REQUEST FOR PROPOSALS

FOR

PRE-QUALIFIED PANEL FOR REAL ESTATE CONSULTANT SERVICES

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I. SUMMARY

Battery Park City Authority d/b/a Hugh L. Carey Battery Park City Authority ("BPCA" or the "Authority"), a New York State public benefit corporation created pursuant to the New York State Public Authorities Law, is seeking to engage a panel of pre-qualified real estate consultants with expertise advising on sophisticated real estate matters in New York City. A detailed description of the work to be performed is set forth in the Scope of Work, attached hereto as Exhibit A (the "Work"). BPCA is seeking consultants with demonstrated experience in one or multiple areas of the Work set forth in the Scope of Work, but generally, selected consultants will provide BPCA with real estate consultant services on an "on-call" basis (collectively, the "Real Estate Consultant Services"). Proposers, as hereafter defined, are not required to be able to provide all of the categories of services listed on Exhibit A (each, a "Category") and are encouraged to submit responses covering one, some or all Categories, as applicable.

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/. Information relating to the Battery Park City Parks Conservancy Corporation ("BPCPC"), BPCA's affiliate, may be viewed at: http://bpcparks.org/.

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

II. OVERVIEW

The Authority hereby requests proposals (a "Proposal" or the "Proposals") from qualified real estate consultants (individually a "Proposer" and collectively the "Proposers") to be added to a pre-qualified panel of consultants which may be called upon to provide Real Estate Consultant Services from time to time. BPCA encourages consultants with relevant expertise to submit a Proposal on one, multiple or all of the following Categories of Work depending on each Proposer's capabilities:

1) Real Estate Advisory Services;
2) Commercial Real Estate Brokerage Services including Property Marketing;
3) Real Estate and/or Property/Fixture Appraisal Services;
4) Affordable Housing Advisory Services;
5) Ground Lease Reporting and Analysis.

Additional information regarding the services involved in each Category is set forth on Exhibit A. Proposers should clearly state in their Proposal which Category or Categories they are proposing to provide. The pre-qualified panel is subject to the approval of BPCA's Board Members. This solicitation **does not** modify or affect existing contracts and any Proposer with an existing BPCA contract is encouraged to submit a Proposal.

III. GENERAL PROVISIONS

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

- withdraw and/or cancel this RFP at any time before final award of the contract;
- request clarification and/or additional information from any or all Proposers;

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

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

IV. TIMETABLE & DESIGNATED CONTACT

A. Key Dates

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

- RFP issued: July 31, 2024

- Deadline to submit questions to BPCA: August 7, 2024 by 4:00 p.m. (by email only)

All questions regarding this RFP should be submitted in writing via email to the "Designated Contact": Lauren Murtha, Battery Park City Authority, at lauren.murtha@bpca.ny.gov.

- BPCA's response to substantive questions: August 14, 2024. Responses will be provided in the form of an addendum to be posted to the Authority's website: https://bpca.ny.gov/apply/rfp-opp/

- PROPOSAL DUE DATE: August 21, 2024 by 3:00 p.m. (the "Due Date")

B. Anticipated Contract Term

The term of the contract(s) awarded pursuant to this RFP (the "Contract(s)") will vary based upon the scope of the Real Estate Consultant Services being performed. However, BPCA anticipates that the pre-qualified panel of consultants established pursuant to this solicitation will have a three (3) year duration, with a BPCA option to extend the panel for one (1) additional year (subject to the approval of BPCA's Board). BPCA reserves the right to terminate any Contract at any time, with or without cause, in accordance with the terms of the Contract. BPCA's sample form of contract is attached hereto as Exhibit E.

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

2) Proposers who submit Proposals for Category 2 – Real Estate and/or Property Fixture Appraisal Services must provide proof of their appropriate professional license and/or certification;

3) Proposers must be lawfully authorized to perform the Category(ies) of Work for which they are proposing in the State of New York.

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 C. **PLEASE NOTE** that BPCA has not set any required goals for MBE/WBE/SDVOB participation for this solicitation, however MBE, WBE and SDVOB firms are encouraged to submit proposals and, where possible, Proposers are encouraged to utilize such firms for any subcontracting opportunities that may become available. Proposers **will be scored** on their responses to the Diversity Practices Questionnaire contained in Exhibit C in accordance with the Evaluation Criteria set forth in Section IX(C), below.

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 3:00 p.m. on August 21, 2024

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

  The Technical Proposal must be clearly labeled as "Proposal Enclosed – Real Estate Consulting 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 – Real Estate Consulting 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 – Real Estate Consulting Services," as long as the amended Proposal is submitted by the Due Date.

VI. PROPOSAL FORMAT AND CONTENTS

A. Proposal Format

The Proposal must:

- Be formatted to 8½" x 11" sized pages;
- Have numbered pages; and
- Must be in Adobe PDF, Microsoft Word or Excel format.

B. Proposal Content

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

a. Executive Summary.

b. Completed Proposal Submission Packet, attached as Exhibit B.

c. Financial Statements:

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

d. Appendices:

i. Attach professional biographies for all key employees identified in your Proposal.

e. Any additional attachments, exhibits or appendices listed herein or in the Proposal Submission Packet.

BPCA reserves the right to reject any Proposals that fail to include any required item described in this Section VI. B., including the Proposal Submission Packet.

VII. INSURANCE REQUIREMENTS

A. General Requirements

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 work; and (ii) continuing throughout the entire term of the Contract. The insurance policies listed below must also conform to the applicable terms of the Contract, as shown in BPCA's sample form of contract attached as Exhibit E.

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

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

B. Insurance Requirements for the Selected Proposer

- **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

  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.

- **Workers' Compensation, Employer's Liability, and Disability Benefits** shall not be less than statutory limits.

- **Umbrella Liability Insurance** at a limit not less than $1,000,000 per occurrence and in the aggregate. BPCA, BPCPC, and the State of New York must be protected as additional insureds on policies held by the selected Proposer and any of its subcontractors.

- **Professional Liability ("Errors & Omissions") Insurance** must be maintained at a limit of not less than $3,000,000 each claim.

- **Data Breach and Privacy/Cyber Liability Insurance** including coverage for failure to protect confidential information and failure of the security of the Proposer's computer systems or BPCA's/BPCPC's systems due to the actions of the Proposer which results in unauthorized access to BPCA'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 BPCA's and BPCPC's property, including but not limited to, money and securities. BPCA, BPCPC, and the State of New York must be protected as additional insureds on policies held by the selected Proposer and any of its subcontractors.

- **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 than:

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

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

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 sample form of contract attached as Exhibit E.

- **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

  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.

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

VIII. COST PROPOSAL; FORMAT AND REQUIRED INCLUSIONS

Each Cost Proposal must state an hourly fee structure for the Real Estate Consultant Services contemplated therein. Each Cost Proposal must detail the hourly rates to be billed for work performed by each member of the proposed team.

Proposers may submit any alternative fee arrangement which, in the opinion of Proposer, would be beneficial to BPCA, along with an explanation as to why Proposer believes such an alternate arrangement would be favorable.

Nothing herein shall prevent BPCA from entering into a fixed-fee arrangement for Real Estate Consultant Services based on the hourly rates provided by Proposer, should such arrangement be in the best interests of BPCA.

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

IX. SELECTION PROCESS

A. Evaluation

Each timely submitted Proposal will be reviewed for compliance with the form and content requirements of this RFP. A committee of BPCA employees selected by BPCA (the "Committee") will then review and evaluate the Proposals in accordance with the evaluation criteria set forth below. Each Category of Work that a Proposer proposes on may be evaluated separately, where appropriate, based on the information submitted, including the responses to the questions contained in the Proposal Submission Packet attached as Exhibit B. As a result, a Proposer may be recommended for an award for one, multiple or no Categories of the Work on which they propose. 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 under the heading of Miscellaneous Guidelines, Policies, Etc. at: http://bpca.ny.gov/public-information/.

B. Interviews

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

C. Evaluation Criteria for Selection

Selection will be based upon the following criteria, per Category of Work that a Proposer includes in their Proposal:

1) Technical Evaluation:

A) Relevant experience in each Category of Work Proposer wishes to be considered for: ……25%
B) Overall qualifications and experience of Proposer's staff in each Category of Work Proposer wishes to be considered for: …….....25%
C) Overall quality of Proposal 20%
D) Relevant experience representing similar governmental entities……15%
E) Depth of firm resources 5%
F) 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. BPCA intends to select multiple Proposers for its pre-qualified panel for Real Estate Consulting Services and will then enter into Contracts with one or more of those pre-qualified Proposers on an as-needed basis. Selection for the pre-qualified panel will be based on BPCA's determination that the Proposal is responsive to the requirements stated in this RFP, that the Cost Proposal is fair and reasonable and that the Proposer receives a satisfactory score as a result of the technical evaluation. Once selected as part of the pre-qualified panel, Work will be assigned to firms on an on-call basis at the Authority's discretion in accordance with its needs at the time the Work is assigned. **Please note that inclusion on BPCA's pre-qualified panel does not mean or imply that any firm will in fact be selected or engaged to provide such services to BPCA. Such selection and engagement will take place only when a need for such services arises. The purpose of the pre-qualified panel is to procure firms available for engagement on short notice.**

In assigning Work to a specific retained consultant, BPCA will consider various factors which may include, but not necessarily be limited to:

- The specialized expertise of the consultant;
- The availability and expertise of assigned principals/employees;
- The consultant's demonstrated ability to provide high-quality Work to the Authority; and
- The amount of other Authority work assigned to the Firm.

X. NON-COLLUSION

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

XI. IRAN DIVESTMENT ACT

By submitting a Proposal or by assuming the responsibility of any Contract awarded hereunder, each Proposer certifies that it is not on the "Entities Determined To Be Non-Responsive Bidders/Offerers

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

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

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

EXHIBIT A

Scope of Work

Consultants will provide BPCA with Real Estate Consulting Services (the "Work") on an as-needed basis at the Authority's discretion in accordance with its needs at any given time. Work to be assigned under this Contract may include, but shall not be limited to, all or a portion of the following advisory, evaluative, and technical services (each of the numbered categories one through nine, a "Category" as defined in the RFP):

1) Real Estate Advisory Services
   a. Transaction Management including:
      - Supporting BPCA in devising, evaluating, and negotiating business terms in its real estate transactions involving long-term residential and commercial ground leases and providing project management services with respect thereto;
      - Formulation of guidance on the structuring of requirements and protocols related to environmentally sustainable and climate resilient design and operations for ground leased properties; and
      - Developing narratives to support engagement and negotiations with key stakeholders and attending and participating in meetings with key stakeholders.
   b. Financial Analysis including:
      - Market and feasibility Analysis such as:
        - Examining market conditions for land values in New York City – focusing on the residential, retail, and office uses that predominate within Battery Park City – and trends such as changes in rents, sale prices, vacancy, and the rate of absorption;
        - Real estate market data, analytics and forecasting;
        - Preparation of economic impact and cost/benefit analyses, feasibility reports, and any other real estate related reports, diagrams, demonstrations, or other documentation that BPCA may require; and
        - Providing brokerage services to BPCA.
      - Evaluating assessments, tax abatements and tax rates for residential and commercial properties;
      - Analyzing the impact of potential public policy initiatives that BPCA may desire to implement from time to time;
      - Assessing structures and valuations for ground leases, relative to land sales, and evaluating recent trends in ground leases within New York City;
      - Developing pro forma to test the value and financial implications of various proposals regarding BPCA's ground leases;
      - Preparing revenue forecast reports in connection with municipal bond offerings, and making presentations of such reports; and
      - Design strategic and alternative valuation solutions.
   c. Arbitration/Litigation Support.

2) Commercial Real Estate Brokerage Services including Property Marketing.

3) Real Estate and/or Property/Fixture Appraisal Services (professional license/certification

required).

4) Affordable Housing Advisory Services including strategies for the provision of affordable housing in Battery Park City, including mechanisms for implementation, enforcement, home-ownership, and financing.

5) Ground Lease Reporting and Analysis including:
   a. Portfolio and Asset-Level Reporting;
   b. Property Condition Assessments; and
   c. Risk Analysis.

Any of the foregoing shall include attendance at meetings and telephone conferences as necessary.

EXHIBIT B
(Proposal Submission Packet)

I. PROPOSAL SUBMISSION CHECKLIST AND CONFIRMATION STATEMENT

[ ] The Proposer hereby certifies that they meet the Minimum Qualification Requirements as stated in Section V.A of the RFP.

[ ] The Proposer hereby certifies that 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.

[ ] The Proposer hereby certifies that they have reviewed BPCA's form of contract, attached as Exhibit E to the RFP, and either has no objections or has detailed their objections in an appendix to their Proposal.

[ ] The Proposer hereby certifies that they possess the experience, ability, resources and financial standing to perform the Services and shall, upon request by the Authority, provide documentation of such.

[ ] The Proposer hereby certifies that their Proposal submitted for Real Estate Consulting Services includes the following required documents and forms, or that, where any required form or document may not be included, a written explanation has been provided for that omission:

[ ] Executive Summary
[ ] Answers to Information Required
[ ] Vendor Responsibility Questionnaire / Certificate of No Change
[ ] Statement of Non-Collusion
[ ] New York State Finance Law §139 Compliance Forms
[ ] Encouraging the Use of New York State Businesses Statement
[ ] Acknowledgement of Addenda Form
[ ] Copy of the Proposer's IRS W9 Form (https://www.irs.gov/pub/irs-pdf/fw9.pdf)
[ ] Copy of the Proposer's financial statements per section VI.B.c.
[ ] Executive Order 16 Certification

Name of Proposer:

Officer Name:

Officer Title:

_____
(Signature of Officer)

II. INFORMATION REQUIRED

A. Questions and Information Sought Relating to the Work –Proposers that wish to propose on multiple Categories set forth in Exhibit A are encouraged to do so, but should clearly highlight those Categories that they are proposing on and, where applicable, submit responses to these questions for each Category.

1) Describe your/your firm's background, services, size, and history as these factors are relevant to the Work. If your offices are located in more than one city, indicate which office will provide the Real Estate Consultant Services.

2) Clearly indicate which of the Categories of the Work described in Exhibit A that you/your firm is proposing to provide.

3) Describe your/your firm's experience performing the Work described in Exhibit A **(or applicable Category(ies) thereof)**, with an emphasis on experience with (i) projects of a similar size and scope to developments within Battery Park City; and (ii) the commercial and residential real estate markets in New York City.

4) If applicable to your Proposal, describe your proposed approach and methodology for (i) modeling cash flow projections, (ii) performing valuation and appraisal services, and (iii) preparing feasibility reports.

5) List any licenses you/your firm have/has that are necessary to perform the Work in the State of New York.

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

7) List each key member of the team 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; and (c) the services to be performed.

8) 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.

9) Identify any subconsultant you intend to use for this engagement and describe the services to be performed by each subconsultant.

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

11) Identify any and all exceptions taken to BPCA's standard form of contract, attached as Exhibit E, 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.

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

13) As applicable, describe your firm's "back up plan" in the event the Lead PM assigned to this engagement leaves the firm.

14) Describe your firm's environmentally sustainable business practices or activities and how such practices may be brought to use in the performance of the Work.

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

15) 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.

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

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

18) 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.

19) 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.

20) 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 E.

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

22) 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.

23) Please provide any additional information which would serve to distinguish your firm from other firms and that you believe may be relevant to this RFP and your capability to perform the Real Estate Consultant Services requested.

III. VENDOR RESPONSIBILITY QUESTIONNAIRE

A. Instructions:

The Standard Vendor Responsibility Form should be filled out by someone in your firm who knows about tax filings, prior findings of non-responsibility by a governmental authority, etc., and can certify the accuracy of all information requested in the form (such as legal status, tax status, and debarment status).

You must answer every question on the questionnaire.

NOTE: You may fill out the "Certificate of No Change" form instead ONLY if your firm has submitted the Vendor Responsibility form to Battery Park City Authority already during this calendar year. If this is the first time your firm is proposing to do work for Battery Park City Authority this year, then you must fill out the entire Vendor Responsibility Questionnaire.

B. Standard Vendor Responsibility Questionnaire

a. Legal Business Name:
b. Federal Employer Id No. (FEIN):
c. D/B/A – Doing Business As (if applicable):
County Filed:
d. Website Address (If Applicable)
e. Principal Place Of Business Address:
f. Telephone:
g. Fax (If Applicable):
h. Authorized Contact For This Questionnaire:
    i. Name:
    ii. Title:
    iii. Telephone:
    iv. Email:
i. Type Of Business (please check appropriate box and provide additional information)

☐ Corporation (Sole Proprietor). State of Incorporation:
☐ Corporation (General Partnership). State of Incorporation:
☐ Corporation (Not-For-Profit). Charities Registration Number:
☐ Corporation (Limited Liability Company/LLC). Jurisdiction Filed In:
☐ Corporation (Limited Partnership). State/County filed in:
☐ Individual
☐ Other – Specify:

j. If not incorporated or formed in New York State, please provide a current Certificate of Good Standing from your state or applicable local jurisdiction.
k. List the name and title of each principal owner, officer, major stockholder (10% or more of the voting shares for publicly traded companies, 25% or more of the shares for all other companies), director, and member, as applicable:

l. Authorized Contact for the Proposed Contract:
    i. Name:
    ii. Title:
    iii. Telephone:
    iv. Email:

Vendor Name:		Vendor FEIN:	

C. Does the vendor use, or has it used in the past five (5) years, any other business name, FEIN, or D/B/A other than what is listed in question a-c above? If yes, please provide the name(s), FEIN(s), and D/B/A(s) and the address for each such company and D/B/A on a separate page and attach to this response.	Yes ☐ No☐
D. Within the past five (5) years, has the vendor, any principal, owner, officer, major stockholder (10% or more of the voting shares for publicly traded companies, 25% or more of the shares for all other companies), affiliate[1] or any person involved in the bidding, contracting or leasing process been the subject of any of the following:	
a. a judgment or conviction for any business related conduct constituting a crime under federal, state or local government law including, but not limited to, fraud, extortion, bribery, racketeering, price-fixing or bid collusion or any crime related to truthfulness and/or business conduct?	Yes ☐ No☐
b. a criminal investigation or indictment for any business related conduct constituting a crime under federal, state or local government law including, but not limited to, fraud, extortion, bribery, racketeering, price-fixing or bid collusion or any crime related to truthfulness and/or business conduct?	Yes ☐ No☐
c. an unsatisfied judgment, injunction or lien for any business related conduct obtained by any federal, state or local government agency including, but not limited to, judgments based on taxes owed and fines and penalties assessed by any federal, state or local government agency?	Yes ☐ No☐
d. an investigation for a civil or criminal violation for any business related conduct by any federal, state or local agency?	Yes ☐ No☐
e. a grant of immunity for any business-related conduct constituting a crime under federal, state or local governmental law including, but not limited to, fraud, extortion, bribery, racketeering, price-fixing, bid collusion or any crime related to truthfulness and/or business conduct?	Yes ☐ No☐

[1]"Affiliate" meaning: (a) any entity in which the vendor owns more than 50% of the voting stock; (b) any individual, entity or group of principal owners or officers who own more than 50% of the voting stock of the vendor; or (c) any entity whose voting stock is more than 50% owned by the same individual, entity or group described in clause (b). In addition, if a vendor owns less than 50% of the voting stock of another entity, but directs or has the right to direct such entity's daily operations, that entity will be an "affiliate" for purposes of this questionnaire.

f.	a federal, state or local government suspension or debarment from the contracting process?	Yes ☐ No☐
g.	a federal, state or local government contract suspension or termination for cause prior to the completion of the term of a contract?	Yes ☐ No☐
h.	a federal, state or local government denial of a lease or contract award for non-responsibility?	Yes ☐ No☐
i.	an administrative proceeding or civil action seeking specific performance or restitution in connection with any federal, state or local contract or lease?	Yes ☐ No☐
j.	a federal, state or local determination of a willful violation of any public works or labor law or regulation?	Yes ☐ No☐
k.	a sanction imposed as a result of judicial or administrative proceedings relative to any business or professional license?	Yes ☐ No☐
l.	a consent order with the New York State Department of Environmental Conservation, or a federal, state or local government enforcement determination involving a violation of federal, state or local environmental laws?	Yes ☐ No☐
m.	an Occupational Safety and Health Act citation and Notification of Penalty containing a violation classified as serious or willful?	Yes ☐ No☐
n.	a rejection of a bid on a New York State contract or a lease with the State for failure to comply with the MacBride Fair Employment Principles?	Yes ☐ No☐
o.	a citation, violation order, pending administrative hearing or proceeding or determination issued by a federal, state or local government for violations of:	
	i. health laws, rules or regulations	Yes ☐ No☐
	ii. unemployment insurance or workers' compensation coverage or claim requirements	Yes ☐ No☐
	iii. ERISA (Employee Retirement Income Security Act)	Yes ☐ No☐
	iv. human rights laws	Yes ☐ No☐
	v. federal U.S. Citizenship and Immigration Services laws	Yes ☐ No☐
	vi. Sherman Act or other federal anti-trust laws	Yes ☐ No☐

p.	entered into an agreement to a voluntary exclusion from contracting with a federal, state or local governmental entity?	Yes ☐ No☐
q.	a denial, decertification, revocation or forfeiture of Women's Business Enterprise, Minority Business Enterprise or Disadvantaged Business Enterprise status?	Yes ☐ No☐
r.	a rejection of a low bid on a federal, state or local contract for failure to meet statutory affirmative action or Minority or Women's Business Enterprise or Disadvantaged Business Enterprise status requirements on a previously held contract?	Yes ☐ No☐
s.	a finding of non-responsibility by an agency or authority due to a violation of State Finance Law §139-j?	Yes ☐ No☐
For each YES answer to questions D.a-s above, provide details on additional pages regarding the finding, including but not limited to cause, current status, resolution, etc.		

Vendor Name:		Vendor FEIN:	

E. During the past three (3) years has the vendor failed to:	
a. File returns or pay any applicable federal, state or local government taxes? If yes, identify the taxing jurisdiction, type of tax, liability year(s) and tax liability amount the company failed to file/pay and the current status of the liability.	Yes ☐ No☐
b. File returns or pay New York State Unemployment Insurance? If yes, indicate the years the company failed to file/pay the insurance and the current status of the liability.	Yes ☐ No☐
F. Have any bankruptcy proceedings been initiated by or against the vendor or its affiliates within the past seven (7) years (whether or not closed) or is any bankruptcy proceeding pending by or against the vendor or its affiliates, regardless of the date of filing? If yes, indicate if this is applicable to the submitting vendor or one of its affiliates: If it is an affiliate, include the affiliate's name and FEIN: Provide the court name, address and docket number: Indicate if the proceedings have been initiated, remain pending or have been closed: If closed, provide the date closed:	Yes ☐ No☐
G. Does the vendor have the financial resources necessary to fulfil the requirements of the proposed contract?	Yes ☐ No☐

Vendor Name:		Vendor FEIN:	

H. Certification:

State of:)

) ss:

County of:)

CERTIFICATION:

The undersigned, personally and on behalf of the vendor identified in questions 1-3 above, does hereby state and certify to Battery Park City Authority – State of New York that the information given above is true, accurate and complete. It is further acknowledged that Battery Park City Authority – State of New York will rely upon the information contained herein and in any attached pages for purposes of evaluating our company for vendor's responsibility for contract award and Battery Park City Authority – State of New York may, in its discretion, by means which it may choose, verify the truth and accuracy of all statements made herein. It is further acknowledged that intentional submission of false or misleading information may constitute a felony under Penal Law Section 175.35 or may constitute a misdemeanor under Penal Law Sections 175.30, or 210.45, and may also be punishable by a fine and/or imprisonment of up to five years under 18 USC Section 1001 and may result in a denial of contract award or contract termination.

Name of Business:

Address:

City, State, Zip:

Officer Name:

Officer Title:

_____

Signature of Officer

IV. CERTIFICATE OF NO CHANGE FORM

NOTE: You may fill out the "Certificate of No Change" form instead ONLY if your firm has submitted the Vendor Responsibility form to Battery Park City Authority already during this calendar year. If this is the first time your firm is proposing to do work for Battery Park City Authority this year, then you must fill out the entire Vendor Responsibility Questionnaire.

CERTIFICATE OF NO CHANGE

STATE OF ( )

COUNTY OF) ss.:

The undersigned, being duly sworn, deposes and says:

1. I am_____, the_____ (title) of _____ (hereinafter the "Contractor"), which is currently submitting an amendment to a State Contract.

2. Contractor previously submitted the completed Battery Park City Authority Standard Vendor Responsibility Questionnaire, dated_____, in connection with another State Contract.

3. Attached is an accurate and true copy of such previously submitted Standard Vendor Responsibility Questionnaire.

4. I hereby certify that with the exception of the information specified in Question 12, and as changed herein, there has been no material change in the information pertaining to the Contractor specified on such attached Questionnaire.

AUTHORIZED CONTACT FOR THE PROPOSED CONTRACT:

Name & Title: _____

Telephone Number: _____

Email: _____

_____
Signature

_____
Print Name

_____
Title

V. STATEMENT OF NON-COLLUSION

A. By submission of this Proposal, Proposer and each person signing on behalf of Proposer certifies, (and in the case of a joint Proposal each party thereto certifies) as to its own organization, under penalty of perjury, that to the best of his knowledge and belief:
   a. The prices in this Proposal have been arrived at independently without collusion, consultation, communication or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other Proposer or with any competitor.
   b. or with any competitor. B) Unless otherwise required by law, the prices which have been quoted in this Proposal have not been knowingly disclosed by the Proposer and will not knowingly be disclosed by the Proposer prior to opening, directly or indirectly to any other Proposer or to any competitor.
   c. No attempt has been made or will be made by Proposer to induce any other person, partnership, firm or corporation to submit or not to submit a Proposal for the purpose of restricting competition.

B. A Proposal shall not be considered for award nor shall any award be made where sub-paragraphs A.a, A.b, and A.c above have not been complied with provided however, that if in any case Proposer cannot make the foregoing certification and the Proposer shall so state and shall furnish with its Proposal a signed statement which sets forth in detail the reasons therefore. Where sub-paragraphs A.a, A.b, and A.c above have not been complied with, Proposal shall not be considered for award nor shall any award be made unless the Authority determines that such disclosure was not made for the purpose of restricting competition.
   The fact that a Proposer (a) has published price lists, rates, or tariffs covering items Being procured, (b) has informed prospective customers of proposed or pending Publication of a new or revised price lists for such item, or (c) has sold the same items To other customers at the same prices being proposed, does not constitute, without more, a disclosure within the meaning of paragraph A.a above.

C. This Proposal, if made by a corporate Proposer, shall be deemed to have been authorized by the board of directors of the Proposer and such authorization shall be deemed to include the signing and submission of the Proposal and the inclusion thereof of the statement of non-collusion as the act and deed of the corporation.

(Insert Name of Proposer and Sign Below)

By: _____
(Print full legal name of person, firm, partnership, or corporation)

_____
(Signature)

_____
(Address)

_____ _____ _____
Corporate ID Number Federal ID Number Date

STATEMENT OF NON-COLLUSION Continued

If the Proposer is an individual, the Proposer's legal residence is as follows:

_____

Street Address City State ZIP

If Proposer is a Firm or Partnership, complete the following:

Name of Members or Partners	Legal Residence

If Proposer is a Corporation, complete the following:

Names of All Officers	
President:	
Vice President:	
Secretary:	
Treasurer:	
Other Officers/Titles (if applicable):	

VI. OFFEROR'S AFFIRMATION OF UNDERSTANDING OF AND AGREEMENT PURSUANT TO STATE FINANCE LAW §139-j(3) AND §139-j(6)(b)

For reference, the applicable sections of the New York State Finance Law can be found here: https://www.nysenate.gov/legislation/laws/STF/139-J

Offeror affirms that it understands and agrees to comply with the procedures of Battery Park City relative to permissible Contacts as required by State Finance Law §139-j(3) and §139-j(6)(b).

By: _____ Date: _____

_____
(Signature)

_____
(Name – Printed)

_____
(Title)

Contractor Name: _____
(Company)

Contractor Address: _____

VII. OFFEROR'S CERTIFICATION OF COMPLAINCE WITH STATE FINANCE LAW §139-k(5)

For reference, the applicable sections of the New York State Finance Law can be found here: https://www.nysenate.gov/legislation/laws/STF/139-K

I certify that all information provided to Battery Park City Authority, its subsidiaries and affiliates with respect to State Finance Law §139-k is complete, true and accurate.

By: _____ Date: _____

_____
(Signature)

_____
(Name – Printed)

_____
(Title)

Contractor Name: _____
(Company)

Contractor Address: _____

VIII. OFFEROR DISCLOSURE OF PRIOR NON-RESPONSIBILITY DETERMINATIONS

Name of Individual or Entity Seeking to Enter into the Procurement Contract:	
Address:	
Name and Title of Person Submitting this Form:	
Project Name:	
Date:	

1. Has any Governmental Entity made a finding of non-responsibility regarding the individual or entity seeking to enter into the Procurement Contract in the previous four years? If yes, please answer the next questions:	Yes ☐ No☐
2. Was the basis for the finding of non-responsibility due to a violation of State Finance Law §139-j?	Yes ☐ No☐
3. Was the basis for the finding of non-responsibility due to the intentional provision of false or incomplete information to a Governmental Entity?	Yes ☐ No☐
4. If you answered yes to any of the above questions, please provide details regarding the finding of non-responsibility below: Governmental Entity: Date of Finding of Non-responsibility: Basis of Finding of Non-Responsibility: (add additional pages if required)	
5. Has any Governmental Entity or other governmental agency terminated or withheld a Procurement Contract with the above-named individual or entity due to the intentional provision of false or incomplete information? If yes, please provide details below: Governmental Entity: Date of Termination or Withholding of Contract: Basis of Termination or Withholding: (add additional pages if required)	Yes ☐ No☐

Offeror certifies that all information provided to the Governmental Entity with respect to State Finance Law §139-k is complete, true and accurate.

By: _____ Date: _____

_____
(Signature)

_____
(Name – Printed)

_____
(Title)

Contractor Name: _____
(Company)

Contractor Address: _____

IX. 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☐

X. ACKNOWLEDGEMENT OF ADDENDA FORM

RFP TITLE: _____

Complete Part I or Part II, whichever is applicable, and sign 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: _____

XI. Certification Under Executive Order No. 16 Prohibiting State Agencies and Authorities from Contracting with Businesses Conducting Business in Russia

Executive Order No. 16 provides that "all Affected State Entities are directed to refrain from entering into any new contract or renewing any existing contract with an entity conducting business operations in Russia." The complete text of Executive Order No. 16 can be found here.

The Executive Order remains in effect while sanctions imposed by the federal government are in effect. Accordingly, vendors who may be excluded from award because of current business operations in Russia are nevertheless encouraged to respond to solicitations to preserve their contracting opportunities in case the sanctions are lifted during a solicitation or even after award in the case of some solicitations.

As defined in Executive Order No. 16, an "entity conducting business operations in Russia" means an institution or company, wherever located, conducting any commercial activity in Russia or transacting business with the Russian Government or with commercial entities headquartered in Russia or with their principal place of business in Russia in the form of contracting, sales, purchasing, investment, or any business partnership.

Is Vendor an entity conducting business operations in Russia, as defined above? Please answer by checking one of the following boxes:

[ ] 1. No, Vendor does not conduct business operations in Russia within the meaning of Executive Order No. 16.

[ ] 2.a. Yes, Vendor conducts business operations in Russia within the meaning of Executive Order No. 16 but has taken steps to wind down business operations in Russia or is in the process of winding down business operations in Russia. (Please provide a detailed description of the wind down process and a schedule for completion.)

[ ] 2.b. Yes, Vendor conducts business operations in Russia within the meaning of Executive Order No. 16 but only to the extent necessary to provide vital health and safety services within Russia or to comply with federal law, regulations, executive orders, or directives. (Please provide a detailed description of the services being provided or the relevant laws, regulations, etc.)

[ ] 3. Yes, Vendor conducts business operations in Russia within the meaning of Executive Order No. 16.

The undersigned certifies under penalties of perjury that they are knowledgeable about the Vendor's business and operations and that the answer provided herein is true to the best of their knowledge and belief.

Vendor Name (Legal Entity): _____

By (Signature): _____

Name: _____

Title: _____

Date: _____

EXHIBIT C

(Diversity Practices Questionnaire 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 purposes of this solicitation, BPCA hereby waives the requirement for MBE, WBE and SDVOB participation goals based on the availability of subcontracting opportunities. Contractors remain encouraged to seek participation opportunities for MWBE and SDVOB firms to the extent possible. Proposals shall include a completed Diversity Practices Questionnaire and, if applicable, the accompanying utilization plan(s) which can be found below:

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 ☐ No☐

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

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

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

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

   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 ☐ 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 ☐ No☐

---

[1] Do not include onsite project overhead.

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

If Yes, 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 ☐ No☐

   If Yes, complete the attached Utilization Plan

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

Signature of Owner/Official _____

Printed Name of Signatory _____

Title _____

Name of Business _____

Address _____

City, State, Zip _____

STATE OF _____

COUNTY OF) ss:

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

_____
Notary Public

MINORITY BUSINESS ENTERPRISE/WOMEN BUSINESS ENTERPRISE (MBW/WBE) UTILIZATION PLAN

Please fill out utilization plan for MBE/WBE(s) participation and use the same form for all additional MBE/WBE Firms.

Contractor Information:

Project Name:		
Project No.:	Site #:	Date:
Name of Contractor:		
Address:		
Contact Person:		
Phone:	Fax:	
Federal ID No.:	Tax ID:	
Is Your Firm: MBE ☐ WBE☐		
Work to Begin:	Work to be Completed:	

MBE/WBE Information:

Sub-Contractor or Vendor:	
Name:	
Address:	
Contact Person:	
Phone:	Fax:
Federal ID No.:	Tax ID:
Is This Firm: MBE ☐ WBE☐	
Total Percent of Contract Holder %	Trade:
Scope of Work to be done by MBE/WBE:	
Work to Begin:	Work to be Completed:

MBE/WBE Information:

Sub-Contractor or Vendor:	
Name:	
Address:	
Contact Person:	
Phone:	Fax:
Federal ID No.:	Tax ID:
Is This Firm: MBE ☐ WBE☐	
Total Percent of Contract Holder %	Trade:
Scope of Work to be done by MBE/WBE:	
Work to Begin:	Work to be Completed:

The Minimum MBE/WBE Business Participation Goal Expected for your Firm is as Follows:	Workforce Percentages set for this project is as Follows:
Trade(s)	Trade(s)
Minority Owned Business %	Minority Workforce %
Women Owned Business %	Female Workforce %

Please attach copies of the most recent New York State Certification Letters for all MBE/WBE Firms Listed on this Utilization Plan. If there are any changes in the information on this plan you must immediately re-submit this plan with the most recent date.

SERVICE DISABLED VETERAN OWNED BUSINESSES (SDVOB) UTILIZATION PLAN

Please fill out utilization plan for SDVOB(s) participation and use the same format for all additional SDVOB sub-contractors.

Contractor Information

Contractor:	Date:
Name:	
Address:	
Contact Person:	Phone:
Federal ID No.:	Fax:

SDVOB Information

Sub-Contractor:	Federal ID No.:
Name:	Work to Begin
Address:	
Phone:	Work to Finish On:
Contact Person:	
Estimate % of Contract to be Awarded to SDVOB:	
Scope of Work to be Done by SDVOB:	

SDVOB Information

Sub-Contractor:	Federal ID No.:
Name:	Work to Begin
Address:	
Phone:	Work to Finish On:
Contact Person:	
Estimate % of Contract to be Awarded to SDVOB:	
Scope of Work to be Done by SDVOB:	

SDVOB Information

Sub-Contractor:	Federal ID No.:
Name:	Work to Begin
Address:	
Phone:	Work to Finish On:
Contact Person:	
Estimate % of Contract to be Awarded to SDVOB:	
Scope of Work to be Done by SDVOB:	

Workforce Percentage Information

Trade (s)	
Minority Workforce:	%
Female Workforce:	%

Equal Employment Opportunity Requirements

By submission of a bid or proposal in response to this solicitation, the Proposer agrees that it will comply with all of the terms and conditions of the following Equal Employment Opportunity Policy Statement, to the extent applicable given the lack of set goals:

EQUAL EMPLOYMENT OPPORTUNITY 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 participation by MBE/WBE firms 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, where applicable and practicable.

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

(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 _____

By _____

Print: _____ Title: _____

EXHIBIT D

List of BPCA & BPCPC Board Members and Employees

LIST OF BOARD MEMBERS

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

LIST OF EMPLOYEES

Afzal, Betzayda M.
Afzal, Curtis
Alvarez, Elsa C.
Anders, Dana J.
Baichu, Sharmila
Baptiste, Marie R
Beecham, Brett D.
Belliard, Freddy
Bender, Marieke E
Benon, Yipin K.
Bergen, Zachary
Billips, Marcus V
Birdseye, Emily
Blake, Nidia
Bonnelly, Sully
Briggs, Jasmine
Brooks-Jones, Latoya B.
Buivid, Nancy
Buquicchio, Anthony
Byron, Thierry
Campbell, Peter M.
Canfield, Donna A
Carmalt, Daniel
Centeno, Monica
Cid, Alexis Torres
Curley, Jonathan
Curtin, Sarah F
Davis, Elizabeth Nelson
Davy, Raymond
Dawson, Gwen
Dawson, Nicole A
De Padua, Gilbert
DeSantis, Phillip C
DeVoto, Joshua
Diaz, Ismael
Diaz, Janpierre
Diaz-Larui, Paul N.
Dickson, Daniel Allen
O'Hara, John
Ohleyer, Stuart
Oringi, Tolbert T.
Dobens, Lawrence
Dopson, Tonasia T.
Eggleston, Terrence
Ehrlich, Abigail
Ellison, AnnMaria
Engler, Elise
Espinal, Jason
Faraino, Richard L.
Filomena, Claudia
Fitch, Jared Dashawn
Flores, Tamara G.
Fonseca, Juan
Frederick, Pamela M.
Gallagher, James J.
Garcia-Edwards, DonnaMarie
Gerbi, Ameli
Goldenberg, Abigail L
Gonsalez, Esteisy
Gould, Robert H.
Greenberg, Ned
Gregg, Evelyn
Gross, Jonathan A
Guigma, Zalissa
Hansen, Robert T.
Heater, Nicole A.
Heerah, Sankar
Hernandez, Raul
Heron, Mary C
Hing, Alexander Herrmann
Hoey, Brendan
Hood, Megan
Howard, Angela M.
Hudon, Craig A
Guigma, Zalissa
Hansen, Robert T.
Heater, Nicole A.
Heerah, Sankar
Hernandez, Raul
Sbordone, Nicholas T
Schwartz, Jean
Sewraj-Kumar, Rekha
Heron, Mary C
Hing, Alexander Herrmann
Hoey, Brendan
Hood, Megan
Howard, Angela M.
Hudon, Craig A.
Jogie, Amy S.
Johnson, Jasmine Mikayla
Jones, Gamal A
Jones, Saladin
Jones, Stevenson
Julien, Ebonique M.
Ketring, Ann H.
Koenig, Karl H.
LaMancusa, Michael P.
Leung, Jeremy K.
Lonie , John Michael
Lopcy, Rene J.
Lopez, Janira C
Lora, Roman
Machuca, Rodolfo Arturo
Maggi, Robert
Maisonet, Evelin
Manzella, Lenore
Martinez, Eric
Martinez, Maria
McLaughlin-Williams, Justin
McNeill, Princess K.
Mesine, Vanessa
Mimbella, Lilka
Mohammed, Ronnie
Moulketis, Irene
Munson, Eric C.
Murtha, Lauren M.
Nathan, Jahmeliah E.
Nesmith, Robert F.
Ng, Siu May
Nishida, Yoshihiro

Ortiz, Maril E.
O'Toole, Kevin
Paillant, Willem
Parker, Jonathan J
Patel-Haribaran, Nimisha
Pearlman, Gladys
Pena, Dahlia B.
Pimentel, Rynell
Powell, Katherine
Power, Sandra
Quon, Robert
Rachnowitz, Jason
Ramirez, Madelin G.
O'Hara, John
Ohleyer, Stuart
Oringi, Tolbert T.
Ortiz, Maril E.
O'Toole, Kevin
Paillant, Willem
Parker, Jonathan J
Patel-Haribaran, Nimisha
Pearlman, Gladys
Pena, Dahlia B.
Pimentel, Rynell
Powell, Katherine
Power, Sandra
Quon, Robert
Rachnowitz, Jason
Ramirez, Madelin G.
Reynolds, Aline E
Rivera, Angel
Rivera, Manuel
Rivera, Ruben
Rogers, Nelson
Rufino, Joel
Russell, Paul C
Santiago, Carlos
Shacham, Yael
Shanley Taft, Marcella
Simon, Sean A.
Singh, Kemnarine
Smedley, Sarah J.
Stewart, Shinay
Sturiano, Jerome E.
Tam, Kathryn
Torres Davila, Michelle K.
Torres, Ryan A.
Van Horn, Douglas J.
Vargas, Christian
Velasquez, Noe
Veve, Yves Emmanuel
Villalobos, Evangelio
Wade, Sharon B.
Wallace, David B.
Wells, John
Williams, Dwight
Wisnewski, Jennifer
Wolfe, Sara N.
Wright, Al
Wu, Jinghui
Yohannes, Jouli
Yokoi, Erin L
Zeng, Joanna

EXHIBIT E

BPCA Sample Form of Contract

CONSULTANT AGREEMENT

between

HUGH L. CAREY BATTERY PARK CITY AUTHORITY

and

[CONSULTANT]

Dated as of _____

Contract No. [CONTRACT #]

([PROJECT NAME])

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EXHIBIT A - SCOPE OF WORK

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 (each, an "Invoice") 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 Invoices should be submitted electronically to bpcafinanceops@bpca.ny.gov and 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 at EMAIL ADDRESS]**.

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. <u>Consultant Cooperation</u>

(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. <u>Termination</u>

(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. <u>Insurance</u>

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

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

(c) Consultant shall furnish to Owner, before or upon execution of this Agreement, 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. <u>Authority of Owner</u>

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. <u>Entire Agreement</u>

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. <u>Consultant as Independent Contractor</u>

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. <u>Maintenance, Audit and Examination of Accounts</u>

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 it successors and assigns have, or may have, against Owner under the provisions of this Agreement, unless a detailed and verified statement of claim is served upon Owner prior to the date final payment is tendered by Owner. It is expressly understood and agreed that Owner's or Consultant's termination of this Agreement pursuant to Section 6 hereof shall not give rise to any claim against Owner for damages, compensation or otherwise as a result of such termination, and that under such circumstances Owner's liability to make payments to Consultant on account of any and all Work shall be limited to the payments set forth in Section 6 hereof.

16. Covenants, Representations and Warranties

(a) Consultant represents and warrants to Owner that:

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

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

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

(b) Consultant covenants and agrees that:

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

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

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

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

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

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

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

17. <u>Indemnity</u>

To the fullest extent allowed by law:

(a) Consultant shall be liable to, and shall indemnify Owner, each Member, officer, agent and employee of Owner for, and shall hold each of the foregoing harmless from and against, any and all claims, losses, damages, expense, penalties, costs or other liabilities, including, without limitation, attorneys' fees, costs, disbursements and interest, arising out of the performance of the Work or Consultant's breach of this Agreement, including but not limited to any 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. <u>Confidentiality</u>

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]mailto:Pamela.frederick@bpca.ny.gov

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. <u>Employment and Diversity</u>

(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 waives goals for MBE, WBE and SDVOB participation. Notwithstanding the foregoing, Consultant is encouraged to make good faith efforts to encourage participation by MBE, WBE and/or SDVOB firms where possible.

(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.

(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://esd.ny.gov/sites/default/files/OCSD-2-Staffing-Plan-05-23.pdf) and submit it as part of their bid or proposal or within a reasonable time, as directed by Owner.

(iv) Workforce Utilization Report

(A) Consultant shall submit a Workforce Utilization Report (https://dol.ny.gov/cfa-wdi-mwbe-workforce-utilization-report) 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.

27. <u>Responsibility</u>

(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 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: _____