only and shall not be considered for any purpose in governing, limiting, modifying, construing or affecting the provisions of this Agreement and shall not otherwise be given legal effect.

**40. Subordination of Terms in the Exhibits**

In the event of a conflict between any provisions contained in this Agreement and any of the Exhibits, the more stringent requirement will control. In the event that none of the conflicting or inconsistent portions or provisions are clearly the more stringent, the terms and conditions contained in this Agreement shall supersede.

(SIGNATURE PAGE FOLLOWS)

SAMPLE

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

HUGH L. CAREY BATTERY PARK CITY AUTHORITY

By: _____

Name: _____

Title: _____

[COMPANY]

By: _____

Name: _____

Title: _____

FEIN# [???]

SAMPLE

**EXHIBIT A**

**SCOPE OF WORK**

SAMPLE

**EXHIBIT B**

**RATES**

SAMPLE

**EXHIBIT C**

**FORM OF TIME SHEET**

| Employee Name/Title | Date of Work | Time Work Began | Time Work Ended | # of Hours | Rate of Pay Per Contract | Summary of Work Performed* | Employee Signature |
|---|---|---|---|---|---|---|---|
| | | | | | | | |
| | | | | | | | |
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| | | | | | | | |
| | | | | | | | |
| | | **Total:** | | | | | |

*For services and/or additional hours that are extraordinary to scope

Supervisors Signature _____

Title _____

SAMPLE

# EXHIBIT D

## M/WBE AND EEO POLICY STATEMENT

Consultant agrees to adopt the following policies with respect to the Work:

**MBWE**

Consultant will and will cause its Subconsultants to take good faith actions to achieve the M/WBE contract participations goals set by the Owner for that area in which the Owner-funded project is located, by taking the following steps:

(a) Actively and affirmatively solicit bids for contracts and subcontracts from qualified State-certified MBEs or WBEs, including solicitations to M/WBE consultant associations.

(b) Request a list of State-certified M/WBEs from Owner and solicit bids from them directly.

(c) Ensure that plans, specifications, request for proposals and other documents used to secure bids will be made available in sufficient time for review by prospective M/WBEs.

(d) Where feasible, divide the work into smaller portions to enhance participation by M/WBEs and encourage the formation of joint ventures and other partnerships among M/WBE consultants to enhance their participation.

(e) Document and maintain records of bid solicitation, including those to M/WBEs and the results thereof. Consultant will also maintain records of actions that its Subconsultants have taken toward meeting M/WBE contract participation goals.

(f) Ensure that progress payments to M/WBEs are made on a timely basis so that undue financial hardship is avoided, and that bonding and other credit requirements are waived or appropriate alternatives developed to encourage M/WBE participation.

**EEO**

(a) This organization will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing programs of affirmative action to ensure that minority group members are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on Owner contracts.

(b) Consultant shall state in all solicitation or advertisements for employees that in the performance of the Owner contract all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex disability or marital status.

(c) At the request of Owner, Consultant shall request each employment agency, labor union, or authorized representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of Consultant's obligations herein.

(d) Consultant shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. Consultant and Subconsultants shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

(e) Consultant will include the provisions of sections (a) through (d) above in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each Subconsultant as to work in connection with Owner's contract.

Agreed to this _____ day of _____, _____

By: _____

Print: _____ Title: _____

SAMPLE