



**Battery Park
City Authority**

**INVITATION FOR BIDS
FOR
UTILITY VEHICLES**

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I. CONTRACTING PARTY

This Information for Bids (the “IFB” or “Solicitation”) is being solicited by the 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 responsible for financing, developing, constructing, maintaining, and operating Battery Park City as a richly diversified mixed-use community providing residential and commercial space, with related amenities such as parks, plazas, recreational areas, and a waterfront esplanade. A summary of BPCA’s structure, mission, and history, as well as the Battery Park City project area, may be viewed at: <http://bpca.ny.gov/>. Public information regarding BPCA’s finances, budget, internal controls, guidelines, and policies may be viewed at: <http://bpca.ny.gov/public-information/>.

II. CONTRACT DESCRIPTION

BPCA seeks to procure twenty-two (22) Taylor-Dunn utility vehicles or approved equivalents, as determined by BPCA¹, meeting or exceeding all specifications set forth in Exhibit A (Scope of Work).

The successful Bidder shall provide all labor, materials, equipment, supplies, transportation, supervision, and/or other items as applicable necessary to perform the Work in accordance with the Contract Documents, which are comprised of this IFB and all attachments, exhibits and appendices, including but not limited to the Authority’s Standard Form of Contract which is attached as Exhibit F.

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 Bids.

III. BASIS OF AWARD

The purpose of this IFB is to obtain competitive bids (“Bids”) from qualified, authorized and responsible firms (“Bidder”) to furnish such goods and/or services in accordance with the requirements set forth in the Contract Documents. BPCA will evaluate Bids received and make a contract award pursuant to the following:

- A. **Responsiveness** — BPCA will review each Bid to determine whether it complies with the material requirements of this IFB. Qualified, conditional or unbalanced Bids, Bids which are at variance with any provision of the Contract Documents or fail to meet any requirement thereof, including but not limited to the Minimum Qualification Requirements set forth in Section VI., below, will be rejected as non-responsive.

¹ The Bidder shall provide sufficient documentation demonstrating equivalency. BPCA shall determine equivalency in its sole discretion.

- B. **Responsibility** — In order to qualify as a responsible Bidder, a Bidder must prove, to the satisfaction of the Authority, that it has the integrity, skill, experience, facilities, financial resources and stability to successfully and faithfully perform the Work in accordance with the requirements contained herein. To demonstrate responsibility, Bidder must show that:
- a. It has satisfactorily performed work of the same general type as required for this IFB;
 - b. It has sufficient management resources, including an appropriate project management team to be assigned to the project to ensure that the project will be properly coordinated, managed and completed on schedule; and
 - c. It has no ongoing commitments or contractual obligations that will impair or adversely impact its performance of the work required hereunder.

BPCA, in its sole discretion, will determine the responsibility of the apparent low Bidder.

- C. **Award** — The Contract will be awarded to the lowest responsive and responsible Bidder as determined by BPCA.

IV. DESIGNATED POINT OF CONTACT

Bidders are advised that communication for this IFB shall only be made to the designated contact person pursuant to New York State Finance Law Section 139-j and 139-k. BPCA has designated the following individual to serve as the single point of contact for this IFB:

Shinay Stewart
Associate Contracting Officer
Battery Park City Authority
200 Liberty Street
New York, New York, 10280
Phone Number: (917) 363-7488
E-Mail: shinay.stewart@bpca.ny.gov

Inquiries regarding this IFB shall be made via e-mail and shall contain the Name of the IFB as well as the name of the Bidder in the subject line.

New York State's State Finance Law sections 139-j and 139-k apply to this IFB, restricting Bidders' contacts with BPCA. Bidders 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 IFB with anyone other than the Designated Contact, as specified in Section IV., or MBE/WBE/SDVOB Designated Contact, as specified in section IV.C., from the time of Bidder's receipt of notice of this IFB 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 IFB. Upon notice of an improper contact, BPCA shall make a determination regarding the Bidder’s eligibility to continue participating in this IFB.

V. TIMETABLE

Procurement Step	Date and Time
IFB Issued	August 19, 2026
Virtual Pre-Bid Conference – Attendance is Optional . If you’d like to attend, please RSVP with Shinay.Stewart@bpca.ny.gov for a link to the Teams Meeting.	August 26, 2026
Deadline to Submit Questions to BPCA Designated Contact	September 2, 2026
BPCA’s Response to Substantive Questions – Responses will be provided in the form of an addendum to be posted on BPCA’s website at https://bpca.ny.gov/apply/rfp-opp/	September 10, 2026
BID DUE DATE – A Dropbox Link will be made available five days prior on BPCA’s website at https://bpca.ny.gov/apply/rfp-opp/	September 17, 2026, at 3:00 PM
BID OPENING – The Bid Opening is the date and time at which all timely submitted bids are opened simultaneously. All bids will remain confidential and unopened until the Bid Opening.	September 17, 2026, at 3:15 PM
ANTICIPATED AWARD DATE	November 2026

VI. GENERAL REQUIREMENTS

A. Minimum Qualification Requirements

The following are the minimum qualification requirements for this IFB. Bids that fail to meet these requirements will be rejected as non-responsive.

1. Authorized to do business in the State of New York,
2. Minimum of five (5) years of experience providing utility vehicles and related support services,
3. Successfully completed at least (3) projects of similar scope within the past five (5) years,
4. Manufacturer-Authorized Dealer, Distributor, or Reseller of the proposed utility vehicle products,
5. Demonstrated ability to provide warranty services, maintenance support, and replacement parts for the proposed vehicles.

B. Bid Security

BPCA does not require a Bid bond for this IFB.

C. MBE/WBE/SDVOB Participation Goals and Requirements

NYS-Certified Minority-Owned Business (“MBE”) Participation: 0%

NYS-Certified Women-Owned Business (“WBE”) Participation: 0%

NYS-Certified Service-Disabled Veteran Owned Business Participation: 0%

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. For questions relating to MBE/WBE/SDVOB participation, joint ventures and sub-contracting goals only, please contact the “MBE/WBE/SDVOB Designated Contact” Zag Kimpolo at zag.kimpolo@bpca.ny.gov or 212-417-2339.

VII. BID SUBMISSION REQUIREMENTS

A. Required Bid Documents

Each Bidder shall upload the following 2 PDF files through BPCA’s Dropbox submission link:

PDF #1 – Bid Submission

1. Bid Pricing Schedule (Exhibit B-2)

PDF #2 – Administrative and Compliance Forms

1. Administrative Forms (Exhibit B-1)

2. MWBE & SDVOB forms, if applicable
3. Financial Statements
4. Any additional certifications or forms required by this IFB

B. Bid Submission

Bids must be received by BPCA no later than the Bid Due Date specified in Section V. Late submissions will not be accepted.

BPCA will receive Bids through a secure electronic **Dropbox** submission link. The Dropbox submission link will be posted on BPCA's website no later than five (5) calendar days prior to the Bid Due Date.

The Dropbox submission link is configured for submission purposes only. Bidders will not have access to view, edit, download, or otherwise access any materials submitted by other Bidders.

Each Bidder shall upload the required Bid documents identified in Section VII.A through the Dropbox submission link. Bids submitted by e-mail, facsimile, mail, hand delivery, or any other method will not be accepted unless expressly authorized in writing by BPCA.

Each required PDF file shall be clearly named as follows:

- [Bidder Name]_PDF 1_Bid Submission
- [Bidder Name]_PDF 2_Admin Forms

Bidders are solely responsible for ensuring that all required files are successfully uploaded prior to the Bid Due Date and time. BPCA shall not be responsible for internet connectivity issues, system failures, file corruption, user error, or any other circumstance that prevents a Bidder from timely submitting its Bid.

The Dropbox submission link will automatically expire at the exact date and time established as the Bid Due Date. Upon expiration of the link, no additional uploads, revisions, modifications, replacements, or supplemental submissions will be accepted.

Submission of files through the Dropbox submission link shall constitute receipt of the Bid by BPCA. Bidders are encouraged to complete their uploads sufficiently in advance of the Bid Due Date to avoid any last-minute technical difficulties.

Any Bid not received through the Dropbox submission link prior to the Bid Due Date and time shall be deemed late and non-responsive.

C. Bid Modifications

A Bidder may modify or replace its Bid at any time prior to the Bid Due Date by submitting a revised Bid clearly labeled:

“AMENDED BID – UTILITY VEHICLES IFB”

Any amended Bid must be received by BPCA prior to the Bid Due Date. The most recent timely submission received by BPCA shall be deemed the Bidder's official Bid and shall supersede all prior submissions. Bids or modifications to Bids received after the Bid Due Date will be considered non-responsive and will not be reviewed.

VIII. BID WITHDRAWAL

By submitting a Bid, a Bidder agrees that its Bid shall remain irrevocable for a period of one hundred twenty (120) calendar days following the Bid Due Date. After the expiration of such period, a Bidder may withdraw its Bid by providing written notice to BPCA. Any award made by BPCA prior to its receipt of such written notice shall remain valid and binding upon the Bidder.

IX. RESERVED

X. INSURANCE REQUIREMENTS

1) General Requirements

The total cost of the required insurance listed in paragraphs 2) and 3) below, must be incorporated into the Bid Sheet. The additional insured protection afforded BPCA 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 and the State of New York, no policies may contain any limitations / exclusions for New York Labor Law claims, and cross liability coverage must be provided for BPCA and the State of New York.

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

2) Insurance Requirements for the Selected Bidder

The selected Bidder and any subcontractors/suppliers used in performing any work on an awarded contract will be required to obtain and provide proof of the types and amounts of insurance listed below: (i) as a condition precedent to the award of the contract for the Project; and (ii) continuing throughout the entire Term. The insurance policies listed below must also conform to the applicable terms of the Contract, as shown in BPCA’s sample form of contract attached.

- **Commercial General Liability Insurance**, written on ISO Form CG 00 01 or its equivalent and with no modification to the contractual liability coverage provided therein,

shall be provided on an occurrence basis and limits shall not be less than:

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

BPCA 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. Securing the required limits via a combination of primary and umbrella/excess liability policies is allowed. The General Aggregate limit must apply on a per project basis on the primary General Liability policy should a combination of primary and Umbrella/Excess liability policies be utilized to secure the required total limits of coverage.

- **Automobile Liability Insurance** with a combined single limit of not less than \$1,000,000. Coverage must apply to the Proposer's owned, hired, and non-owned vehicles and protect BPCA, BPCPC, and the State of New York as additional insured.
- **Workers' Compensation, Employer's Liability, and Disability Benefits** shall not be less than statutory limits, including United States Longshore and Harbor Workers Act coverage as applicable to the operations of the Proposer.
- **Motor Truck Cargo Insurance** must be maintained at a limit of not less than the value of the product being delivered.

XI. BID TERMS AND CONDITIONS

A. Bid Mistake

A Bidder claiming a mistake in its Bid shall notify BPCA in writing as soon as practicable after discovery of the alleged mistake and provide any information reasonably requested by BPCA concerning the nature of the mistake.

BPCA shall review the request and determine, in its sole discretion and consistent with applicable law and BPCA's Procurement Guidelines, whether the Bid may be withdrawn or otherwise addressed.

Nothing herein shall obligate BPCA to permit the withdrawal, correction, or modification of a Bid after the Bid Due Date.

B. Questions and Addenda

- a. Prior to submission of a Bid, prospective Bidders shall examine the Contract Documents carefully and submit in writing any questions regarding the following:
 - i. An interpretation, clarification or correction of any ambiguity, inconsistency or error in any of the Contract Documents;
 - ii. Any substantive amendment which the Bidder desires to have made to the Contract Documents; and
 - iii. Any reservation of rights by the prospective Bidder specifying any item or material that may comprise any part of the Work as to which the Bidder wishes to reserve its rights under any applicable law or rule, including but not limited to intellectual property or confidentiality.
- b. Any questions must be submitted to the Designated Contact by no later than the date set forth in Section V. of this IFB. A Bidder's failure to request any clarification, interpretation or correction will preclude such Bidder from thereafter claiming any ambiguity, inconsistency or error in the Contract Documents.
- c. BPCA reserves the right to respond, or not respond, to any questions received. In the event BPCA issues a response, it will be done by the date and in the format listed in Section V. Responses will not identify specific Bidders who asked any questions.

C. Reserved Rights

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

- Issue any number of amendments revising any of the Contract Documents, including but not limited to any date(s) set forth in the IFB, or responding to Bidder questions;
- Prior to the Bid Opening, direct Bidders to submit Bid modifications addressing subsequent amendments to the Solicitation;
- Reject any or all Bids received in response to the Solicitation;
- Withdraw the Solicitation at any time, at BPCA's sole discretion;
- Make an award under the Solicitation in whole or in part;
- Disqualify any Bidder whose conduct and/or Bid fails to conform to the requirements of the Solicitation;
- Require correction of arithmetic or other apparent errors for the purpose of assuring a full and complete understanding of a Bid and/or to determine a Bidder's compliance with the requirements of the Solicitation.

D. Contract Execution and Award

- a. A contract in the form set forth on Exhibit E hereto will be awarded to the responsive and responsible Bidder with the lowest Bid price. A Bidder's execution of its Bid, upon acceptance by the Authority, shall be deemed to bind it to this contract and no exceptions to the terms and conditions will be considered.
- b. BPCA will issue a notice of award informing the successful Bidder that it has been awarded the contract, however Work under the contract will not proceed until BPCA separately issues a notice to proceed.

E. Reservation of Rights

BPCA is not liable or responsible in any way for any expenses incurred in the preparation of a Bid in response to this IFB. All information submitted in response to this IFB 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. Bidders are responsible for identifying any information in their respective Bids 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.

XII. IRAN DIVESTMENT ACT

By submitting a Bid or by assuming the responsibility of any Contract awarded hereunder, each Bidder 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 Bidder 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 Bidder 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 Bidder 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 Bidder should it appear on the Prohibited Entities List hereafter.

XIII. EXECUTIVE ORDER 16

Pursuant to Executive Order 16 dated March 17, 2022, all State agencies and authorities are prohibited from entering into any new contract or renewing any existing contract with an entity conducting business operations in Russia. As part of this solicitation, each firm is required to certify that the firm is not an 'entity conducting business operations in Russia.' Certification under Executive Order No. 16 can be found in Exhibit B-1: IFB Submission Packet.

EXHIBIT A

Scope of Work

Model	Configuration	Key Features	Quantity
Taylor-Dunn Bigfoot XL Li-Ion	2-Seater EV Utility Vehicle	Eco Cab, removable vinyl doors, steel box with locking doors, Taylor Green, undercoating, Li-Ion battery (23.3 kWh), onboard 1 kW charger	1
Taylor-Dunn Bigfoot XL Li-Ion	2-Seater EV Utility Vehicle, Open Air	54" x 77" bed, 14" deck rails, Taylor Green, undercoating, Li-Ion battery (12.3 kWh) charge	3
Taylor-Dunn Bigfoot Li-Ion	2-Seater EV Utility Vehicle	Eco Cab with vinyl doors, 44" x 77" bed, 14" deck rails, Taylor Green, undercoating, Li-Ion battery (12.3 kWh)	9
Taylor-Dunn Bigfoot Li-Ion	4-Seater EV Utility Vehicle, Open Air	44" x 77" bed, 14" deck rails, Taylor Green, undercoating, Li-Ion battery (12.3 kWh)	9
		TOTAL:	22

Delivery Requirements

The successful Bidder must deliver all vehicles to:

Battery Park City Authority

75 Battery Place

New York NY 10280

Delivery Hours: Monday through Friday, between 7:30AM and 3:00PM

Required Delivery Date:

All vehicles must be delivered within 180 calendar days of Notice of Award. The Contractor shall make deliveries on a rolling basis as vehicles become available from the manufacturer and shall not intentionally delay completed vehicles pending delivery of the entire order.

Registration Documentation:

At the time of delivery, the Contractor shall provide all documentation required for BPCA to obtain title, registration, and license plates for each vehicle from the New York State Department of Motor Vehicles. Such documentation shall include, at a minimum, the manufacturer's certificate of origin (or certificate of title, where applicable), bill of sale, and any other forms or documents required for registration of the vehicles in New York State.

Delivery shall not be deemed complete until all required registration, title, warranty, and ownership documentation has been furnished to BPCA.

Technical Specifications:**A. 2-Seater EV Utility Vehicle**

Taylor-Dunn Bigfoot (QTY: 9)

The vehicle shall meet the following specifications:

- 44-inch width
- Low speed utility vehicle with low step height
- Easy steering and high operator visibility
- Emergency power cutoff switch
- Horn
- Turning radius of 137 inches
- Adjustable front bucket seats
- 44"x77" diamond plate cargo bed Payload capacity, 3,000 lbs.
- Towing capacity, 7,500 lbs.
- Eco Cab Metal Cab with vinyl doors
- Unitized 12-gauge welded steel body
- Non-slip flooring
- Galvanized frame option
- Undercoating
- Pneumatic tires 5.70 x 8, Load Range C
- Soft-ride shocks
- Taylor Green finish (approved color match)
- Lithium-ion battery system
- Built-in charger with compatible 120V outlets
- Hitch with pintle and ball combination
- Hand-operated parking brake
- Automatic battery disconnects after ten minutes inactive
- Regeneration braking
- Deck Rails

- 14-inch stake sides with end gate

B. 4-Seater EV Utility Vehicle

Taylor-Dunn Bigfoot (QTY: 9)

The vehicle shall meet the following specifications:

- 44-inch width
- Low speed utility vehicle with low step height
- Easy steering and high operator visibility
- Emergency power cutoff switch
- Horn
- Turning radius of 137 inches
- Adjustable front bucket seats
- Fold-away rear seat accommodating 2 or 4 passengers
- Minimum 44"x77" diamond plate cargo bed
- Payload capacity, 3,000 lbs.
- Towing capacity, 7,500 lbs.
- Unitized 12-gauge welded steel body
- Non-slip flooring
- Galvanized main frame option
- Undercoating
- Pneumatic tires 5.70 x 8, Load Range C
- Soft-ride shocks
- Taylor Green finish (approved color match)
- Lithium-ion battery system
- Built-in charger with compatible 120V outlets
- Hitch with pintle and ball combination
- Hand-operated parking brake
- Automatic battery disconnects after ten minutes inactive
- Regeneration braking
- Deck Rails
- 14-inch stake sides with end gate

C. 2-Seater EV Utility

Taylor-Dunn Bigfoot XL (QTY: 3)

The vehicle shall meet the following specifications:

- 57-inch width
- Low speed utility vehicle with low step height
- Easy steering and high operator visibility
- Emergency power cutoff switch
- Horn
- Turning radius of 145 inches
- Adjustable front bucket seats
- Minimum 54" x 77" diamond plate cargo bed
- Payload capacity, 3,000 lbs.
- Towing capacity, 10,000lbs.
- Eco Cab metal cab with vinyl doors (where specified)
- Unitized 12-gauge welded steel body
- Non-slip flooring
- Galvanized frame option
- Undercoating
- Taylor Green finish (approved color match)
- Lithium-ion battery system
- Built-in charger with compatible 120V or 220V outlets
- Hitch pintle and ball combination
- Hand-operated parking brake
- Automatic battery disconnects after ten minutes inactive
- Regeneration braking
- Deck Rails
- 14-inch stake sides with end gate
- Vehicle width: 44"
- XL body

D. 2-Seater EV Utility Vehicle with Cab

Taylor-Dunn Bigfoot XL (QTY: 1)

This vehicle shall meet all specification listed above for the Bigfoot XL model and additionally include:

- Eco Cab
- Removable vinyl doors
- Steel cargo box with locking doors
- Reference configuration consistent with Serial No. 203517

Warranty Requirements:

The bidder shall provide detailed warranty information for the vehicle, battery system, powertrain, onboard charger, and corrosion protection. At a minimum, warranty coverage shall include a three (3) year comprehensive vehicle warranty, a five (5) year powertrain warranty, a five (5) year corrosion warranty, and an eight (8) year lithium-ion battery warranty guaranteeing not less than seventy percent (70%) of original battery capacity. Bidders shall also provide pricing for available extended warranty options.

Approved Equivalents:

References in this Scope of Work to specific manufacturers, models, or product names are intended solely to identify the level of quality, performance, design, and functionality desired by BPCA. BPCA may consider approved equivalents, provided that the product meets or exceeds all specifications set forth herein.

EXHIBIT B-1

Administrative & Compliance Forms

I. BID SUBMISSION CHECKLIST AND CONFIRMATION STATEMENT

[] The Bidder hereby certifies that they meet the Minimum Qualification Requirements as stated in Section V.A of the IFB (please **initial** next to the requirements).

Authorized to do business in the State of New York.	☐ Yes	_____
Minimum of five (5) years of experience providing utility vehicles and related support services.	☐ Yes	_____
Successfully completed at least (3) projects of similar scope within the past five (5) years.	☐ Yes	_____
Manufacturer-Authorized Dealer, Distributor, or Reseller of the proposed utility vehicle products.	☐ Yes	_____
Demonstrated ability to provide warranty services, maintenance support, and replacement parts for the proposed vehicles.	☐ Yes	_____

[] The Bidder hereby certifies that except as disclosed in the Bid, no officer or employee of the Bidder is directly or indirectly a party to or in any other manner interested financially or otherwise in this IFB (refer to Exhibit D for list of BPCA Board Members and Employees).

[] The Bidder hereby certifies that they possess the ability, resources and financial standing to provide and deliver the requested goods and/or services.

[] The Bidder hereby certifies that their Bid submitted 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:

1. Forms & Items included in this Exhibit:

- [] This Checklist
- [] Vendor Responsibility Questionnaire / Certificate of No Change
- [] Statement of Non-Collusion
- [] Affirmation of Understanding of & Agreement Pursuant to State Finance Law §139j(3) and §139-j(6)(b)
- [] Certification of Compliance with New York State Finance Law §139-k(5)
- [] Disclosure of Prior Non-Responsibility Determinations
- [] Encouraging the Use of New York State Businesses Statement
- [] Acknowledgement of Addenda Form
- [] MWBE Utilization Plan
- [] SDVOB Utilization Plan

- ☐ MWBE & Equal Employment Opportunity Policy Statement
- ☐ Diversity Practices Questionnaire
- ☐ Executive Order 16 Certification
- ☐ Gender-Based Violence and the Workplace Certification
- ☐ Iran Divestment Act

2. Additional Required Documents

- ☐ Copy of the Bidder's IRS Form W-9 (<https://www.irs.gov/pub/irs-pdf/fw9.pdf>)

3. Designated Point of Contact:

Name and Title:	Email:	Phone Number:

Name of Bidder:

Officer Name:

Officer Title:

(Signature of Officer)

II. 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:	
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A. 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 ☐
B. 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), affiliate² 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 ☐

²"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.

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 ☐
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:	
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A. 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 ☐
B. 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 ☐
C. Does the vendor have the financial resources necessary to fulfil the requirements of the proposed contract?	Yes ☐ No ☐

Vendor Name:		Vendor FEIN:	
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D. Certification:

State of:)
) ss:
 County of:)

CERTIFICATION:

The undersigned, personally and on behalf of the vendor identified in questions B.a-c 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

III. 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

IV. STATEMENT OF NON-COLLUSION

- A. By submission of this Bid, Bidder and each person signing on behalf of Bidder certifies, (and in the case of a joint Bid 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 Bid 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 Bidder or with any competitor.
 - b. or with any competitor. B) Unless otherwise required by law, the prices which have been quoted in this Bid have not been knowingly disclosed by the Bidder and will not knowingly be disclosed by the Bidder prior to opening, directly or indirectly to any other Bidder or to any competitor.
 - c. No attempt has been made or will be made by Bidder to induce any other person, partnership, firm or corporation to submit or not to submit a Bid for the purpose of restricting competition.
- B. A Bid 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 Bidder cannot make the foregoing certification and the Bidder shall so state and shall furnish with its Bid 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, Bid shall not be considered for award nor shall any award be made unless BPCA determines that such disclosure was not made for the purpose of restricting competition.
- The fact that a Bidder (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 Bid, if made by a corporate Bidder, shall be deemed to have been authorized by the board of directors of the Bidder and such authorization shall be deemed to include the signing and submission of the Bid and the inclusion thereof of the statement of non-collusion as the act and deed of the corporation.

(Insert Name of Bidder 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 Bidder is an individual, the Bidder's legal residence is as follows:

Street Address	City	State	ZIP
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If Bidder is a Firm or Partnership, complete the following:

Name of Members or Partners	Legal Residence

If Bidder is a Corporation, complete the following:

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

V. 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 Authority 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: _____

VI. OFFEROR'S CERTIFICATION OF COMPLIANCE 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: _____

VII. 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: _____

VIII. 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, Bidders 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.

Bidders 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, Bidders 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/bidders 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.

Bidders can demonstrate their commitment to the use of New York State businesses by responding to the question below. Each bidder must include a response to this question with their bid. 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 ☐

IX. ACKNOWLEDGEMENT OF ADDENDA FORM

IFB 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 IFB:

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 IFB

Part III

Bidder's Name: _____

Bidder's Authorized Representative:

Name: _____

Title: _____

Signature: _____

X. MINORITY BUSINESS ENTERPRISE/WOMEN BUSINESS ENTERPRISE (MBE/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:

MINORITY BUSINESS ENTERPRISE/WOMEN BUSINESS ENTERPRISE (MBE/WBE)
UTILIZATION PLAN (continued)

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.

XI. 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:	

SERVICE-DISABLED VETERAN OWNED BUSINESSES (SDVOB) UTILIZATION PLAN (continued)

Workforce Percentage Information

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

XII. MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES 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 the MBE/WBE contract participations goals set by the State for that area in which the State-funded project is located, by taking the following steps:

- (1) Actively and affirmatively soliciting bids for contracts and subcontracts from qualified State certified MBEs or WBEs, including solicitations to MBE/WBE contractor associations.
- (2) Requesting a list of State-certified MBEs/WBEs from BPCA and soliciting bids from these MBEs/WBEs directly.
- (3) Ensuring that plans, specifications, request for proposals and other documents used to secure bids will be made available in sufficient time for review by prospective MBEs/WBEs.
- (4) Where feasible, dividing the work into smaller portions to enhance participations by MBEs/WBEs and encourage the formation of joint venture and other partnerships among MBE/WBE contractors to enhance their participation.
- (5) Documenting and maintaining records of bid solicitation, including those to MBEs/WBEs and the results thereof. The Contractor will also maintain records of actions that its subcontractors have taken toward meeting MBE/WBE contract participation goals.
- (6) Ensuring that progress payments to MBEs/WBEs are made on a timely basis so that undue financial hardship is avoided, and that bonding and other credit requirements are waived or appropriate alternatives are developed to encourage MBE/WBE participation.

EEO

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

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

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

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

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

Agreed to this _____ day of _____

By _____

Print: _____ Title: _____

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

MBE/WBE Contract Goals

0% Minority and Women's Business Enterprise Participation

____ % Minority Business Enterprise Participation

____ % Women's Business Enterprise Participation

EEO Contract Goals (if applicable)

____ % Minority Labor Force Participation

____ % Female Labor Force Participation

(Authorized Representative)

Title: _____

Date: _____

XIII. 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 training³ 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 ☐

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

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.

8. Does your Company plan to enter into partnering or subcontracting agreements with New York State certified MBEs/WBEs if selected as the successful Bidder? 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

XIV. 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: https://www.governor.ny.gov/executive-order/no-16-prohibiting-state-agencies-and-authorities-contracting-businesses-conducting](https://www.governor.ny.gov/executive-order/no-16-prohibiting-state-agencies-and-authorities-contracting-businesses-conducting).

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: _____

XV. Gender-Based Violence and the Workplace Certification

New York State Finance Law §139-M requires bidders on competitive state procurements to certify that they have a written policy addressing gender-based violence and the workplace and that such policy meets the following minimum requirements:

- **Share Information:** Employers must provide information regarding gender-based violence where employees can see and access it, including displaying the NYS Domestic and Sexual Violence Hotline information and a gender-based violence and the workplace poster.
- **Refer Employee-Survivors to Services:** The policy must require that the employer refer employees who disclose current or past victim status to the NYS Domestic and Sexual Violence Hotline and/or a local service provider. For bidders outside of New York State, referrals should be made to a local provider or statewide hotline. While referrals are required to be provided by the employer, it is not required for the employee to access services.
- **Prohibit Retaliation:** The policy must clearly state that discrimination or retaliation against employees who identify as victims or survivors of gender-based violence is prohibited.
- **Comply with Laws:** Ensure your policy follows State law. For employers based in New York State, this means that the policy must follow the SAFE Leave Act, New York State Human Rights Law, and any other relevant laws and regulations.
- **Offer Implementation Support:** OPDV is able to assist employers in developing and implementing this policy. Employers must provide information to supervisors and human resources, where available, about this technical assistance from OPDV. OPDV can be contacted at workplace@opdv.ny.gov.

By submission of this certification, each person signing on behalf of any organization certifies, and in the case of a joint submission each party thereto certifies its own organization, under penalty of perjury, that they have and have implemented a written policy addressing gender-based violence and the workplace.

Organization's signature below certifies its compliance with State Finance Law §139-M.

Organization: _____

By (signature): _____

Name (Please Print): _____

Title: _____

Date: _____

This form must be signed by an authorized executive or legal representative.

If the organization cannot make the above certification, they must provide a statement with their bid detailing the reasons therefore:

XVI. Iran Divestment Act

By submitting a Bid or by assuming the responsibility of any Contract awarded hereunder, each Bidder certifies that it is not on the “Entities Determined To Be Non-Responsive Bidders/Offerors 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 Bidder 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 Bidder 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 Bidder 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 Bidder should it appear on the Prohibited Entities List hereafter.

Vendor Name (Legal Entity): _____

By (Signature): _____

Name: _____

Title: _____

Date: _____

EXHIBIT B-2

BID SHEET

BIDDER INFORMATION:

Company Name: _____

Address: _____

Contact Person: _____

Phone: _____

Email: _____

FEIN: _____

SECTION 1 – BASE BID (REQUIRED)

A. VEHICLE PRICING					
Item#	Vehicle Description	Model	Quantity	Unit Price (\$)	Total Price (\$)
1	2-Seater EV Utility Vehicle	Taylor-Dunn Bigfoot XL Li-Ion	1		
2	2-Seater EV Utility Vehicle, Open Air	Taylor-Dunn Bigfoot XL Li-Ion	3		
3	2-Seater EV Utility Vehicle	Taylor-Dunn Bigfoot Li-Ion	9		
4	4-Seater EV Utility Vehicle, Open Air	Taylor-Dunn Bigfoot Li-Ion	9		

Subtotal (All Vehicles): \$ _____

B. DELIVERY COSTS	
Description	Cost (\$)
Delivery/Freight	

Additional Charges (if any)	
-----------------------------	--

Total Delivery Cost: \$ _____

C: TOTAL BASE BID	
Total Base Bid (Vehicles + Delivery):	

SECTION 2: WARRANTY INFORMATION

The Bidder shall provide manufacturer warranty documentation demonstrating compliance with the minimum warranty requirements set forth in Exhibit A.

The Bidder shall identify and describe all standard warranty coverage included in the Base Bid, including any warranty applicable to the vehicle, powertrain, battery system, corrosion protection, onboard charger, and any other components covered under the manufacturer's standard warranty program.

Failure to provide warranty documentation demonstrating compliance with the requirements of Exhibit A may result in the Bid being deemed non-responsive.

SECTION 3 – CERTIFICATION

The undersigned certifies that they have read and understood all bid documents and agree to furnish the goods in accordance with all terms, conditions, and specifications.

Authorized Signature: _____

Name (Print): _____

Title: _____

Date: _____

EXHIBIT C

(Contractor Requirements and Procedures for Participation by New York State-Certified MBEs/WBEs/SDVOBs and Equal Employment Opportunities for Minority Group Members and Women)

NEW YORK STATE LAW

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

Business Participation Opportunities for MWBEs

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

Overall goal for total MWBE participation: 0%

NYS-Certified Minority-Owned Business (“MBE”) Participation: 0%

NYS-Certified Women-Owned Business (“WBE”) Participation: 0%

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

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

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

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

By submitting a bid or bids, a Bidder agrees to demonstrate its good faith efforts to achieve the applicable MWBE participation goals by submitting evidence thereof through the New York State Contract System (“NYSCS”), which can be viewed at <https://ny.newnycontracts.com>, provided, however, that a Bidder may arrange to provide such evidence via a non-electronic method by contacting Zag Kimpolo at zag.kimpolo@bpca.ny.gov or 212-417-2339. Please note that the NYSCS is a one-stop solution for all of your MBE/WBE and Article 15-A contract requirements. For additional information on the use of the NYSCS to meet the Bidder’s MBE/WBE requirements,

please see the attached MBE/WBE guidance from the New York State Division of Minority and Women's Business Development, "Your MWBE Utilization and Reporting Responsibilities Under Article 15-A."

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

- A. An MWBE Utilization Plan with their bid. Any modifications or changes to an accepted MWBE Utilization Plan after the Contract award and during the term of the Contract must be reported on a revised MWBE Utilization Plan and submitted to BPCA for review and approval.
- B. BPCA will review the submitted MWBE Utilization Plan and advise the Bidder of BPCA acceptance or issue a notice of deficiency within 30 days of receipt.
- C. If a notice of deficiency is issued, the Bidder will be required to respond to the notice of deficiency within seven (7) business days of receipt by submitting to Zag-Legrand Kimpolo-Nkaya at zag.kimpolo@bpcanyc.gov, a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by BPCA to be inadequate, BPCA shall notify the Bidder and direct the Bidder to submit, within five (5) business days, a request for a partial or total waiver of MWBE participation goals. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or bid.
- D. BPCA may disqualify a Bidder as being non-responsive under the following circumstances:
 - 1) If a Bidder fails to submit an MWBE Utilization Plan;
 - 2) If a Bidder fails to submit a written remedy to a notice of deficiency;
 - 3) If a Bidder fails to submit a request for waiver; or
 - 4) If BPCA determines that the Bidder has failed to document good faith efforts.

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

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

Business Participation Opportunities for SDVOBs

For purposes of this solicitation, BPCA hereby establishes an overall goal of 0% for SDVOB participation. A Bidder must document good faith efforts to provide meaningful participation by SDVOBs as subcontractors or suppliers in the performance of the Contract and Bidder agrees that BPCA may withhold payment pending receipt of the required SDVOB documentation. The directory of New York State Certified SDVOBs can be viewed at: <https://sdves.ogs.ny.gov/business-search>. For guidance on how BPCA will determine a Contractor's "good faith efforts," refer to 9 NYCRR §252.2(f)(2).

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

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

- A. Additionally, a Bidder agrees to submit a Utilization Plan with their bid or Bid as evidence of compliance with the foregoing. Any modifications or changes to the Utilization Plan after the Contract award and during the term of the Contract must be reported on a revised Utilization Plan and submitted to BPCA.
- B. BPCA will review the submitted Utilization Plan and advise the Bidder of BPCA's acceptance or issue a notice of deficiency within 30 days of receipt.
- C. If a notice of deficiency is issued, Bidder agrees that it shall respond to the notice of deficiency within seven (7) business days of receipt by submitting to Zag-Legrand Kimpolo-Nkaya at BPCA, by email at zag.kimpolo@bpca.ny.gov, a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by BPCA to be inadequate, BPCA shall notify the Bidder and direct the Bidder to submit, within five (5) business days, a request for a partial or total waiver of SDVOB participation goals. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or Bid.
- D. BPCA may disqualify a Bidder as being non-responsive under the following circumstances:
 - 1) If a Bidder fails to submit a Utilization Plan;
 - 2) If a Bidder fails to submit a written remedy to a notice of deficiency;
 - 3) If a Bidder fails to submit a request for waiver; or
 - 4) If BPCA determines that the Bidder has failed to document good faith efforts.

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

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

Equal Employment Opportunity Requirements

By submission of a bid or bid in response to this solicitation, the Bidder agrees with all of the terms and conditions of the attached MWBE Equal Employment Opportunity Policy Statement. The Bidder is required to ensure that it and any subcontractors awarded a subcontract for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work"), except where the Work is for the beneficial use of the Bidder, undertake or continue programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, equal opportunity shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, and rates

of pay or other forms of compensation. This requirement does not apply to: (i) work, goods, or services unrelated to the Contract; or (ii) employment outside New York State.

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

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

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

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

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



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

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

GETTING STARTED

To access the system, please login or create a user name and password at <https://ny.newnycontracts.com/>. If you are uncertain whether you already have an account set up or still need to register, please send an email to the customer service contact listed on the Contact Us & Support page, or reach out to Zag Kimpolo at zag.kimpolo@bpca.ny.gov or 212-417-2339. For verification, in the email, include your business name and contact information.

VENDOR RESPONSIBILITIES

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

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

For more information, contact Zag Kimpolo at zag.kimpolo@bpca.ny.gov or 212-417-2339.

EXHIBIT D

(List of BPCA Board Members and Employees)

List of Board Members

Donald Capoccia

Martha Gallo

Anthony Kendall

Catherine McVay Hughes

Lester Petracca

Clinton Plummer

Angela Pinsky

EXHIBIT D

(List of BPCA & BPCPC Board Members and Employees)

LIST OF EMPLOYEES

Acevedo, Angel	Davis, Elizabeth Nelson	Hoey, Brendan
Afzal, Betzayda M.	De Padua, Gilbert	Hood, Megan
Alexander, Danah	DeSantis, Phillip C	Howard, Angela M.
Alexander, Samantha	Diaz, Ismael	Hudon, Craig A.
Alvarez, Elsa C.	Diaz-Larui, Paul N.	Jogie, Amy S.
Anders, Dana J.	Dickson, Daniel Allen	Johnson, Jasmine Mikayla
Anderson, Conrad J	Dobens, Lawrence	Johnson-Gabrielle, Willow
Appenfeller, Gwendolyn	Dopson, Tonasia T.	Jones, Gamal A
Arpi-Tacuri, Tiffany Hillary	Eggleston, Terrence	Jones, Saladin
Athayde, Kyle	Ellison, AnnMaria	Julien, Ebonique M.
Babb, David	Engler, Elise	Kaur, Rupinder
Baichu, Sharmila	Espinal, Jason	Kessin, Benjamin
Baki, Muriel Barnett	Ethridge, Maya	Kimpolo Nkaya, Zag Legrand
Baptiste, Marie R	Flanagan, Stacey	Koenig, Karl H.
Beecham, Brett D.	Flores, Tamara G.	Kotsanis, Elephtherios
Belliard, Freddy	Fonseca, Juan	Lalama Moreno, Cristina
Bender, Marieke E	Fortune, Dennis	Alexandra
Benon, Yipin K.	Frederick, Pamela M.	Le, Uyen
Berendschot, Octavie	Fuhrman, Heather	Lei, Jeffrey
Bergen, Zachary	Gallagher, James J.	Leon, Boris
Best, Jacqueline	Garcia-Edwards, DonnaMarie	Lerner, Marianna
Blake, Nidia Xcenia	Gerbi, Ameli	Leung, Jeremy K.
Bonnelly, Sully	Gonzalez, Anatasia I.	Lima, Triny
Bruce, Oliver	Gonzalez, Lee	Liu, Johnny
Buivid, Nancy	Gorley, Keyond	Lopcy, Rene J.
Buquicchio, Anthony	Gould, Robert H.	Lopez, Janira C
Campbell, Peter M.	Gregg, Evelyn	Magana, Maria
Caraballo, Angel	Gross, Jonathan A	Maggi, Michael Andrew
Centeno, Monica	Gutin, Dmitriy	Maggi, Robert
Chen, David	Hansen, Robert T.	Maisonet, Evelin
Cho, Terence	Harper, Justin	Mann, Rajinder
Cid, Alexis Torres	Harris, Elian	Manzella, Lenore
Cogan, Jonathan William	Hart, Louisa Rose	Martinez, Eric
Compaan, Jason	Heerah, Sankar	Martinez, Maria
Cordova, Kevin	Hernandez, Raul	McNeill, Princess K.
Curley, Jonathan	Heron, Mary C	Mendez, Just
Curtin, Sarah F	Herrera Rincon, Lorena	Mesine-Michael, Vanessa
Daube, Ashley	Hines, Damien	Metal, Rami
Davis, David	Hing, Alexander Herrmann	Mikati, Rayyan

EXHIBIT D

(List of BPCA & BPCPC Board Members and Employees)

Mimbella, Lilka	Santiago, Carlos
Mirabal, Michael	Sbordone, Nicholas T
Miranda, Doreen	Schwartz, Jean
Mohammed, Ronnie	Sentino, Delano
Morris, Haley	Sewraj-Kumar, Rekha
Motte, Eva Katherine	Shacham, Yael
Moulketis, Irene	Shakov, Matthew
Murray, Ryan Patrick	Simon, Sean A.
Murtha, Lauren M.	Singh, Kemnarine
Nathan, Jahmeliah E.	Smedley, Sarah J.
Ngo, Jane Anh	Smith, Sherone
Noll, Alexander	Stewart, Shinay
O'Toole, Kevin	Striggles, Patricia Antionette
Ortiz, Maril E.	Taft, Marcella
Oyeniya, Adebayo	Teelan, Michael
Paillant, Willem	Torres Davila, Michelle K.
Palma, Ma Enore	Torres, Ryan A.
Parker, Jonathan J	Van Horn, Douglas J.
Patel-Haribaran, Nimisha	Vann, Isabel
Pearlman, Gladys	Vargas, Christian
Pena , Carlen	Veve, Yves Emmanuel
Perriello, Vito	Vitale, Matthew William
Petrov, Roman Eduardovich	Wade, Sharon B.
Powell, Katherine	Wallace, David B.
Powell, Rayshawn	Weixel, Goldie
Pula, Ard	Wells, John
Rachnowitz, Jason	Williams, Dwight
Ramirez, Madelin G.	Williams, Eileen
Ramos, Joel	Williams, Ikeem
Reynolds, Aline E	Wisnewski, Jennifer
Reynoso, Eder	Wolfe, Sara N.
Rhoades, Takoda Rayne	Wu, Ken
Richards, Kwame	Yohannes, Jouli
Rivera, Angel	Yokoi, Erin L
Rivera, Manuel	Zeltser, Zachary
Rivera, Ruben	Zeng, Joanna
Riveros Torres, Sylvia Juliana	de Melo, Pedro
Rufino, Joel	
Russell, Paul C	
Salazar, Atticus	
Sanders, Monica Ciera	

EXHIBIT E

(BPCA Form of Contract)

PURCHASING AGREEMENT

between

HUGH L. CAREY BATTERY PARK CITY AUTHORITY

and

[CONTRACTOR]

Contract No. [CONTRACT #]

((PROJECT NAME))

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EXHIBIT A - DELIVERY SCHEDULE [if applicable]

EXHIBIT B - BID SHEET / RATE SHEET [if applicable]

EXHIBIT C - FORM OF TIME SHEET [if applicable]

EXHIBIT D - MBWE AND EEO POLICY STATEMENT

PURCHASING AGREEMENT TERMS AND CONDITIONS

This PURCHASE AGREEMENT (the “Agreement” or “Contract”) by and between BATTERY PARK CITY AUTHORITY d/b/a HUGH L. CAREY BATTERY PARK CITY AUTHORITY, (“Owner,” “BPCA,” or the “Authority”), 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 “Contractor”), sets forth the terms by which Contractor will supply certain goods and/or services (the “Goods”, or the “Services” as applicable) as described in the Agreement. Any differing terms proposed by Contractor are rejected unless explicitly incorporated herein, by reference or otherwise, and accepted by the Authority. In the event of any conflicting terms between this and any other Agreement between the parties, the terms of this Agreement shall be deemed to apply.

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 Contractor to **[describe services to be performed]** (the “Work”), and Contractor desires to perform such services for Owner.

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

1. General Contract Interpretation

A. The Information for Bidders, the Bid (including the Bid Sheet), these Contract Terms and Conditions, any Schedules and Exhibits, all Addenda (if any) issued, any Technical Specifications and/or Contract Drawings, and the Notice of Award collectively constitute the Contract and shall be referred to collectively as the “Contract” or the “Contract Documents.”

B. References to any agreement or other instrument shall be deemed to include such agreement or other instrument as it may, from time to time, be modified, amended, supplemented, or restated in accordance with its terms.

C. The word “Contractor” when used in this Contract, shall mean the Bidder to whom the Authority awards this Contract.

D. The terms “hereof,” “herein,” “hereby,” “herewith,” “hereto,” and “hereunder” shall be deemed to refer to this Contract.

E. The headings of the paragraphs or Articles are inserted for convenience only and shall not affect the construction or interpretation of this Contract.

F. All references to “days” shall be deemed to be calendar days, unless otherwise expressly indicated.

G. All references to “business days” shall be deemed to be references to the days of Mondays through Fridays, exclusive of Authority-observed holidays.

H. All notices hereunder must be in writing, in accordance with ARTICLE 29, NOTICES, unless expressly indicated otherwise.

I. As used herein, the singular shall mean and include the plural; the masculine gender shall mean and include the feminine and neuter genders; and vice versa.

2. Scope of Work

The Work to be performed under this Contract may briefly be described as **[provide a general description for each Contract here]** including all necessary or incidental work, labor and materials. Included in the Work and price shall be all pickup, transportation and delivery expenses from and to the Authority as well as all labor, materials, equipment, incidentals and overhead costs and expenses in performing the Work.

The Contractor agrees to perform the Work in accordance with requirements and terms and provisions hereinafter set forth in the Contract Documents. In consideration for the complete, satisfactory and proper performance thereof by the Contractor, the Authority agrees to pay to the Contractor, and the Contractor agrees to accept as full compensation therefor, the sums of money set forth in the Bid Sheet at the time and in the manner and upon the terms and conditions hereinafter set forth in the Contract Documents.

3. Time for Performance

A. Contractor shall perform the Work as expeditiously as is consistent with professional skill and the orderly progress of the Work, but in any event the delivery of the Services shall not exceed delivery schedule attached hereto as Exhibit A.

B. Delivery by Contractor of Goods or Services shall be within the time specified in the schedule set forth in the Bid Sheet or elsewhere in the Contract Documents. If for any reason delivery cannot be made by the date or dates specified, Contractor must immediately furnish the Authority with written notice of such delay and the reason therefor.

C. Time of delivery is of the essence of this Contract. In the event of a delay in the delivery of the Goods or Services, for which the Contractor is not entitled to an extension of time in accordance with Article 14, Extensions of Time, the Authority may recover all damages for such delay, and may seek such other remedies, as are available under the Uniform Commercial Code or other laws of the State of New York.

D. If the delivery of Goods or Services under this Contract should be unavoidably

delayed, the Authority may extend the time for completion in accordance with the terms and conditions set forth in Article 14, Extensions of Time

E. The delivery and acceptance of any Goods after the date fixed for completion of performance shall not be deemed a waiver of the right of the Authority to terminate this Contract with respect to the undelivered portion or to require the delivery of any undelivered Goods in accordance with this Contract.

F. Unless otherwise stipulated in the Contract, delivery of goods shall be made between 8 a.m. and 3 p.m. on the Authority's business day. However, on Goods required for daily consumption, or where the delivery is an emergency, a replacement, or is overdue, the convenience of the Authority shall govern.

G. The Authority reserves the right to temporarily suspend the performance of the whole or any part of the Work, if it shall deem it in its best interest so to do, without compensation to the Contractor for such suspension other than extending the time for completing the Work as much as in the opinion of the Authority the Contractor may have been delayed by such suspension.

4. Term

Notwithstanding anything contained herein to the contrary, the term of this Agreement shall begin as of [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.

5. Invoicing and Payment

(a) Owner shall pay, and Contractor agrees to accept as full compensation for all Work performed under this Agreement, the rate(s) set forth in the Bid Sheet, which is deemed to be incorporated into this Agreement and attached hereto as Exhibit B (the "Rates").

(b) The Authority shall pay and the Contractor shall accept the amounts set forth in the Bid Sheet as full compensation for all costs and expenses of completing the Work, including, but not limited to: all labor and material required to be done or furnished under this Contract; all overhead, expenses, fees and profits including the cost of providing storage yard or facilities; all risks and obligations set forth in the Contract; any applicable fees or taxes; and all expenses due to any unforeseen difficulty encountered in the prosecution of the Contract.

(c) Invoices shall be submitted not more than once each month subject to the Contractor's compliance with the submission requirements contained hereunder and all other provisions of the Contract Documents.

(d) In addition to any other requirement set forth in this Contract with respect to what constitutes a proper invoice or for the Contractor to be entitled to receive payment, the Contractor's invoice must set forth: (a) the Authority's contract number, which may be found on the cover page of this Agreement; (b) a description, with specificity, of the goods delivered, services rendered, or other event initiating entitlement to payment pursuant to the terms of this Contract; (c) that portion

of the Contract price related to such payment less any deductions such as retainage required pursuant to the terms hereof (if any). Should the invoice not be calculated correctly, such as not taking into account retainage as a deduction, the Authority may either reject the invoice or treat the invoice as proper only to the extent of the correct calculation of the amount thereof.

(e) The following are in addition to any other requirement set forth in this Contract with respect to what supporting documentation must accompany an invoice:

- i. In the event the Contract contains an inspection and acceptance procedure, the Contractor's invoice relating to delivered and/or installed goods, the goods/services covered by such invoice must be accompanied by a copy of the Authority's certificate of acceptance, or equivalent document, thereof.
- ii. In the event the Contract provides for payment upon achieving stated milestones of performance, the Contractor's invoice relating to any milestone must be accompanied by a copy of the Authority's certificate, or equivalent document, that the milestone has been achieved.
- iii. In the event the Contract provides for payment based upon a delivery schedule, the Contractor's invoice must be accompanied by appropriate documentation that the "deliverable" has been delivered in accordance with the schedule in the Contract, and if this Contract requires acceptance thereof as a condition precedent to payment, that the deliverable has been so accepted.
- iv. Invoices must be accompanied by all affidavits, time records, staffing and other records provided for or required by the contract to establish the amount of payment and/or performance of the Contract billed, as well as a statement with sufficient specificity which establishes the basis on which the payment is due according to the Contract. Any documentation generated by the Authority, such as certificate of acceptance, will be issued in accordance with the terms of the Contract.

(f) In addition to any other requirements pertaining to the right of the Authority or other entity to perform inspections, reviews or audits with respect to any payment or to the Contract as a whole, the Authority reserves the right to inspect, review and/or audit each invoice for payment to verify that the invoice amount is consistent with the materials, labor, goods, and/or services provided and is in accordance with the provisions of the Contract, as well as to determine the resources applied or used by the Contractor in fulfilling the terms of the Contract or otherwise to verify that the goods or services billed for were provided in accordance therewith. The Authority will require ten (10) Authority business days from the Receipt of Invoice Date within which to perform this function.

(g) The Authority shall have the right to set-off against any payment due the Contractor under this Contract any unpaid legally enforceable debt owed by the Contractor to the Authority as outlined in the MTA's Statement of Rules and Regulations.

(h) The Authority shall pay Contractor in accordance with 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 Contractor 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 Contractor's negligence or breach of this Agreement.

(i) All Invoices should be submitted electronically to bpccfinanceops@bpcc.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].

(j) The Unless otherwise stipulated in writing by the parties, the Authority shall make payment subject to the following conditions, which are, unless waived in whole or in part by the Authority in writing, conditions precedent to payment:

- i. The Contractor is not, in the User Department and/or Procurement Specialist's opinion, in breach of any terms or provision of this Contract;
- ii. The Authority has accepted the goods/services

(k) The Authority may withhold sums equal to any claims of the Authority against the Contractor, for indemnification or otherwise, pending settlement or other disposition of such claim. The Authority may withhold from any payment otherwise due the Contractor as much as may be necessary to protect the Authority and if it so elects may also withhold any amounts due from the Contractor to any Subcontractors or Suppliers for work performed or material furnished by them. The foregoing provisions shall be construed solely for the benefit of the Authority and will not require the Authority to determine or adjust any claims or disputes between the Contractor and his Subcontractors or Suppliers, or to withhold any monies for their protection unless the Authority elects to do so. The failure or refusal of the Authority to withhold any monies from the Contractor shall in no way impair the obligations of any surety or sureties under any bond or bonds furnished under this Contract. The Authority may withhold payment to the Contractor, if the Contractor fails to remedy unsuitable conditions. The Contractor shall be given written notice of any unsuitable conditions.

6. Withholding Money Due Contractor to Meet Claims or Liens

A. If at any time a claim, lien or judgment shall be made by any person or corporation against the Authority, for which Contractor is liable under this Contract or, otherwise by law, with respect to matters pertaining to this Contract, the Authority shall have the right to

withhold an amount it deems reasonably necessary to satisfy such claim, in addition to the other sums herein authorized by the Contract to be so retained, out of any monies then due or thereafter becoming due to the Contractor hereunder, as security for the payment of such claim. If the liability of any such party on such claim or claims shall have been finally adjudicated by a judgment of a court of competent jurisdiction or such claim or claims shall have been admitted by the Contractor to be valid, then the claim may, if determined by the Authority to be in its best interest, be paid from the amount so retained hereunder, credited against the payments due Contractor, and the balance, if any, paid to the Contractor.

B. Should any such claim remain unsatisfied at the time the final payment is due the Contractor, the Authority shall have the right to retain out of said final payment a sum in its judgment sufficient to protect the Authority in regard to all unsatisfied claims. In lieu of the foregoing, the Authority may require other security.

C. In case the amount thus retained should be insufficient to pay the amount adjudicated to be due upon such claim, the Contractor shall pay the amount of the deficiency to the Authority. Upon the failure of the Contractor so to do, the Authority may sue for and recover from the Contractor the amount or balance as a debt from the Contractor.

D. Notwithstanding anything in this Article to the contrary, in the event of a claim for injury to persons or damage to property by persons or corporations other than the Authority, the Authority shall not withhold money due the Contractor provided the Authority receives adequate written assurance from the Contractor's insurance carrier that it will assume all responsibility in connection with the claim including defending the Contractor or the Authority in any lawsuit, and paying any judgment based on said claim. The Authority shall have sole discretion to determine the adequacy of the assurance furnished.

7. Claims by Contractor

If the Contractor shall have a claim for compensation against the Authority for any loss or damage of any nature arising under this Contract by reason of any act, neglect, fault or default of the Authority or its agents, the Contractor shall, within fifteen (15) days after the sustaining of such damage, furnish a written statement to the Authority detailing the nature and amount of damage sustained. Compliance with the provisions hereof shall constitute a condition to Contractor's submission of a dispute with respect to any claim for compensation and the Contractor shall be deemed to have waived any claim not submitted in accordance therewith. The provisions of this Article shall not be construed as a recognition or admission of any legal liability on the part of the Authority to pay any sum on account of any damage suffered in connection with or arising out of the performance of this Contract or any part thereof.

8. Increase and Decrease in the Scope of Contractor'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 Article 3 *supra*, at any time and for any reason, upon written notice to Contractor specifying the nature and extent of such changes. If Contractor 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, Contractor 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 Contractor or any Subcontractor (as defined in Article 25 of this Agreement), Owner will pay Contractor 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 Contractor at the time of such change.

9. Contractor Cooperation

(a) Contractor 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) Contractor shall render any assistance that Owner may require with respect to any claim or action arising from or in any way relating to Contractor'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 Contractor has completed performance of the Work under this Agreement and without any additional compensation therefor.

10. Termination

(a) *Termination for Convenience.* Owner, at any time, may terminate this Agreement in whole or in part. Any such termination shall be effected by mailing or delivering to Contractor 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, Contractor shall act promptly to minimize any expenses resulting from said termination. Owner shall pay Contractor the costs actually incurred by Contractor, including any Fee for Work actually and satisfactorily performed up to the effective date of the termination, but in no event shall Contractor 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) Contractor 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 Contractor shall prove to be untrue in any material respect;

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

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

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

(v) Contractor otherwise shall be in default hereunder;

by serving written notice upon Contractor 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 Contractor 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 Contractor, and Contractor 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, Contractor shall be entitled to such amount of the Fee that has not theretofore been paid to Contractor and that shall compensate Contractor 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 Contractor under this Agreement, including, without limitation, the right to seek full reimbursement from Contractor for all costs and expenses incurred by Owner by reasons of Contractor's default hereunder and which Owner would not have otherwise incurred if Contractor had not defaulted hereunder.

(c) Upon any termination of this Agreement in accordance with the provisions of this Article 10, Contractor 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 Contractor relating to the Work, to the extent same are cancelable or transferable by Contractor;

(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 Contractor, 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 Contractor shall be entitled to be reimbursed and paid as provided in Article 10(b) but to no other payments or damages.

11. Suspension

Owner may, at any time and for any reason, order Contractor 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, Contractor 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. Contractor specifically agrees that such suspension, delay or interruption of the performance of Work pursuant to this Article 11 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 Article 3 *supra*, to compensate Contractor for lost time due to suspension, delay or interruption, and such time extension shall be Contractor's sole compensation for same. Contractor shall resume performance of such Work upon the date ordered by Owner.

12. Assignment

(a) Contractor 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 Contractor or a change in control or change in the ownership of any entity owning or controlling the Contractor, 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 Contractor or any entity owning or controlling the Contractor, 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 Contractor and Owner shall have all rights and remedies available to it under law and equity, including termination of the Agreement.

13. Changes

A. This Contract may be modified and changed from time to time as agreed to in writing between the parties hereto, in a manner not materially affecting the substance hereof.

B. No change in, modification to, termination or discharge of this Contract in any form whatsoever, shall be valid or enforceable unless it is in writing and signed by the party to be charged therewith or duly authorized representative thereof; provided, however, that any

change in or modification, termination or discharge of this Contract expressly provided for in this Contract shall be effective as so provided.

C. It is agreed by the Contractor that any change resulting in additional goods/services shall be paid at the applicable rates set forth in the Bid Sheet for equivalent items as determined by the Authority. In the event that the Authority shall order additional goods/services for which there are no applicable rates set forth in the Bid Sheet for equivalent items, it is understood and agreed by Contractor that the Authority and Contractor shall negotiate a mutually agreeable price to be paid by the Authority for Contractor's supplying of such additional goods/services. In the event that the parties are unable to agree upon a price for the additional goods/services, the Authority may nevertheless direct the Contractor to proceed with supplying the additional goods/services. The Contractor shall diligently proceed with supplying the additional goods/services, but may initiate a dispute to the Project Manager within five (5) days of the Authority's directive to proceed as to a reasonable price therefor and the Authority and the Contractor will work together in good faith to resolve the dispute.

D. If as a result of the change or modification, the Authority determines that more time is required for the Contractor to complete performance than is specified within the Contract, the Authority will extend the time for Contractor's performance by the number of days actually required for Contractor to supply the goods/services.

14. Extensions of Time

A. If the Contractor is delayed at any time during the progress of the Contract by the neglect or failure of the Authority or by a Force Majeure, then the time for completion and/or affected delivery date(s) shall be extended by the Authority subject to the following conditions:

1. the cause of the delay arises after the notice of award and neither was nor could have been anticipated by the Contractor by reasonable investigation before such award;
2. the Contractor demonstrates that the completion of the Contract and/or affected delivery(s) will be actually and necessarily delayed;
3. the effect of such cause cannot be avoided or mitigated by the exercise of all reasonable precautions, efforts and measures whether before or after the occurrence of the cause of delay; and
4. the Contractor makes written request and provides other information to the Authority as described in Paragraph D below.

A delay meeting all the conditions of this Paragraph A shall be deemed an excusable delay. Any concurrent delay which does not constitute an excusable delay shall not be the sole basis for denying a request hereunder.

B. Any reference in this Article to the Contractor shall be deemed to include material men, Suppliers and Subcontractors, whether or not in privity of contract with the Contractor, all of whom shall be considered as agents of the Contractor for the purpose of this Article.

C. The Authority reserves the right to rescind or shorten any extension previously granted, if subsequently the Authority determines that any information provided by the Contractor in support of a request for an extension of time was erroneous; provided however, that such information or facts, if known, would have resulted in a denial of the request for an excusable delay. Notwithstanding the above, the Authority will not rescind or shorten any extension previously granted if the Contractor acted in reliance upon the granting of such extension and such extension was based on information which, although later found to have been erroneous, was submitted in good faith by the Contractor.

D. The request for an extension of time pursuant to Paragraph A above, shall be made within ten (10) days after the time when Contractor knows or should know any cause for which it may claim an excusable delay and shall provide any actual or potential basis for an extension of time, identifying such cause and describing, as fully as practicable at that time the nature and expected duration of the delay and its effect on the completion of that part of the Contract identified in the request. Contractor shall not be entitled to an extension of time unless it affirmatively demonstrates that it is entitled to such extension. The Authority may require the Contractor to furnish such additional information or documentation as the Authority shall reasonably deem necessary or helpful in considering the requested extension. The Contractor must also comply with requirements set forth in the Bid Sheet or Specifications (if any) regarding Contractor's detailed schedule for performance.

E. Within thirty (30) days of its receipt of all such information and documentation [or within thirty (30) days of Contractor's filing of the original request in the event the Authority requires no such additional material], the Authority shall advise the Contractor of its decision on such requested extension; except that, where it is not reasonably practicable for the Authority to render such decision in the thirty (30) day period, it shall, prior to the expiration of such period, advise the Contractor that it will require additional time and the approximate date upon which it expects to render such decision.

F. In regard to an injunction, strike or interference of public authority which may delay the Contract, the Contractor shall promptly give the Authority a copy of the injunction or other order and copies of the papers upon which the same shall have been granted. The Authority shall be accorded the right to intervene or become a party to any suit or proceeding in which any such injunction shall be obtained and to move to vacate the same or otherwise, as the Authority may deem proper.

G. Neither the permitting of the Contractor to proceed with the Contract subsequent to the date specified in the Contract (as such date may have been extended pursuant to this Article), the making of any payments to the Contractor thereafter, nor the issuance of any Change Order thereafter, shall operate as a waiver on the part of the Authority of any rights under this Contract, including but not limited to the assessment of liquidated damages (if any) or declaring Contractor in default.

H. In case the Contractor shall be delayed at any time or for any period by two or more of the causes above-mentioned in this Article, the Contractor shall not be entitled to a separate extension for each one of the causes but only one period of extension shall be granted for the delay.

I. The Contractor agrees to make no claim for damages for delay of any kind in the performance of this Contract whether occasioned by any act or omission of the Authority or any of its representatives and Contractor agrees that any such claim shall be compensated for solely by an extension of time to complete performance of the Contract as provided herein.

15. Insurance

(a) Contractor shall procure and maintain all of the insurance required under this Article 15 during the Term of this Agreement, except with respect to Completed Operations coverage, as described in Article 15(g) below.

(b) Contractor shall not commence performance of the Work until Contractor has obtained, and required each Subcontractor to obtain, all the insurance required under this Article 15 and until it has furnished to Owner the certificate or certificates of insurance required by Article 15(c) hereof.

(c) Contractor shall furnish to Owner, before or upon execution of this Agreement, a certificate or certificates of the insurance required under this Article 15 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 15. Contractor 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 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 Contractor 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 Contractor to Owner.

(f) All additional insured protection afforded Owner 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 and the State of New York.

(g) Contractor and Subcontractors 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:

- \$XXXXXXX per occurrence
- \$XXXXXXX General Aggregate, which must apply on a per project basis
- \$XXXXXXX Products/Completed Operations aggregate

(B) Owner 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 Contractor and any of its Subcontractors. Subcontractors may not use blanket additional insured endorsements to provide additional insured protection to Owner 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 Contractor or Subcontractors arising from the injured worker’s employment with the Contractor or any of its Subcontractors

(C) Contractor and any of its Subcontractors 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 & 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, Contractor 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 Contractor and any of its Subcontractors 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 and the State of New York as additional insureds under such policy and shall not be less than a \$XXXXXX Combined Single Limit

(iv) Professional Liability (“Errors and Omissions”) insurance must be maintained at a limit of not less than \$XXXXXX per claim.

(v) Data Breach and Privacy/Cyber Liability Insurance including coverage for failure to protect confidential information and failure of the security of Contractor’s computer systems or Owner’s systems due to the actions of Contractor which results in unauthorized access to Owner’s data. The limit applicable to this policy shall be no less than \$XXXXXX per

occurrence, and must apply to incidents related to the cyber theft of Owner's property, including but not limited to, money and securities. Owner and the State of New York must be protected as additional insureds on policies held by Contractor and any of its Subcontractors.

(vi) Technology Errors and Omissions insurance with a limit of not less than \$XXXXXXX 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 and the State of New York as additional insureds.

(vii) Valuable Papers insurance insuring, for the benefit of Contractor and Owner, all plans, designs, drawings, specifications, and documents used under this Agreement by Contractor in a total amount of not less than \$XXXXXXX. Contractor may furnish full coverage under one policy, or may submit separate policies from any Subcontractor(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 needed to ensure compliance with the limits set forth in this Article, if applicable. Owner and the State of New York must be protected as additional insureds on policies held by the Contractor and any of its Subcontractors.

(h) The insurance required under Articles 15(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, Contractor 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 Contractor from, or to be a limitation on the nature or extent of, such obligations and risk.

16. Authority of Owner

The Work shall be subject to the general supervision, direction, control and approval of Owner or its authorized representative(s), whose decision shall be final and binding upon Contractor 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 Contractor and such determination shall be final and binding on Contractor.

17. Entire Agreement

This Agreement, including all Exhibits hereto, constitutes the entire Agreement between Owner and Contractor, and any prior agreements or understandings between Owner and Contractor 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 Contractor, the terms of this Agreement shall be deemed to control.

18. Contractor as Independent Contractor

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

19. Maintenance, Audit and Examination of Accounts

Contractor 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 Subcontractors to maintain, complete and correct books and records relating to all aspects of Contractor'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 Contractor and/or any Subcontractors shall fail to comply with the provisions of this Article 19, 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 Contractor to refund any such payment made. Any excessive audit costs incurred by Owner due to Contractor's or any Subcontractor's failure to maintain adequate records shall be borne by Contractor.

20. Acceptance of Final Payment; Release and Discharge

Final payment shall be made to Contractor 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 Article 10 hereof, and upon submission of a certification that all Subcontractors have been paid their full and agreed compensation. The acceptance by Contractor of the final payment under this Agreement, or any final payment due upon termination of this Agreement under Article 10 hereof, shall constitute a full and complete waiver and release of Owner from any and all claims, demands and causes of action whatsoever that Contractor, and/or its successors and assigns have, or may have, against Owner under the provisions of this Agreement, unless a detailed and verified statement of claim is served upon Owner prior to the date final payment is tendered by Owner. It is expressly understood and agreed that Owner's or Contractor's termination of this Agreement pursuant to Article 10 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 Contractor on account of any and all Work shall be limited to the payments set forth in Article 10 hereof.

21. Covenants, Representations and Warranties

(a) Contractor 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, Contractor 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 Contractor has, prior to the date of this Agreement, been called before a grand jury, head of a state agency, head of a city department or other city agency to testify in an investigation concerning any transaction or contract had with the State of New York, any political subdivision thereof, a public authority, or with any public department, agency or official of the State of New York or of any political subdivision thereof, and refused to sign a waiver of immunity against subsequent criminal prosecution or to answer any relevant question concerning such transaction or contract.

(b) Contractor covenants and agrees that:

(i) recognizing that time for completion of the Work is of the essence, Contractor 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 Subcontractor(s) used by Contractor in the performance of the Work hereunder shall be qualified in all respects for such assignment, employment and use;

(iii) Contractor, 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) Contractor 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, Contractor shall diligently render to Owner any and all assistance specified in Article 9 of this Agreement that may be required by Owner as a result thereof; and

(vi) Contractor 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 Contractor shall provide sufficient numbers of qualified personnel as shall be required to perform the Work in the time requested by Owner. Contractor shall comply with any reasonable request by Owner to remove and/or replace any of Contractor'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.

(d) The warranties, express and implied, created or recognized by the Uniform Commercial Code or other laws of the State of New York shall apply to all Goods furnished and delivered hereunder (including Goods which relate to services performed), and may not be excluded or modified unless such exclusion or modifications are specifically agreed to in writing by the Authority. Contractor agrees to replace, at the Authority's option, any Goods which fail to satisfy such warranties and to pay all transportation charges for the replacement of such Goods. Contractor shall bear the risk of loss to, and expense to retain, such Goods while held by the Authority pending Contractor's disposition thereof.

22. Indemnity

To the fullest extent allowed by law:

(a) Contractor 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 Contractor'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 Contractor 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) Contractor 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 Contractor in the performance of this Agreement.

23. Patents, Copyrights and Infringement Claims

A. The All inventions, ideas, designs and methods contained in the Contract Documents in which the Authority has, or acquires patent, copyright or other intellectual property rights (hereinafter referred to as “IPR”) shall remain reserved for the exclusive use of the Authority and may not be utilized, reproduced or distributed by or on behalf of the Contractor, or any employee, Subcontractor or agent without the prior written consent of the Authority except to the extent necessarily required in connection with performance of the Contract.

B. If, pursuant to performance of the Contract, the Contractor or any of its agents, officers, employees or Subcontractors shall produce any patentable or copyrightable subject matter as to which the Authority does not gain ownership rights, the Authority and its affiliates shall thereupon have, without cost or expense, an irrevocable, non-exclusive, royalty-free license to make, have made or use, either themselves or by another contractor or other party on their behalf, such subject matter in connection with any work or any activity now or hereafter undertaken by or on behalf of the Authority or any of its affiliates or subsidiaries. The license herein granted shall not be transferable and shall not extend to contractors or other parties except to the extent of their work or activity on behalf of the Authority or such affiliates or subsidiaries.

C. Except to the extent that rights are held by Contractor or others under existing valid patents or copyrights and are not given to the Authority, the Authority shall have the right to use or permit the use of all such drawings, data, and other papers, and also any oral information of any nature whatsoever received by the Authority, and any ideas or methods represented by such papers and information, for any purposes and at any time without other compensation than that specifically provided herein, and no such papers or information shall be deemed to have been given in confidence and any statement or legend to the contrary on any of said drawings, data, or other papers shall be void and of no effect.

D. The Contractor warrants that all goods/services provided shall be free from any claims made against the Authority or Indemnified Parties of IPR from any other person or entity. The Contractor shall save harmless and indemnify the Indemnified Parties from and against all costs, expenses and damages which any of them shall incur or be obligated to pay by reason of any such infringement or claim of infringement, and shall, at the election of the Authority, defend at the Contractor’s sole expense all such claims in connection with any alleged infringement.

E. If the Authority be enjoined from using any portion of the Work as to which the Contractor is to indemnify the Authority against IPR claims, the Authority may at its option and without thereby limiting any other right it may have hereunder or at law or in equity, require the Contractor to supply at its own expense, temporarily or permanently, facilities not subject to such injunction and not infringing any IPR, and if the Contractor shall fail to do so, the Contractor shall, at its expense, remove such offending facilities and refund the cost thereof to the Authority or take such steps as may be necessary to ensure compliance by the Authority with such injunction, to the satisfaction of the Authority.

F. The Contractor is responsible to determine whether a prospective Supplier or Subcontractor is a party to any litigation involving IPR infringement claims, including antitrust or other trade regulation claims, or is subject to any injunction which may prohibit it under certain circumstances from selling equipment to be used or installed under this Contract. The Contractor enters into any agreement with a party to such litigation at its own risk and the Authority will not undertake to determine the merits of such litigation. The Authority, however, reserves the right to reject any article which is the subject of such litigation or injunction, or in its judgment use of such article as a result of such circumstances, would delay the Contract or be unlawful.

24. Quantities are Variable

A. The Contractor understands that the quantities of the various unit price items specified in the Bid (if any) are the approximate quantities of such items for the Work as estimated by the Authority, and are not in any way guaranteed or represented as correct or intended to be relied upon and they shall not be taken as final and shall form no basis for any claims for damages including, but not limited to anticipated profits in case they do not correspond with the final quantities actually ordered and that the Authority reserves the right to increase or to diminish or to omit entirely any of the quantities or items as therein stated in the Price Schedule or these Contract Documents.

B. With respect to any unit price item as to which an estimated quantity is set forth in the Price Schedule, such unit price shall apply regardless of the actual quantity of such item ultimately utilized in, or required by, the Work; except that, if the actual quantity for a unit price item differs from the estimated quantity in the Price Schedule by more than twenty percent (20%), then the Project Manager shall review whether application of the unit price would cause a substantial inequity to either party, and, if so, the unit price for such item will be equitably adjusted, upward or downward, as determined by the Project Manager.

C. This is not an exclusive contract or a requirements contract, and does not obligate the Authority to fill through the Contractor all its needs for the goods or services covered by the Contract. The Authority is free to obtain these goods or services from other sources to the extent it sees fit.

25. Inspection and Acceptance or Rejection of Goods

A. The Authority reserves the right to inspect the Goods delivered under this Contract within a reasonable time after delivery.

B. The Authority may make additional inspections at the plant of the Contractor or at the plant of the Manufacturer of the Goods. Where plant inspection has been stipulated in the Contract, the Contractor must advise the Authority at least forty-eight (48) hours in advance of the beginning of manufacture.

C. Any cost incurred in the preparation of Goods for inspection by the Authority's User Department shall be borne entirely by the Contractor.

D. The Authority will determine whether to accept or reject delivered Goods after the Authority has fully inspected the Goods.

E. If the Contractor fails to make delivery within the time specified in, or if the Goods delivered fail to conform to the Contract requirements in quality, number or otherwise, or are found at any time to be defective in material or workmanship, the Authority may reject the Goods or may accept any commercial unit and reject the rest. If the quality of the Goods is not satisfactory, the Authority shall have the right to reject the Goods. The Authority shall notify Contractor of any such rejections.

F. The exercise by the Authority of its right of inspection hereunder or the Authority's acceptance of the Goods shall in no way be deemed a waiver by the Authority of (1) Authority's right to later reject, revoke acceptance, or recover damages for Goods accepted which are not free from patent or latent defects, or (2) the Contractor's obligation to deliver conforming Goods. If the quantity of conforming units shown on the Packing Slip is not equal to the quantity actually delivered by the Contractor, the Authority will ignore the Packing Slip and will apply the terms and conditions of this agreement to the quantity actually delivered.

G. The Contractor shall remove from the Authority's property at its own expense and within a reasonable time (not to exceed fifteen (15) days after notification of rejection), any Goods rejected by the Authority as non-conforming, as an overshipment or due to late delivery. Such Goods shall be deemed abandoned and the Authority shall have the right to dispose of any such Goods left longer than fifteen (15) days after notification of rejection and apply the proceeds, if any, of such disposition to Contractor's account, after deducting reasonable expenses for such disposal, without any further liability or responsibility on the part of the Authority. Contractor shall bear the risk of loss of all conforming Goods until delivery. Contractor shall bear the risk of loss of non-conforming Goods, including Goods on which acceptance was revoked, at all times. If acceptance is revoked, the Contractor bears the risk of loss thereafter. If the Authority rejects the same Goods from the same Contractor for the second time, the Contractor shall be liable to the Authority for all charges incurred by the Authority in connection with inspection of the Goods. In addition to actual out-of-pocket costs incurred by the Authority, the Contractor will be charged the Authority's reasonable costs for each laboratory analysis performed including analysis performed directly by the Authority. The Contractor shall promptly pay such amounts to the Authority. Delivery accepted with deductions due to difference in commercial value shall not be considered as rejects under this Article.

26. Confidentiality

Owner's Confidential Information ("Confidential Information") means nonpublic information that BPCA designates as being confidential or which, under the circumstances surrounding disclosure, ought to be treated as confidential. Confidential Information includes without limitation, information relating to BPCA's business practices, including but not limited to draft documents, data files, specifications and any other non-public information, in any form, disclosed by BPCA to Contractor.

Contractor further agrees that data, recommendations, reports and other materials developed in the course of the Work shall comprise Confidential Information and are strictly

confidential between Contractor and Owner and except as specifically provided herein, Contractor 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.

Contractor shall hold Confidential Information in strictest confidence, and shall use the Confidential Information only for the purposes of this Agreement and disclose the Confidential Information only to its employees or contractors who have a need to know and who have agreed to abide by the terms of this Agreement prior to disclosure. Contractor shall take reasonable security precautions, at least as great as precautions it takes to protect its own confidential information, to preserve the confidentiality of the Owner's Confidential Information. Further, Contractor agrees to notify BPCA immediately upon discovery of any unauthorized use or disclosure of Confidential Information or any other breach of this Agreement by Contractor, or its employees or subcontractors, and will cooperate with BPCA in every reasonable way to help BPCA regain possession of Owner's Confidential Information and prevent its further unauthorized disclosure or use.

27. Modification

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

28. Waiver

Except as otherwise provided in 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.

29. 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.

30. 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. Contractor, 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 Contractor and any successor at Contractor'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.

31. 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.

32. Notices

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

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

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

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

Battery Park City Authority

[INSERT NAME OF CONTACT]

200 Liberty Street, 24th Floor
New York, NY 10281

[INSERT EMAIL ADDRESS]

With a copy to:

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

[INSERT NAME OF CONTRACTOR]

[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.

33. Approval and Use of Subcontractors

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

(b) Contractor shall be responsible for the performance of the Work of any Subcontractors engaged, including the maintenance of schedules, coordination of their Work and resolutions of all differences between or among Contractor and any Subcontractors. It is expressly understood and agreed that any and all Subcontractors engaged by Contractor hereunder shall at all times be deemed engaged by Contractor and not by Owner.

(c) The fees of any Subcontractor retained by Contractor to perform any part of the Work required under this Agreement shall be deemed covered by the compensation stipulated in Article 5 above. Contractor shall pay its Subcontractors in full the amount due them from the proportionate share of each requisition for payment submitted by Contractor and paid by Owner. Contractor shall make payment to its Subcontractors no later than seven (7) calendar days after receipt of payment from Owner. Contractor shall indemnify, defend and hold Owner harmless with respect to any claims against Owner based upon Contractor’s alleged failure to make payments to Subcontractors for Work under this Agreement.

(d) Upon the request of Owner, Contractor shall cause any Subcontractor employed by the Contractor in connection with this Agreement to execute a copy of this Agreement, wherein such Subcontractor 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 Subcontractors.

34. Employment and Diversity

26.1 Participation by Minority and Women-Owned Business Enterprises

(a) General Provisions

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

(ii) Contractor 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”). Contractor’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 Article 34.1(g) and such other remedies as are available to Owner.

(b) Contract Goals

(i) For purposes of this Contract, Owner hereby establishes an overall goal of XX% for MWBE participation, XX% for New York State-certified minority-owned business enterprise (“MBE”) participation and XX% for New York State-certified women-owned business enterprise (“WBE”) participation (collectively, “MWBE Contract Goals”) based on the current availability of MBEs and WBEs.

(ii) For purposes of providing meaningful participation by MWBEs on the Agreement and achieving the MWBE Contract Goals established in Article 34.1(b)(i) hereof, Contractor should reference the directory of MWBEs at the following internet address: <https://ny.newnycontracts.com>.

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

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

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

- (A) Evidence of outreach to MWBEs;
- (B) Any responses by MWBEs to Contractor’s outreach;

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

(c) Equal Employment Opportunity (“EEO”)

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

(ii) In performing the Agreement, Contractor shall:

(A) Ensure that each Contractor and Subcontractor 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) Contractor 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 Contractor.

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

(D) Contractor’s EEO policy statement shall include the following language:

(1) Contractor 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) Contractor 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) Contractor 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 Contractor's obligations herein.

(4) Contractor will include the provisions of Articles 34.1(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 Subcontractor as to the Work.

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

(iii) Staffing Plan. To ensure compliance with this Article, Contractor 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. Contractor 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.

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

(iv) Workforce Utilization Report

(A) Contractor shall submit a Workforce Utilization Report (<https://dol.ny.gov/cfa-wdi-mwbe-workforce-utilization-report>) and shall require each of its Subcontractors 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 Contractor and any Subcontractors.

(C) Pursuant to Executive Order #162, Contractors and Subcontractors 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) Contractor shall comply with the provisions of the Human Rights Law, and all other State and Federal statutory and constitutional non-discrimination provisions. Contractor and its 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.

(d) MWBE Utilization Plan

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

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

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

(e) Waivers

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

(ii) If Owner, upon review of the MWBE Utilization Plan, quarterly MWBE Contractor Compliance Reports described in Article 34.1(c)(iv)(C), or any other relevant information, determines that Contractor is failing or refusing to comply with the MWBE Contract Goals, and no waiver has been issued in regards to such non-compliance, Owner may issue a notice of deficiency to Contractor. Contractor must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE Contract Goals.

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

(g) Liquidated Damages - MWBE Participation

(i) Where Owner determines that Contractor is not in compliance with the requirements of this Article 34.1 and Contractor refuses to comply with such requirements, or if

Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals, Contractor shall be obligated to pay to Owner liquidated damages.

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

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

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

(iii) In the event a determination has been made which requires the payment of liquidated damages and such identified sums have not been withheld by Owner, Contractor shall pay such liquidated damages to Owner within sixty (60) days after they are assessed. Provided, however, that if Contractor has filed a complaint with the Director of the Division of Minority and Women's Business Development pursuant to 5 NYCRR § 142.12, liquidated damages shall be payable only in the event of a determination adverse to Contractor following the complaint process.

26.2 Participation by Service-Disabled Veteran-Owned Businesses

(a) General Provisions

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

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

(b) Contract Goals

(i) Owner hereby establishes an overall goal of ___% for SDVOB participation, based on the current availability of qualified SDVOBs. For purposes of providing meaningful participation by SDVOBs, the Contractor should reference the directory of New York State Certified SDVOBs found at: <https://sdves.ogs.ny.gov/business-search>. Questions regarding compliance with SDVOB participation goals should be directed to directed to Zag-Legrand Kimpolo-Nkaya at zag.kimpolo@bpca.ny.gov or 212-417-2339. Additionally, following execution of this Agreement, Contractor is encouraged to contact the Office of General Services' Division of Service-Disabled Veterans' Business Development at 518-474-2015 or VeteransDevelopment@ogs.ny.gov to discuss additional methods of maximizing participation by SDVOBs on the Agreement.

(ii) Contractor must document “good faith efforts” to provide meaningful participation by SDVOBs as Subcontractors or suppliers in the performance of the Contract (see Article 34.2(d) below).

(c) SDVOB Utilization Plan

(i) In accordance with 9 NYCRR § 252.2(i), Contractors are required to submit a completed SDVOB Utilization Plan on Form SDVOB 100 (<https://esd.ny.gov/sites/default/files/OCSD-4%20Utilization%20Plan.pdf>) with their bid.

(ii) The Utilization Plan shall list the SDVOBs that Contractor intends to use to perform the Work, a description of the Work that Contractor intends the SDVOB to perform to meet the goals on the Agreement, the estimated dollar amounts to be paid to an SDVOB, or, if not known, an estimate of the percentage of Work the SDVOB will perform. By signing the Utilization Plan, Contractor acknowledges that making false representations or providing information that shows a lack of good faith as part of, or in conjunction with, the submission of a Utilization Plan is prohibited by law and may result in penalties including, but not limited to, termination of a contract for cause, loss of eligibility to submit future bids, and/or withholding of payments. Any modifications or changes to the agreed participation by SDVOBs after the contract award and during the term of the Agreement must be reported on a revised SDVOB Utilization Plan and submitted to Owner.

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

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

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

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

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

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

(d) Waivers

(i) Prior to submission of a request for a partial or total waiver, Contractor should speak to Zag-LeGrand Kimpolo-Nkaya at zag.kimpolo@bpca.ny.gov or 212-417-2339 for guidance.

(ii) In accordance with 9 NYCRR § 252.2(m), a Contractor that is able to document good faith efforts to meet the goal requirements, as set forth in Article 34.2(e) below, may submit a request for a partial or total waiver on Form SDVOB 200 (<https://dol.ny.gov/cfa-wdi-sdvo-application-waiver-request>), accompanied by supporting documentation. Contractor may submit the request for waiver at the same time it submits its SDVOB Utilization Plan. If a request for waiver is submitted with the SDVOB Utilization Plan and is not accepted by Owner at that time, the provisions of Article 34.2(c)(iii), (iv) and (v) will apply. If the documentation included with the Contractor's waiver request is complete, Owner shall evaluate the request and issue a written notice of acceptance or denial within 20 days of receipt.

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

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

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

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

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

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

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

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

(f) Monthly SDVOB Contractor Compliance Report

In accordance with 9 NYCRR § 252.2(q), Contractor is required to report Monthly SDVOB Contractor Compliance to Owner during the term of the Agreement for the preceding month's activity, documenting progress made towards achieving the SDVOB goals. This information must be submitted using form SDVOB 101 available at <https://dol.ny.gov/system/files/documents/2021/02/sdvob101.docx> and should be completed by the Contractor and submitted to Owner, by the 10th day of each month during the term of the Contract, for the preceding month's activity to Zag-Legrand Kimpolo-Nkaya at zag.kimpolo@bpca.ny.gov.

(g) Breach of Contract and Damages

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

35. Responsibility

(a) Contractor shall at all times during the Term of this Agreement remain responsible. Contractor 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 Contractor's responsibility. In the event of such suspension, Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, Contractor 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 Contractor, 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 Contractor's expense where Contractor 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.

36. Interest of Others

Nothing in this Agreement shall be construed to give any person other than Owner and Contractor any legal or equitable right, remedy or claim. This Agreement shall be held to be for

the sole and exclusive benefit of Owner and Contractor.

37. 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 Contractor or any Subcontractor against any member, officer, employee, lessee, consultant or agent of Owner or the State of New York. By execution of this Agreement, Contractor agrees to look solely to Owner with respect to any claim that may arise.

38. Survival

In addition to any provision expressly set forth as surviving the expiration or termination of this Contract, any provision of this Contract whose purpose would be defeated or rendered meaningless by the expiration or earlier termination hereof shall be deemed to survive any such expiration or termination.

39. Participation in International Boycott Prohibited

Contractor agrees, as a material condition of this Agreement, that neither Contractor 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.

40. MacBride Fair Employment Principles

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

41. 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 Contractor

performed work physically at the site of the Work.

42. 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.

43. 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 Contractor 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 Contractor in accordance with the written notification terms of this contract.

44. 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).

45. Binding Contract

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

46. 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.

47. 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.

48. 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, which shall be deemed to be fully executed as of the later of the two dates written below.

HUGH L. CAREY BATTERY PARK CITY AUTHORITY

By: _____

Name: _____

Title: _____

Date: _____

[COMPANY]

By: _____

Name: _____

Title: _____

Date: _____

FEIN# [??]

EXHIBIT A

EXHIBIT B

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

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

MBWE

Contractor will and will cause its Subcontractors 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. Contractor will also maintain records of actions that its Subcontractors 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) Contractor 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, Contractor 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 Contractor's obligations herein.

(d) Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. 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) Contractor 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 Subcontractor as to work in connection with Owner's contract.

Agreed to this _____ day of _____, _____

By: _____

Print: _____ Title: _____