

**BATTERY PARK CITY AUTHORITY**

**REQUEST FOR PROPOSALS**

**FOR**

**EASTERN BOUNDARY & PIER A PLAZA SANITATION SERVICES**

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## **I. SUMMARY**

Battery Park City Authority d/b/a Hugh L. Carey Battery Park City Authority (“BPCA”) requests proposals (each individually, a “Proposal” and collectively, the “Proposals”) from sanitation services provider (each individually, a “Proposer” and collectively, the “Proposers”) to provide BPCA with Eastern Boundary & Pier A Plaza Sanitation services. Eastern Boundary & Pier A Plaza Sanitation services shall include, but not be limited to: (1) sweeping of sidewalks, gutters and pedestrian plazas, (2) emptying street trash cans and replacing liners, (3) removal of litter from sidewalk cracks, planting beds & tree pits, (4) removal of posters, stickers & graffiti from parking signs & other small structures, (5) lining up newspaper boxes, (6) painting lampposts, fire hydrants, fire alarm boxes as necessary to remove graffiti. A detailed scope of work for which the selected Proposer will be responsible is attached as **Exhibit A** (the “Work”).

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

Minority-Owned Business Enterprises (“MBE”), Women-Owned Business Enterprises (“WBE”) and Service-Disabled Veteran-Owned Business Enterprises (“SDVOB”) are encouraged to submit Proposals.

## **II. GENERAL PROVISIONS**

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

- withdraw and/or cancel this RFP at any time before final award of the contract (the “Contract”);
- request clarification and/or additional information from any or all Proposers;
- amend any term or requirement of this RFP at any time before award of the Contract (Proposers may amend their Proposals, as directed by BPCA, if BPCA materially alters or amends the RFP after submission of Proposals);
- alter any key dates or deadlines related to this RFP;
- award the Work, in whole or in part, to one or more Proposers;
- reject any Proposal that does not strictly conform to the requirements of this RFP;
- conduct an interview with any or all of the Proposers to aid the evaluation process; and
- negotiate potential Contract terms with any Proposer.

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

## **III. TIMETABLE & DESIGNATED CONTACT**

### **A. Key Dates**

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

- RFP issued: **Tuesday, May 10, 2016**

- **Highly Suggested** Meeting and Walk-through: **Tuesday, May 17, 2016** at **75 Battery Place, New York, New York.**
- Deadline to submit questions to BPCA: **Wednesday, May 18, 2016 by 5:00 p.m.** (by email only). All questions regarding this RFP should be submitted in writing via email to the “Designated Contact”: Michael LaMancusa, Contract Officer, Battery Park City Authority, at [michael.lamancusa@bpca.ny.gov](mailto:michael.lamancusa@bpca.ny.gov).
- BPCA’s response to substantive questions: **Monday, May 23, 2016** (by email)
- **PROPOSAL DUE DATE: Friday, June 3, 2016 by 3:00 p.m. (the “Due Date”)**
- Interviews, if any in BPCA’s sole discretion: **First full week of June 2016.**
- Contract start date: To be determined.

**B. Anticipated Contract Term**

The anticipated term of the Contract will be three (3) years. BPCA reserves the right to terminate the Contract at any time, with or without cause, in accordance with the terms of the Contract. BPCA’s sample form of contract is attached as **Exhibit D**.

**IV. GENERAL REQUIREMENTS**

**A. Minimum Qualification Requirements**

- 1) Proposer must have an office in New York State (a New York City office is preferred); and
- 2) Proposer must be lawfully authorized to engage in business in the State of New York.

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

Contractor requirements and procedures for business participation opportunities for New York State certified MBEs/WBEs/SDVOBs and equal employment opportunities for 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 “MBE/WBE/SDVOB Designated Contact” Mr. Anthony Peterson at 212.417.2337.

**C. Restricted Period**

State Finance Law sections 139-J and 139-K apply to this RFP, restricting Proposers’ contacts with BPCA. Proposers are restricted from making any contact relating to this RFP with anyone other than the Designated Contact, as specified in Section III.A., or MBE/WBE/SDVOB Designated Contact, as specified in Section IV.B., from Proposer’s receipt of notice of this RFP through approval of the Contract by BPCA (the “Restricted Period”). BPCA employees must record certain contacts during the Restricted Period, including, but not limited to, any oral or written communications that could reasonably be seen as intended to influence BPCA’s conduct or award of this RFP. Upon notice of improper conduct, BPCA must make a determination regarding the Proposer’s responsibility.

**D. Submission of Proposals**

**Proposals must be received by BPCA no later than 3:00 p.m. on Friday, June 3, 2016.** Each Proposer must submit five (5) paper copies and one (1) PDF version (via CD-Rom or flash drive) in a sealed package clearly marked “**Proposal Enclosed - Eastern Boundary & Pier A Plaza Sanitation Services**” to the Designated Contact **by messenger, overnight courier or certified mail** to the following address:

**MICHAEL LAMANCUSA**

Battery Park City Authority  
200 Liberty Street, 24<sup>th</sup> Floor  
New York, New York 10281

BPCA is not responsible for late Proposals, no matter the cause. Proposals must arrive at the time and place specified herein and be time stamped by BPCA by the Due Date. Please leave ample time for building security, as late Proposals will not be accepted. Proposals submitted by fax or electronic transmission will NOT be accepted. A Proposer may, after submitting a Proposal, amend its Proposal by submitting an amended Proposal, clearly labeled “**Amended Proposal Enclosed - Eastern Boundary & Pier A Plaza Sanitation Services**,” as long as the amended Proposal is submitted by the Due Date.

## **V. PROPOSAL FORMAT AND CONTENTS**

### **A. Proposal Format**

The Proposal must be submitted in the following format:

- 1) Printed on 8½” x 11” paper;
- 2) Pages must be numbered; and
- 3) Maximum page limit of ten (10) single-sided pages, exclusive of the Cover Letter, Cost Proposal and RFP Attachments.

### **B. Proposal Content**

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

- 1) Cover Letter, signed by a person within the firm who is authorized to bind the Proposer. **Cover Letters must be signed. Proposals with unsigned Cover Letters will be rejected.**
- 2) **Executive Summary.**
- 3) Responses to the RFP Questions/Requested Information (Section V.C.).
- 4) RFP Attachments (Section V.D.).
- 5) Response to the question regarding the use of New York State businesses set forth in Section IX.
- 6) Completed MBE/WBE and EEO Policy Statement (attached as part of **Exhibit C**).

### **C. RFP Questions/Requested Information**

- 1) Describe your firm’s background, services, size, and history as these factors are relevant to the Work, with an emphasis on experience with similar projects in New York City or other urban areas. If your offices are located in more than one city, indicate which office will provide the services.
- 2) Describe the relevant special services your firm provides, particularly those that may not be offered by other firms.
- 3) Describe your experience and methodology for providing basic sanitation services.
- 4) Please describe your experience handling sidewalk sanitation and litter removal in New York City or other large urban areas.
- 5) Within the past three years, have there been any significant developments in your firm such as changes in ownership or restructuring? Do you anticipate any significant changes in the near future? If so, please describe.
- 6) How does your firm identify and manage conflicts of interest?
- 7) Has your firm or any of the firm’s partners/employees been disciplined or censured by any regulatory body within the last 5 years? If so, please describe the relevant facts.

- 8) Within the last five years, has your firm, or a partner or employee in your firm, been involved in litigation or other legal proceedings relating to the provision of street or sidewalk sanitation? If so, please provide an explanation and the current status or disposition of the matter.
- 9) Are there any potential conflict of interest issues in representing BPCA?
- 10) List any professional or personal relationships your firm's lead principal may have with BPCA's Board and/or staff members of BPCA.
- 11) List all the types of employees you intend to assign to this engagement and the area(s) of specialization for each type of employee. Describe the role of each type of employee who will be assigned to this engagement.
- 12) Identify any subcontractors you intend to use for this engagement, and describe the services to be performed by each subcontractor.
- 13) Identify the lead principal will be the primary contact and lead principal in providing services to BPCA, and who will be listed as a "key person" in any contract with BPCA.
- 14) Describe your proposed team's experience with similar work for other public agencies and authorities, with a particular emphasis on New York State agencies and authorities.
- 15) Clearly identify any information in your Proposal that you believe to be confidential and exempt from FOIL, and state the reasons. Please note that this question is for informational purposes only, and BPCA will determine FOIL applicability in its sole discretion.
- 16) Identify any and all exceptions taken to BPCA's standard form of contract, attached as **Exhibit D**.
- 17) Provide at least three (3) client references for whom your firm has performed similar work to that requested in this RFP. For each client, describe the project, the project's dates, services performed, and provide the name, address and telephone number for a person at the client's firm familiar with such work.
- 18) In the past five years, have any public sector clients terminated their working relationship with your firm? If so, please provide a brief statement of the reasons. Provide the name of the client and each such client's in-house counsel's name, address and telephone number.
- 19) If selected, will your firm assign any person to this engagement who was previously an employee of BPCA or BPCPC? If so, please: i) identify when (month and year) that person's employment at BPCA/BPCPC terminated, and ii) describe that person's involvement, if any, with matters related to this RFP during his/her employment at BPCA/BPCPC.
- 20) Please provide any additional information which would serve to distinguish your firm from other firms and that you believe may be relevant to this RFP and your capability to perform the services requested.

#### **D. Insurance Requirements**

- 1) The selected Proposer will be required to provide the types and amounts of insurance listed below as a condition of the award of the project and maintain such insurance throughout the entire term of the Contract. The insurance policies listed below must also conform to the applicable terms of the Contract, as shown in BPCA's sample form of contract attached as **Exhibit D**. All subcontractors used by the selected Proposers will be subject to the same insurance requirements, absent written waiver. BPCA's denial of such a waiver request shall not be a valid reason to request modification of a Cost Proposal that is included as part of any final Proposal documents.
- **Commercial General Liability Insurance**, written on ISO Form CG 00 001 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
    - \$3,000,000 general aggregate
    - \$3,000,000 products/completed operations aggregate

BPCA, BPCPC, and the State of New York must be protected as additional insureds on ISO Form CG 2010

(11/85) or its equivalent on policies held by the selected Proposer and any of its subcontractors. Should the Proposer's work include construction activities of any kind, then the Proposer must maintain Products/Completed Operations coverage for no less than three years after the construction work is completed. When providing evidence of insurance, the Proposer must include a completed Acord 855 NY form.

- **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.

#### **E. RFP Attachments**

##### **1) Mandatory Forms:**

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

- A) NYS Standard Vendor Responsibility Questionnaire, notarized and signed by the individual(s) authorized to contractually bind the Proposer, indicating the signer's title/position that within the firm.\*
- B) State Finance Law § 139 Form 1, signed by the individual(s) authorized to contractually bind the Proposer.\*
- C) W-9 form.
- D) Statement of Non-Collusion.
- E) Diversity Forms.

\*In addition to the copy required to be included in each bound Proposal, Proposers must additionally provide one (1) unbound, completed original, with ink signatures, of the NYS Standard Vendor Responsibility Questionnaire and SFL § 139 Form 1.

##### **2) Financial Statements:**

Please provide a copy of your firm's most recent Audited Financial Statements (within the last year).

##### **3) Acknowledgement of Addenda:**

Attach a completed and signed Acknowledgement of Addenda Form, attached as **Exhibit E**, acknowledging receipt of all addenda to this RFP, if any, issued by BPCA before the Due Date.

#### **F. Cost Proposal**

Each "Cost Proposal" must state a flat monthly rate for the performance of all Work.

**The Cost Proposal must be submitted in its own separate, sealed envelope within the sealed packaged containing all of the other Proposal documents. Please provide two (2) copies of the Cost Proposal.**

### **VI. SELECTION PROCESS**

#### **A. Evaluation**

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

## **B. Interviews**

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

## **C. Evaluation Criteria for Selection**

Selection will be based upon the following criteria:

- 1) Technical Evaluation:
  - A) Experience with Providing Services as Outlined in **Exhibit A**: 30%
  - B) Experience with Providing Similar Services to Other Authorities and Government Agencies: 30%
  - C) Proposed MBE/WBE utilization plan (the “Utilization Plan”) and/or Proposer MBE/WBE status: 25%
  - D) Response to Diversity Practices Questionnaire: 13%
  - E) Proposed SDVOB utilization plan and/or Proposer SDVOB status: 2%
- 2) Cost Proposal Evaluation.
- 3) There are no statutory wage requirements for this RFP, however the Authority will view payment of a fair wage as an indication of a qualified and stable work force. Whether the workforce is union or non-union is at the discretion of the Proposer.

## **D. Basis for Contract Award**

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

## **VII. NON-COLLUSION**

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



## **VIII. IRAN DISINVESTMENT ACT**

By submitting a Proposal or by assuming the responsibility of any Contract awarded hereunder, Proposers hereby certify that they are 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 certify that they will not utilize any subconsultant that is identified on the Prohibited Entities List on this Contract. The selected Proposer agrees that should it seek to renew or extend any Contract awarded hereunder, it must provide the same certification at the time the Contract is renewed or extended. The selected Proposer also agrees that any proposed assignee of the Contract will be required to certify that it is not on the Prohibited Entities List before BPCA may approve a request for assignment of the Contract.

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

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

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

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

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

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

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

Proposers can demonstrate their commitment to the use of New York State businesses by responding to the question below. If yes, identify New York State businesses that will be used and attach identifying information.

Will New York State businesses be used in the performance of this contract?      ☐ Yes      ☐ No

## **EXHIBIT A**

### **Scope of Work**

Proposer shall provide a daily workforce of three (3) employees, for seven and one half (7.5) hours per day between the hours of 10:30 a.m. and 7:00 p.m. EST, seven (7) days a week to provide sanitation and street maintenance services. All such employees shall be legally permitted to be in the vicinity of minors.

Areas of coverage shall include (see **Exhibit B**):

- Pier A Plaza.
- The Battery Place Island, located at the area where Route 9A terminates.
- The Battery Place half-circle, located across Battery Place from Pier A Plaza.
- The Promenade between Battery Place and West Thames Street.
- The Route 9A bikeway in two (2) sections: between Battery Place and Albany Street, and between Murray Street and the north end of the Battery Park City Esplanade.
- Route 9A walkway in two (2) sections: between West Thames and Albany Streets, and between Murray Street and the north end of the Battery Park City Esplanade and the adjacent Stuyvesant Plaza.
- Route 9A paved pedestrian crossing areas at the West Thames Street, Albany Street, Murray Street, Warren Street and Chambers Street crossings.
- Crosswalk accessible Route 9A medians (planted and paved areas) between Battery Place and Chambers Street.

#### **1. Specific Services** shall include, but are not limited to the following:

- Sweep sidewalks from the building or property line to the curb and eighteen (18) inches into the street from the curb and gutters as well as fifty (50) feet in on every cross street along the route.
- Remove filled garbage bags from the trash receptacles in the areas listed in **Exhibit B** and replace them with new liners, if applicable.
- Clean cigarette butts and other debris from cracks in the sidewalks, planting beds, and tree pits, including in the Route 9A medians.
- Remove posters, stickers, graffiti and other debris from structures, including, parking signs and traffic equipment on a daily basis.
- Sweep and clean all paved pedestrian crossing areas as listed in **Exhibit B**.
- In the summer months, paint the lamp posts, mailboxes, fire hydrants and fire alarm boxes as necessary to remove graffiti.
- Clear snow from crosswalks, curb-cuts and fire hydrants.
- Assigned staff will report to the BPCA representative at the start and end of each shift.

#### **2. Special Conditions**

- Due to extreme weather conditions, work schedules may be adjusted or curtailed in order to ensure the safety of personnel. Whenever such conditions arise, the Proposer's representative will contact the BPCA representative.
- In case of snow, routine cleaning assignments will be adjusted in order to better handle such conditions.

- Proposer will provide a consistent workforce.
- The specific holidays that Proposer will not be providing regular services to the area are:
  1. New Year's Day (no service)
  2. Martin Luther King Day (2 staff members only)
  3. Presidents' Day (2 staff members only)
  4. Columbus Day (2 staff members only)
  5. Veterans Day (2 staff members only)
  6. Thanksgiving Day (2 staff members only)
  7. Christmas Day (closed)

### **3. Equipment**

Proposer will provide year-round uniforms for each worker, including rain and cold weather gear. Proposer shall ensure that such uniforms are cleaned and maintained.

### **4. Transportation**

Proposer will be responsible for all transportation to and from Battery Park City. No vehicles are permitted on the areas listed in **Exhibit B** or may be used in performance of services listed above.

## **EXHIBIT B**

### **Service Area Maps**

Pier A Plaza:

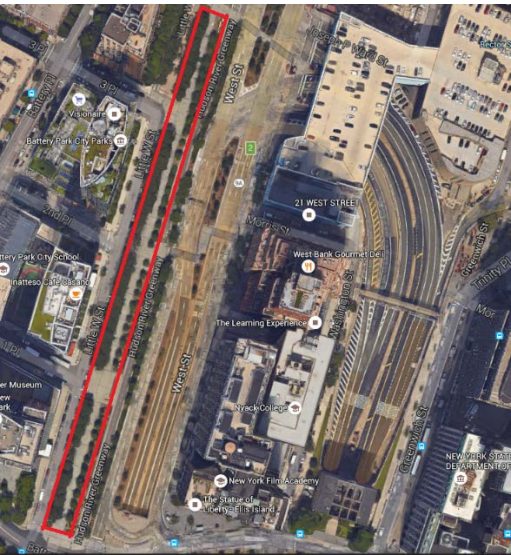


The Battery Place Island, located at the area where Route 9A terminates. The Battery Place half-circle, located across Battery Place from Pier A Plaza:

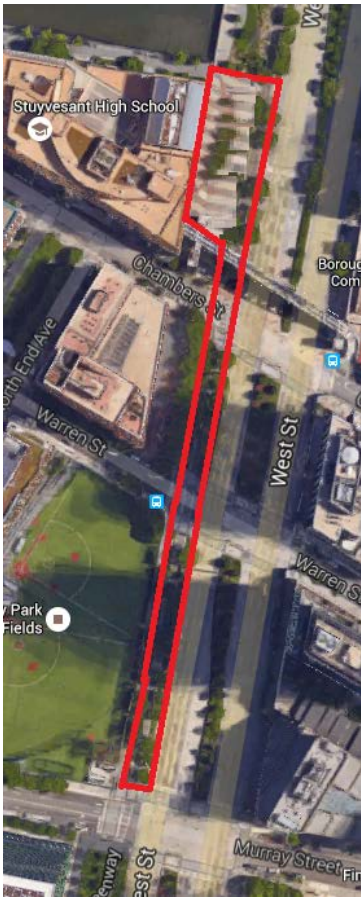
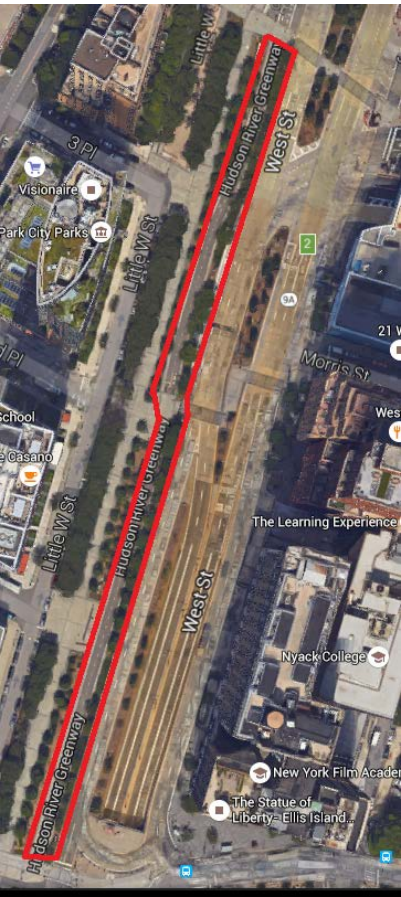




The Promenade between Battery Place and West Thames Street:

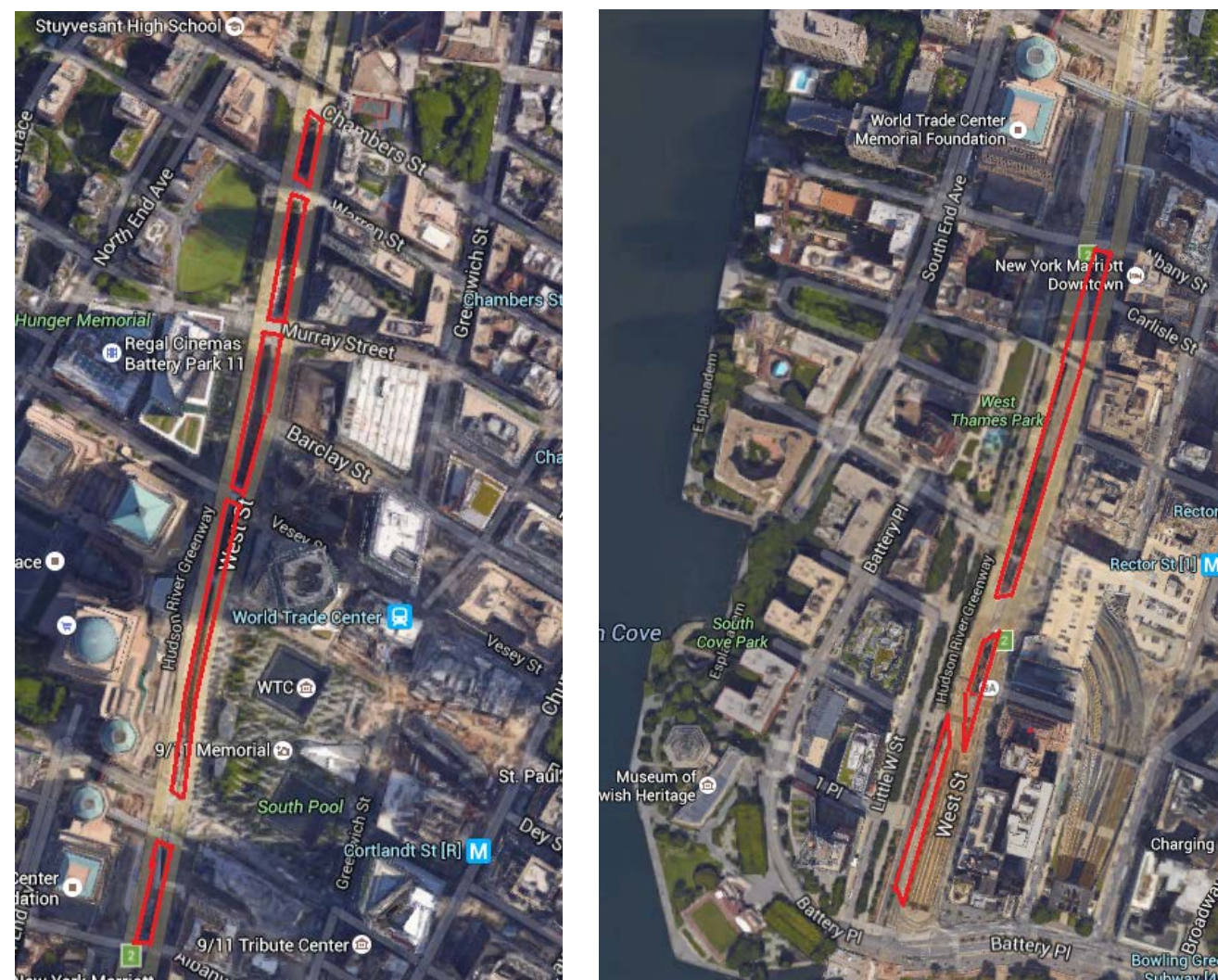


The Route 9A bikeway in two (2) sections: between Battery Place and Albany Street, and between Murray Street and the north end of the Battery Park City Esplanade. Route 9A walkway in two (2) sections: between West Thames and Albany Streets, and between Murray Street and the north end of the Battery Park City Esplanade and the adjacent Stuyvesant Plaza:





Crosswalk accessible Route 9A medians (planted and paved areas) between Battery Place and Chambers Street:



## **EXHIBIT C**

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

Pursuant to New York State Executive Law Article 15-A and 5 NYCRR §§140-145, BPCA recognizes its obligation under the law to promote opportunities for maximum feasible participation of certified MBEs/WBEs 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.

In 2006, the State of New York commissioned a disparity study to evaluate whether MBEs/WBEs had a full and fair opportunity to participate in state contracting. The findings of the study were published on April 29, 2010, under the title “The State of Minority and Women-Owned Business Enterprises: Evidence from New York” (the “Disparity Study”). The report found evidence of statistically significant disparities between the level of participation of MBEs/WBEs in state procurement contracting versus the number of MBEs/WBEs that were ready, willing and able to participate in state procurements. As a result of these findings, the Disparity Study made recommendations concerning the implementation and operation of the statewide certified MBEs/WBEs program. The recommendations from the Disparity Study culminated in the enactment and the implementation of New York State Executive Law Article 15-A, which requires, among other things, that BPCA establish goals for maximum feasible participation of New York State Certified MBEs/WBEs and the employment of minority groups members and women in the performance of New York State contracts.

#### **Business Participation Opportunities for MBEs/WBEs**

For purposes of this solicitation, BPCA hereby establishes an overall goal of **30%** for MBE/WBE participation, **15%** for MBE participation and **15%** for WBE participation (based on the current availability of qualified MBEs and WBEs). A contractor (“Contractor”) on the Contract must document good faith efforts to provide meaningful participation by MBEs/WBEs as subcontractors or suppliers in the performance of the Contract and Contractor agrees that BPCA may withhold payment pending receipt of the required MBE/WBE documentation. The directory of New York State Certified MBEs/WBEs can be viewed at: <https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp?TN=ny&XID=7562>. For guidance on how BPCA will determine a Contractor’s “good faith efforts,” refer to 5 NYCRR §142.8.

In accordance with 5 NYCRR §142.13, Contractor acknowledges that if it is found to have willfully and intentionally failed to comply with the MBE/WBE participation goals set forth in the Contract, such finding constitutes a breach of Contract and BPCA may withhold payment from the Contractor as liquidated damages.

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

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

- A. Additionally, a Proposer agrees to submit a Utilization Plan with their bid or Proposal as evidence of compliance with the foregoing. Any modifications or changes to the Utilization Plan after the Contract award and during the term of the Contract must be reported on a revised Utilization Plan and submitted to BPCA.
- B. BPCA will review the submitted Utilization Plan and advise the Proposer of BPCA's acceptance or issue a notice of deficiency within 30 days of receipt.
- C. If a notice of deficiency is issued, Proposer agrees that it shall respond to the notice of deficiency within seven (7) business days of receipt by submitting to BPCA, at the address specified in this RFP, or by facsimile at 212-417-2279 a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by BPCA to be inadequate, BPCA shall notify the Proposer and direct the Proposer to submit, within five (5) business days, a request for a partial or total waiver of MBE/WBE participation goals. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or Proposal.
- D. BPCA may disqualify a Proposer as being non-responsive under the following circumstances:
  - 1) If a Proposer fails to submit a Utilization Plan;
  - 2) If a Proposer fails to submit a written remedy to a notice of deficiency;
  - 3) If a Proposer fails to submit a request for waiver; or
  - 4) If BPCA determines that the Proposer has failed to document good faith efforts.

Contractors shall attempt to utilize, in good faith, any MBE/WBE 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.

Contractors are required to submit a Contractor's MBE/WBE Contractor Compliance & Payment Report to BPCA on a monthly basis over the term of the Contract documenting the progress made toward achievement of the MBE/WBE goals of the Contract.

#### **Business Participation Opportunities for SDVOBs**

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

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

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



- A. Additionally, a Proposer agrees to submit a Utilization Plan with their bid or Proposal as evidence of compliance with the foregoing. Any modifications or changes to the Utilization Plan after the Contract award and during the term of the Contract must be reported on a revised Utilization Plan and submitted to BPCA.
- B. BPCA will review the submitted Utilization Plan and advise the Proposer of BPCA's acceptance or issue a notice of deficiency within 30 days of receipt.
- C. If a notice of deficiency is issued, Proposer agrees that it shall respond to the notice of deficiency within seven (7) business days of receipt by submitting to BPCA, at the address specified in this RFP, or by facsimile at 212-417-2279 a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by BPCA to be inadequate, BPCA shall notify the Proposer and direct the Proposer to submit, within five (5) business days, a request for a partial or total waiver of SDVOB participation goals. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or Proposal.
- D. BPCA may disqualify a Proposer as being non-responsive under the following circumstances:
  - 1) If a Proposer fails to submit a Utilization Plan;
  - 2) If a Proposer fails to submit a written remedy to a notice of deficiency;
  - 3) If a Proposer fails to submit a request for waiver; or
  - 4) If BPCA determines that the Proposer has failed to document good faith efforts.

Contractors 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.

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

#### **Equal Employment Opportunity Requirements**

By submission of a bid or Proposal in response to this RFP, the Proposer/Contractor agrees with all of the terms and conditions of the attached M/WBE – Equal Employment Opportunity Policy Statement. The Contractor is required to ensure that it shall and any subcontractors awarded a subcontract over \$25,000 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon, except where such work is for the beneficial use of the Contractor, undertake or continue programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, equal opportunity shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, and rates of pay or other forms of compensation. This requirement does not apply to: (i) work, goods, or services unrelated to the Contract or (ii) employment outside New York State.

The Proposer further agrees to submit a MBE/WBE and Equal Employment Opportunity Policy Statement, Form # 4, to BPCA with their Proposal.

To ensure compliance with Article 15-A, Proposer further agrees, where applicable, to submit with the Proposal, a staffing plan identifying the anticipated work force to be utilized on the Contract and if awarded a Contract, will, upon request, submit to BPCA a workforce utilization report identifying the workforce actually utilized on the

Contract, if known, through the NYSCS; provided, however, that a Proposer may arrange to provide such report via a non-electronic method by contacting BPCA.

Further, pursuant to Article 15 of the Executive Law (the “Human Rights Law”), all other New York 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 are allowed by the Contract.**

For questions on MBE/WBE/SDVOB participation, joint ventures and sub-contracting goals ONLY, please contact Mr. Anthony Peterson at 212.417.2337.



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

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

### **GETTING STARTED**

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

### **VENDOR RESPONSIBILITIES**

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

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

For more information, contact your project manager.

## **MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES – EQUAL EMPLOYMENT OPPORTUNITY POLICY STATEMENT**

### **MBE/WBE AND EEO POLICY STATEMENT**

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

---

#### **MBE/WBE**

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

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

#### **EEO**

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

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

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

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

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

Agreed to this \_\_\_\_\_ day of \_\_\_\_\_, 2015

By \_\_\_\_\_

Print: \_\_\_\_\_ Title: \_\_\_\_\_

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

**MBE/WBE Contract Goals**

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

\_\_\_\_ % Minority Business Enterprise Participation

\_\_\_\_ % Women's Business Enterprise Participation

**EEO Contract Goals** (if applicable)

\_\_\_\_ % Minority Labor Force Participation

\_\_\_\_ % Female Labor Force Participation

\_\_\_\_\_  
(Authorized Representative)

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## Diversity Practices Questionnaire

I, \_\_\_\_\_, as \_\_\_\_\_ (title) of \_\_\_\_\_ firm or company (hereafter referred to as the company), swear and/or affirm under penalty of perjury that the answers submitted to the following questions are complete and accurate to the best of my knowledge:

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

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

2. What percentage of your company's gross revenues (from your prior fiscal year) was paid to New York State certified minority and/or women-owned business enterprises as subcontractors, suppliers, joint-venture's, 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 minority- and women-owned business enterprises as suppliers/contractors?<sup>1</sup>

4. Does your company provide technical training<sup>2</sup> to minority- and women-owned business enterprises? Yes or No

If yes, provide a description of such training which should include, but not be limited to, the date the program was initiated, the names and the number of minority- and women-owned business enterprises 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 minority- and women-owned business enterprise mentor-protégé program?

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

6. Does your company include specific quantitative goals for the utilization of minority- and women-owned business enterprises in its non-government procurements? Yes or No

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

7. Does your company have a formal minority- and women-owned business enterprise supplier diversity program? Yes or No

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

8. Does your company plan to enter into partnering or subcontracting agreements with New York State certified minority- and women-owned business enterprises if selected as the successful respondent? Yes or No

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<sup>1</sup> Do not include onsite project overhead.

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

If Yes, complete the attached Utilization Plan

All information provided in connection with the 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 \_\_\_\_\_, 201\_, before me, the undersigned, a Notary Public in and for the State of \_\_\_\_\_, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to this certification and said person executed this instrument.

\_\_\_\_\_

Notary Public

**EXHIBIT D**

**BPCA Form of Contract**



CONSULTANT AGREEMENT

between

HUGH L. CAREY BATTERY PARK CITY AUTHORITY

and

**[NAME OF COMPANY, INC. CORP, CO.]**

Dated as of **[DATE]**

Contract No. **[ENTER CONTRACT NUMBER]**

**([PROJECT NAME])**

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**EXHIBIT A - SCOPE OF WORK**

**EXHIBIT B - RATES [if applicable]**

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

**EXHIBIT D - HUGH L. CAREY BATTERY PARK CITY AUTHORITY PROMPT PAYMENT POLICY**

**EXHIBIT E - MONTHLY UTILIZATION COMPLIANCE REPORTS**

## CONSULTANT AGREEMENT

AGREEMENT (the “Agreement”) made as of [DATE] between BATTERY PARK CITY AUTHORITY, d/b/a HUGH L. CAREY BATTERY PARK CITY AUTHORITY, (the “Owner”), a body corporate and politic, constituting a public benefit corporation, having a place of business at One World Financial Center, 24<sup>th</sup> Floor, New York, New York 10281, and [NAME OF COMPANY], incorporated in the State of [STATE], having an office at [Street, City, State, zip code] (the “Consultant”).

### W I T N E S S E T H:

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

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

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

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

#### **1. Scope of Work**

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

#### **2. Time for Performance**

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

#### **3. Compensation**

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

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

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

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

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

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

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

(d) Owner shall pay Consultant no later than the 30<sup>th</sup> calendar day (excluding holidays) following Owner’s receipt of a Proper Invoice (pursuant to, and as such term is defined in Owner’s Prompt Payment Policy, a copy of which is attached hereto and made part hereof as Exhibit D). Any item(s) of Work indicated in any Exhibit hereto as attributable to a specific phase of the Work that is not performed during the specified phase shall not be compensated by Owner, but payment for any such items of Work shall remain available to Consultant if, with Owner’s advance approval, such Work is actually performed during a subsequent phase of the Work, subject to the provisions of this Article 3 and Owner’s approval of any request for payment. Owner may withhold from any payment an amount equal to any costs or damages incurred by Owner as a result of Consultant’s negligence or breach of this Agreement.

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

Office of the Treasurer  
Battery Park City Authority  
d/b/a Hugh L. Carey Battery Park City Authority  
One World Financial Center, 24<sup>th</sup> Floor  
New York, NY 10281-1097  
Attn.: Accounts Payable

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

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

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

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

## **5. Consultant Cooperation**

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

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

## **6. Termination**

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

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

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

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

(iii) Consultant shall make a general assignment for the benefit of its creditors, or a receiver or trustee shall have been appointed on account of Consultant's insolvency, or Consultant

otherwise shall be or become insolvent, or an order for relief shall have been entered against Consultant under Chapter 7 or Chapter 11 of Title 11 of the United States Code;

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

(v) Consultant otherwise shall be in default hereunder;

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

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

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

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

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

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

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

## **7. Suspension**

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

## **8. Assignment**

Consultant shall not assign the Agreement in whole or in part without Owner's prior written consent; however, Owner may assign the Agreement in whole or in part without Consultant's prior written consent.

## **9. Ownership of Documents**

(a) All material specifically prepared for the Project and excluding any intellectual property already owned by Consultant that is furnished by Consultant or any Subconsultants (including but not limited to all film, video, or digital assets, Hypertext Markup Language ("HTML") files, JavaScript files, flash files, etc.) in connection with the Work shall be deemed Works Made for Hire and become the sole property of Owner. Consultant shall provide a tangible copy of the Work to Owner in any form(s) to be specified by Owner. Such materials may be used by Owner, in whole or in part, or in modified form, for any and all purposes Owner may deem desirable without further employment of, or payment of any additional compensation to Consultant. Consultant hereby acknowledges that whatever participation Consultant has, or will have, in connection with any copyrightable subject matter that is the subject of the Work is and shall be deemed Work Made for Hire on behalf of the Owner and that the Owner shall be the sole owner of the Work, and all underlying rights therein, worldwide and in perpetuity. In the event that the Work, or any portion thereof, does not qualify or is deemed not to be Work Made for Hire, Consultant hereby irrevocably transfers and assigns to the Owner all of Consultant's right, title and interest, throughout the world, in and to the Work, including, without limitation, all of Consultant's right, title and interest in the copyrights to the Work, including the unrestricted right to make modifications, adaptations and revisions to the Work and hereby waives any so-called "moral rights" with respect to the Work. Consultant grants to Owner a royalty free, worldwide perpetual, irrevocable, nonexclusive license



to reproduce, modify, and publicly display the Work.

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

#### **10. Insurance [As applicable]**

(a) Consultant shall carry the following insurance:

(i) Workers' Compensation and New York State Disability Benefit Insurance covering all persons employed or retained by Consultant in connection with the Work, as required by New York State Law.

(ii) Professional Liability Insurance with limits of liability in amounts not less than [\$\$\$\$], insuring Consultant and any of its respective officers, directors, stockholders, partners and employees for liability arising out of the carrying out of Consultant's professional responsibilities for the Work. All such professional liability policies shall include coverage for contractual liability, including the matters set forth in Section 17 of this Agreement. All policies shall be subject to a deductible of not more than [\$\$\$\$] per claim. The maximum permitted self-insured retention shall be [\$\$\$\$], or an amount approved by Owner in writing.

(iii) Commercial General Liability Insurance with contractual, products and completed operations coverages issued to and covering the liability of Consultant for all the Work and operations relating thereto and all obligations assumed by Consultant under this Agreement, with a combined single limit for Bodily Injury, Personal Injury and Property Damage of at least [\$\$\$\$] per occurrence and [\$\$\$\$] in the aggregate. Said insurance shall, where applicable, be written on an occurrence basis. The limit may be provided through a combination of primary and umbrella/excess liability policies. The coverage shall provide and encompass at least the following:

(A) An endorsement naming Owner, Battery Park City Parks Conservancy Corporation, the State of New York, and such other entities as identified by Owner, as additional insureds ("Additional Insureds").

(B) The policy or policies must be endorsed to be primary as respects the coverage afforded the Additional Insureds and such policy or policies shall be primary to any other insurance maintained by Owner. Any other insurance maintained by Owner shall be excess of and shall not contribute with Consultant's insurance, regardless of the existence of any "other insurance" clause contained in Owner's own policy or policies of insurance.

(iv) Automobile Liability and Property Damage Insurance covering the use in connection with the Work of all owned, leased, hired, and non-owned vehicles bearing, or under the circumstances under which such vehicles are used are required to bear license plates by the Motor Vehicle Laws of the State of New York, with a combined single limit for Bodily Injury and Property Damage of at least [\$\$\$\$\$] per occurrence.

(v) Employer's Liability Insurance, during the Term for the benefit of such employees as are required to be insured by the applicable provisions of law and voluntary compensation for employees excluded from statutory benefits. Employer's Liability Insurance and benefits resulting from disease shall not be less than an annual aggregate amount of [\$\$\$\$\$] for each consecutive 12-month period.

(vi) Valuable Papers Insurance covering, for the benefit of Consultant and BPCA all documents used under this Agreement by Consultant or any Subconsultant in a total amount of not less than [\$\$\$\$\$]. Consultant may furnish full coverage using one policy or may submit separate policies from the Subconsultants for their proportionate shares of such coverage.

(vii) Comprehensive Crime/Employee Dishonesty Insurance in a reasonable amount or an amount which is customary in the applicable industry, trade or profession.

(viii) If the Work involves the removal, repair, installation or testing of underground petroleum storage tanks, or petroleum remediation operations, or the performance of work or services related to excavation, loading, transporting or unloading of hazardous or contaminated materials, Contractor shall provide Contractors Professional Liability Insurance with a limit of [\$\$\$\$\$]. Coverage shall provide and encompass the following:

(A) Contractor's negligent acts, errors or omissions in rendering or failing to render services of an engineering or consulting nature arising out of their environmental engineering or consulting.

(B) Maximum self-insured retention of [\$\$\$\$\$], or an amount acceptable to Owner.

(ix) Excess Liability Insurance with an aggregate limit of not less than [\$\$\$\$\$].

(b) All required insurance shall be maintained with responsible insurance carriers authorized to do business in the State of New York and rated at least B+ by A.M. Best and Company, or meet such other requirements as are acceptable to Owner, and shall be approved by Owner. Upon execution of this Agreement and before commencing any performance hereunder, Consultant shall deposit with Owner the original policies of insurance, or certificates therefor, bearing notations or accompanied by other evidence satisfactory to Owner of the payment of all premium payments thereunder. **Such policies or certificates shall be delivered to Sharon Wade [change, if necessary], Executive Assistant, at Owner's place of business, immediately upon signing this Agreement.** Thereafter, certification of all premium payments shall be deposited with Owner not less than ten (10) days before the expiration dates of the policies. Submission of a policy or certificate of insurance with Owner shall constitute a warranty by Consultant that the insurance coverage described is in effect for the policy term shown.

(c) Riders providing substantially as follows shall be made a part of the insurance policies described in Subsection 10(a) hereof, as applicable:

(i) the policy shall not be canceled or terminated, or the coverage thereof materially reduced, until thirty (30) days after receipt of written notice thereof by certified or registered mail, return receipt requested addressed to Owner; and

(ii) violation of any of the terms of the policy, or any other policy issued by the Company, shall not by itself invalidate such policy.

(d) The insurance policies required by this Section 10 shall be kept in full force and effect for the periods specified hereunder:

(i) Workers' Compensation Insurance and New York State Disability Benefits Insurance shall be kept in force until receipt of final payment by Consultant hereunder. This Agreement shall be void and of no force or effect unless, in compliance with the Workers' Compensation Law, Consultant shall secure Workers' Compensation Insurance for such of their respective employees engaged in the performance of the Work as are required to be insured under said law.

(ii) Professional Liability Insurance shall be kept in force for the earlier of three (3) years after the completion of the performance of the Work hereunder or termination of this Agreement. If the insurance policy provided pursuant to Section 10(a)(ii) above shall be canceled or not renewed, Consultant shall purchase at its sole expense an extended discovery clause covering the period of three years after Work under this Agreement is completed.

(e) Should Consultant engage any Subconsultant(s), the same conditions as are applicable to Consultant under this Section 10 shall apply to each Subconsultant of every tier. However, Consultant shall keep Subconsultant's certificates of insurance on file, and shall produce same upon demand by Owner.

(f) Should Consultant fail to provide or maintain any insurance required by this Agreement, Owner may, at its sole discretion, after providing verbal notice to Consultant, purchase any insurance required under this Agreement and charge back such purchase to Consultant.

(g) At any time that the coverage provisions and limits on the insurance policies required under this Agreement do not meet the provisions and limits set forth above, Consultant shall immediately cease work on the Project. Consultant shall not resume work on the Project until authorized to do so by Owner. Any delay or time lost as a result of Consultant not having the insurance required under this Section 10 shall not entitle Consultant to receive additional compensation or a time extension.

(h) Notwithstanding any other provisions in this Section 10, Owner may require Consultant to provide, at Owner's expense, any other form or limit of insurance necessary to secure Owner's interests.

(i) Consultant shall secure, pay for, and maintain Property Insurance necessary for protection against the loss of owned, borrowed or rented equipment, tools and materials used in Consultant's performance of the Work. The requirement to secure and maintain such insurance is solely for the benefit of Consultant. Consultant's failure to secure such insurance or to maintain adequate levels of coverage shall not render Owner or any other Additional Insureds, or their agents and employees, responsible for any such losses, and Owner, the other Additional Insureds, and their agents and employees shall have no such liability.

(j) Neither the procurement nor the maintenance of any type of insurance by Owner and Consultant shall in any way be construed or deemed to limit, discharge, waive or release Consultant from any of the obligations and risks accepted by Consultant, or be a limitation on the nature or extent of said obligations and risks.

(k) Consultant shall not violate, or permit to be violated, any term or condition of its insurance policies, and shall at all times satisfy Owner's safety requirements and any requirements of the insurance companies issuing such policies. Consultant shall take every reasonable precaution against injuries to persons or damage to property, and for the safety of persons engaged in performing the Work or doing any work in connection with the Project. Consultant shall establish and maintain safety procedures in connection with the Work as required by the New York labor law and regulations of the Occupational Safety and Health Act, as applicable.

#### **11. Authority of Owner**

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

#### **12. Entire Agreement**

This Agreement, including all Exhibits hereto, constitutes the entire Agreement between Owner and Consultant, and any prior agreements or understandings between Owner and Consultant with respect to any portion of the Work are hereby merged into and with this Agreement.

#### **13. Consultant as Independent Contractor**

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

#### **14. Maintenance, Audit and Examination of Accounts**

Consultant shall, until the earlier of six (6) years after completion of the performance of the Work or six (6) years after termination of this Agreement, maintain, and require all Subconsultants to maintain, complete and correct books and records relating to all aspects of Consultant's obligations hereunder, including without limitation, accurate cost and accounting records specifically identifying the costs incurred in performing their respective obligations, and shall make such books and records available to Owner or its authorized representatives for review and audit at all such reasonable times as Owner may request. In the event that Consultant and/or any Subconsultants shall fail to comply with the provisions of this Section 14, and as a result thereof shall be unable to provide reasonable evidence of such compliance, Owner shall not be required to pay any portion of the Fee and Reimbursable Expenses then due or next becoming due, as the case may be, with respect to such items, and if such compensation has already been paid, Owner may require Consultant to refund any such payment made. Any excessive audit costs incurred by Owner due to Consultant's or any Subconsultant's failure to maintain adequate records shall be borne by Consultant.

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

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

**16. Covenants, Representations and Warranties**

(a) Consultant represents and warrants to Owner that:

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

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

(iii) to the best of its knowledge, upon due inquiry, no officer, member, partner or employee of Consultant has, prior to the date of this Agreement, been called before a grand jury, head of a state agency, head of a city department or other city agency to testify in an investigation concerning any transaction or contract had with the State of New York, any political subdivision

thereof, a public authority, or with any public department, agency or official of the State of New York or of any political subdivision thereof, and refused to sign a waiver of immunity against subsequent criminal prosecution or to answer any relevant question concerning such transaction or contract.

(b) Consultant covenants and agrees that:

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

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

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

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

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

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

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

## **17. Indemnity**

(a) Consultant shall be liable to, and shall indemnify Owner, each Member, officer, agent and employee of Owner for, and shall hold each of the foregoing harmless from and against, any and all claims, losses, damages, expense, penalties, costs or other liabilities, including, without limitation, attorneys' fees, costs, disbursements and interest, arising out of the performance of the Work or Consultant's breach of this Agreement, including but not limited to any of the provisions set forth in Section 16 hereof, and Consultant agrees that it shall defend any suit or action brought against Owner or any Member, officer, agent or employees of Owner that is based on any loss or

liability or alleged loss or liability indemnified herein.

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

**18. Confidentiality**

Consultant hereby agrees that data, recommendations, reports and other materials developed in the course of the Work are strictly confidential between Consultant and Owner and except as specifically provided herein, Consultant may not at any time reveal or disclose such data, recommendations or reports in whole or in part to any third party without first obtaining written approval from Owner.

**19. Modification**

No modification, amendment, change, termination or attempted waiver of any of the provisions of this Agreement shall be binding unless in writing and signed by the party to be bound.

**20. Waiver**

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

**21. Severability**

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

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

This Agreement shall be construed under, and be governed by, the laws of the State of New York. All actions or proceedings relating, directly or indirectly, to this Agreement shall be litigated only in courts located within the County of New York. Consultant, any guarantor of the performance of its obligations hereunder (“Guarantor”) and their successors and assigns hereby subject themselves to the jurisdiction of any state or federal court located within such county, waive the personal service of any process upon them in any action or proceeding therein and consent that such process be served by certified or registered mail, return receipt requested,

directed to the Consultant and any successor at Consultant's address hereinabove set forth, to Guarantor and any successor at the address set forth in the instrument of guaranty, and to any assignee at the address set forth in the instrument of assignment. Such service shall be deemed made two days after such process is so mailed.

**23. Provisions Required by Law**

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

**24. Notices**

Any notice, approval, consent, acceptance, request, bill, demand or statement required or permitted to be given hereunder (a "Notice") from either party to the other shall be in writing and shall be deemed given when received by overnight mail or when deposited with the United States Postal Service in a postage prepaid envelope, certified or registered mail, addressed to the other party at the addresses set forth above. If to Owner, Notices shall be sent to the attention of **[HEAD OF DEPARTMENT]**, with copies to the **[President & Chief Operating Officer and the General Counsel] [EITHER OR BOTH, AS APPLICABLE – MAY MAKE MORE SENSE FOR IT TO BE OTHERS]**, and if to Consultant, Notices shall be sent to the attention of **[NAME], [TITLE]**. Either party may at any time change such address or add additional parties to receive a Notice by mailing, as aforesaid, to the other party a Notice thereof.

**25. Approval and Use of Subconsultants**

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

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

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



with respect to any claims against Owner based upon Consultant's alleged failure to make payments to Subconsultants for Work under this Agreement.

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

## **26. Employment and Diversity**

### **26.1. Definitions**

The following terms shall have the meanings set forth below for the purposes of this Article 26:

(a) "Certified Business." A business verified as a minority or women-owned business enterprise by the Division or such other New York State agency authorized to make such certification.

(b) "Diversity Program." The program by which Owner shall monitor Consultant's compliance with the requirements set forth in (i) the MBE/WBE Required Participation Plan and (ii) the Utilization Plan.

(c) "Division." The Division of Minority and Women's Business Development of the New York State Department of Economic Development.

(d) "Director." The Director or the Executive Director of the Division.

(e) "Directory." The directory of certified businesses prepared by the Director for use by Owner and consultants in complying with the provisions of the Executive Law of the State of New York, Article 15-A.

(f) "MBE/WBE Required Participation Plan." The plan previously submitted by a Consultant to Owner listing the certified MBEs and/or WBEs that the Consultant intends to use in the performance of this agreement in order to ensure that MBEs and WBEs are awarded a fair share of the total dollar value that is to be paid for the Work.

(g) "Minority Group Member." A United States citizen or permanent resident alien who is and can demonstrate membership in one of the following groups:

- (1) Black persons having origins in any of the Black African racial groups;
- (2) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American descent of either Indian or Hispanic origin, regardless of race;
- (3) Native American or Alaskan native persons having origins in any of the original

peoples of North America; or

(4) Asian and Pacific Islander persons having origins in any of the Far East countries, South East Asia, the Indian subcontinent or the Pacific Islands.

(h) “Minority-owned Business Enterprise” (“MBE”). A business enterprise, including a sole proprietorship, partnership or corporation that is:

(1) at least 51 percent owned by one or more Minority Group Members;

(2) an enterprise in which such minority ownership is real, substantial and continuing;

(3) an enterprise in which such minority ownership has and exercises the authority to control and operate, independently, the day-to-day business decisions of the enterprise; and

(4) an enterprise authorized to do business in the State of New York and is independently owned and operated.

(i) “Subcontract.” An agreement providing for a total expenditure in excess of \$25,000 for the performance of any portion of the Work between Consultant and any individual or business enterprise, including a sole proprietorship, partnership, corporation, or not-for-profit corporation, in which a portion of a contractor’s obligation is undertaken or assumed.

(j) “Utilization Plan.” A plan previously submitted by Consultant to Owner that sets forth the proposed percentages of employees who are either Minority Group Members or women and who will be used by Consultant to perform the Work.

(k) “Women-owned Business Enterprise” (“WBE”). A business enterprise, including a sole proprietorship, partnership or corporation that is:

(1) at least 51 percent owned by one or more United States citizens or permanent resident aliens who are women;

(2) an enterprise in which the ownership interest of such women is real, substantial and continuing;

(3) an enterprise in which such women ownership has and exercises the authority to control and operate, independently, the day-to-day business decisions of the enterprise; and

(4) an enterprise authorized to do business in the State of New York and that is independently owned and operated.

## **26.2. Equal Employment Opportunities for Minority Group Members and**

## **Women**

(a) During the performance of the Work, Consultant agrees as follows:

(1) Consultant shall not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status; shall undertake or continue existing programs of diversity to ensure that Minority Group Members and women are afforded equal employment opportunities without discrimination; and shall make and document its good faith effort to achieve prompt and full utilization of Minority Group Members and women at all levels and in all segments of its work force where deficiencies exist.

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

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

(4) Consultant and any Subconsultant shall be required to submit compliance reports in accordance with this Section 26 relating to their operations and the implementation of the Diversity Program in effect as of the date of execution of this Agreement.

(5) Consultant shall submit an EEO policy statement to Owner within seventy-two hours of notice from Owner of the awarding of this contract to Consultant. If Consultant does not have an existing EEO policy statement, Owner may provide to Consultant a model statement.

(6) For purposes of providing meaningful participation by MBE/WBE's for the Work and achieving the goals established herein, Consultant and its Subconsultants should reference the directory of New York State Certified MBE/WBE's found at the following internet address: <http://www.esd.ny.gov/mwbe.html>.

Additionally, Consultant and its Subconsultants are encouraged to contact the Division of Minority and Woman Business Development at (518) 292-5250, (212) 803-2414, or (716) 846-8200, to discuss additional methods of maximizing participation by MBE/WBE's on the Work.

(7) Where MBE/WBE goals have been established herein, Consultant must

document “good faith efforts,” pursuant to 5 NYCRR §142.8, to provide meaningful participation by MBE/WBE’s as Subconsultants or suppliers in the performance of the Work.

(b) Consultant shall include the provisions of subdivision (a) of this section in every Subcontract in such a manner that the provisions will be binding upon each Subconsultant as to the Work in connection with this Agreement’s execution.

(c) Miscellaneous provisions:

(1) The provisions of this section shall not be binding upon Consultant or its Subconsultants in the performance of any other work or the providing of services, or any other activities that are unrelated, separate or distinct from this Agreement as expressed by its terms.

(2) The requirements of this section shall not apply to any employment outside New York State, or application for employment outside such state, or solicitations, or advertisements therefore, or any existing programs of diversity regarding employment outside New York State and the effect of contract provisions required by this section shall be so limited.

(d) Enforcement: the parties agree to be bound by provisions of Article 15-A of the Executive Law of the State of New York and by the regulations adopted pursuant thereunder.

### **26.3. Workforce Participation**

(a) Consultant is required to make good faith efforts to achieve the participation of [PERCENTAGE] percent ([##]%) Minority Group Members and [PERCENTAGE] percent ([##]%) women in the personnel utilized by Consultant in the Work as set forth in the Utilization Plan.

(b) To ensure compliance with this Section, Consultant shall submit a staffing plan to document the composition of the proposed workforce to be utilized in the performance of this contract by the specified categories listed, including ethnic background, gender, and Federal occupational categories. Consultant shall complete the staffing plan form and submit it as part of their bid or proposal or within a reasonable time, but no later than the time of award of the contract.

(c) The participation for Minority Group Members and women employees must be substantially uniform throughout the work.

(d) Consultant shall not participate in the transfer of Minority Group Member employees or women employees from employer to employer or from project to project for the sole purpose of satisfying the participation goals above set forth.

(e) In achieving such participation, Consultant is required to make good faith efforts to find and employ qualified Minority Group Members and women supervisory personnel and staff.

(f) Consultant shall meet with Owner, and such other persons as Owner may invite, on a periodic basis as required by Owner to discuss issues relating to Minority Group Members and women workforce participation. At such meetings, Consultant shall report on the names of its Subconsultants then engaged on the Project to which the Work relates or which within 60 days are scheduled to be engaged on such Project, on the nature of the work and anticipated schedule of Consultant and Subconsultants, on the anticipated hiring needs of Consultant and Subconsultants, on the names of the responsible supervisors directly employed by Consultant, and such information requested by Owner that will then promote the employment of Minority Group Members and women. Consultant shall use its best efforts to obtain the above information and shall, upon Owner's request, cause its Subconsultants to attend said meetings and provide the above information.

(g) Compliance reports with respect to the Utilization Plan ("Utilization Compliance Reports"), which shall be submitted to Owner's Diversity officer on a monthly basis and shall be in accordance with the following:

(1) Owner may require that Consultant submit Utilization Compliance Reports for the duration of this contract to Owner regarding Consultant's operation and implementation of the Utilization Plan portion of the Diversity Program in effect as of the date of execution of this Agreement.

(2) The Utilization Compliance Reports shall include information on any Subconsultant involved in the performance of the contract with regard to the Subconsultant's compliance with the Diversity Program.

(3) The Utilization Compliance Reports shall include, but are not limited to the following:

(i) a breakdown of the Subconsultants by ethnic background, gender or such other categories as may be required by Owner;

(ii) the actions the Consultant and Subconsultants have taken to meet the components of the Diversity Program;

(iii) how Consultant and Subconsultants intend to utilize participation of Minority Group Members and women in their workforce in connection with the performance of the Work and timetables therefor during the remainder of their performance of the Work.

(h) Any failure by Consultant to submit a required Utilization Compliance Report, including information on any of its Subconsultant's compliance, may be deemed a breach of contract with respect to this agreement.

(i) Consultant shall include the provisions of Section 26.3 in every Subcontract, and such provisions shall be binding upon each Subconsultant.

#### **26.4. Minority Business Enterprise (MBE) Participation and Women's Business Enterprise (WBE) Participation**

(a) Consultant shall make good faith efforts to attain the participation of [PERCENTAGE] percent ([##]%) MBEs and/or [PERCENTAGE] percentage ([##]%) WBEs in the total dollar value of the Work.

(b) The total dollar value of the Work for purposes of determining compliance with the MBE/WBE Required Participation Plan shall be calculated as follows:

(1) if an MBE and WBE is not the Consultant -- the dollar value of the Work subcontracted to MBEs and WBEs; provided, however, that where materials are purchased from an MBE and WBE that acts merely as a conduit for goods manufactured or produced by a non-MBE and non-WBE, only that portion of the price paid for such materials that will accrue as profit to the MBE or WBE and/or the Fee received by the MBE and WBE shall be included;

(2) if Consultant is a joint venture including one or more MBEs and WBEs as joint venturers -- the Fee multiplied by the percentage of the joint venture's profits (or losses) that are to accrue to the MBE and WBE joint venturer(s) under the joint venture agreement; and

(3) if an MBE and WBE is Consultant or where Consultant is a joint venture consisting entirely of MBEs and WBEs -- the Fee.

(c) Compliance reports with respect to the MBE/WBE Required Participation Plan ("MBE/WBE Compliance Reports") shall be required as follows:

(1) MBE/WBE Compliance Reports shall be submitted to Owner and shall include information with respect to:

(i) dividing the Work to be subcontracted into smaller portions, where economically and technically feasible;

(ii) actively and affirmatively making a good faith effort to solicit bids for subcontracts from qualified MBEs and WBEs identified in the directory of certified businesses available at the office of the Owner's Diversity Officer, including the circulation of solicitations to minority contractor associations. Consultant shall maintain records detailing the efforts made to provide for meaningful MBE and WBE participation in the Work, including the names and addresses of all MBEs and WBEs contacted and, if any such MBE or WBE is not selected as a joint venture or subcontractor, the reasons for such decision;

(iii) making plans and specifications for prospective work available to MBEs and WBEs in sufficient time for review;

(iv) utilizing the services and cooperating with those organizations providing technical assistance to Owner in connection with the participation of MBEs and WBEs in the Project to which the Work relates;

(v) encouraging the formation of joint ventures, partnerships or other similar arrangements among subcontractors where appropriate;

(vi) ensuring that provision is made to provide progress payments to MBEs and WBEs on a timely basis; and

(vii) not requiring bonds from and/or providing bonds and insurance for MBEs and WBEs where appropriate, and/or assisting in obtaining bonds and insurance for MBEs and WBEs where feasible.

(2) MBE/WBE Compliance Reports that shall be submitted to the Diversity Department on the monthly basis.

(3) MBE/WBE Compliance Reports shall also include, but not be limited to, the following information:

(i) the name, address and telephone number of each certified MBE and WBE that Consultant is using or intends to use to comply with the MBE/WBE Required Participation Plan;

(ii) a brief description of the contract scope of work to be performed for the Consultant by each certified MBE and WBE and the scheduled dates for performance;

(iii) a statement of whether Consultant has a written agreement with each certified MBE and WBE that Consultant is using or intends to use, and if requested, copies of such agreements;

(iv) the actual total cost of the contract scope of work to be performed by each certified MBE and WBE for this Agreement; and

(v) The actual amounts of any payments made by Consultant to each certified MBE and WBE as of the date the MBE/WBE Compliance Report was submitted.

(d) Consultant shall provide Owner with MBE/WBE and/or Workforce Monthly Utilization Reports, by the last calendar day of each month, in the form of Exhibit E hereto. Failure to provide such reports shall be an event of default of contractor's obligations pursuant to this Section.

(e) Consultant shall provide proof of payment to all subcontractors and materialmen in the

form of a waiver of lien or cancelled check, with each request for payment. Failure to provide such proof of payment shall be an event of default of contractor's obligations pursuant to this Section.

#### **26.5 Failure to Comply**

(a) In accordance with 5 NYCRR §142.13, Consultant acknowledges that if it is found to have willfully and intentionally failed to comply with the MBE/WBE participation goals set forth herein or any other requirements set forth in this Article 27, such finding constitutes a breach of contract and Owner may withhold payment from the Consultant as liquidated damages.

(b) Such liquidated damages shall be calculated based on the actual cost incurred by Owner related to Owner's expenses for personnel, supplies and overhead related to establishing, monitoring, and reviewing certified MBE/WBE programmatic goals and Diversity and Equal Opportunity compliance.

#### **27. Responsibility**

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

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

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

#### **28. Interest of Others**

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

#### **29. Executory Contract**

It is understood by and between the parties hereto that this Agreement shall be deemed



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

**30. Participation in International Boycott Prohibited**

Consultant agrees, as a material condition of this Agreement, that neither Consultant nor any substantially owned or affiliated person, firm, partnership or corporation has participated or is participating or shall participate in an international boycott in violation of the provisions of the United States Export Administration Act of 1969, as amended, or the United States Export Administration Act of 1979, as amended, or the Regulations of the United States Department of Commerce promulgated thereunder. This Agreement shall be rendered forfeited and void by the Comptroller of the State of New York if, subsequent to execution, such person, firm, partnership or corporation has been convicted of a violation of the provisions of either of such federal acts or such Regulations or has been found upon the final determination of the United States Commerce Department or any other appropriate agency of the United States to have violated the provisions of either of such federal acts or such Regulations.

**31. MacBride Fair Employment Principles**

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

**32. Limitation Periods**

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

**33. Iran Divestment Act**

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

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

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

**35. Comptroller's Approval**

If this contract is considered an eligible contract as defined by Title 2 of NYCRR Part 206, it is subject to the New York State Comptroller's approval, and therefore shall not be valid and enforceable until that approval has been obtained. A contract is considered "eligible" as defined by Title 2 of NYCRR Part 206, if it is not a specifically exempt contract, is executed by a state authority on or after March 1, 2010 where the aggregate consideration under the contract may reasonably be valued in excess of one million dollars, AND the contract is either (1) awarded on a single-source basis, sole-source basis or pursuant to any other method of procurement that is not a competitive procurement OR (2) supported in whole or part with funds appropriated from the Community Projects Fund (007).

**36. Binding Contract**

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

**37. Counterparts**

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

**38. Section Headings**

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

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

In the event of a conflict of terms, the terms stated in Sections 1-39 herein, shall take precedence over and shall prevail over any printed, typed, or handwritten terms located in the Exhibits.

(SIGNATURE PAGE FOLLOWS)



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

HUGH L. CAREY BATTERY PARK CITY AUTHORITY

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

[CONTRACTOR COMPANY NAME]

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

FEIN# [??]

**EXHIBIT A**

**SCOPE OF WORK**

**EXHIBIT B**

**RATES**

**EXHIBIT C**

**FORM OF TIME SHEET**

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

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

Supervisors Signature \_\_\_\_\_

Title \_\_\_\_\_

## **EXHIBIT D**

### **HUGH L. CAREY BATTERY PARK CITY AUTHORITY** **PROMPT PAYMENT POLICY**

#### Section 9002.1

Statement of Policy and Purpose. This Prompt Payment Policy is adopted pursuant to Section 2880 of the Public Authorities Law, requiring each public benefit corporation to promulgate rules and regulations detailing its policy with respect to making prompt payment to contractors.

#### Section 9002.2

Definitions. For the purpose of this Part, the following terms shall have the following meanings unless the context shall clearly indicate otherwise:

(a) “Authority” shall mean the Hugh L. Carey Battery Park City Authority.

(b) “Contract” shall mean an enforceable agreement entered into by the Authority and a Contractor, including purchase orders. Bond resolutions and any leases to which the Authority is a party, including any leases between the Authority and any of its tenants or subtenants, as well as any related agreements which are an integral part of such leases or subleases, are not Contracts within the meaning of this Section.

(c) “Contractor” shall mean any person, partnership, private corporation or association providing or performing any of the following pursuant to a Contract:

(i) selling materials, equipment or supplies or leasing property or equipment to the Authority;

(ii) constructing, reconstructing, rehabilitating or repairing buildings, streets or other improvements for or on behalf of the Authority; or

(iii) rendering or providing services to the Authority.

(d) “Designated Payment Office” shall mean that department within the Authority to which a Proper Invoice is to be submitted by a Contractor; unless otherwise, specified, the Designated Payment Office shall be:

Office of the Chief Financial Officer  
Hugh L. Carey Battery Park City Authority  
One World Financial Center, 24th Floor  
New York, New York 10281-1097  
Attention: Accounts Payable



(e) "Prompt Payment" shall mean payment of a debt due and owing by the Authority pursuant to a Contract before interest accrues thereon pursuant to the provisions of this Part.

(f) "Proper Invoice" shall mean a written request or invoice for contract payment setting forth the description, price and quantity of goods, property or services provided by a Contractor, such request or invoice being both in accordance with the terms of the Contract and in such form, and supported by such other substantiating documentation, as the Authority may reasonably require.

(g) "Receipt of a Proper Invoice" shall mean either:

(i) The date on which a Proper Invoice is received by the Designated Payment Office or

(ii) The date on which the Authority receives the purchased goods, property or services covered by the Proper Invoice, whichever is later.

(h) "Set-off" shall mean the reduction by the Authority of a payment due to a Contractor by an amount equal to the amount of an unpaid legally enforceable debt owed by the Contractor to the Authority.

#### Section 9002.3

Applicability. This Part shall apply to all Contracts entered into on or after April 29, 1988.

#### Section 9002.4

(a) Payment Request Procedure. Contractors owed money by the Authority shall deliver a Proper Invoice to the Designated Payment Office. The Designated Payment Office will log the receipt date of each invoice, and send it to the department unit within the Authority that received the goods, property or services from the Contractor for review and verification of the Contractor's performance in accordance with the Contract. Contractors with Contracts which provide for payment at specific dates or intervals shall also be required to provide a Proper Invoice which certifies that the obligations required under such Contract have been performed prior to such date(s) or during such interval(s) and review and verification of the work of these Contractors will take place upon receipt of such Proper Invoice; payment shall be made in accordance with the terms of such Contracts.

(b) Prompt Payment Schedule. The schedule of the time in which the Authority will make prompt payment under a Contract is as follows:

(i) For invoices received on or after July 1, 1989, payment will be made by the Authority within 30 calendar days, excluding legal holidays, after Receipt of a Proper Invoice.

(ii) For Contracts which provide for payment at one or more specific dates or intervals, payment will be made in accordance with the terms of such Contracts, but interest shall only be payable if payment is not made within the time provided as in (i) above.

(iii) This schedule will not apply in those instances where payment is being delayed by reason of any of the exceptions listed in Section 9002.4(e) or where the time in which to make payment is being tolled for any of the reasons listed in Section 9002.4(f) herein, in which cases the time for payment shall be there provided.

(c) Interest Computation. If the Authority fails to make payment in accordance with the prompt payment schedule set forth in Section 9002.4(b) above, the Authority will pay interest to the affected Contractor at the rate equal to that set by the State Tax Commission for corporate taxes pursuant to Section 1096(e) of the Tax Law.

(d) Funds Available to Pay Interest Penalties. The Authority will pay interest as provided herein with monies available to the Authority for operating and administrative expenses pursuant to its approved budget.

(e) Extension of Payment Time. Any of the following facts, conditions or situations are determined by the Authority to be exceptions to the prompt payment schedule set forth in Section 9002.4(b) and to justify extensions of the time by which payment must be made (the amount of time of such extension being as established by the Authority's Treasurer consistent with this Part, with notice provided to the Contractor):

(i) Statutory or Contract provisions requiring an inspection period or an audit prior to payment;

(ii) The absence of a state appropriation which is necessary to authorize payment;

(iii) A requirement for federal government examination of a Proper Invoice prior to payment;

(iv) Extraordinary delay between the time of the provision of goods, property or services by a Contractor and the receipt of a Proper Invoice by the Authority;

(v) Failure by a Contractor to submit documents required by the Contract or reasonably required by the Authority prior to payment;

(vi) Where time is taken in the processing of an invoice by the State Department of Taxation and Finance, the State Division of the Budget, the Office of

the State Comptroller, or any other entity external to the Authority that is or may be required by statute, regulation or Contract to approve or process Authority payments.

(f) Defects or Improprieties. The following facts or conditions toll the prompt payment schedule set forth in Section 9002.4(b):

(i) A reasonable belief by the Authority in the existence of any defects(s), including any incompleteness or failure of compliance with the terms of the Contract, in or with respect to the goods, property or services delivered;

(ii) A reasonable belief by the Authority in the existence of any defect(s) in the invoice; or

(iii) A reasonable belief by the Authority in suspected impropriety of any kind. In order to toll the prompt payment schedule without penalty, the Authority has fifteen calendar days after receipt of an invoice to send a Contractor notification of such defects or improprieties. Authority notification shall be by letter to the Contractor, setting forth any such defect or impropriety in reasonable detail, sent to the address indicated for notices under the Contract or, if no such address is provided, sent to the address set forth in the invoice provided that, in the event that the Authority fails to so notify the Contractor within such fifteen days, the sole effect of such failure to so notify the Contractor shall be that the number of days allowed for payment shall be reduced by the number of days between such fifteenth day and the date of the Authority's transmitting such notifications. In the event that the Authority fails to provide reasonable grounds for its contention that any such defect or impropriety exists, the date by which Contract payment shall be made shall be calculated from the date of receipt of an invoice.

#### Section 9002.5

(a) Annual Report. The Authority shall prepare an annual report on the scope and implementation of this prompt payment policy. The report shall include, but not be limited to, the following:

(i) A listing of the types or categories of contracts which the Authority entered into during the twelve-month fiscal year covered by the report with an indication whether each such type or category of contract was subject to this prompt payment policy, and if it was not, the reason(s) why not;

(ii) The number and amount of interest payments made for contracts, arranged according to each such type or category;

(iii) The number of interest chargeable days, and the total number of days taken to process each late contract payment; and

(iv) A summary of the principal reasons why such late payments occurred.

(b) Within ninety (90) days after the completion of each such fiscal year, copies of this annual report shall be filed with the State Comptroller, the State Director of the Budget, the Chairman of the Senate Finance Committee and the Chairman of the Assembly Ways and Means Committee.

(c) Copies of its annual report shall be made available to the public upon reasonable request at the Authority's main office.

#### Section 9002.6

(a) Amendment. The Authority shall have the power to amend this Part by promulgating amended rules and regulations at any time, and within thirty days of the adoption of any such amendments hereto, the Authority shall file copies with the State Comptroller, the State Director of the Budget, the Chairman of the Senate Finance Committee and the Chairman of the Assembly Ways and Means Committee.

(b) Contract Incorporation. The policy statement in effect at the time that a Contract is entered into is hereby incorporated into and made a part of that Contract.

(c) Public Access. The Authority shall make copies of this policy statement available to the public upon reasonable request at the Authority's main office. The Authority shall also provide a copy of this policy statement to each Contractor at or prior to the time a Contract is entered into.

(d) Inapplicability. This policy is not applicable to payments due and owing by the Authority to any other governmental entity, agency, public benefit corporation or the employees thereof when acting in or incidental to their public employment capacity, to interest on judgments rendered by a court against the Authority pursuant to any other provision of law, or to situations where the Authority exercises a legally authorized Set-off against all or part of a payment due a Contractor.

(e) Legal Processes. The Authority is under no liability to pay interest pursuant to this policy for any period after a Contractor has filed a claim, given notice of an intention to file a claim or commenced legal action seeking any payment of interest; interest during such period shall only be paid as directed by the court in accordance with such other provisions of law as may be applicable.

(f) Interpretation. This Part shall be interpreted consistent with and to fulfill the purposes of Section 2880 of the Public Authority Law

**EXHIBIT E**

**MONTHLY UTILIZATION COMPLIANCE REPORTS**

Name of Prime/Sub-contractor: _____					
Contact Person: _____					
Address: _____ _____					
Phone #: (    ) _____ Fax #: (    ) _____					
Tracking Report for the Month of _____ Year _____ Contract # _____					
Name of Vendor/Subcontractor Address/Phone-Fax/Contact Person	WBE MBE	Total Amount Contracted to Date	Total Amount Billed to Date	Total Amount Paid to Date	Total % to Date

Please note on or before the seventh day following each month of the Term of this Agreement, contractor shall submit this report regarding MBE/WBE utilization during the preceding month. This report shall be signed and verified by an officer of Contractor and must be accompanied by copies of supporting documents, including but not limited to cancelled checks, both front and back, as well as any invoices for MBE/WBE firms listed therein.

# Hugh L. Carey Battery Park City Authority WORK FORCE EMPLOYMENT UTILIZATION REPORT

Name of Contractor \_\_\_\_\_ Reporting Period \_\_\_\_\_

Type of Report: ☐ Contract Specific Work Force ☐ Total Work Force ☐ Check if NOT-FOR-PROFIT

Federal Id/Payee Id No.: _____  Check One: <input type="checkbox"/> Prime Contractor <input type="checkbox"/> Subcontractor  Contract Amount: \$ _____	Contract No.: _____ Location of Work: _____  Product/Service Provided: _____  Expected EEO Participation: Minority _____ % Women _____ %  Contract Start Date: _____ Percent of Job Completed: _____
--	--

Number of Employees											Total Percent Minority Employees	Total Percent Female Employees
Federal Occupational Category	Total Number of Employees		Black (Not of Hispanic Origin)		Hispanic		Asian of Pacific Islander		Native American/ Alaskan Native			
	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female		
Official/Admin												
Professionals												
Technicians												
Sales Workers												
Office & Clerical												
Craft Workers												
Operatives												
Laborers												
Service Workers												
TOTALS												

Company Officials Name _____	Title _____
Company Official's Signature _____	Date _____
Address _____	Telephone Number (____) _____

**EXHIBIT E**

**Acknowledgement of Addenda**

**RFP TITLE:** \_\_\_\_\_

<b>Complete Part I <u>or</u> Part II, whichever is applicable, and sign your name in Part III.</b>
--

**Part I**

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

Addendum # 1, Dated \_\_\_\_\_, \_\_\_\_

Addendum # 2, Dated \_\_\_\_\_, \_\_\_\_

Addendum # 3, Dated \_\_\_\_\_, \_\_\_\_

Addendum # 4, Dated \_\_\_\_\_, \_\_\_\_

Addendum # 5, Dated \_\_\_\_\_, \_\_\_\_

Addendum # 6, Dated \_\_\_\_\_, \_\_\_\_

**Part II Acknowledgement of No Receipt**

\_\_\_\_\_ No Addendum was received in connection with this RFP

**Part III**

Proposer's Name: \_\_\_\_\_

Proposer's Authorized Representative:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_