



**Battery Park
City Authority**

REQUEST FOR PROPOSALS

FOR

South Battery Park City Resiliency Project:
Special Inspections And Laboratory Testing Services

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I. INTRODUCTION

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 to retain a firm to provide various special inspection and laboratory testing services as more fully described in this Request for Proposals (“RFP”) and its attachments.

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, including its annual budget for legal expenses and prompt payment policy, may be viewed at: <http://bpca.ny.gov/public-information/>. 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. OVERVIEW

BPCA hereby requests proposals (each individually a “Proposal” and collectively the “Proposals”) from firms qualified to perform special inspection and laboratory testing services (each individually, a “Proposer” and collectively, the “Proposers”). The work to be performed will include a variety of special inspection and laboratory testing services (collectively, the “Services” or the “Work”) for the Wagner Park / Museum of Jewish Heritage Site Work construction component (“Construction Package 2”) and the Pier A / Battery / Near Surface Isolation construction component (“Construction Package 4”) of the South Battery Park City Resiliency Project (the “SBPCR Project”) as more fully described in the scope of work attached hereto as Exhibit A (the “Scope of Work”). For the avoidance of doubt, the selected Proposer under this RFP shall be responsible solely for the components of the SBPCR Project outlined in the Scope of Work.

The selected Proposer shall be responsible for complying with all applicable sections of the New York City (“NYC”) Building Code and the Rules of the City of New York (“RCNY”) as more fully described in the Scope of Work but which require, among other things, that certain materials, operations, and equipment be inspected and/or tested to verify the SBPCR Project’s compliance with the special inspections code requirements specified within this RFP.

The selected Proposer will be responsible for all Work which shall include, but not necessarily be limited to, NYC Department of Buildings (“DOB”)-required special inspections and tests of such materials and equipment utilized for, and operations undertaken for, the SBPCR Project. The selected Proposer will inspect and certify whether construction operations performed and materials installed by general contractors (“GCs”) and/or sub-contractor(s) adhere to all applicable NYC Building Code special inspections requirements and comply with the SBPCR Project drawings and specifications (individually, the “Project Drawings” and the “Project Specifications,” and collectively, the “Construction Documents”) to be provided by BPCA to the selected Proposer, upon awarding of the contract associated with this RFP (the “Contract”).

III. GENERAL PROVISIONS

This RFP, including all attachments, exhibits, and any amendments or addenda is subject to the rights reserved by BPCA, including, but not limited to BPCA’s right to:

- Reject any or all Proposals received in response to this RFP;
- Withdraw the RFP at any time, at BPCA’s sole discretion;
- Make an award of the resulting Contract associated with this RFP in whole or in part;
- Disqualify any Proposer whose conduct and/or Proposal fails to conform to the requirements of this RFP;
- Seek clarifications and/or revisions of a Proposal or any part of a Proposal;

- Use information obtained by BPCA through site visits; interviews; investigation of a Proposer's qualifications, experience, ability or financial standing; and any other material or information provided by or received from the Proposer during the procurement process;
- Prior to BPCA's review of the Proposals, direct Proposers to submit Proposal modifications addressing subsequent amendments to the RFP;
- Request that Proposers submit best and final offers subsequent to BPCA's review of the Proposals;
- Change any of this RFP's scheduled dates;
- Waive any non-material requirements;
- Negotiate contract terms with one or multiple Proposers in the Authority's sole discretion;
- Utilize any and all ideas submitted in the Proposals received;
- Require clarification at any time during the procurement process, and/or require correction of arithmetic or other apparent errors for the purpose of assuring a full and complete understanding of a Proposal and/or to determine a Proposer's compliance with the requirements of the RFP; and
- Make non-material revisions to the Scope of Work following receipt of Proposals.

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.

IV. TIMETABLE & DESIGNATED CONTACT

A. Key Dates

Subject to change at BPCA's discretion, the following are key dates for this RFP. All times listed are Eastern Standard Time:

- RFP issued: February 24, 2023
- Deadline to submit questions to BPCA: March 3, 2023 by 5:00 p.m. (by email only). All questions regarding this RFP should be submitted in writing via email to the "Designated Contact": Michael LaMancusa, Battery Park City Authority, at Michael.LaMancusa@bpca.ny.gov.
- BPCA's response to substantive questions: March 9, 2023 (posted onto BPCA website)
- PROPOSAL DUE DATE: March 17, 2023 by 5:00 p.m. (the "Due Date")

B. Contract start date: April/May 2023 (Approximate)/Anticipated Contract Term

The anticipated term of the Contract awarded pursuant to this RFP will be thirty (30) months. The Contract will also contain an option for BPCA, within its sole discretion, to extend its term by one (1) additional year up to two (2) times, resulting in a maximum of two (2) single-year extensions. 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 (the "Standard Form of Contract") is attached as Exhibit C.

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V. 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 be lawfully licensed or authorized to do business in the State of New York (“NYS”) and be able to provide evidence of such licensure or authorization.
- 2) Proposer must obtain a “Certificate of Authorization to provide Engineering Services in New York State” from the NYS Education Department pursuant to Section 7210 of the NYS Education Law. No Contract award will be made to any Proposer unless such Proposer is authorized by the NYS Education Department to provide professional engineering services in New York State. A copy of the Certificate of Authorization must be provided prior to Contract award.
- 3) Proposer shall submit documentation demonstrating that it is lawfully registered with DOB as a “Special Inspection Agency” for all special inspection categories and classes.
- 4) The laboratory or laboratories to be used by the Proposer for the testing components of the Services must be identified by name and must have a record of successful performance of such services for at least the past three (3) years. Each laboratory that will perform concrete testing must be licensed as a “Concrete Testing Laboratory” in accordance with the requirements of the NYC Building Code.
- 5) Proposer must verify that, within the last three (3) consecutive years prior to the Proposal submission, it has successfully completed in a timely fashion at least five (5) special inspections-related projects, with each carrying a minimum fee of seventy-five thousand dollars (\$75,000), for other NYC or NYS government agencies involving services similar in scope, type and complexity to the Services.
- 6) Proposer must have at least three (3) licensed professionals – i.e., registered architects and/or professional engineers – on its staff (“Licensed Professionals”) to provide managerial and supervising services associated with its performance of the Services. Each Licensed Professional must have a minimum of five (5) years of experience relevant to the Services. At least two (2) of the Licensed Professionals must have been full-time employees of the Proposer for at least one (1) year prior to the Proposal submission date.
- 7) Proposer must demonstrate a minimum staffing level of thirty (30) full-time special inspectors.

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” Justin McLaughlin-Williams at justin.mclaughlin-williams@bpca.ny.gov or 212-417-2337.

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 IV.A., or MBE/WBE/SDVOB Designated Contact, as specified in Section V.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 5:00 p.m. on March 17, 2023.

- Each Proposer must e-mail their Technical Proposal to the following e-mail address:
The Technical Proposal must be clearly labeled as "Proposal Enclosed – SOUTH BATTERY PARK CITY RESILIENCY SPECIAL INSPECTIONS AND LABORATORY TESTING SERVICES.". The Technical Proposal must be clearly labeled as "Proposal Enclosed – SOUTH BATTERY PARK CITY RESILIENCY SPECIAL INSPECTIONS AND LABORATORY TESTING 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 – SOUTH BATTERY PARK CITY RESILIENCY SPECIAL INSPECTIONS AND LABORATORY TESTING 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 – SOUTH BATTERY PARK CITY RESILIENCY SPECIAL INSPECTIONS AND LABORATORY TESTING SERVICES," as long as the amended Proposal is submitted by the Due Date.

VI. PROPOSAL FORMAT AND CONTENTS

A. Proposal Format

The Proposal must:

- 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 IX. 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 V.A; and
 - (c) Proposer has reviewed BPCA's Standard Form of Contract, attached as Exhibit C 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 Information Required (Sections VII.A. and B.).

The Proposal must also include all required attachments listed in Section VII. C Note that Mandatory Forms and resumes do not count toward the page limit.

BPCA reserves the right to reject any Proposals that fail to include any required item described in this Section VI. B., including Cover Letters that are unsigned or fail to include each of the above representations (including an appendix, if applicable). As BPCA is currently only accepting electronic Proposal submissions, scans of documents requiring signatures and/or requiring notarization are acceptable.

VII. INFORMATION REQUIRED

A. Information Sought Relating to the Work

- 1) Describe your team's background and history on similar projects for which special inspection and laboratory testing services adhering to DOB guidelines are required. Additionally, describe the firm's ability to provide sufficient personnel for the SBPCR Project-required special inspections.
- 2) Submit documentation demonstrating compliance with all listed DOB requirements, including, without limitation: all required licenses, certifications, and resumes of proposed personnel. The Consultant shall maintain all applicable registrations and accreditations for the duration of the Contract.
- 3) Describe your approach to ensuring adequate and timely responsiveness to the provision of the Services, including accessibility, communication, site visits and project completion, as well as your approach to expediting sub-consultants' performance of work associated with the Services.
- 4) List each key member of the team ("Key Personnel") 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) years and type(s) of relevant technical and managerial experience; (d) the services to be performed; and, (e) whether the team member holds a NYS professional license, along with proof of such licensure.

- 5) 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. These people must attend the interview if your firm is invited.
- 6) If known, identify specific subcontractors or sub-consultants you intend to use for this engagement, and describe the services to be performed by each subcontractor or sub-consultant.
- 7) Clearly identify any information in your Proposal that you believe to be confidential and exempt from disclosure under the Freedom of Information Law (“FOIL”) and state your reasoning therefor. Please note that this question is for informational purposes only, and BPCA will determine FOIL applicability in its sole discretion.
- 8) Identify any exceptions taken to BPCA’s Standard Form of Contract, attached as Exhibit C, 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.
- 9) 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 projects, dates, and services performed, and provide the name, address, and telephone number for a person at client’s firm familiar with such work.

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

- 1) 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 them.
- 2) How does your firm identify and manage conflicts of interest?
- 3) Are there any potential conflict of interest issues posed by your firm’s performance of the Services on behalf of BPCA?
- 4) 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.
- 5) 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.
- 6) List any professional or personal relationships your firm’s employees may have with BPCA’s Board Members and/or employees, a list of which is attached as Exhibit F.
- 7) If selected, will your firm assign any person to this engagement who was previously an employee of BPCA or BPCA’s affiliate, the Battery Park City Parks Conservancy (“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.
- 8) 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) Certificate of No Change (if applicable).
 - c) Statement of Non-Collusion.
 - d) MBE/WBE/SDVOB Utilization Plans. Please note that all such plans must be submitted even if Proposer is an MBE/WBE/SDVOB.
 - e) Proposer’s Affirmation of Understanding of and Agreement pursuant to State Finance Law 139-j(3) and 139-j(6)(b).
 - f) Proposer’s Certification of Compliance with State Finance Law 139-k (5).
 - g) Proposer’s Disclosure of Prior Non-Responsibility Determinations.
- 2) Response to the question regarding the use of New York State businesses set forth in Section XIII.
- 3) W-9 form.
- 4) Completed MBE/WBE and EEO Policy Statement and Diversity Practices Questionnaire (attached to this RFP as part of Exhibit B).
- 5) Financial Statements: Provide a copy of your firm’s most recent Audited Financial Statements (within the last year). In the event you do not have audited financials you must provide a statement to that effect with your proposal, and summary financial information for the calendar year most recently ended.
- 6) 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.
- 7) Appendices: Attach professional biographies for all project executives, project managers, and general foremen identified in your Proposal.

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VIII. INSURANCE REQUIREMENTS

A. General Requirements

The total cost of the required insurance listed in Items B. and C. 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 thirty (30) days before such cancellation or non-renewal is effective, except for cancellations due to non-payment of premium, in which case ten (10) days’ written notice is acceptable.

B. 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 Standard Form of Contract (attached as Exhibit C).

- **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 the selected Proposer and any of its subcontractors. Should the Proposer’s work include construction activities of any kind, then the Proposer 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 and the State of New York for the prescribed timeframe. When providing evidence of insurance, the Proposer must include a completed Acord 855 NY form. Securing the required limits via a combination of primary and umbrella/excess liability policies is allowed.

- **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 insureds.

- **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 \$5,000,000 each claim.

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C. 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 such subcontractor's Work. The insurance policies listed below must also conform to the applicable terms of the Contract, as shown in BPCA's Standard Form of Contract (attached as Exhibit C).

- **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 insureds.

- **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 VII(B) above, unless otherwise approved in writing by BPCA prior to commencement of any Subcontractor's work.**

IX. COST PROPOSAL: FORMAT AND REQUIRED INCLUSIONS

BPCA has provided in its Form of Cost Proposal, attached hereto as Exhibit D-1, a table that includes an estimated number of specific types of inspections expected to be required for the Work. Each Proposer must provide the total not-to-exceed costs for each type and quantity of inspection listed, which are to be added together to form a total not-to-exceed Cost Proposal for the Work. In addition, each Cost Proposal must provide, in accordance with the forms attached hereto as Exhibits D-2 through D-4, billing rates for its proposed personnel and unit prices, as well as hourly rental rates for the specialized equipment to be used to conduct the special inspection tests, depending on the type of special inspection(s) being performed and inclusive of any other costs associated with operation of the equipment. The Cost Proposal must be submitted per the guidance of Section V. D.

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X. 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: www.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) Breadth and depth of experience and expertise in successfully providing timely special inspections and laboratory testing services.....30%
- b) Experience and qualifications of Key Personnel providing special inspections and laboratory testing services30%
- c) Approach to the Services, including overall quality of Proposal, staffing, communication and responsiveness, proposed sub-consultants, and scheduling protocols.....30%
- d) Response to Diversity Practices Questionnaire.....10%

2) Cost Proposal evaluation.

D. Basis for Contract Award

BPCA will assess the Proposals utilizing the criteria set forth above. 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, and which, in conjunction with a determination that the Cost Proposal is fair and reasonable, is determined to provide the best overall value to BPCA given the requirements of the Work. The Cost Proposal shall be prepared in accordance with the Cost Proposal Form provided in Exhibit D (attached) and based upon the types and number of inspections specified therein, with the understanding that the actual number and types of inspections required for the work may ultimately vary from the projected types and numbers included in the form. In recognition of the expectation that additional and/or different tests will be required, an allowance in the amount of \$100,000 will be added to the total amount of the Cost Proposal of the selected Proposer to be utilized with BPCA’s advance approval to address potential variations in or additions to the number or types of inspections ultimately required to complete the Work.

XI. 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.

XII. 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.

XIII. 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**

I. Background and Project Overview

The South Battery Park City Resiliency Project (the “SBPCR Project”) involves the construction of a continuous flood barrier system within Battery Park City (“BPC”) from First Place to State Street in Lower Manhattan. The SBPCR Project will involve complete reconstruction of the area bound by Battery Place, the Hudson River, First Place, and Little West Street as shown in color in Figure 1, below.

Figure 1: SBPCR Project Area



The construction component of the SBPCR Project is divided into three (3) construction bid packages referred to as “Package 2,” “Package 3,” and “Package 4” respectively, and are delineated as follows:

- Package 2 involves the re-construction of the areas identified as the Museum of Jewish Heritage and Wagner Park;
- Package 3 involves the demolition and re-construction of Wagner Park’s Pavilion building (the “Pavilion”); and
- Package 4 involves the re-construction of the areas identified at Pier A Plaza and the Battery.

The project areas corresponding with these three (3) packages shall collectively be referred to herein as the “SBPCR Project Site”, and it is expected that construction work for all three packages will occur substantially at the same time.

Work to be performed under this contract (the “Contract”) shall include the performance of special inspections and laboratory testing for **ONLY** Package 2 and Package 4 of the SBPCR Project (collectively, the “Work” or the “Services”). Special Inspections associated with Package 3 are not included in the Work under this Contract.

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II. Construction Contractor Work

Construction work performed for each package will be performed by a contractor or contractors selected by BPCA pursuant to a separate solicitation. The BPCA-selected contractor for Package 2 (the “Package 2 Contractor”) will construct the flood barrier system and re-construct the park surrounding the new Pavilion. The SBPCR Project’s flood barrier system involves the construction of deployable flip-up gates, raising the existing elevation with a buried sheet pile wall and anchor system, and the installation of exposed flood walls. The Package 2 Contractor will also be responsible for new site utilities, site grading, installation of plantings and trees, installation of park finishes such as pavements, furnishings, lighting, and other park elements. The Package 2 Contractor (in coordination with the contractor for Package 3, the “Package 3 Contractor”) will mobilize at the Wagner Pavilion / Site Work Project Site, install temporary protection measures, and begin demolition of the existing Pavilion and its landscaped surroundings at Wagner Park and the Museum of Jewish Heritage. Once such demolition is complete, installation of deep foundations for the floodwalls, as well as utilities work on First Place and Battery Place, will occur. Pile caps and slabs will be installed where required, and construction of the new Pavilion’s superstructure will begin. Work associated with site grading, retaining walls, installation of drainage, water, electrical, communications, lighting, fire protection, water reuse systems, and building geothermal systems will also take place. Finish work, such as stonework, masonry, plantings, trees, site furnishings and building fit-out, will then be installed. Package 2 also involves the construction of a tide gate around an existing fifty-four inch (54”) combined sewer overflow (“CSO”) at First Place. This work will involve the installation of micropiles and a new tide gate chamber.

The construction work within the Package 4 Project Area, identified as Pier A Plaza and the Battery on Figure 1, will be performed by a BPCA-selected contractor (the “Package 4 Contractor”) and will involve demolition, re-grading, and re-construction of plaza and park landscape elements as well as installation of a flood barrier system. The flood barrier system involves the construction of deployable flip-up gates, the raising of the existing at-grade elevation with a reinforced concrete wall, and the installation of exposed flood walls that will span the Battery Tunnel Underpass and Brooklyn Battery Tunnels below the Battery. The Package 4 Contractor will also be responsible for site grading as well as installation of new site utilities, plantings and trees, and park and plaza finishes such as pavements, furnishings, lighting, and landscaping. The Package 4 Contractor will mobilize at the site, install temporary safety protection measures, and begin demolition of the existing site. Once demolition is complete, installation of deep foundations for the floodwalls and Pavilion, and utilities work along Battery Place, will commence. Then, site grading, and installation of drainage, water, electrical, communications, and lighting elements, will take place. Package 4 also entails the construction of a tide gate around an existing ninety-six inch (96”) diameter CSO in Pier A Plaza, which involves the installation of micropiles and a new tide gate chamber.

Package 4 also includes a scope of work referred to as “Near Surface Isolation” or “NSI”. The NSI Work focuses on the interior drainage components of the SBPCR Project and will consist of the installation of gates within the existing regulator structures at specific locations shown on the SBPCR project drawings (the “Project Drawings”) which will be provided by BPCA to the contractor which is selected for award of this Contract (the “Contractor”). A new tide gate chamber to be constructed on piles will be built at Rector Street which would close during a flood event to prevent the storm surge from rising through the interceptor line and reaching the street level. Additionally, four (4) existing interceptor manholes situated along West Street between Battery Place and Albany Street will be pressure-proofed and retrofitted to receive a cover that can be sealed shut and locked during a flood event, in order to resist the pressure resulting from the surge rising through the interceptor and the piping connecting the manholes to the interceptor.

Site preparation for the SBPCR Project commenced in the winter of 2022, and construction is expected to last approximately twenty-four (24) months.

III. Scope of Services

The NYC Building Code and the Rules of the City of New York (“RCNY”) require that certain materials, operations, and equipment be inspected and/or tested to verify the SBPCR Project’s compliance with the below-specified special

inspections code requirements. The Contractor shall perform all New York City Department of Buildings (“DOB”) required special inspections and tests of such materials and equipment utilized for, and operations undertaken for, Package 2 and Package 4 of the SBPCR Project.

The Contractor will inspect and certify that construction operations performed and materials installed by the Package 2 Contractor, the Package 4 Contractor and/or any of their sub-contractor(s) adhere to all applicable NYC Building Code special inspections requirements and comply with the SBPCR Project drawings and specifications issued by the SBPCR Project’s Design Consultant, AECOM USA, and/or its Construction Manager, LiRo Program & Construction Management.

The Contractor will perform all special inspections and associated laboratory testing services required for completion of Packages 2 and 4 of the SBPCR Project. BPCA projects that the inspections noted “Y” in the table below will constitute the extent of the inspections/tests required; however, should any additional inspections not so noted below be required for completion of Packages 2 and 4, then, upon BPCA’s advance approval, an allocation of the Contract’s allowance may be made to cover the costs of such additional required inspections subject to the terms and conditions of the Contract:

- Package 2 – Wagner Park / Museum of Jewish Heritage Site Work Construction Services
- Package 4 – Pier A Plaza / Battery Site Work Construction Services

Special Inspections	NYC Building Code/Section	Package 2	Package 4
Structural Steel - Welding	BC 1704.3.1	Y	Y
Structural Steel - Details	BC 1704.3.2	Y	Y
Structural Steel - High Strength Bolting	BC 1704.3.3		Y
Structural Cold - Formed Steel	BC 1704.3.4		
Concrete - Cast-In-Place	BC 1704.4	Y	Y
Concrete - Precast	BC 1704.4		Y
Concrete – Pre-stressed	BC 1704.4		
Masonry	BC 1704.5		
Wood - Installation of High-Load Diaphragms	BC 1704.6.1		
Wood - Installation of Metal-Plate-Connected Trusses	BC 1704.6.2		
Wood - Installation of Prefabricated I-Joists	BC 1704.6.3		
Subgrade Inspection	BC 1704.7.1	Y	Y
Subsurface Conditions - Fill Placement & In-Place Density	BC 1704.7.2 BC 1704.7.3	Y	Y
Subsurface Investigations (Borings/Test Pits)	BC 1704.7.4		

Deep Foundation Elements	BC 1704.8	Y	Y
Helical Piles (BB# 2014-020)	BC 1704.8.5		
Vertical Masonry Foundation Elements	BC 1704.9		
Wall Panels, Curtain Walls, and Veneers	BC 1704.10		
Sprayed fire-resistant materials	BC 1704.11		
Mastic and Intumescent Fire-resistant Coatings	BC 1704.12		
Exterior Insulation and Finish Systems (EIFS)	BC 1704.13		
Alternative Materials - OTCR Buildings Bulletin #	BC 1704.14		
Smoke Control Systems	BC 1704.15		
Mechanical Systems	BC 1704.16		
Fuel-Oil Storage and Fuel-Oil Piping Systems	BC 1704.17		
High-Pressure Steam Piping (Welding)	BC 1704.18		
High Temperature Hot Water Piping (Welding)	BC 1704.18		
High-Pressure Fuel-Gas Piping (Welding)	BC 1704.19		
Structural Stability - Existing Buildings	BC 1704.20.1		
Excavations - Sheet piling, Shoring, and Bracing	BC 1704.20.2	Y	Y
Underpinning	BC 1704.20.3 BC 1814		
Mechanical Demolition	BC 1704.20.4		Y
Raising and Moving of a Building	BC 1704.20.5		
Soil Percolation Test - Private On-Site Storm Water Drainage Disposal Systems, and Detention Facilities	BC 1704.21.1.2		Y
Private On-Site Storm Water Drainage Disposal Systems, and Detention Facilities Installation	BC 1704.21.2	Y	Y
Individual On-Site Private Sewage Disposal Systems Installations	BC 1704.22		
Soil Percolation Test - Individual On-Site Private Sewage Disposal System	BC 1704.22		
Sprinkler Systems	BC 1704.23		

Standpipe Systems	BC 1704.24		
Heating Systems	BC 1704.25		
Chimneys	BC 1704.26		
Fire-Resistant Penetrations and Joints	BC 1704.27		
Aluminum Welding	BC 1704.27	Y	Y
Flood Zone Compliance (attach FEMA elevation/dry flood-proofing certificate where applicable)	BC 1704.30 BC G105		
Luminous Egress Path Markings	BC 1704.30 BC 1024.8		
Emergency and Standby Power Systems (Generators)	BC 1704.31		
Post-Installed Anchors (BB# 2014-018, 2014-019)	BC 1704.32	Y	Y
Seismic Isolation Systems	BC 1707.8		
Concrete Design Mix	BC 1905.3 BC 1913.5	Y	Y
Concrete Sampling and Testing	BC 1905.6 BC 1913.10	Y	Y
Preliminary	28-116.2.1, BC 110.2		
Footing and Foundation	BC 110.3.1		
Lowest Floor Elevation	BC 110.3.2		
Structural Wood Frame	BC 110.3.3		
Energy Code Compliance Inspections	BC 110.3.5		
Fire-Resistance Rated Construction	BC 110.3.4		
Public Assembly Emergency Lighting	28-116.2.2		
Final*	28-116.2.4.2, BC 110.5, Directive 14 of 1975, and 1 RCNY 101-10		

In furtherance of this Scope of Work, the Contractor will perform the following Services:

1. Provide all qualified special inspectors, engineers and/or architects, technicians, equipment and laboratory services required for the special inspection and testing of construction materials, construction methods, and construction equipment in order to verify and document compliance with applicable sections of the SBPCR Project drawings & specifications and the NYC Building Code.

2. Provide all qualified special inspectors, engineers and/or architects, technicians, equipment, and laboratory services required for the inspection and testing of specified SBPCR Project materials in order to verify and document compliance with the Contract Drawings & Specifications and/or NYC Building Code and RCNY.
3. Furnish, and file with DOB, all special inspection reports, laboratory tests, and related documents with all required signatures and seals by a licensed engineer and/or a registered architect for Construction Package 2 and Construction Package 4. Copies of all laboratory tests, special inspection reports and related documents with required seal and signature of a supervising engineer for special inspections (the "Supervising Engineer") shall be submitted to BPCA and the Construction Manager at the completion of each special inspection and/or laboratory test. BPCA's acceptance of a special inspection is contingent upon Contractor submitting to BPCA all necessary certificates evidencing compliance in every respect with the requirements of the regulatory agencies having jurisdiction over the special inspection.
4. Participate in the final special inspection of the construction work corresponding with Construction Package 2 and Construction Package 4 including verification of the certificate of occupancy (the "CO"), as required by BPCA, and submit to BPCA and the Construction Manager all laboratory testing, special inspections, and filing of documentation necessary for DOB's granting of applicable portions of the SBPCR Project's CO and final approval.
5. Upon request by BPCA, provide professional engineering consultation services for any special inspections and laboratory testing of relevant SBPCR Project construction materials.
6. Provide written notice at least five (5) days in advance of each required test to BPCA, noting the time and place of testing in each notice.

IV. Consultant's Key Personnel:

1. In addition to any other staffing requirements set forth in this Contract, any individual performing special inspection services must comply with the minimum qualification requirements per title established by the DOB under Section 101-06 of Subchapter A of Chapter 100 of Title 1 of the RCNY.
2. The Contractor represents and warrants that, in recognition of the critical nature of timely completion of the Services, it has and shall maintain expertise in performing its obligations hereunder, and it has and shall maintain sufficient resources, facilities, capacity, and number of personnel to ensure that all of its obligations will be performed by qualified personnel in workmanlike manner, and in accordance with the highest standards of the industry.
3. The Contractor shall ensure that the personnel employed/utilized by its subcontractors or sub-consultants (if any) are fully qualified by education and training, as required by the NYC Building Code, and that such personnel possess all certifications, licenses etc., as necessary to perform the services for which the subcontractor or sub-consultant was engaged.
4. The Contractor shall maintain the registrations and accreditations described below for the full duration of the Contract:

A. Laboratory Testing Services:

The laboratory or laboratories to be used by the Contractor for the testing components of the Services must be identified by name and must have a record of successful performance of such services for at least the past three (3) years. Additional minimum qualifications for such laboratory or laboratories shall include:

- Each laboratory that performs concrete testing must be licensed as a “Concrete Testing Laboratory” in accordance with the requirements of the NYC Building Code; and,
- The laboratory must be accredited by the National Voluntary Laboratory Accreditation Program (NVLAP); the Cement and Concrete Reference Laboratory (CCRL); and AASHTO Materials Reference Laboratory (AMRL).

B. Key Personnel:

- Individuals provided by the Contractor for required titles of Key Personnel shall: (a) at a minimum, meet all qualification requirements of the NYC Building Code, as well as all requirements of any other governing departments, agencies, entities, etc. with jurisdiction over the particular service being performed, and (b) must satisfy the minimum requirements for the title in question, as set forth in this RFP. The Contractor shall provide the names, qualifications, certifications and detailed resumes or other documentation acceptable to the BPCA to demonstrate that each individual provided complies with the minimum requirements per title. In exceptional circumstances, BPCA may modify the requirements per title in writing in its sole and absolute discretion.
- Certifications and qualifications shall be renewed when required. Updated information for all personnel-performing services hereunder shall be promptly sent to BPCA to keep current all such information. The submissions must show that each individual meets the minimum requirements for the title in question as well as the minimum qualification requirements established by the DOB for the particular services such individual will perform.

a. Contract Executive:

- The Contractor shall assign a “Contract Executive” to the Contract for its entire duration, which Contract Executive shall be subject to BPCA’s approval. No substitutions for the Contract Executive shall be permitted unless approved in advance / in writing by BPCA. Any proposed replacement for the Contract Executive must possess qualifications substantially similar to those of the individual being replaced.
- The Contract Executive shall serve as the Contractor’s principal representative with respect to its obligations under this Contract.

b. Project Manager:

- The Contractor shall assign a project manager (the “Project Manager”) to oversee the progress of all special inspections and general financial accounting tasks associated with the SBPCR Project. Such Project Manager shall have the authority to make decisions and shall be responsible for the following: a) attending meetings at the SBPCR Project Site, if required; b) coordinating the activities of personnel-performing services; and, c) submitting and signing requisitions for payment.
- The Project Manager shall coordinate and attend an SBPCR Project kick-off meeting to commence the special inspections component of the Services upon the Contractor’s receipt of a Notice to Proceed, at no additional cost to the SBPCR Project. BPCA, the Design Consultant, and the Construction Manager shall all attend this meeting.
- The Project Manager shall also attend meetings, as needed, throughout the SBPCR Project’s construction and coordinate with the Construction Manager for upcoming special inspections at no additional cost to the Project. At these meetings, the SBPCR Project’s assignment manager shall also provide an update on the progress of the SBPCR Project’s required special inspections.
- **Supervising Engineer:**
- The Contractor shall also provide resumes of Supervising Engineer, the director of technical & laboratory services, and the special inspectors (as required) proposed to perform the Services.
- The Supervising Engineer shall file all required documentation with DOB that delineates his/her responsibility for the special inspections required in association with the Services.

Contractor must ensure that each person assigned to perform the Work meets the minimum requirements per title included in the table below:

ITEM	TITLE	Minimum No. of Years' Experience
1.00	ARCHITECTS	
1.01	NYS Registered Architect	7
2.00	ENGINEERS	
2.01	NYS Professional Engineer (General Building Construction)	7
2.02	NYS Professional Engineer (Fire Protection and Fire Resistance Construction)	7
2.03	NYS Professional Engineer (Civil/ Structural/Geotechnical)	7
2.04	NYS Professional Engineer (Mechanical/Plumbing Systems)	7
2.05	NYS Professional Engineer (Electrical/Fire Alarm)	7
3.00	INSPECTORS	
3.01	General Building Construction Inspector (Wall Panels, Curtain Walls, Veneers, Exterior Insulation Finish System, Chimneys, Flood Zone Compliance, and Photoluminescent Exit Path Markings)	3
3.02	Flood Zone Compliance and Photoluminescent Exit Path Markings Inspector (PE or RA)	5
3.03	Fire Protection System and Fire-Resistant Construction Inspector (Sprayed Fire-Resistant Materials, Smoke Control Systems, Standpipe and Sprinkler Systems, Firestop, Draftstop, and Fireblock Systems)	3
3.04	Electrical / Fire alarm Inspector (Fire Alarm test (when FDNY inspection not required) and emergency Power Systems (Generators))	5
3.05	Mechanical / Plumbing Systems Inspector (Mechanical Systems, Fuel-Oil Storage and Fuel-Oil Piping Systems, Site Storm Drainage Disposal and Detention Facilities, Septic System Installation, and Heating Systems)	3
3.06	Welding Inspector (PE or RA and AWS or ICC Certification)	5
3.07	Welding Inspector (Structural Steel, Erection & Bolting, Cold- Form Steel, High Pressure Steam Piping, Fuel-Gas Piping and Aluminum) (PE and ICC Certification)	3
3.08	Bolting Inspector	3
3.09	Shop Welding Inspector (PE or RA and AWS or ICC Certification)	5
3.10	Shop Welding Inspector (High Pressure Steam Piping, Fuel- Gas Piping, Aluminum) (PE or RA and AWS or ICC Certification)	3
3.11	Non-Destructive Ultrasonic/Magnetic/Penetration (Dye) Testing Inspector	3

3.12	Non-Destructive Shop Ultrasonic/Magnetic/Penetration (Dye) Testing Inspector	3
3.13	Concrete - Cast in Place, Pre-cast, Pre-stressed Concrete and Masonry Inspector (Note: License concrete testing lab to perform sampling and testing of cylinders)	3
3.14	Concrete Coring Technician	3
3.15	Concrete Batch Plant Technician	3
3.16	Concrete Field Technician, ACI 1 (American Concrete Institute Level 1)	3
3.17	Concrete Non Destructive Testing Technician	3
3.18	Asphalt Batch Plant Inspector	3
3.19	Asphalt Field Inspector	3
3.20	Certified Wood Construction Inspector (Professional Engineer)	5
3.21	Wood Construction Inspector (Off-Site Fabrication of Structural Elements, High Load Diaphragms, Metal-Plated- Connected Trusses and Prefabricated I-Joists)	3
3.22	Site Preparation, Soils- Fill Placement, In-Place Density and soils Investigations Inspector (PE or RA)	5
3.23	Soils Inspector (Site Preparation, Fill Placement & In-Place Density, and Investigations (Borings/Test Pits))	3
3.24	Compaction Technician	3
3.25	Pile Foundations, Drilled Pier Installation, Pier Foundation and Underpinning Inspector (PE or RA)	5
3.26	Pile Foundations, Drilled Pier Installation, Pier Foundation and Underpinning Inspector	3
3.27	Structural Safety-Stability and Mechanical Demolition Inspector	3
3.28	Excavation - Sheet piling, Shoring and Bracing Inspector	3
3.29	Seismic Isolation Systems Inspector	5
3.30	Radiographic Testing Technician	3
3.31	Progress Inspection Inspector (Preliminary)	3
3.32	Progress Inspection Inspector (Footings and Foundations, Lowest Floor Elevation, Frame and Fire-Resistance Rated construction)	3
3.33	Progress Inspection Inspector (Energy Code Compliance, Public assembly Emergency Lighting and Final)	5
4.00	NOISE CONTROL	
4.01	Noise Consultant (approved by DEP - As per Rules of NYC Title 15 DEP 29-10 - http://72.0.151.116/nyc/rcny/Title15_29-101.asp)	7
4.02	Sound Level Inspector – (B.S. in science or engineering with at least four years of experience measuring sound levels utilizing the ANSI standards)	4

IV. Other Requirements

1. If, during the SBPCR Project's construction work, it appears that the estimated special inspection quantities are not sufficient for the successful completion of the SBPCR Project, or if additional special inspection services items are required, the Contractor shall immediately inform BPCA.
2. The Contractor shall provide BPCA and the Construction Manager with a brief status and financial report on the progress of the special inspections, at two (2) different stages – expenditure of **fifty percent (50%)** of the Contract amount, and at **seventy-five percent (75%)** of the Contract amount (collectively, the "Financial Reports"). The Financial Reports should include an analysis on the progress of special inspections made to date, and whether the remaining Contract balance is sufficient to complete the SBPCR Project (i.e., special inspections remaining vis-a-vis the remaining Contract balance). The brief status and Financial Reports described herein shall be provided for each of Packages 2 and 4.
3. The Contractor shall provide the BPCA with a monthly summary of all test failures / failed inspections, cancellation fees, and late charges incurred on the SBPCR Project which may be back-charged to the Package 2 Contractor or Package 4 Contractor, as applicable.
4. Strict adherence to the SBPCR Project's established construction performance schedule must be maintained. The Contractor may be required to provide services for various special inspections simultaneously at BPCA's discretion.
5. Any Contract document or special inspection items submitted by the Contractor shall become BPCA property upon submission.
6. The Contractor shall immediately inform BPCA in the event it determines the need for any adjustment to its staff. In the case of staff substitutions, the Contractor must submit the replacement resume(s) to BPCA for approval prior to any modifications. No change of any subcontractor, sub-consultant or Contractor staff may take place without the express written consent of BPCA.
7. The Contractor shall provide its own office supplies and equipment, including equipment for sampling, measuring, and testing, except for special equipment listed in the Cost Proposal form.
8. The Contractor may not sub-contract special inspectors and/or supervising engineers for the Services unless expressly authorized by BPCA.
9. All special inspection, laboratory testing, and support services to be performed by the Contractor must be coordinated with the Construction Manager in accordance with an approved progress schedule. The special inspection component of the Services shall take place in a cooperative and timely manner, and every effort shall be made to avoid delay to the SBPCR Project.
10. The Contractor shall work in a cooperative manner with the Construction Manager. The Construction Manager will engage directly with special inspectors to arrange inspections, and ensure the inspections are coordinated and completed in a timely manner to prevent unnecessary delays to the SBPCR Project. The Construction Manager will maintain a database of all reports submitted by the Contractor; the Contractor shall provide any and all notifications of special inspection and laboratory test results, progress and final documentation, reports, etc. to the Construction Manager or as otherwise directed by the BPCA.
11. All special inspection and laboratory test reports shall bear the signature and seal of the Supervising Engineer.

12. The Contractor will be required to utilize Procore Construction Management Software.

13. Preliminary test results shall be uploaded to Procore by the Supervising Engineer responsible for the special inspections component of the Services. The Supervising Engineer shall upload the final report to Procore and as directed by BPCA no later than one (1) week after the performance of each special inspection test.

14. All test failures or indications of lack of compliance shall be flagged by the Supervising Engineer who shall immediately notify BPCA and Construction Manager of such non-compliance to allow for prompt corrective measures. Any and all significant issues and/or problems shall be brought to BPCA's and the Construction Manager's attention immediately.

15. The Contractor shall separately track and identify all test failures / failed inspections, cancellation fees, and late charges incurred on the Project, and provide a monthly report to BPCA and the Construction Manager.

16. All field reports/tests shall be uploaded daily to Procore no later than at 12:00 p.m. on the day immediately following a special inspection. The field reports/tests shall include all information required for the special inspection, including the equipment used for such inspection and a summary of the results and conclusions of such inspection.

EXHIBIT B
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 twenty-five (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 Justin McLaughlin-Williams at justin.mclaughlin-williams@bpca.ny.gov or 212-417-2337. 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 BPCA's Justin McLaughlin-Williams, by email at justin.mclaughlin-williams@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 BPCA's Justin McLaughlin-Williams, by email at justin.mclaughlin-williams@bpca.ny.gov, 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 (EEO) 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.



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>. 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 Justin McLaughlin-Williams, by email at justin.mclaughlin-williams@bpca.ny.gov or 212-417-2337. 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>).

For more information, contact Justin McLaughlin-Williams at justin.mclaughlin-williams@bpca.ny.gov or 212-417-2337.

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 _____ (*month*), 20____ (*year*)

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 training² 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

If Yes, complete the attached Utilization Plan

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.

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 C
STANDARD FORM OF CONTRACT

(ATTACHED)

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

EXHIBIT B - RATES [if applicable]

EXHIBIT C - FORM OF TIME SHEET [if applicable]

EXHIBIT D - MBWE AND EEO POLICY STATEMENT

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

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

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

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

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 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. Insurance

(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, 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 10. Consultant hereby certifies 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 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 if required) and Disability Benefits during the Term, at not less than the statutory limits, 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.

(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]. 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 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 its 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 or of 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.

(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. Indemnity

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 claim for personal

injury, property damage or death, or any breach 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.

(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. Modification

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

20. 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.

21. 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.

22. 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.

23. 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.

24. 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:

- (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-mail, 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.

25. 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 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.

26. Employment and Diversity

26.1 *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 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:

(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]

(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/eoo_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.

(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 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.

26.2 *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@bpcn.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 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 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%20Report.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.

(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.

27. 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.

28. 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.

29. 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.

30. 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 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.

31. 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 interest 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.

32. 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.

33. 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.

34. 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.

35. 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 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).

36. Binding Contract

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

37. 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.

38. 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.

39. 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)

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# [??]

EXHIBIT A
SCOPE OF WORK

EXHIBIT B

RATES

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
Total:							

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

Supervisors Signature _____

Title _____

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: _____

EXHIBIT D
PRICING PROPOSAL FORMS

[NO FURTHER TEXT ON THIS PAGE]

EXHIBIT D-1
FORM OF COST PROPOSAL

For each item identified on each line in the table below, the Proposer shall set forth an all-inclusive, not to exceed cost for inspections/tests in the estimated quantities shown for Package 2 and Package 4 on each line (the “Line-Item Cost”). The Line-Item Cost shall include everything required to complete the inspection or test identified in that line, including but not necessarily limited to all special inspection, testing, equipment, materials, labor, laboratory, and any other costs necessary for the completion of the Scope of Work as it pertains to the type of inspection identified on that Line. Payment for each individual inspection and/or test shall be made in accordance with the actual rates and unit prices set forth on Exhibits D-2 through D-4, but total payment under any Line Item shall not exceed the Line-Item Cost.

For the avoidance of doubt, the total not-to-exceed cost of all Work under this Contract (the Not-to-Exceed Amount”) shall be deemed to be the total of all Line Items on the table below, exclusive of the included Allowance. The Allowance shall not be included in the Not-to-Exceed Amount and shall be used exclusively to address a situation where BPCA, in its sole discretion, determines that additional and/or alternate inspections and/or testing, above and beyond the estimated quantities set forth in each line below, is required in connection with Packages 2 and 4 of the SBPCR Project. Any such additional and/or alternate inspections and/or testing shall be billed at the rates for personnel, testing and equipment, as applicable, set forth in Exhibits D-2 through D-4, and in all events shall be subject to the prior review and approval of BPCA.

Special Inspections Required by Bid Package		Estimated Quantity*		Not-to-Exceed Line Item Cost
Special Instructions	Code/Section	Package 2	Package 4	
Structural Steel - Welding	BC 1704.3.1	25	10	\$-
Structural Steel - Details	BC 1704.3.2	10	5	\$-
Structural Steel - High Strength Bolting	BC 1704.3.3	-	5	\$-
Concrete - Cast-In-Place	BC 1704.4	60	60	\$-
Concrete - Precast	BC 1704.4	-	5	\$-
Subgrade Inspection	BC 1704.7.1	70	70	\$-
Subsurface Conditions - Fill Placement & In-Place Density	BC 1704.7.2 BC 1704.7.3	150	60	\$-
Deep Foundation Elements	BC 1704.8	120	175	\$-
Excavations - Sheet piling, Shoring, and Bracing	BC 1704.20.2	30	30	\$-
Mechanical Demolition	BC 1704.20.4	-	10	\$-
Soil Percolation Test - Private On-Site Storm Water Drainage Disposal Systems, and Detention Facilities	BC 1704.21.1.2	-	20	\$-
Private On-Site Storm Water Drainage Disposal Systems, and Detention Facilities Installation	BC 1704.21.2	30	30	\$-
Aluminum Welding	BC 1704.27	15	10	\$-
Post-Installed Anchors (BB# 2014-018, 2014-019)	BC 1704.32	60	-	\$-
Concrete Sampling and Testing	BC 1905.6 BC 1913.10	450	80	\$-

Total Not to Exceed Amount
+ Allowance for Changes/Additions to Projected Types/Numbers of Inspections and Tests
TOTAL COST PROPOSAL

\$-
\$ 100,000.00
\$

***Quantities and types of tests listed are estimated and shall be used by BPCA for proposal evaluation purposes and, in conjunction with the specified allowance, to formulate the total value of the awarded Contract.**

EXHIBIT D-2
SCHEDULE OF RATES FOR PERSONNEL

The selected Proposer shall set forth for each title contained in this Exhibit a list of all-inclusive rates (collectively, the "All-Inclusive Rates") for the staff the selected Proposer plans to use to perform the Services. Payments for Special Inspections shall incorporate the All-Inclusive Rates for each title used to perform the Special Inspection (including any additional staff rates and overtime rates).

All Inclusive Rates for Specified Titles of Personnel

All-Inclusive Rates for Specified Titles of Personnel: Required titles of personnel anticipated for the Services are listed below. Minimum requirements per title are set forth in the RFP. For each title listed below, the proposer shall submit a proposed All-Inclusive Rate which shall apply throughout the term of the Contract.

All-Inclusive Rates shall be broken down based on full day and half-day rates. A full day ("Full Day Rate") shall constitute eight (8) hours, commencing at 6:00AM or 7:00AM, Monday through Friday whereas a half-day ("Half-Day Rate") shall be calculated at exactly fifty percent (50%) of the Full Day Rate and apply to any days where services are four (4) hours or less, commencing between 6:00AM to 12:00PM, Monday through Friday.

Overtime services shall be priced hourly and calculated at 1.5 times the base rate used to calculate the Full Day Rate. Premium Time services shall be priced hourly; the Proposer shall identify the rate calculation. Overtime and Premium rates shall apply to services provided outside of the hours of any Full Day Rate and shall require the prior approval and/or authorization of the Authority. Premium Time rates shall apply to services provided on a Saturday, Sunday, or any federally observed Holiday. Overtime rates shall apply to services provided exceeding an eight (8) hour shift.

In conformance with the aforementioned, the selected Proposer shall detail in the proposal the hours and days for which Full Day, Half Day, Overtime and Premium Time services would be in effect in the proposer's cost proposal.

Expenses Included: Such All-Inclusive Rates shall be deemed to be applicable to all personnel hours required in performance of the Services as set forth below:

- a) All expenses incurred by the selected Proposer in the performance of all required Services;
- b) All expenses related to management and oversight;
- c) Preparation of all required forms, applications, documentation and/or reports for filing with the DOB, including without limitation, Technical Reports (TRs) and any other required reports of testing and/or laboratory services; and
- d) All expenses related to overhead, including insurance, and any anticipated profit; and all expenses related to providing the non-reimbursable items and/or services set forth in the RFP.

[NO FURTHER TEXT ON THIS PAGE]

SCHEDULE OF ALL INCLUSIVE RATES FOR TITLES OF PERSONNEL

Item	Title	Full Day Rate	Half Day Rate	Overtime Rate	Premium Time Rate*
1.00	ARCHITECTS				
1.01	NYS Registered Architect	\$	\$	\$	\$
2.00	ENGINEERS				
2.01	NYS Professional Engineer (General Building Construction)	\$	\$	\$	\$
2.02	NYS Professional Engineer (Fire Protection and Fire Resistance Construction)	\$	\$	\$	\$
2.03	NYS Professional Engineer (Civil/ Structural/Geotechnical)	\$	\$	\$	\$
2.04	NYS Professional Engineer (Mechanical/Plumbing Systems)	\$	\$	\$	\$
2.05	NYS Professional Engineer (Electrical/Fire Alarm)	\$	\$	\$	\$
3.00	INSPECTORS				
3.01	General Building Construction Inspector (Wall Panels, Curtain Walls, Veneers, Exterior Insulation Finish System, Chimneys, Flood Zone Compliance, and Photoluminescent Exit Path Markings)	\$	\$	\$	\$
3.02	Flood Zone Compliance and Photoluminescent Exit Path Markings Inspector (PE or RA)	\$	\$	\$	\$
3.03	Fire Protection System and Fire-Resistant Construction Inspector (Sprayed Fire-Resistant Materials, Smoke Control Systems, Standpipe and Sprinkler Systems, Firestop, Draftstop, and Fireblock Systems)	\$	\$	\$	\$
3.04	Electrical / Fire alarm Inspector (Fire Alarm test (when FDNY inspection not required) and emergency Power Systems (Generators))	\$	\$	\$	\$
3.05	Mechanical / Plumbing Systems Inspector (Mechanical Systems, Fuel-Oil Storage and Fuel-Oil Piping Systems, Site Storm Drainage Disposal and Detention Facilities, Septic System Installation, and Heating Systems)	\$	\$	\$	\$
3.06	Welding Inspector (PE or RA and AWS or ICC Certification)	\$	\$	\$	\$
3.07	Welding Inspector (Structural Steel, Erection & Bolting, Cold- Form Steel, High Pressure Steam Piping, Fuel-Gas Piping and Aluminum) (PE and ICC Certification)	\$	\$	\$	\$
3.08	Bolting Inspector	\$	\$	\$	\$

3.09	Shop Welding Inspector (PE or RA and AWS or ICC Certification)	\$	\$	\$	\$
3.10	Shop Welding Inspector (High Pressure Steam Piping, Fuel- Gas Piping, Aluminum) (PE or RA and AWS or ICC Certification)	\$	\$	\$	\$
3.11	Non-Destructive Ultrasonic/Magnetic/Penetration (Dye) Testing Inspector	\$	\$	\$	\$
3.12	Non-Destructive Shop Ultrasonic/Magnetic/Penetration (Dye) Testing Inspector	\$	\$	\$	\$
3.13	Concrete - Cast in Place, Pre-cast, Pre-stressed Concrete and Masonry Inspector	\$	\$	\$	\$
3.14	Concrete Coring Technician	\$	\$	\$	\$
3.15	Concrete Batch Plant Technician	\$	\$	\$	\$
3.16	Concrete Field Institute Level 1) Technician, ACI 1 (American Concrete	\$	\$	\$	\$
3.17	Concrete Non Destructive Testing Technician	\$	\$	\$	\$
3.18	Asphalt Batch Plant Inspector	\$	\$	\$	\$
3.19	Asphalt Field Inspector	\$	\$	\$	\$
3.20	Certified Wood Construction Inspector (Professional Engineer)	\$	\$	\$	\$
3.21	Wood Construction Inspector (Off-Site Fabrication of Structural Elements, High Load Diaphragms, Metal-Plated- Connected Trusses and Prefabricated I-Joists)	\$	\$	\$	\$
3.22	Site Preparation, Soils- Fill Placement, In-Place Density and soils Investigations Inspector (PE or RA)	\$	\$	\$	\$
3.23	Soils Inspector (Site Preparation, Fill Placement & In-Place Density, and Investigations (Borings/Test Pits))	\$	\$	\$	\$
3.24	Compaction Technician	\$	\$	\$	\$
3.25	Pile Foundations, Drilled Pier Installation, Pier Foundation and Underpinning Inspector (PE or RA)	\$	\$	\$	\$
3.26	Pile Foundations, Drilled Pier Installation, Pier Foundation and Underpinning Inspector	\$	\$	\$	\$
3.27	Structural Safety-Stability and Mechanical Demolition Inspector	\$	\$	\$	\$
3.28	Excavation - Sheet piling, Shoring and Bracing Inspector	\$	\$	\$	\$
3.29	Seismic Isolation Systems Inspector	\$	\$	\$	\$
3.30	Radiographic Testing Technician	\$	\$	\$	\$
3.31	Progress Inspection Inspector (Preliminary)	\$	\$	\$	\$

3.32	Progress Inspection Inspector (Footing and Foundation, Lowest Floor Elevation, Frame and Fire-Resistance Rated construction)	\$	\$	\$	\$
3.33	Progress Inspection Inspector (Energy Code Compliance, Public assembly Emergency Lighting and Final)	\$	\$	\$	\$
4.00	NOISE CONTROL				
4.01	Noise Consultant	\$	\$	\$	\$
4.02	Sound Level Inspector	\$	\$	\$	\$

***show calculation**

EXHIBIT D-3
UNIT PRICING FORM FOR TESTING AND/OR LABORATORY SERVICES

Services on a Unit Price Basis: The selected Proposer shall provide the testing and/or laboratory services set forth in this Exhibit for the unit prices set forth herein.

Expenses Included in Unit Prices: The expenses that are deemed included in the unit prices for testing and/or laboratory services included herein shall include all expenses required to perform each testing and/or laboratory service potentially required for completion of the Services, EXCLUDING any personnel or equipment expense which are not integral to the testing and/or laboratory processes and which would otherwise be calculated and incurred separately in accordance with Exhibit D-2 and/or D-4. The selected Proposer shall not be entitled to any mark-up on the unit prices set forth in this Exhibit. For each item of testing and/or laboratory services set forth in this Exhibit, the selected Proposer shall provide the services and/or equipment described below, even though such services and/or equipment are not stated in the description of the item.

- (1) All unit prices set forth herein for each specified testing and/or laboratory service shall include:
 - (a) Performance of the specified services by qualified professional personnel (i.e., Engineer, operator, technician, etc.);
 - (b) Preparation of all required forms, applications, documentation and/or reports for filing with the DOB, including without limitation, Technical Reports (TRs) and any other required reports of testing and/or laboratory services;
 - (c) Gathering any required sample(s), and transporting and/or handling the sample(s);
 - (d) Material consumed in the test;
 - (e) Equipment to perform the test, including calibration, set up, maintenance and cleaning, but in no event shall such equipment included in such unit price hereunder be duplicative of any cost included in Exhibit D-1 for special testing equipment priced separately in accordance with Exhibit D-4, below;
 - (f) Providing Preliminary Laboratory Test Report summarizing the results of the tests;
 - (g) Preparing Final Report with appropriate backup documentation interpreting and/or analyzing the results of the test. If required by law, rule or regulation, or if requested by BPCA, such Final Report must be signed and sealed by a Professional Engineer licensed in N.Y.
- (2) All expenses related to supervision, management, oversight and quality control procedures
- (3) All expenses related to providing non-reimbursable items and/or services
- (4) All expenses related to overhead, including insurance, and any anticipated profit

The Unit Prices set forth in this section shall apply for the entire duration of the Contract.

Non-Regular Business Hours: In the event the selected Proposer performs services on a unit price basis during non-regular business hours, the Unit Prices set forth in this Exhibit D-3 shall not be subject to an increase for such services.

The required testing and/or laboratory services are listed below. For each item listed below, the proposer shall submit a proposed Unit Price.

Testing Methods: All testing services shall be in accordance with the latest ASTM methods and procedures, as well as the following procedures: AWS, ASME, ANSI, AISC, SJI, PCI, ACI, and TPI. In addition, for non-destructive testing, the procedure shall conform to ASTM E543. The selected proposer shall not be entitled to any increase in the unit prices for testing services due to revisions in the methods and/or procedures.

Schedule Of Unit Prices For Testing And/Or Laboratory Services

Special Inspections	NYC Building Code/Section	Unit Price (Per Test)
Structural Steel - Welding	BC 1704.3.1	\$-
Structural Steel - Details	BC 1704.3.2	\$-
Structural Steel - High Strength Bolting	BC 1704.3.3	\$-
Structural Cold - Formed Steel	BC 1704.3.4	\$-
Concrete - Cast-In-Place	BC 1704.4	\$-
Concrete - Precast	BC 1704.4	\$-
Concrete – Pre-stressed	BC 1704.4	\$-
Masonry	BC 1704.5	\$-
Wood - Installation of High-Load Diaphragms	BC 1704.6.1	\$-
Wood - Installation of Metal-Plate-Connected Trusses	BC 1704.6.2	\$-
Wood - Installation of Prefabricated I-Joists	BC 1704.6.3	\$-
Subgrade Inspection	BC 1704.7.1	\$-
Subsurface Conditions - Fill Placement & In-Place Density	BC 1704.7.2 BC 1704.7.3	\$-
Subsurface Investigations (Borings/Test Pits)	BC 1704.7.4	\$-
Deep Foundation Elements	BC 1704.8	\$-
Helical Piles (BB# 2014-020)	BC 1704.8.5	\$-
Vertical Masonry Foundation Elements	BC 1704.9	\$-
Wall Panels, Curtain Walls, and Veneers	BC 1704.10	\$-
Sprayed fire-resistant materials	BC 1704.11	\$-
Mastic and Intumescent Fire-resistant Coatings	BC 1704.12	\$-
Exterior Insulation and Finish Systems (EIFS)	BC 1704.13	\$-
Alternative Materials - OTCR Buildings Bulletin #	BC 1704.14	\$-
Smoke Control Systems	BC 1704.15	\$-
Mechanical Systems	BC 1704.16	\$-
Fuel-Oil Storage and Furl-Oil Piping Systems	BC 1704.17	\$-
High-Pressure Steam Piping (Welding)	BC 1704.18	\$-
High Temperature Hot Water Piping (Welding)	BC 1704.18	\$-
High-Pressure Fuel-Gas Piping (Welding)	BC 1704.19	\$-
Structural Stability - Existing Buildings	BC 1704.20.1	\$-
Excavations - Sheet piling, Shoring, and Bracing	BC 1704.20.2	\$-
Underpinning	BC 1704.20.3 BC 1814	\$-
Mechanical Demolition	BC 1704.20.4	\$-
Raising and Moving of a Building	BC 1704.20.5	\$-
Soil Percolation Test - Private On-Site Storm Water Drainage Disposal Systems, and Detention Facilities	BC 1704.21.1.2	\$-
Private On-Site Storm Water Drainage Disposal Systems, and Detention Facilities Installation	BC 1704.21.2	\$-

Individual On-Site Private Sewage Disposal Systems Installations	BC 1704.22	\$-
Soil Percolation Test - Individual On-Site Private Sewage Disposal System	BC 1704.22	\$-
Sprinkler Systems	BC 1704.23	\$-
Standpipe Systems	BC 1704.24	\$-
Heating Systems	BC 1704.25	\$-
Chimneys	BC 1704.26	\$-
Fire-Resistant Penetrations and Joints	BC 1704.27	\$-
Aluminum Welding	BC 1704.27	\$-
Flood Zone Compliance (attach FEMA elevation/dry flood-proofing certificate where applicable)	BC 1704.30 BC G105	\$-
Luminous Egress Path Markings	BC 1704.30 BC 1024.8	\$-
Emergency and Standby Power Systems (Generators)	BC 1704.31	\$-
Post-Installed Anchors (BB# 2014-018, 2014-019)	BC 1704.32	\$-
Seismic Isolation Systems	BC 1707.8	\$-
Concrete Design Mix	BC 1905.3 BC 1913.5	\$-
Concrete Sampling and Testing	BC 1905.6 BC 1913.10	\$-
Preliminary	28-116.2.1, BC 110.2	\$-
Footing and Foundation	BC 110.3.1	\$-
Lowest Floor Elevation	BC 110.3.2	\$-
Structural Wood Frame	BC 110.3.3	\$-
Energy Code Compliance Inspections	BC 110.3.5	\$-
Fire-Resistance Rated Construction	BC 110.3.4	\$-
Public Assembly Emergency Lighting	28-116.2.2	\$-
Final*	28-116.2.4.2, BC 110.5, Directive 14 of 1975, and 1 RCNY 101-10	\$-

[NO FURTHER TEXT ON THIS PAGE]

EXHIBIT D-4
SCHEDULE OF UNIT PRICES FOR SPECIAL TESTING EQUIPMENT

Services on a Unit Price Basis: The selected Proposer shall provide the special testing equipment enumerated in this Exhibit, as needed to perform the Services, for the unit prices set forth herein. For the avoidance of doubt, the special testing equipment priced in this Exhibit D-4 is to be considered as distinct from the cost of any required special equipment included in the unit pricing contained in Exhibit D-3.

Expenses Included in Unit Prices: The expenses that are deemed included in the unit prices for special testing equipment are the expenses set forth below. Such expenses do not include the cost of operator labor. The selected Proposer shall not be entitled to any mark-up on the unit prices set forth in this Exhibit:

- (a) All expenses incurred by the selected Proposer in connection with providing the specified equipment, including without limitation, expenses for equipment calibration, set up, wear and tear, maintenance and cleaning;
- (b) All expenses related to handling, transporting, and/or delivering the equipment to the site;
- (c) All expenses related to supervision, management, oversight and quality control procedures associated with the equipment;
- (d) All expenses related to providing non-reimbursable items and/or services; and
- (e) All expenses related to overhead, including insurance, and any anticipated profit.

Half and Full Day Unit Prices for Equipment: The Unit Price Schedule set forth below includes unit prices for half days and unit prices for full days. Such unit prices are based on the following: (1) a full day consists of eight hours, commencing at 6:00 A.M. or 7:00 A.M, Monday through Friday, (2) a half day consists of four hours, commencing between 6:00 A.M. to 12:00 P.M., Monday through Friday, and the specified time frames for a full day and a half day do not include the time required to transport the equipment to and from the site

Increases in Unit Prices: The Unit Prices set forth in this section shall be subject to increases after the base term of the Contract has expired.

Non-Regular Business Hours: In the event the selected Proposer performs services on a unit price basis during non-regular business hours, the Unit Prices set forth in this section shall not be subject to an increase for such services.

The special testing equipment potentially required to complete the Services are listed below. For each item listed below, the proposer shall submit a proposed unit price ("Unit Price for Special Testing Equipment").

	Item	Unit	Unit
1.00	SPECIAL EQUIPMENT (Unit prices do not include the cost of operator labor)		
1.01	Skidmore-Wilhelm Meter	Half Day	\$-
		Full Day	\$-
1.02	Torque Wrench	Half Day	\$-
		Full Day	\$-
1.03	Radiographic Film	Each Plate	\$-
1.04	Ultrasonic Equipment (S meter) (ASTM C 597)	Half Day	\$-
		Full Day	\$-

1.05	Magnetic Particle Equipment	Half Day	\$-
		Full Day	\$-
1.06	Liquid Dye Penetrant	Equipment Provided Per Test	\$-
1.07	Eddy Current Equipment	Half Day	\$-
		Full Day	\$-
1.08	Radiographic Equipment	Half Day	\$-
		Full Day	\$-
1.09	Paint Thickness Gauge	Half Day	\$-
		Full Day	\$-
1.10	Pachometer (R-Meter)	Half Day	\$-
		Full Day	\$-
1.11	Schmidt Hammer (ASTM C805)	Half Day	\$-
		Full Day	\$-
1.12	Windsor Probe Equipment (ASTM 803)	Half Day	\$-
		Full Day	\$-
1.13	Recording Thermometer	Half Day	\$-
		Full Day	\$-
1.14	Pull Test Equipment	Half Day	\$-
		Full Day	\$-
1.15	Microwave Test Equipment (per AASHTO, TP23)	Half Day	\$-
		Full Day	\$-
1.16	GPR (Ground Penetrating Radar)	Half Day	\$-
		Full Day	\$-
1.17	Curing Box	Per Day	\$-
1.18	Asphalt Density Equipment	Per Day	\$-
1.19	Nuclear Density Gauge	Per Day	\$-
1.20	Sand Cone Gauge	Per Day	\$-
1.21	DCP Dynamic Cone Penetrometer (ASTM STP 399)	Per Day	\$-

Cancellations / Late Charges / Failed Inspections

A Special Inspection may be cancelled by the Authority up to 3:00 P.M. on the day prior to the Special Inspection without any cost to the Authority. If the Authority cancels a Special Inspection after 3:00 P.M. on the day prior to the Special Inspection, the selected Proposer shall be entitled to fifty percent (50%) of the Unit Price.

For any and all cancellations, late charges, and/or failed inspections, the selected proposer shall prepare separate monthly documentation summarizing the associated special inspection costs resulting from cancellations, late charges and/or failed inspections. The documentation should also include any support documentation including daily report log that describes the specific inspection and reasons for failure, cancellation or lateness. This summary should be issued to the Authority and Construction Manager on a monthly basis.

[NO FURTHER TEXT ON THIS PAGE]

EXHIBIT E
ACKNOWLEDGEMENT OF ADDENDA

RFP TITLE: _____

Complete Part I <u>or</u> 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: _____ Date: _____

EXHIBIT F
LIST OF BPCA & BPCPC BOARD MEMBERS AND EMPLOYEES

LIST OF BOARD MEMBERS

Martha J. Gallo

Donald Capoccia

Lester Petracca

Louis J. Bevilacqua

Catherine McVay Hughes

Anthony Kendall

LIST OF EMPLOYEES

Betzayda Afzal
Curtis Afzal
Elsa Alvarez
Dana Anders
Stephen Arciold
Sharmila Baichu
Marie Baptiste
Brett Beecham
Freddy Belliard
Marieke Bender
Yipin Benon
Zachary Bergen
Marcus Billips
Emily Birdseye
Nidia Blake
Sully Bonnelly
Jasmine Briggs
Latoya Brooks-Jones
Nancy Buivid
Anthony Buquicchio
Thierry Byron
Peter Campbell
Donna Canfield
Daniel Carmalt
Monica Centeno
Alexis Torres Cid
Sarah Curtin
Gwen Dawson
Nicole Dawson
Gilbert De Padua
Joshua DeVoto
Javier Delarosa
Paul Diaz-Larui
Tonesia Dopson
Abigail Ehrlich
AnnMaria Ellison
Richard Faraino
Claudia Filomena
Tamara Flores
Pamela Frederick
James Gallagher
Abigail Goldenberg
Anastasia Gonzalez
Lenron Goode Jr.
Ned Greenberg
Evelyn Gregg
Jonathan Gross
Robert Hansen

Nicole Heater
Sankar Heerah
Raul Hernandez
Brendan Hoey
Keiry Holguin
Megan Hood
Craig Hudon
Michael Jablonowski
Amy Jogie
William John
Jasmine Mikayla Johnson
Benjamin Jones
Gamal Jones
Ebonique Julien
Roland Kemp
Ann Ketrang
Karl Koenig
Varun Kohli
Michael Lamancusa
John Lonie
Rene Lopcy
Janira Lopez
Roman Lora
Rodolfo Machuca
Robert Maggi
Evelin Maisonet
Maria Martinez
Justin McLaughlin-Williams
Princess McNeill
Vanessa Mesine
Nazima Mohamed
Ronnie Mohammed
Franco Morizio
Irene Moulketis
Eric Munson
Lauren Murtha
Jahmeliah Nathan
Robert Nesmith
Siu May Ng
Yoshihiro Nishida
Kevin O'Toole
Stuart Ohleyer
Maril Ortiz
Willem Paillant
Jonathan Parker
Nimisha Patel-Haribaran
Gladys Pearlman
Dahlia Pena
Rynell Pimentel

Katherine Powell
Sandra Power
Robert Quon
Jason Rachnowitz
Madelin Ramirez
Aline Reynolds
Angel Rivera
Manuel Rivera
Nelson Rogers
Jose Rosado
Joel Rufino
Paul Russell
Carlos Santiago
Nicholas Sbordone
Jean Schwartz
Rekha Sewraj-Kumar
Marcella Shanley Taft
Sean Simon
Kemnarine Singh
Sarah Smedley
Shinay Stewart
Jerome Sturiano
Lance Super
Ryan Torres
Michelle Torres Davila
Douglas Van Horn
Noe Velasquez
Yves Emmanuel Veve
Evangelio Villalobos
Sharon Wade
David Wallace
John Wells
Dwight Williams
Jennifer Wisnewski
Al Wright
Erin Yokoi