

**BATTERY PARK CITY AUTHORITY**

**REQUEST FOR PROPOSALS**

**FOR**

**South Battery Park City Resiliency Project**

**Design Services**

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## **I. SUMMARY**

### **A. Background**

Battery Park City Authority d/b/a Hugh L. Carey Battery Park City Authority (“BPCA”) requests proposals (each individually, a “Proposal” or collectively, the “Proposals”) from architecture and/or engineering firms (each individually, a “Proposer” or collectively, the “Proposers”) to provide BPCA with multidisciplinary design services (the “Services”) in support of its South Battery Park City Resiliency Plan (the “SBPC Plan”). The SBPC Plan is the outcome of a two-year assessment and resiliency analysis initiated in 2015 through BPCA’s Wagner Park Site Assessment Project. The Services will advance the SBPC Plan’s conceptual strategies and designs through detailed design and engineering, to final sets of construction documents suitable for contractor bidding, and will provide construction administration services for the construction of the final project design. More specifically, the Services will consist of architecture, landscape architecture and engineering services related to (a) the construction of a comprehensive flood barrier system (the “Barrier System”) to check water inundation from the Hudson River Estuary at Robert F. Wagner Park (“Wagner Park”) and the Pier A Plaza (the “Plaza”) associated with storm activity and sea-level rise, (b) the construction of a new pavilion structure within Wagner Park to replace the existing pavilion structure, which will enhance the resiliency of the area and provide other amenities, (c) the implementation of certain modifications to the Wagner Park landscaping design, and (d) the implementation of certain modifications to the water inlet separating Pier A from Wagner Park. Wagner Park and the Plaza are referred to collectively as the “Base Project Site.” As described in more detail in Exhibit A, BPCA’s resiliency studies have identified the Base Project Site as a primary point of flood vulnerability due to storm surge and projected sea-level rise. The Base Project Site also is likely the first point of connection between any BPC barrier system and the Lower Manhattan Coastal Resiliency (“LMCR”) project, which is the City of New York’s planning vehicle for a targeted, though as-yet unfunded, flood-protection system for the southern part of Manhattan.

The Services shall also include, as an add alternate, the design of an extension of the Barrier System from the northeast corner of the Plaza along a line to be determined but roughly in keeping with the bikeway area abutting Battery Place and the Battery (the “Battery Bikeway Segment” or the “Add Alt Site”) to a point to be determined near the southwest corner of Battery Place and Broadway. The Battery Bikeway Segment will include certain property owned and/or controlled by the City of New York and/or the New York City Department of Parks and Recreation.

The SBPC Plan envisions the creation of the Barrier System and the capability of the Barrier System to eventually tie into the broader LMCR project, assuming one is funded and built. The Barrier System comprises a Wagner Park component, a Plaza component, and the potential Battery Bikeway Segment. Regardless of any other resiliency measures that are or will be planned or constructed in or around the southern portion of Manhattan, the Barrier System will have independent utility because it will be designed to enhance the resiliency of a significant swath of southern BPC, West Street and the southwestern Financial District. If and when the full LMCR project is designed, funded and built, BPCA anticipates that the Barrier System would be positioned to link into the LMCR project to further enhance the flood protection afforded to the Base Project Site area.

Proposers must ensure that they or their collective teams incorporate/include appropriate expertise in all disciplines required to perform the Services, including, but not limited to:

- General Architectural Design;
- Landscape and Base Project Site Architecture Design;
- Environmental/Biological Science;
- Hydrological Engineering (Modeling);

- Civil Engineering;
- MEP Engineering;
- Structural Engineering;
- Geotechnical Engineering;
- Environmental Engineering;
- Marine Engineering;
- Surveying;
- Signage and Graphics;
- Restaurant/Food Service Design and Consultation and
- Cost Estimating and Value Engineering.

The Services shall include, but shall not be limited to: (1) the review and understanding, as a beginning concept, of the conceptual design and programming report prepared in 2017 by Perkins Eastman Architects, PC (the “South BPC Resiliency Report”) as a product of BPCA’s Wagner Park Site Assessment Project, the culmination of which is the SBPC Plan, which is attached hereto as Exhibit B; (2) further assessment, investigation, modeling and calculations, as necessary, to refine and/or modify the elements of the SBPC Plan to reflect BPCA’s resiliency and programming objectives; (3) a public outreach and communication program to include meetings, presentations and design revisions based upon community/stakeholder feedback; (4) coordination with BPCA, its consultants and attorneys, to prepare environmental studies and approvals, as required, for construction of the resiliency measures and related improvements that are the subject of the Services; (5) coordination with BPCA, its consultants and attorneys, to secure any zoning, design or other regulatory approvals required for the construction of the resiliency measures and related improvements that are the subject of the Services; and (6) construction phase architecture, landscape architecture, environmental/biological science, engineering and administration services to implement the resiliency measures and related improvements that are the subject of the Services.

A detailed Scope of Work for the Services is attached at Exhibit A.

**B. Site Description**

1) Wagner Park:

Built in 1994, Wagner Park is located at the southwestern extreme of Battery Park City (“BPC”) between historic Pier A and the Jewish Heritage Museum. The Park offers panoramic views of the NYC Harbor and the Statue of Liberty and includes two structures connected by a rooftop walkway, two ornamental gardens, an esplanade, a central lawn and various pieces of public artwork. Wagner Park will be upgraded to incorporate a primary portion of the Barrier System.

In addition to other ancillary improvements as specified in the SBPC Plan. The form and alignment of the Barrier System are subject to final confirmation through the performance of the Services.

2) The Plaza:

The Plaza is a 37,000 square foot urban plaza which serves as the forecourt to historic Pier A and an important Lower Manhattan pedestrian nexus. Situated along the Hudson River Waterfront between Wagner Park and the historic Battery and at the southern terminus of State Route 9A, the Plaza forms a highly visible and important transition point between a number of pedestrian and bicycle routes. The precise elements and alignment of the Barrier System as it traverses the Plaza are to be determined through the provision of the Services.

3) Battery Bikeway Segment:

The Battery Bikeway Segment is a linear parcel that runs to the south of and roughly parallel to Battery Place and the Battery Bikeway as they extend eastward from the Plaza to approximately State Street and a point that lies at the target elevation for Lower Manhattan coastal flood barriers. The exact placement, dimensions and alignment of the Battery Bikeway Segment are to be determined through the provision of the Services and other future developments.

Minority-Owned Business Enterprises (“MBE”) and Women-Owned Business Enterprises (“WBE”) are encouraged to submit Proposals.

This request for proposals, the attachments and any additional information submitted herewith, (collectively, the “RFP”) does not obligate BPCA to complete the selection and contract award process. BPCA reserves the right: (i) to accept or reject any and all Proposals; (ii) to request additional information from any or all Proposers to assist BPCA in its evaluation process; (iii) to amend or withdraw this RFP prior to the announcement of the selected firm; and (iv) to award the proposed services, in whole or in part, to one or more firms. In case of an amendment to the RFP, all Proposers will be provided with a copy of any such amendment(s) and will be afforded the opportunity to revise their Proposals in response to the RFP amendment.

## **II. DESCRIPTION OF BPCA**

BPCA is a public benefit corporation created in 1968 under the laws of the State of New York for the purpose of financing, developing, constructing, maintaining, and operating a planned community development of the Battery Park City site as a mixed commercial and residential community.

Under the Battery Park City Authority Act (the “Act”), BPCA has the following powers, among others: to borrow money and to issue negotiable bonds, notes or other obligations and to provide for the rights of the holders thereof; to acquire, lease, hold, mortgage and dispose of real property and personal property or any interest therein for its corporate purposes; to construct, improve, enlarge, operate and maintain Battery Park City; to make bylaws for the management and regulation of its affairs, and, subject to agreements with bondholders, for the regulation of Battery Park City; to make contracts and to execute all necessary or convenient instruments, including leases and subleases; to accept grants, loans and contributions from the United States, or the State of New York or the City of New York (the “City”), or any agency or instrumentality of any of them, or from any other source and to expend the proceeds for any corporate purpose; to fix, establish and collect rates, rentals, fees and other charges; and to do all things necessary or convenient to carry out the powers expressly granted by the Act. BPCA has no taxing power.

Since its inception, BPCA has caused the staged development of Battery Park City, in individual parcels, creating a richly diversified mixed use community providing residential and commercial space, with related amenities such as parks, open spaces, plazas, recreational areas and a waterfront esplanade. Most individual parcels of land in Battery Park City were developed into residential and commercial buildings by tenants (“Ground Lease Tenants”) under long-term ground leases with BPCA. The Ground Lease Tenants are responsible for the maintenance, insurance and defense and indemnification of BPCA with regard to those leased parcels.

One of BPCA’s key responsibilities under the Act is to operate, maintain and repair the parks and open spaces in and around Battery Park City’s residential and commercial areas. This function has been delegated by BPCA to the Battery Park City Parks Conservancy Corporation (“BPCPC”) through a written Management Agreement. BPCPC carries out its mission by maintaining 36 acres of parks, playgrounds and open spaces, including a mile-long waterfront esplanade. BPCPC also develops programs and manages public events for the Battery Park City community. BPCA owns and has built out a commercial condominium unit in a residential building in Battery Park City, which serves as the BPCPC headquarters.

To obtain a copy of BPCA’s most recently completed audited financial statements, please visit BPCA’s official website at [www.batteryparkcity.org](http://www.batteryparkcity.org). The audited financial statements and related reports found on BPCA’s website

will provide you with an overview of BPCA, which may be helpful in understanding the services required. For an overview of BPCPC's operations, please visit its website at [www.bpcparks.org](http://www.bpcparks.org).

### **III. SERVICES REQUIRED**

- A. The selected Proposer shall be responsible for performance of all services detailed in the Scope of Work, attached hereto as Exhibit A.
- B. All work to be performed by the selected Proposer shall be performed under the supervision of a Project Manager in charge of this engagement (the "Project Manager"), who must ensure that the work completed for BPCA is performed competently and in a timely manner.

### **IV. KEY DATES, CONTRACT TERM AND MINIMUM QUALIFICATIONS**

#### **A. Key Dates**

The following is a list of key dates, up to and including the date Proposals are due to be submitted, which is subject to change at BPCA's discretion:

- Request for Proposals issued: July 14, 2017
- Pre-proposal meeting with site visit to follow: August 2, 2017 at 10:30 a.m. at BPCA offices, 200 Liberty Street, 24<sup>th</sup> Floor, New York, New York 10281
- Deadline to submit questions to BPCA: Tuesday, August 31, 2017 by 3:00 p.m. (by email only)  
All questions regarding this RFP should be submitted in writing via email to the "Designated Contact":  
**Mr. Michael LaMancusa**, Contracts Administrator, Battery Park City Authority, at  
[Michael.LaMancusa@bpcanyc.gov](mailto:Michael.LaMancusa@bpcanyc.gov).
- Deadline for BPCA's response to substantive questions: September 13, 2017
- **DUE DATE FOR RESPONSES TO RFP: September 29, 2017 by 3:00 p.m. (the "Due Date")**
- Selection and notification of successful Proposer: To be determined.
- Contract start date: To be determined.

#### **B. Anticipated Contract Term**

It is anticipated that the term of the contract awarded pursuant to this RFP (the "Contract") will be a period of twenty-four (24) months. BPCA reserves the right to terminate the Contract at any time, with or without cause, upon thirty (30) days written notice. BPCA reserves the right to terminate the Contract at any time, without prior notice, if the person identified in the Proposal as the Project Manager for this engagement ceases to be employed by the selected Proposer.

#### **C. Minimum Qualification Requirements**

The following are the Minimum Qualification Requirements for this RFP. **Proposals that fail to comply with these requirements will be rejected.**

- 1) The Proposer must have an office in New York State (a New York City office is preferred);
- 2) The Proposer or one of its team members must have at least five years' experience performing civil, geotechnical, structural and marine engineering services and must have performed engineering design services for at least one urban flood resiliency project.

- 3) The Proposer or one of its team members must have at least five years' experience performing landscape design of public parks and open spaces;
- 4) The Proposer or one of its team members must have at least five years' experience performing architectural design services; and
- 5) The Proposer must be authorized to do business in the State of New York and, in the case of architects and engineers, be licensed to practice in the State of New York.

## **V. GENERAL REQUIREMENTS**

### **A. Questions regarding MBE/WBE participation, joint ventures and sub-contracting goals**

Please see Exhibit C (attached) for contractor requirements and procedures for business participation opportunities for New York State certified MBEs/WBEs and equal employment opportunities for minority group members and women.

For questions relating to MBE/WBE participation, joint ventures and sub-contracting goals ONLY, please contact "MBE/WBE Designated Contact" Mr. Anthony Peterson at 212.417.2337, [Anthony.peterson@bpca.ny.gov](mailto:Anthony.peterson@bpca.ny.gov).

### **B. Restricted Period**

Proposers are restricted from making contact with anyone other than the Designated Contact or MBE/WBE Designated Contact specified above during the period from the date of publication of the notice of this RFP in the New York State Contract Reporter through approval of the Contract by BPCA (the "Restricted Period"). Employees of BPCA are required to record certain contacts during the Restricted Period, including, but not limited to, any oral, written or electronic communication with a governmental entity under circumstances where a reasonable person would infer that the communication was intended to influence BPCA's conduct or decision regarding the governmental procurement, and to make a determination of responsibility based, in part, upon any such contact. Failure to abide by this process may result in a finding that the firm is a non-responsive Proposer.

### **C. Submission of Proposals**

**Proposals are due no later than 3:00 p.m. on September 29, 2017**

Each Proposer must submit seven (7) paper copies of its Proposal and one (1) electronic CD-Rom or flash drive copy in a sealed package clearly marked "**Proposal Enclosed – South BPC Resiliency Design 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, NY 10281

BPCA is not responsible for any internal or external delivery delays that may cause any Proposal to arrive beyond the stated Due Date. To be considered, Proposals must arrive at the time and place specified herein and be time stamped by BPCA's time stamp prior to 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 a second, amended Proposal, clearly labeled "**Amended Proposal Enclosed – South BPC Resiliency Design Services**" as long as the amended Proposal is submitted by the Due Date.

Public access to Proposals shall be governed by the relevant provisions of the Freedom of Information Law, Article 6 of the New York State Public Officers Law, and regulations adopted pursuant thereto.

### **D. Mandatory Forms**

Proposers must complete and include with their Proposal all “Mandatory Forms,” which can be found at the following URL address: [http://www.batteryparkcity.org/pdf\\_n/Mandatory\\_Forms\\_Packet.pdf](http://www.batteryparkcity.org/pdf_n/Mandatory_Forms_Packet.pdf), by the Due Date.

These Mandatory Forms include the following:

- 1) NYS Standard Vendor Responsibility Questionnaire – **Submit with the Cost Proposal (as described below), one (1) original unbound set of a completed NYS Standard Vendor Responsibility Questionnaire with original ink signatures. Do not include the Standard Vendor Responsibility Questionnaire in the bound copies of the Cost Proposal.** The NYS Standard Vendor Responsibility Questionnaire must be notarized and signed by the individual(s) authorized to bind the firm contractually. Indicate the title or position that the signer holds within the firm.
- 2) State Finance Law § 139 Form 1 – **one original unbound completed SFL 139 Form 1: Professional’s Certifications Pursuant to SFL § 139-j and § 139-k with original signature.** State Finance Law § 139 Forms 1 must be signed by the individual(s) authorized to bind the firm contractually.
- 3) W-9 form.
- 4) Statement of Non-Collusion.
- 5) Diversity Forms.

## **VI. PROPOSAL FORMAT AND CONTENTS**

### **A. Proposal Format**

The Proposal must be printed on 8½” x 11” paper. Pages should be numbered. The Proposal will be evaluated on the basis of its content, not length and should be limited to no more than twenty-five (25) pages, exclusive of the Transmittal Letter and the Appendices listed below. BPCA reserves the right to disqualify Proposals that fail to comply with any of these instructions.

### **B. Proposal Content**

A Proposal in response to this RFP must include the following sections in the order listed:

- 1) Transmittal Letter, as follows:

The Proposal must include a signed Transmittal Letter from a person within the firm who is authorized to bind the firm, preferably the Project Manager. **Transmittal Letters must be signed. Proposals with unsigned Transmittal Letters will be rejected.**

**The Transmittal Letter must include a representation by the Proposer that, except as disclosed in the Proposal, no officer or employee of the Proposer is directly or indirectly a party to or in any other manner interested financially or otherwise in this RFP.**

- 2) Executive Summary.
- 3) Proposer’s discussion of its understanding of the Services Required (see Section III).
- 4) Proposer’s Responses to the RFP Questions and RFP Additional Information Request, set forth below.
- 5) Proposer’s Cost Proposal, as described below.
- 6) Proposer’s response to the question regarding the use of New York State businesses set forth in Section X of the RFP.

### **C. RFP Questions**

- 1) Describe your firm's background, size, and history as they may be relevant to the Services, with an emphasis on waterfront resiliency design, the design of public parks, public open spaces and the architectural design of relevant buildings or structures. If your offices are located in more than one city, indicate which office will provide the services.
- 2) Describe your firm's experience in dealing with the City of New York, the NYS Department of Transportation ("NYSDOT") and/or the Port Authority of New York and New Jersey ("PANYNJ") on infrastructure and resiliency projects.
- 3) Identify members of your team who have experience performing services for and interacting with the City of New York, NYSDOT and/or PANYNJ on infrastructure and resiliency projects.
- 4) Describe the relevant services your firm and your team members provide, particularly those that may not be offered by other firms.
- 5) Describe in detail your expertise and experience as they relate to storm- and climate change resiliency design, especially with respect to waterfront properties in dense urban environments. Additionally, please describe examples, if any, of how your designs have successfully been employed to mitigate the risk of significant or catastrophic damage caused by storm- and climate change-related events or conditions.
- 6) Describe your firm's experience designing public amenity structures incorporating restaurant or other food service elements.
- 7) Describe your firm's approach to the Services and its specific phases, indicating where and how efficiencies of time and/or cost may be achieved.
- 8) Describe your firm's approach to community outreach and interface for the project underlying the Services.
- 9) Describe similarities or parallels between the Services, or specific elements or aspects of the Services, and other projects performed by your team. Please note any special challenges posed by the Services and potential means for addressing those challenges.
- 10) Describe your experience working with the New York City Public Design Commission ("PDC").
- 11) Describe your firm's experience and knowledge of the New York City Zoning Resolution and Building Code, as well as the Public Trust Doctrine.
- 12) 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.
- 13) How does your firm identify and manage conflicts of interest?
- 14) Has your firm or any of the firm's partners/employees been disciplined or censured by any regulatory body within the last five years? If so, please describe the relevant facts.
- 15) 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 professional services? If so, please provide an explanation and the current status or disposition of the matter.
- 16) Are there any potential conflict of interest issues representing BPCA?
- 17) List any professional or personal relationships your firm's employees may have with BPCA's Board and/or BPCA and BPCPC staff. A list of such Board members and staff is attached at Exhibit D.
- 18) If selected, will your firm assign any person to the Services 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 the Services during his/her employment at BPCA/BPCPC.
- 19) List all employees you intend to assign to this engagement and the area(s) of specialization for each employee. Describe the role of each employee who will be assigned to this engagement.
- 20) Identify the Project Manager who will be the primary contact and lead personnel in providing the Services to BPCA, and who will be listed as a "key person" in any contract with BPCA.
- 21) 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.
- 22) Describe your firm's "backup plan" in the event one or more of the employees assigned to this engagement leave the firm.

- 23) 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.
- 24) **Identify any and all exceptions taken to BPCA's standard form of contract, attached hereto as Exhibit E, and detail the reasons for such exceptions. No exceptions to the Contract will be considered by BPCA after submission of the Proposals.** BPCA reserves the right to reject Proposals based on non-conformance with the standard form of contract.
- 25) Please provide any additional information that 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/Bonding**

### 1) General Requirements

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

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

### 2) Insurance Requirements for the Selected Proposer

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

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

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

BPCA, BPCPC, and the State of New York must be protected as additional insureds on ISO Form CG 2010 (11/85) or its equivalent on policies held by the selected Proposer and any of its subcontractors.

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

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

- **Umbrella Liability Insurance** at a limit not less than \$5,000,000 per occurrence and in the aggregate. BPCA, BPCPC, and the State of New York must be protected as additional insureds on policies held by the selected Proposer and any of its subcontractors.
- **Professional Liability (“Errors & Omissions”) Insurance** must be maintained at a limit of not less than \$5,000,000 each claim.

### 3) Insurance Requirements for all Subcontractors

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

- **Commercial General Liability Insurance**, written on ISO Form CG 00 01 or its equivalent and with no modification to the contractual liability coverage provided therein, shall be provided on an occurrence basis and limits shall not be less than:
  - \$1,000,000 per occurrence
  - \$2,000,000 general aggregate which must apply on a per location / per project basis
  - \$2,000,000 products/completed operations aggregate

BPCA, BPCPC, and the State of New York must be protected as additional insureds on ISO Form CG 2010 (11/85) or its equivalent on policies held by all subcontractors.

- **Automobile Liability Insurance** with a combined single limit of not less than \$1,000,000. Coverage must apply to the subcontractor’s owned, hired, and non-owned vehicles and protect BPCA, BPCPC, and the State of New York as additional insured.
- **Workers’ Compensation, Employer’s Liability, and Disability Benefits** shall not be less than statutory limits, including United States Longshore and Harbor Workers Act coverage as applicable to the operations of the subcontractor.
- **Subcontractors will also be required to obtain all other insurances listed in Section (2) unless otherwise approved in writing by BPCA prior to commencement of any Subcontractor’s work.**

### **E. RFP Additional Information Request**

#### 1) Appendices:

- a. Include professional biographies for all employees listed in your Proposal.

#### 2) References:

Please provide the name, address, and phone number of at least three (3) client references for whom your firm has performed similar work to that requested in this RFP.

### 3) Financial Statements:

Please provide a copy of your firm's most recent audited financial statements (within the last year).

## **F. Cost Proposal**

Each Proposer must submit six copies of its Cost Proposal, which must include:

- 1) A total not-to-exceed fee for performance of all Services contemplated herein;
- 2) A not-to-exceed fee for performance of each Phase and Task as delineated in Exhibit A, including a separate not-to-exceed fee for performance of each Task included in the Add Alt Scope of Work as specified in Exhibit A.
- 3) Hourly billing rates for each personnel category Proposer proposes to employ for completion of the Services; and
- 4) A not-to-exceed amount for all reimbursable costs associated with performance of the Services.

**The Cost Proposal, regardless of whether it is bound, must be submitted in its own separate envelope within the sealed package containing all other Proposal documents. For the avoidance of doubt, the Cost Proposal must be submitted separately and unbound from the remainder of the Proposal documents. Please provide six (6) copies of the Cost Proposal.**

## **VII. THE EVALUATION PROCESS**

### **A. Objectives**

The primary objective of the evaluation process is to select a Proposer that:

- Demonstrates a thorough understanding of the scope of the engagement and the specific responsibilities that it entails;
- Possesses adequate resources to handle assigned responsibilities and to handle unforeseen circumstances that may arise;
- Has the capacity to provide personnel who have relevant experience and skills, and are highly diligent, responsible and professional personnel such that they will be able to perform the Services Required;
- Maintains high ethical standards and has an unblemished reputation; and
- Has no conflict of interest between its representation of BPCA and that of other clients.

The selection process will begin with the review and evaluation of each of the written Proposals. The purpose of this evaluation process is twofold: (1) examining the responses for compliance with this RFP and (2) identifying the complying firms that have the highest probability of satisfactorily performing the Services Required at a reasonable cost to BPCA. The evaluation process will be conducted in a comprehensive and impartial manner. The evaluation process will be conducted by a committee of BPCA's employees selected by BPCA (the "Committee"). **The Committee will evaluate the Proposals based upon the evaluation criteria for selection set forth below.**

BPCA reserves the right to reject and return unopened to the Proposer any Proposal received after the RFP Due Date. All timely submitted Proposals will be reviewed to determine if they contain all required submittals specified herein. Incomplete Proposals may be rejected.

### **B. Interviews**

BPCA reserves the right to determine whether interviews will be necessary for any or all of the Proposers. The purpose of the interview is to further document a Proposer’s ability to provide the Services, and to impart to the Committee an understanding of how specific services will be furnished. The proposed Lead Partner and Project Manager, as well all other key personnel proposed to provide the services must be present and participate in the interview. The firm will be evaluated on the basis of whether the interview substantiates the characteristics and attributes claimed by the Proposer in its written response to this RFP and any other information requested by the Committee prior to the interview.

**C. Evaluation Criteria for Selection**

Selection will be based upon the following criteria:

1.) Technical evaluation factors:

- a) Expertise and experience in the design of parks, public spaces, waterfronts, parks structures and public amenity structures
  - General experience 12%
  - Experience specific to City of New York projects 4%
  - Experience specific to New York State Department of Transportation projects 2%
  - Experience specific to Port Authority of NY and NJ projects 2%
  
- b) Expertise and experience in the design and engineering of coastal resiliency projects, including a variety of flood barrier technologies and approaches
  - General experience 12%
  - Experience specific to City of New York projects 4%
  - Experience specific to New York State Department of Transportation 2%
  - Experience specific to Port Authority of NY and NJ projects 2%
  
- c) Integration of adequate expertise and experience in all disciplines necessary to adequately perform the Services / Scope of Work, including but not limited to planning, design, coastal flooding resiliency design, specified engineering disciplines, hydrologic modeling, surveying, regulatory, legal, economic, sustainability, environmental/biological sciences, restaurant/food service consulting and consensus-building elements. 20%
  
- d) Approach to the provision of the Services, staffing and schedule: 20%
  
- e) Proposed MBE/WBE utilization plan (the “Utilization Plan”) and/or Firm MBE/WBE status: 7%
  
- f) Response to Diversity Practices Questionnaire: 10%
  
- g) Proposed SDVOB utilization plan and/or Proposer SDVOB status: 3%

2.) Cost Proposal evaluation.

**D. Basis for Contract Award**

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

### **VIII. NON-COLLUSION**

By submitting a Proposal, Proposers hereby warrant and represent 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.

### **IX. IRAN DIVESTMENT 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 sub consultant that is identified on the Prohibited Entities List on this Contract. The selected Proposer agrees that should it seek to renew or extend any Contract awarded hereunder, it must provide the same certification at the time the Contract is renewed or extended. The selected Proposer also agrees that any proposed assignee of the Contract will be required to certify that it is not on the Prohibited Entities List before BPCA may approve a request for assignment of the Contract.

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

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

### **X. 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:

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

If yes, identify New York State businesses that will be used and attach identifying information.

## EXHIBIT A

### SCOPE OF WORK

#### **I. Background and Summary**

In October 2012, Hurricane Sandy devastated the Northeast United States, resulting in over fifty lives lost in New York alone and billions of dollars in property damage, along with extensive loss of income and productivity and millions of traumatized residents. Although Sandy had been downgraded to tropical storm or “Superstorm” status by the time it reached New York City, it packed an incredibly powerful punch along the Manhattan waterfront, especially at particularly vulnerable points in Lower Manhattan, where streets, office and residential buildings, transit facilities, hospitals, power plants, public facilities and many other points were inundated with flood waters, in some cases to a height of several feet. Weeks passed before life returned to any semblance of normalcy in Lower Manhattan, and property owners are in certain cases still in the process of repairing, rebuilding and improving nearly five years later.

Battery Park City (“BPC”), a 92-acre master-planned, mixed-use neighborhood located along the Hudson River waterfront at the southwestern edge of Manhattan, fared better than many Lower Manhattan neighborhoods in Sandy’s wake, due largely to the presence of a protective seawall at the water’s edge and building parcels that are relatively higher than many other Lower Manhattan waterfront parcels. Nevertheless, BPC still sustained approximately \$20 million in Sandy damages, due almost exclusively to flooding. The bulk of BPC’s damage did not occur on the waterfront side of the neighborhood, but from storm inundation along West Street, at the eastern boundary of BPC. Some relatively minor waterside flood breaching also occurred, suggesting Sandy’s role as a bellwether event and bringing into stark relief the prospects of future, perhaps larger storm events.

Since 2012, the State of New York (through the Governors’ Office of Storm Recovery), the City of New York (through the Mayor’s Office of Recovery and Resiliency), the Metropolitan Transit Authority and the Port Authority of New York and New Jersey, along with scores of property owners, businesses and entities having property interests and/or business operations in Lower Manhattan, have devoted extensive energy, money, intellectual capital and creativity toward devising a slate of effective methods for addressing Lower Manhattan’s vulnerability to future storm damage and floodwater inundation, along with projected rises in sea level. The Lower Manhattan Coastal Resiliency project (“LMCR”) is the culmination of several of these early collaborations and is currently the City of New York’s planning vehicle for a targeted system of flood barrier protection to extend from Montgomery Street on the Lower East Side, southward around the tip of Manhattan and up along Battery Park City a point just north of Chambers Street. The LMCR project, aside from design, is not yet funded.

BPCA, which is responsible for planning and maintaining BPC, has both monitored and participated in collaborative discussions associated with the LMCR project and other resiliency-focused groups and organizations. In addition, given the urgency of the need, BPCA initiated its own resiliency assessment projects, aimed at evaluating BPC’s peculiar vulnerabilities to storm-related flood damage and sea level rise. Through these resiliency assessment projects, BPCA has been devising a methodology for the protection of BPC residents and assets that both will function independently of other lower Manhattan resiliency measures that may be developed, and also will afford a preferred means for the LMCR project, if it is built, to tie into BPC. To date, BPCA’s resiliency assessments have identified two primary points of severe flood vulnerability for BPC: (i) Wagner Park and its environs (the area made the subject of the present RFP), and (ii) the intersection of the BPC Esplanade and the Hudson River Park waterfront immediately north of Stuyvesant High School. In part because Wagner Park and its environs is both a primary vulnerability point and the likely first point of connection between any BPC barrier system and the LMCR project, BPCA retained Perkins Eastman to perform a specific assessment of that area (the Wagner Park Site Assessment Project). BPCA also retained Parsons Transportation, Inc. to perform a separate resiliency assessment for the entirety of BPC (the “BPC Assessment”), which largely focuses on enhancing BPC’s waterside defenses and protecting the BPC Esplanade/Hudson River Park intersection and the areas along BPC’s West Street frontage.

In 2017, following thorough evaluation and planning, including extensive community outreach and involvement, the Wagner Park Site Assessment Project was concluded and a report (the ““South BPC Resiliency Report””) was issued. The South BPC Resiliency Report includes the SBPC Plan, which is a conceptual plan for a storm barrier to be constructed along a line extending from the Museum of Jewish Heritage, through Wagner Park, across the Pier A Plaza and potentially along a line south of Battery Place to State Street. The SBPC Plan also includes conceptual designs for a modified landscape for Wagner Park and a new Wagner Park pavilion structure to replace the existing structure.

## **II. Objectives and Overview**

The purpose of the Services is to advance the conceptual plans and designs from the SBPC Plan through detailed design and engineering to final sets of construction documents suitable for contractor bidding and then to provide construction administration services for the construction of the final design.

BPCA envisions the Services as implementing a near-term, stand-alone flood barrier system that could eventually tie into the broader LMCR project, assuming one is funded and built. The Barrier System comprises a Wagner Park component, a Plaza component, and the potential Battery Bikeway Segment. The Barrier System will be designed to enhance the resiliency of a significant swath of southern BPC, West Street and the southwestern Financial District. If and when the full LMCR project is designed, funded and built, BPCA anticipates that the Barrier System would be positioned to link into the LMCR project to further enhance the flood protection afforded to the Base Project Site area.

The Services will comprise four primary phases, specifically:

### *Phase 1: Overall Project Objective Overview and Surveys.*

Topographic, utility and sewer surveys of the Base Project Site and any additional areas south of Second Place, west and south of Battery Place, and west of the Battery not otherwise covered by the Base Project Site shall be prepared according to commonly accepted industry standards. In addition, topographic and sewer surveys of all roadways, sidewalks and waterfront areas (not otherwise included in the site descriptions above) that are south of Third Place and west of the eastern curb line of Route 9A will be prepared in accordance with commonly accepted industry standards. Based upon the results of the surveys, hydrologic modeling will be performed to confirm the extent of potential protection afforded by and any adjustments to the conceptual alignment of the Barrier System (within the same general area of the identified segments) recommended for the purpose of providing improved protection, lessening of visual impacts or practical impediments, and/or potential cost savings.

### *Phase 2: Wagner Park:*

Concept designs will be advanced for flood barrier system (including detailed geotechnical, civil and structural engineering), park landscaping design modifications, new park pavilion building, new wetlands area and new cultural boat dock. Upon approval of final design and issuance of all necessary governmental permits and approvals, construction documents will be prepared, contractor procurement will be initiated and construction will proceed to completion.

### *Phase 3: Pier A Plaza:*

Concept design will be advanced for flood barrier system and associated modifications to existing Plaza, including detailed geotechnical, civil and structural engineering. Upon approval of final design and issuance of all necessary governmental permits and approvals, construction documents will be prepared, contractor procurement will be initiated and construction will proceed to completion.

*Phase 4 [ADD ALT – ONLY IF ELECTED BY BPCA TO BE INCLUDED]: Battery Bikeway Segment*

Concept alignment of Battery Bikeway Segment will be evaluated, and options for barrier methodologies and technologies will be identified and screened based upon geotechnical, civil and structural engineering analyses. Design of the Battery Bikeway Segment barrier system will be advanced, and, upon approval of final design and issuance of all necessary governmental permits and approvals, construction documents will be prepared, contractor procurement will be initiated and construction will proceed to completion.

It is anticipated that each of the four Services phases will be capable of proceeding in a largely discrete fashion; however, it is expected that there will be significant concurrency and interaction among the various phases. For each of Phases 2, 3 and 4, the Services will include a Community & Stakeholder Outreach Task, a Design Development Task, a Construction Document Task, a Bidding and Negotiation Task and a Construction Administration Task (as detailed below) and shall include services necessary to advance the progressive stages of design in a manner that acknowledges and responds to comments and feedback from BPCA, community members and stakeholders and that adheres to mandates and requirements of all agencies or entities having jurisdiction over any component of the resiliency efforts being implemented through the Services.

The selected Proposer shall coordinate its services, as appropriate and as requested, with other consultants and counsel that are either contracted by BPCA or identified by BPCA as having information relevant to or a legitimate interest in the provision of the Services. BPCA expects to procure and retain a Construction Manager for the SBPC Plan during the course of the Services. The Construction Manager, as well as other BPCA counsel and consultants, shall participate in the provision of the Services through regularly scheduled meetings with the selected Proposer.

### **III. General Requirements**

- A. Before commencement of Phase 1 of the Services work, the selected Proposer shall:
- Attend an introductory meeting with BPCA and Perkins Eastman to allow for an open exchange of information pertinent to the Services to date.
  - Establish a detailed list of contacts for and, where appropriate, make introductions to all relevant and interested organizations, stakeholders, government entities, agencies and departments, community groups and boards, and adjacent businesses and property owners.
- B. For all Services phases, the selected Proposer shall:
- Establish a schedule for completion of Scope of Work milestones;
  - Attend regular progress meetings with BPCA;
  - As needed, appropriate or requested by BPCA, attend meetings or otherwise communicate with relevant agencies, government entities or regulatory bodies.
  - Establish a detailed community outreach plan, subject to BPCA approval, appropriate to the particular Services phase, including opportunities for regular community updates and feedback, as well as periodic meetings and presentations.
- C. For Phases 2, 3 and 4 [if included] of the Services, the selected Proposer shall:
- Prepare and submit, as applicable, all relevant drawings, applications, documents and materials necessary to obtain required approvals, permits, certifications, consents or franchises.
  - Revise or amend any and all documents, including surveys, project designs, drawings and specifications until the same shall receive final approval by BPCA and all other agencies or entities from whom approval is required. The selected Proposer shall initiate all actions for incremental review of proposed designs, including all follow-up meetings, as required, to expeditiously resolve all questions and concerns and to obtain required approvals.

- Prepare, as appropriate and required, technical surveys, schematic design documents, design development documents, and construction bid documents, including necessary permits and approvals.
  - Conduct site visits as needed or requested.
  - Develop and revise cost estimates.
  - Develop construction phasing plans in consultation with BPCA, the Construction Manager and other consultants.
- C. The selected Proposer shall provide each draft and final package in paper and electronic (Adobe Reader and AutoCAD formats, as applicable) formats, and all photos, images, renderings, etc. in high resolution JPG format.
- D. Each Task of the Services will require active collaboration and interface between the selected Proposer and BPCA staff, attorneys and/or consultants. The selected Proposer shall meet with BPCA staff regularly, no less than once every two weeks, throughout performance of the Services. The selected Proposer shall also meet with other relevant entities and organizations determined to be necessary or beneficial by the selected Proposer and/or BPCA.
- E. The target date for the Selected Proposer's production of biddable contract documents for Phase 2 – Wagner Park shall be six to eight months following contract execution, with the target date for the production of biddable documents for Phases 3 – Pier A Plaza and Phase 4 – Battery Bikeway Segment [IF INCLUDED] being ten to twelve months following contract execution. Portions of the Services may be bid under separate contracts and at different stages in order to allow construction to begin at the earliest possible date. The selected Proposer in consultation with the BPCA may propose phasing plans and timeframes for the various portions of the Services.

#### **IV. Phase 1 -- Overall Project Objective Overview and Point Elevation Surveys.**

The selected Proposer shall perform topographic, utility and sewer surveys, in accordance with commonly accepted industry standards, of the Base Project Site and any additional areas south of Second Place, west and south of Battery Place, and west of the Battery not otherwise covered by the Base Project Site. In addition, the selected Proposer shall prepare topographic and sewer surveys in accordance with commonly accepted industry standards of all roadways, sidewalks and waterfront areas (not otherwise included in the site descriptions above) that are south of Third Place and west of the eastern curb line of Route 9A. Based upon the results of the required surveys, the selected Proposer shall perform hydrologic modeling to confirm the extent of potential protection afforded by and any adjustments to the conceptual alignment of the Barrier System (within the same general area of the identified segments) recommended for the purpose of providing improved protection, lessening of visual impacts or practical impediments, and/or potential cost savings.

#### **V. Phase 2 -- Wagner Park Site**

##### Task a): Community & Stakeholder Outreach

- i) The selected Proposer shall conduct preliminary meetings with the local community members, the Community Board and interested groups as directed by BPCA. The selected Proposer shall present the progress of this Services Phase and take under consideration all concerns and ideas expressed about this Services Phase. The selected Proposer shall submit to BPCA a summary documenting the minutes of each meeting and/or presentation. The selected Proposer shall document all attendees of the meetings and may distribute, upon BPCA's approval, copies of the meeting minutes to attendees.

- ii) Based on the input and comments obtained from the above, the selected Proposer shall prepare design plans which should include sufficient detail of site design, landscape design, streetscape design, existing and proposed plans, elevations, cross-sections, lighting design and all other appropriate elements and details. The selected Proposer shall present the proposed treatments in a schematic plan view, together with typical cross section views showing the interrelationship between the various elements, as well as the existing and proposed utilities. Illustrative streetscape views, including perspectives shall be shown as required to demonstrate the interrelationship of the distinctive design elements and the overall effect of the proposed improvements to the urban environment.

Task b): Design Development

- i) The selected Proposer shall incorporate the contents of the completed topographic and utility surveys into the design documents. The selected Proposer shall utilize as much information from these surveys as may be necessary to check design assumptions of the preliminary design and potential interference problems relating to substructures and abutting properties.
- ii) The selected Proposer shall obtain a geotechnical survey of Wagner Park, which survey shall be prepared in accordance with commonly accepted industry standards.
- iii) The selected Proposer shall further develop the plans and details of this Services Phase, including but not limited to: foundation design, utility impacts, and site impacts.
- iv) The selected Proposer shall review the design development documents with BPCA as they are being developed.
- v) Upon completion of the design development documents, or as otherwise deemed appropriate by BPCA, the selected Proposer shall submit plans (making presentations if requested by BPCA) to all interested agencies, entities, organizations and/or other parties that have jurisdiction over the area involved in this Services Phase, or that, in the opinion of BPCA, have a legal or otherwise legitimate interest in this Services Phase or the SBPC Plan
- vi) The selected Proposer shall modify and correct, as appropriate, the design development documents in accordance with the comments received from the interested reviewing parties. The affected portions of the revised drawings shall be resubmitted, as necessary, to the interested parties for review and approval.

Task c): Construction Documents

- i) The selected Proposer shall prepare contract documents for the purpose of contractor bidding and procurement. Drawings included in the contract documents shall be prepared with necessary construction details, fully dimensioned and with detailed specifications from which prospective bidders can make accurate and reliable estimates of the quantities, quality and character of the labor and materials required to complete the particular bid contract and to install any equipment therein.
- ii) The selected Proposer shall prepare all required contract documents in a manner and form that enables BPCA to award the necessary contract/s for construction. The contract documents shall include, but shall not be limited to final drawings and specifications for all elements for this Services Phase.
- iii) The selected Proposer shall participate in a constructability review of the contract documents that shall be carried out by the Construction Manager and BPCA.
- iv) The selected Proposer shall subsequently prepare a final cost estimate for the final design as reflected by the contract documents, which shall be prepared in a format approved by the Construction Manager and BPCA and shall evaluate and cost any proposed value engineering options.

- v) The selected Proposer shall make progress submissions as requested by BPCA adhering to the following general guidelines:
- 75% final design documents,
  - 95% final design documents, and
  - Contract documents (for bidding and procurement).

Task d): Bidding and Negotiation

- i) The selected Proposer shall assist with review of contractors' bids.
- ii) The selected Proposer shall prepare conformed documents to reflect the procured scope, if necessary, due to the incorporation of any proposed bid alternates

Task e): Construction Administration

- i) The selected Proposer shall review shop drawings, product data, samples and similar submittal materials of the contractors.
- ii) The selected Proposer shall visit the site periodically over the construction duration to determine whether the work is in accordance with the requirements of the contract documents.
- iii) The selected Proposer shall participate in regular construction meetings during construction with BPCA and others.
- iv) The selected Proposer shall periodically observe the status of the construction work to determine recommendations as to the dates of substantial completion and final completion and prepare and update punch lists as required to inform BPCA and the contractors of any deficiencies in the work.
- v) The selected Proposer shall provide services in support of the closeout of this Services Phase with the contractors and all authorities having jurisdiction.

**VI. Phase 3 -- Pier A Plaza**

Task a): Community & Stakeholder Outreach

- i) The selected Proposer shall conduct preliminary meetings with the local community members, the Community Board and interested groups as directed by BPCA. The selected Proposer shall present the progress of this Services Phase and take under consideration all concerns and ideas expressed about this Services Phase. The selected Proposer shall submit to BPCA a summary documenting the minutes of each meeting and/or presentation. The selected Proposer shall document all attendees of the meetings and may distribute, upon BPCA's approval, copies of the meeting minutes to attendees.
- ii) Based on the input and comments obtained from the above, the selected Proposer shall prepare design plans which should include sufficient detail of site design, landscape design, streetscape design, existing and proposed plans, elevations, cross-sections, lighting design and all other appropriate elements and details. The selected Proposer shall present the proposed treatments in a schematic plan view, together with typical cross section views showing the interrelationship between the various elements, as well as the existing and proposed utilities. Illustrative streetscape views, including perspectives shall be shown as required to demonstrate the interrelationship of the distinctive design elements and the overall effect of the proposed improvements to the urban environment.

Task b): Design Development

- i) The selected Proposer shall incorporate the contents of the completed topographic and utility surveys into the design documents. The selected Proposer shall utilize as much information from these surveys as may be necessary to check design assumptions of the preliminary design and potential interference problems relating to substructures and abutting properties.
- ii) The selected Proposer shall obtain a geotechnical survey of the Pier A Plaza, which survey shall be prepared in accordance with commonly accepted industry standards.
- iii) The selected Proposer shall further develop the plans and details of the Services Phase, including but not limited to: foundation design, utility impacts, and site impacts.
- iv) The selected Proposer shall review the design development documents with BPCA as they are being developed.
- v) Upon completion of the design development documents, or as otherwise deemed appropriate by BPCA, the selected Proposer shall submit plans (making presentations if requested by BPCA) to all interested agencies, entities, organizations and/or other parties that have jurisdiction over the area involved in this Services Phase, or that, in the opinion of BPCA, have a legal or otherwise legitimate interest in this Services Phase or the SBPC Plan.
- vi) The selected Proposer shall modify and correct, as appropriate, the design development documents in accordance with the comments received from the interested reviewing parties. The affected portions of the revised drawings shall be resubmitted, as necessary, to the interested parties for review and approval.

#### Task c): Construction Documents

- i) The selected Proposer shall prepare contract documents for the purpose of contractor bidding and procurement. Drawings included in the contract documents shall be prepared with necessary construction details, fully dimensioned and with detailed specifications from which prospective bidders can make accurate and reliable estimates of the quantities, quality and character of the labor and materials required to complete the particular bid contract and to install any equipment therein.
- ii) The selected Proposer shall prepare all required contract documents in a manner and form that enables BPCA to award the necessary contract/s for construction. The contract documents shall include, but shall not be limited to final drawings and specifications for all elements for the Services Phase.
- iii) The selected Proposer shall participate in a constructability review of the contract documents that shall be carried out by the Construction Manager and BPCA.
- iv) The selected Proposer shall subsequently prepare a final cost estimate for the final design as reflected by the contract documents, which shall be prepared in a format approved by the Construction Manager and BPCA and shall evaluate and cost any proposed value engineering options.
- v) The selected Proposer shall make progress submissions as requested by BPCA adhering to the following general guidelines:
  - 75% final design documents,
  - 95% final design documents, and
  - Contract documents (for bidding and procurement).

#### Task d): Bidding and Negotiation

- i) The selected Proposer shall assist with review of contractors' bids.

- ii) The selected Proposer shall prepare conformed documents to reflect the procured scope, if necessary, due to the incorporation of any proposed bid alternates

Task e): Construction Administration

- i) The selected Proposer shall review shop drawings, product data, samples and similar submittal materials of the contractors.
- ii) The selected Proposer shall visit the site periodically over the construction duration to determine whether the work is in accordance with the requirements of the contract documents.
- iii) The selected Proposer shall participate in regular construction meetings during construction with BPCA and others.
- iv) The selected Proposer shall periodically observe the status of the construction work to determine recommendations as to the dates of substantial completion and final completion and prepare and update punch lists as required to inform BPCA and the contractors of any deficiencies in the work.
- v) The selected Proposer shall provide services in support of the closeout of this Services Phase with the contractors and all authorities having jurisdiction.

**ADD ALT SCOPE OF WORK- [only if elected by BPCA]**

**Phase 4 -- Battery Bikeway Segment**

Task a): Community & Stakeholder Outreach

- i) The selected Proposer shall conduct preliminary meetings with the local community members, the Community Board and interested groups as directed by BPCA. The selected Proposer shall present the progress of this Services Phase and take under consideration all concerns and ideas expressed about this Services Phase. The selected Proposer shall submit to BPCA a summary documenting the minutes of each meeting and/or presentation. The selected Proposer shall document all attendees of the meetings and may distribute, upon BPCA's approval, copies of the meeting minutes to attendees.
- ii) Based on the input and comments obtained from the above, the selected Proposer shall prepare design plans which should include sufficient detail of site design, landscape design, streetscape design, existing and proposed plans, elevations, cross-sections, lighting design and all other appropriate elements and details. The selected Proposer shall present the proposed treatments in a schematic plan view, together with typical cross section views showing the interrelationship between the various elements, as well as the existing and proposed utilities. Illustrative streetscape views, including perspectives shall be shown as required to demonstrate the interrelationship of the distinctive design elements and the overall effect of the proposed improvements to the urban environment.
- iii) The selected Proposer shall work with BPCA, The Battery Conservancy and the NYC Department of Parks and Recreation ("DPR"), or other applicable NYC referring department, to obtain PDC approval. The selected Proposer's required services may include scoping meetings, DPR in-house/internal design reviews, and Community Board meetings.

Task b): Design Development

- i) The selected Proposer shall prepare topographic, utility and sewer surveys of the Battery Bikeway Segment area, which surveys shall be prepared in accordance with commonly accepted industry standards.

- iii) The selected Proposer shall obtain a geotechnical survey of the Battery Bikeway Segment area, which survey shall be prepared in accordance with commonly accepted industry standards.
- iii) The selected Proposer shall incorporate the contents of the completed topographic and utility surveys into the design documents. The selected Proposer shall utilize as much information from these surveys as may be necessary to check design assumptions of the preliminary design and potential interference problems relating to substructures and abutting properties.
- iii) The selected Proposer shall further develop the plans and details of this Services Phase, including but not limited to: foundation design, utility impacts, and site impacts.
- iv) The selected Proposer shall review the design development documents with BPCA as they are being developed.
- v) Upon completion of the design development documents, or as otherwise deemed appropriate by BPCA, the selected Proposer shall submit plans (making presentations if requested by BPCA) to all interested agencies, entities, organizations and/or other parties that have jurisdiction over the area involved in this Services Phase, or that, in the opinion of BPCA, have a legal or otherwise legitimate interest in this Services Phase or the SBPC Plan.
- vi) The selected Proposer shall modify and correct, as appropriate, the design development documents in accordance with the comments received from the interested reviewing parties. The affected portions of the revised drawings shall be resubmitted, as necessary, to the interested parties for review and approval.

#### Task c): Construction Documents

- i) The selected Proposer shall prepare contract documents for the purpose of contractor bidding and procurement. Drawings included in the contract documents shall be prepared with necessary construction details, fully dimensioned and with detailed specifications from which prospective bidders can make accurate and reliable estimates of the quantities, quality and character of the labor and materials required to complete the particular bid contract and to install any equipment therein.
- ii) The selected Proposer shall prepare all required contract documents in a manner and form that enables BPCA to award the necessary contract/s for construction. The contract documents shall include, but shall not be limited to final drawings and specifications for all elements for the Services Phase.
- iii) The selected Proposer shall participate in a constructability review of the contract documents that shall be carried out by the Construction Manager and BPCA.
- iv) The selected Proposer shall subsequently prepare a final cost estimate for the final design as reflected by the contract documents, which shall be prepared in a format approved by the Construction Manager and BPCA and shall evaluate and cost any proposed value engineering options.
- v) The selected Proposer shall make progress submissions as requested by BPCA adhering to the following general guidelines:
  - 75% final design documents,
  - 95% final design documents, and
  - Contract documents (for bidding and procurement).

#### Task d): Bidding and Negotiation

- i) The selected Proposer shall assist with review of contractors' bids.
- ii) The selected Proposer shall prepare conformed documents to reflect the procured scope, if necessary, due to the incorporation of any proposed bid alternates.

Task e): Construction Administration

- i) The selected Proposer shall review shop drawings, product data, samples and similar submittal materials of the contractors.
- ii) The selected Proposer shall visit the site periodically over the construction duration to determine whether the work is in accordance with the requirements of the contract documents.
- iii) The selected Proposer shall participate in regular construction meetings during construction with BPCA and others.
- iv) The selected Proposer shall periodically observe the status of the construction work to determine recommendations as to the dates of substantial completion and final completion and prepare and update punch lists as required to inform BPCA and the contractors of any deficiencies in the work.
- v) The selected Proposer shall provide services in support of the closeout of this Services Phase with the contractors and all authorities having jurisdiction.

**EXHIBIT B**

South BPC Resiliency Report / SBPC Plan

(attached)

# WAGNER PARK SITE ASSESSMENT AND SOUTH BATTERY PARK CITY RESILIENCY PLAN

E X E C U T I V E   S U M M A R Y



**Battery Park  
City Authority**

July 13, 2017

**Perkins Eastman**

## Credits

Perkins Eastman

W Architecture & Landscape Architecture

Arup

KS Engineers

Muesser Rutledge Consulting Engineers

HR&A Advisors



July 13, 2017

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# 1. Introduction

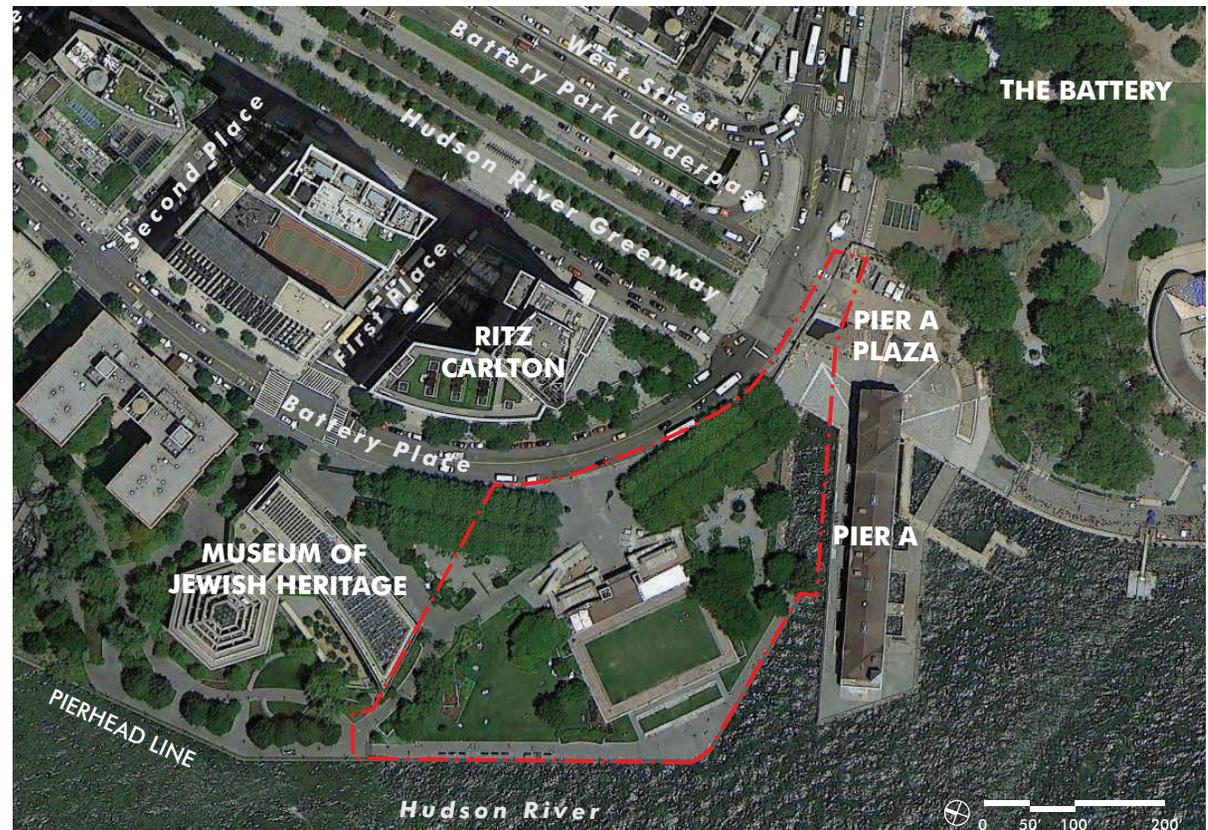
In the years since Wagner Park opened in 1994, much has changed: New Yorkers' sensibility toward public spaces, the water and waterfront access has become more sophisticated. Lower Manhattan suffered a devastating tragedy in 2001 but has recovered to become an incredibly vibrant mixed-use neighborhood and one of the City's biggest tourist destinations. In the immediate vicinity of Wagner Park, pedestrian activity has burgeoned, and the revitalization of Pier A has established a destination on the Park's eastern edge.

Notwithstanding the enormous pace of change and transformation in Lower Manhattan, no change carries the prospects for as many significant, long-term impacts to the area, and to the Wagner Park environs in particular, as the increasing manifestations of climate change -- including severe storms with storm surge and flooding at greater frequencies, along with science's projections for significant future sea level rise.

The Wagner Park Site Assessment included a comprehensive assessment of the vulnerability of the area surrounding the Park (including Pier A Plaza) to the risks associated with climate change and the factors involved

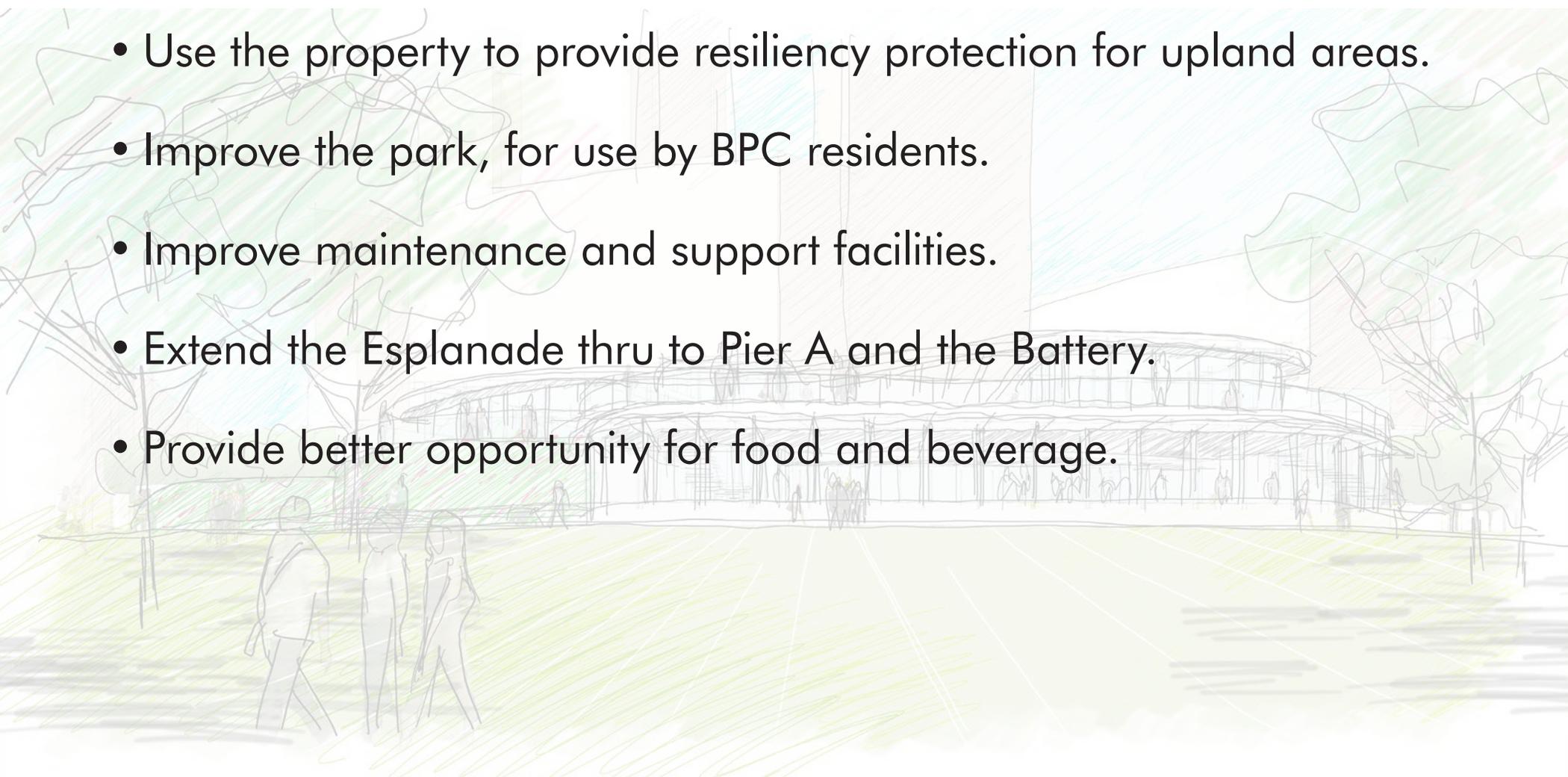
in creating an effective and appropriate resiliency strategy, one that could eventually be tied into the City's Lower Manhattan Coastal Resiliency Project. Included in the study's scope were considerations of the Park

itself and its pavilion and what opportunities the ultimate resiliency strategy may afford to improve the functionality, appeal and efficiencies of the Park.



Study Area

## 2. Planning Objectives

- Use the property to provide resiliency protection for upland areas.
  - Improve the park, for use by BPC residents.
  - Improve maintenance and support facilities.
  - Extend the Esplanade thru to Pier A and the Battery.
  - Provide better opportunity for food and beverage.
- 

### 3. Overall resiliency context



100 yr flood & Sandy 2012 inundation map

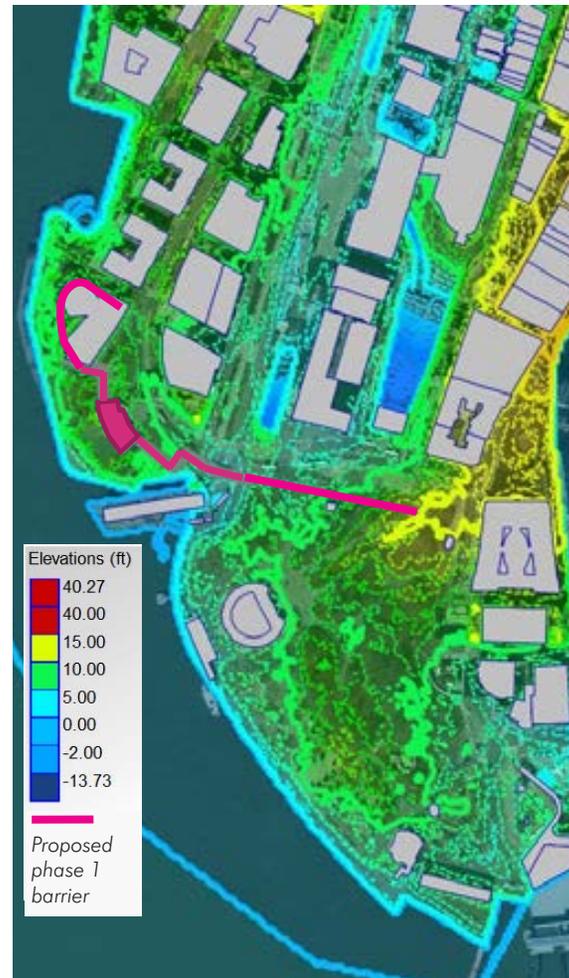
The Wagner Park study area occupies a location that is one of the most vulnerable in Lower Manhattan to tidal inundation, including portions of Wagner Park and Pier A Plaza, which are located at elevations which make them particularly vulnerable to storm surge.

The study area also occupies a pivotal location, between the larger Battery Park City perimeter resiliency concept that begins just north of Wagner Park (primarily utilizing existing building faces and garden walls as the basis of a new storm barrier), and the Lower Manhattan Coastal Resiliency protection line as it approaches the study area from the east.

## 4. South Battery Park City Resiliency Plan

Based upon the resiliency analysis performed during the study, the Assessment Team recommends a discrete Phase 1 flood barrier project that can serve as a stand-alone waterfront barrier, affording flood protection to a significant portion of South Battery Park City and the southwestern corner of the Financial District. The resulting South Battery Park City Resiliency Plan would involve extending the barrier line from the eastern terminus of the study area (at the northeast corner of Pier A Plaza), along Battery Place east to State Street, and from the northern terminus of the study area (adjacent to the Museum of Jewish Heritage) north to First Place.

The South Battery Park City Resiliency Plan would be carefully coordinated with the Lower Manhattan Coastal Resiliency Plan so that it is positioned for tie-in at such time as the Lower Manhattan Coastal Resiliency barrier line approaches the Battery from the east.



Overview of lower Manhattan elevations and proposed standalone phase 1 flood barrier

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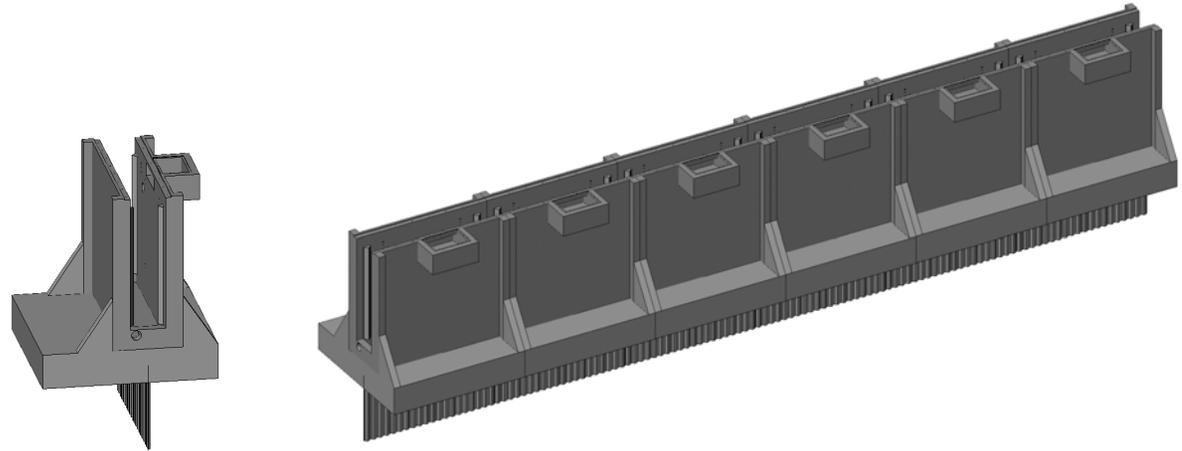
BPCA Resiliency plan

## 5. Deployable Flood Barrier Concept

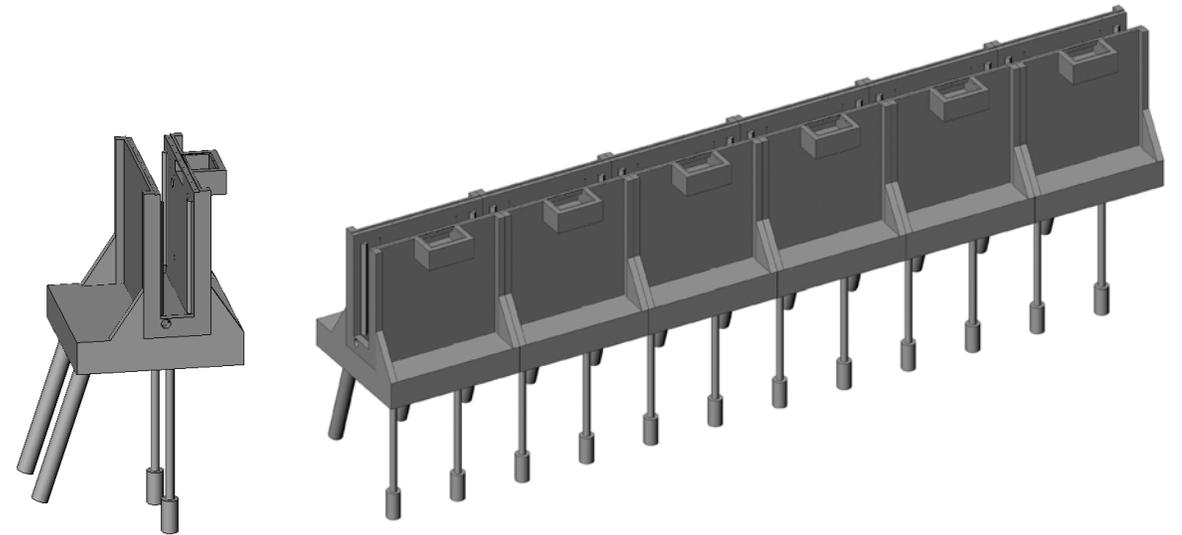
### Flood Barrier System

Because a portion of the flood protection line of the South Battery Park City Resiliency Plan will cross just below the southern terminus of Route 9A, the Hudson River Park Greenway and the newly designated Empire Trail, it is important that views and access to the water be preserved to the greatest extent feasible.

The preferred deployable flood barrier system uses flood gates that are stored in the ground and raised in the event of a storm condition. In the raised position, the barriers are supported between columns spaced at a uniform distance of approximately 15 feet, which is the length of the individual flood wall units. The structure is a repeating unit, and each segment of flood wall is linked to form a continuous protective wall.



*Foundation base assembly with sheet piles*



*Foundation base with batter piles and rock anchors*

## 6. Deployable Flood Barrier Design Integration

### Precedent: Georgetown Harbor

The type of deployable flood barrier system envisioned for most of Wagner Park and for Pier A Plaza can be found in current operation in Georgetown Harbor in Washington, D.C. *[Part of the barrier system in the Park is formed by the wall of a newly constructed pavilion structure as discussed in next section]*

This system, which has been in use since 1986, is deployed manually. While simple and

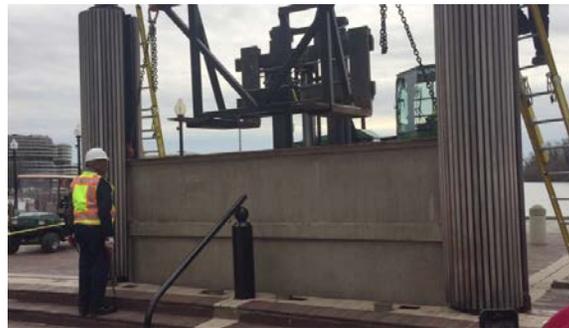
efficient to operate, this system has several benefits: It does not rely on expensive-to-maintain technology, and it does not depend on components being delivered from off site, which would add significant time & expense and risk in the event that the gates are deployed.

The specific forms and technologies for the segment of the flood barrier that would extend

from Pier A Plaza along Battery Place to State Street have not been definitively identified in this study. This will require further analysis as part of a future engineering project. Additional engineering for this segment will be required to analyze a suitable means for spanning the Battery Park Underpass and the Brooklyn-Battery Tunnel.



Georgetown Harbor: deployable flood barrier columns during non-flood condition



Georgetown Harbor: barrier being deployed



Georgetown Harbor: barrier raised during flood

## Columns as Civic Design

When the flood walls are not deployed, they are stored in the ground and not visible, allowing views and access to the park. The freestanding supportive columns, which remain in place permanently, will be designed as civic elements for the Park and the Plaza, while working with the structural specifications required to support the flood walls.

Freestanding columns have a long history as design elements in public environments including many examples in New York City parks. At Wagner Park, the columns can be designed as a mediating element between the new pavilion and the landscape. They can also incorporate other park amenities such as lighting or charging stations for mobile devices.

*Hudson River Park near Morton Street, NY*

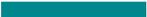


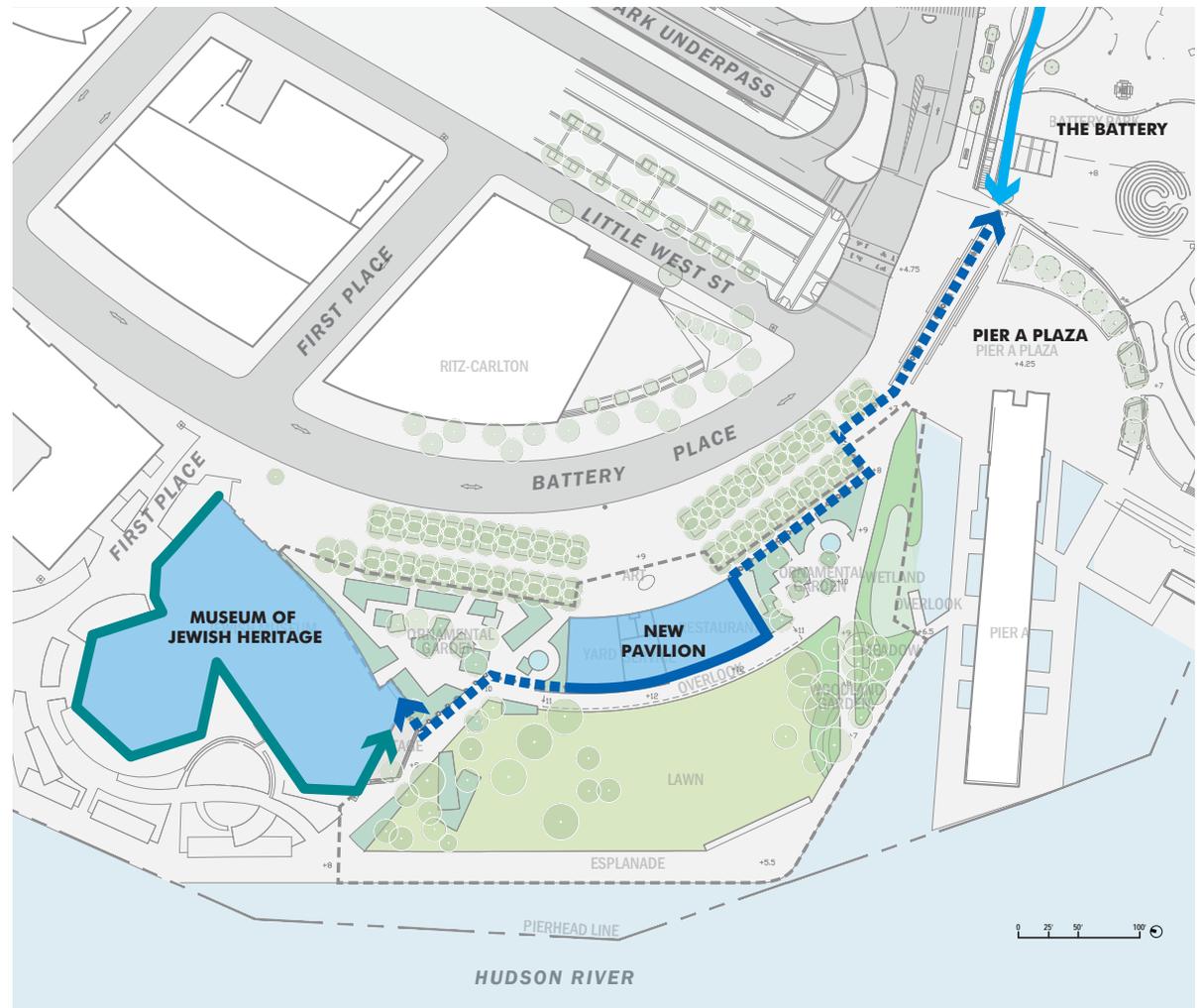
*Target Field, Minneapolis, MN*

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# 7. Wagner Park Resiliency Concept

The resiliency concept for Wagner Park relies on both deployable barriers and a new pavilion designed to function as a barrier against storm surge. The combination of the two systems forms a continuous barrier from First Place to State Street.

-  South Battery Park City Resiliency
-  Deployable Flood Barrier Border
-  Building as Continuous Flood Barrier
-  Lower Manhattan Coastal Resiliency



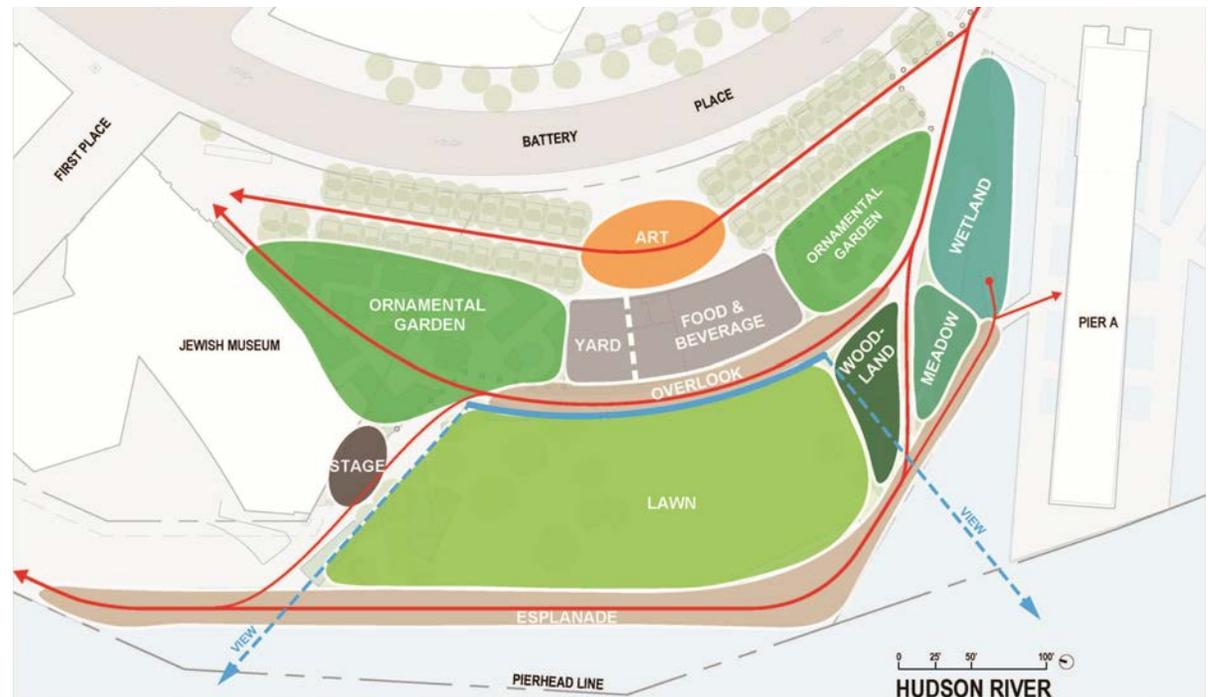
Continuous line of protection formed by the new proposed pavilion and deployable flood barrier.

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## 8. Wagner Park Landscape Concept

The South Battery Park City Resiliency Plan envisions building upon the most successful and popular features of the Park while further expanding upon the range of settings it encompasses. This includes:

- Preserving and expand the ornamental gardens
- Increasing the accessibility and usability of the lawn, with one contiguous area extending from the Museum of Jewish Heritage to the new proposed wetlands on the west side of the Pier A Cove
- Introducing a new wetlands to improve the water quality and environmental quality of the cove, and a woodlands area, representing the transition between “river and meadow.”
- An outdoor stage area for seasonal use.



Landscape concept

# 9. Wagner Park — Use Allocation

The proposed Wagner Park landscape concept of the South Battery Park City Resiliency Plan enhances the quality of the Park experience by :

- expanding the ornamental gardens;
- simplifying the lawn;
- increasing the planted areas to include a new wetlands feature at the Pier A cove; and
- reducing existing paved areas.



### Existing

Landscape Category	Area
Garden	21,000 sf
Lawn	39,500 sf
<b>Wetland + Woodland</b>	<b>0</b>
Hardscape	43,400 sf
Building	8,000 sf
Yard	1,600 sf
Water	3,000 sf
<b>Total</b>	<b>116,500 sf</b>

### Proposed

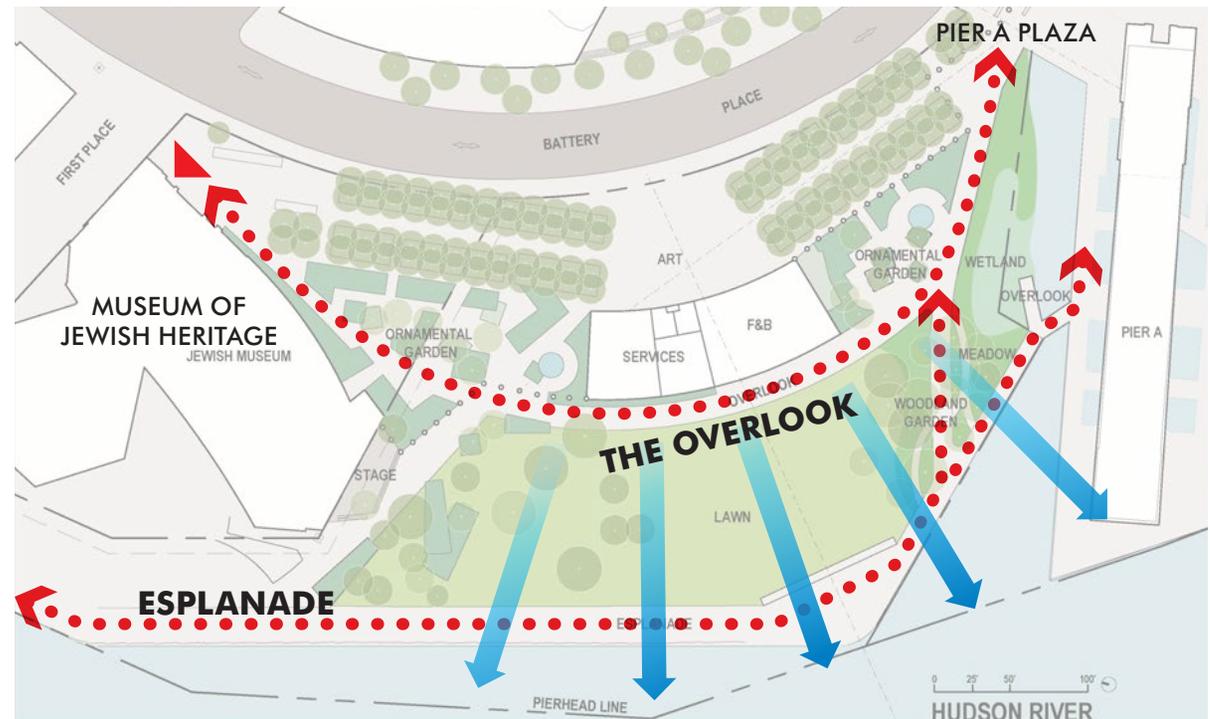
Change in Area	Area
+ 2,000 sf	23,000 sf
+ 500 sf	40,000 sf
<b>+ 9,600 sf</b>	<b>9,600 sf</b>
- 8,300 sf	35,100 sf
- 1,700 sf	6,300 sf
+ 900 sf	2,500 sf
- 3,000 sf	0 sf
<b>Total</b>	<b>116,500 sf</b>



# 11. Wagner Park — Pedestrian Access/Navigation

Added pedestrian benefits:

- continuous waterside Esplanade connecting Battery Park City and Pier A/Plaza;
- new bridge + overlook providing direct access to Pier A
- elevated overlook with unobstructed panorama; and
- simplified, intuitive accessways into and through the Park.



## 12. Wagner Park — Existing Pavilion

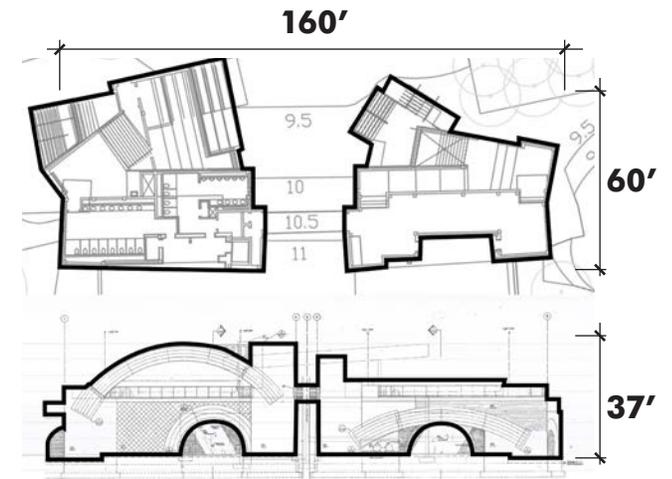
Following an evaluation of the existing pavilion and its compatibility with the study’s resiliency objectives, the Assessment Team recommends that the existing pavilion be replaced with a new pavilion structure. The South Battery Park City Resiliency Plan envisions a new structure of similar footprint that would be able to form a critical component of the Park’s flood barrier system.

Existing pavilion considerations relevant to the need for a replacement structure include:

- The first floor is below target protection elevation;
- Exterior envelope is not resilient and would not accommodate built-in resiliency measures;
- Extensive repair/remediation required, plus code-required upgrades, and atypical future maintenance and repairs (due to harsh marine environment and nature of original detailing) approach cost of new construction;
- Even if repaired and upgraded:
  - » New flood barrier would be required to be built around, rather than as part of it;
  - » Parks maintenance and storage space would be inadequate;
  - » No flexible space would be available for BPCA auxiliary needs such as security outpost or site office;
  - » Food and beverage space would be inadequate for current or enhanced restaurant operations;
  - » Underground cistern for storage of storm water would not be accommodated.



*Efflorescence on west elevation façade, northern structure*



*Existing Wagner pavilion*

# 13. Park Pavilion Programming

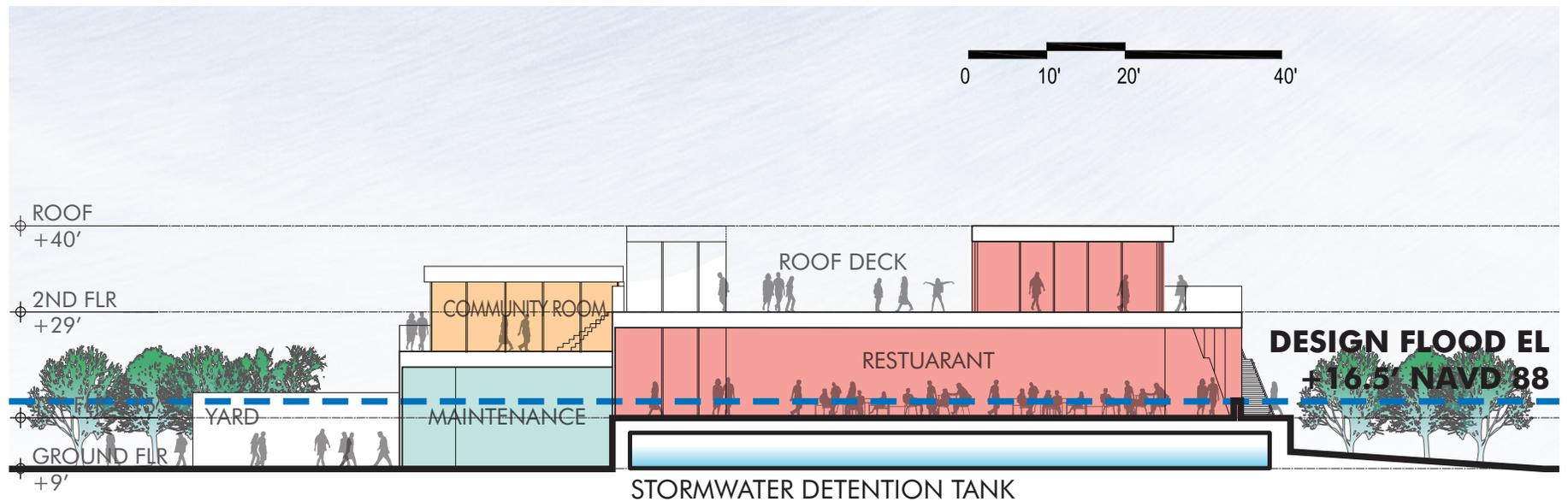
The new Wagner Park pavilion, in addition to forming a significant element of the flood barrier system for the South Battery Park City Resiliency Plan, is intended to offer enhanced utility and support for the Park by creating improved maintenance, storage and service yard space for BPCA Parks operations and improving space utilization for the public restrooms located within the pavilion. Additional space provided for food and beverage operations will allow for adequate kitchen/service areas and seating capacity similar to that provided by the existing pavilion (including exterior dining space) while employing contemporary restaurant space standards and accessibility requirements. The inclusion of a second-floor publicly-accessible roof deck and community room offer additional Park enhancements.



Program	Existing Usable Area	Proposed Usable Area
Restaurant	3,450 sf	5,000 sf (ground floor)  1,200 sf (second floor)
Maintenance/Auxiliary	2,100 sf (partial height space)	1,100 sf (full height space)
Restrooms	1,310 sf	900 sf
<b>Community Room</b>	<b>N/A</b>	<b>1,200 sf</b>
Roof Deck	3,126 sf	3,200 sf (public)  1,400 sf (restaurant)
Steps and landings	3,968 sf	-
Service Yard (Open to Above)	960 sf	3,000 sf
<b>Total</b>	<b>14,914 sf</b>	<b>17,000 sf</b>

# 14. Park Pavilion as Flood Barrier

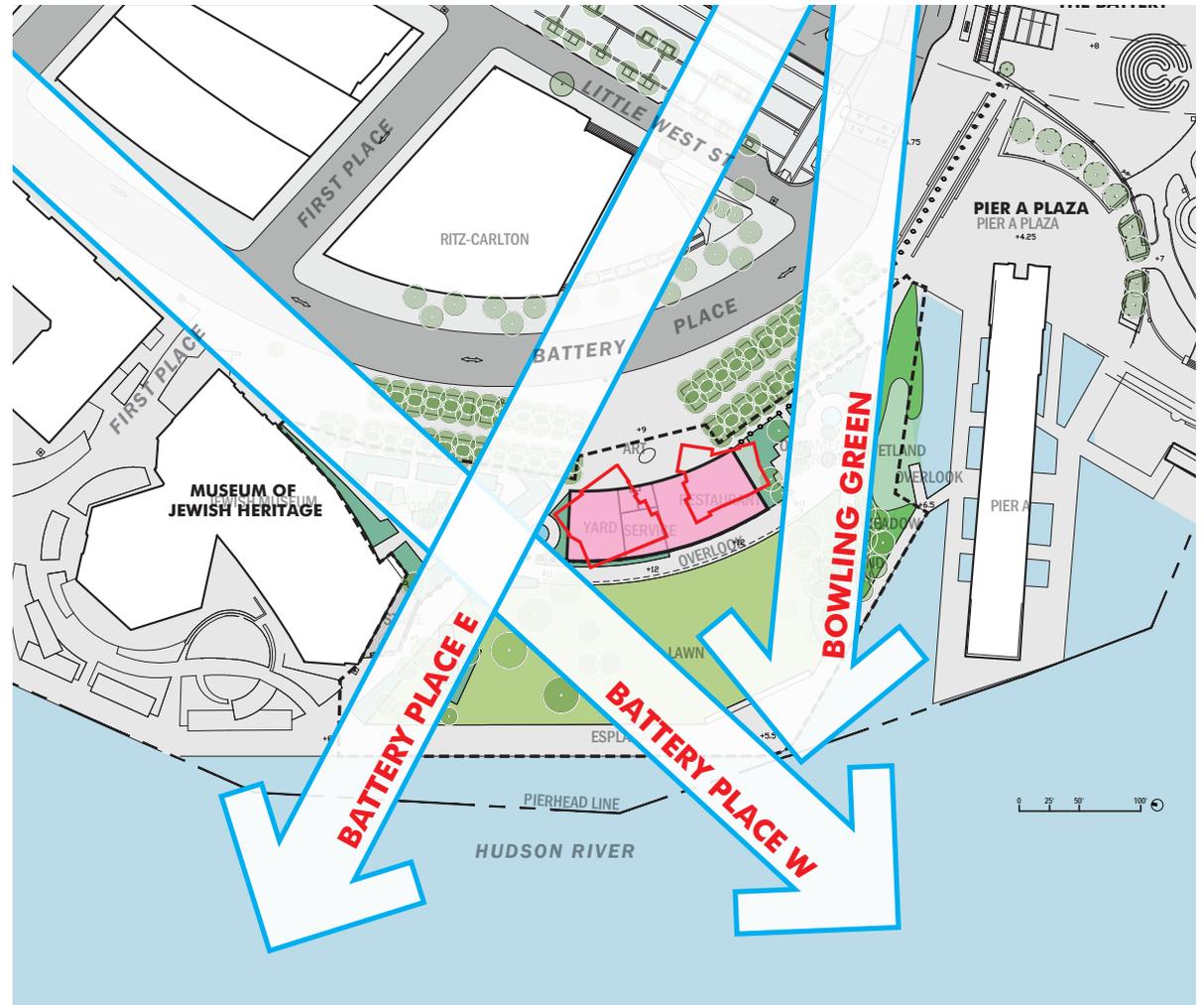
The proposed pavilion would need to be built to a height sufficient to allow the building to act as a barrier for flooding and storm surge. The plan assumes a Design Flood Elevation of El +16.5 NAVD 88, per the Design Flood Elevation provided by the Mayor’s Office of Rebuilding and Resilience, and the Lower Manhattan Coastal Resiliency Team.



The proposed pavilion would need to be built to a height sufficient to allow the building to act a barrier for storm surge.

# 15. Siting of a New Pavilion

The proposed program should be provided within a footprint that stays within the area defined by the site's three view corridors.

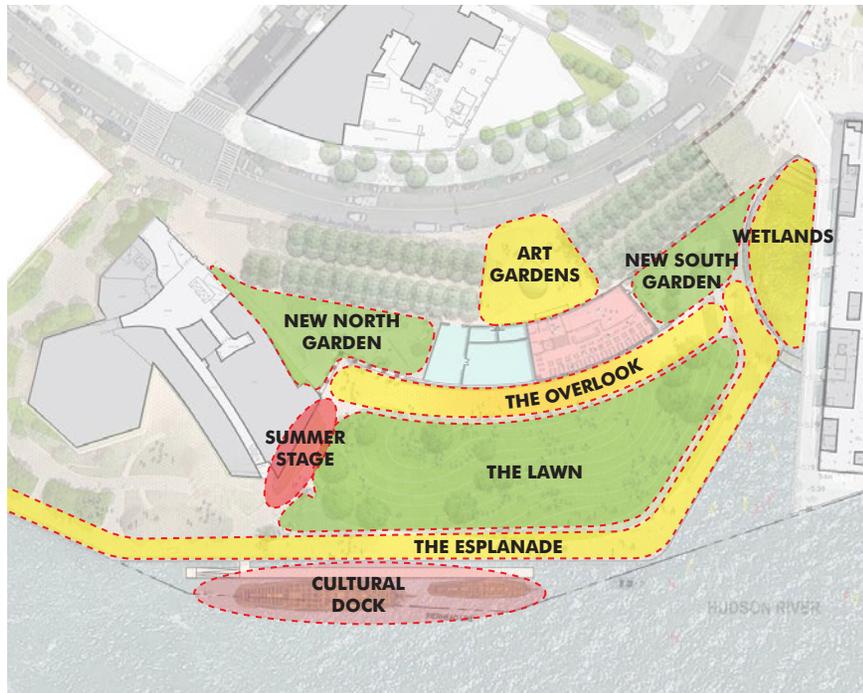


The new pavilion should occupy within footprint constraints

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## 16. Key Park Places

The proposed plan for Wagner Park can be seen as a series of places, building on, and enhancing what exists. These places form areas for people to enjoy the park individually, or in small groups, yet are integrated into a bigger whole.



Key places with programs



Sketch of The Lawn looking toward Pier A



*Sketch view from New South Garden with proposed Woodlands in the foreground*

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# 17. Public Engagement and Outreach — Meetings/Presentations

The Team's public engagement efforts consisted of dozens of meetings with local stakeholders; meetings with public agencies and elected officials; participation in larger format open public and community meetings; and an online survey. These meetings are detailed below.

## **Public Agencies and Elected Officials**

- Governors Office (10/28/16, via webex)
- Lower Manhattan Coastal Resiliency Team (1/6/17 and 5/16/17)
- Mayors Office of Recovery and Resiliency (1/13/17)
- State Senator Daniel Squadron (2/10/17)
- Manhattan Borough President Gale Brewer (5/17/17)



Town Hall Meeting, November 9, 2016

## **Open Public Meetings**

- CB1 BPC Committee Meeting (4/5/16)
- BPC Open Community Meeting (4/13/16)
- BPCA Board Meeting (9/20/16)
- BPC Open Community Meeting (11/9/16)
- CB1 BPC Committee Meeting (12/6/16)
- BPC Open Committee Meeting (3/22/17)
- BPCA Board Meeting (3/22/17)
- BPC Committee Meeting (4/4/17)
- CB1 Lower Manhattan Coastal Resiliency (LMCR) Spring Task Force Meeting (4/20/17)
- CB1 BPC Committee Meeting (5/2/17)
- CB1 Resiliency Spring Community-wide Meeting (5/18/17)
- CB1 Waterfront, Parks & Resiliency Committee Meeting (6/20/17)

Extensive adjustments were made in response to community input and comments gathered at the open public meetings. These include:

- Modified the esplanade connection to Pier A Plaza to minimize impact on the Ornamental Gardens
- Expanded the Ornamental Gardens near the Museum of Jewish Heritage

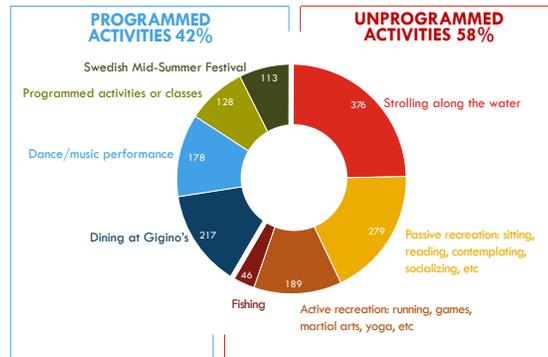
- Reduced overall massing to lessen the appearance of a long continuous wall
- Eliminated the roof deck atop the second floor of the proposed pavilion. (or “third floor” as some were characterizing it; you’ll recall there some disagreement there) of the proposed pavilion
- Reduced the footprint of the restaurant’s upper level
- Reduced restaurant floor area while retaining sufficient space & seating for normal operations, ADA/access clearances, code conformance, adequate space for trash & service, etc.
- Specifically delineated a public roof deck and public access to the upper level
- Minimized height of yard screen wall to more closely suggest a garden wall
- Reduced the depth and length of the canopy
- Further reduced the area of paved surface
- Provided adequate space for existing number of toilet fixtures in public restrooms

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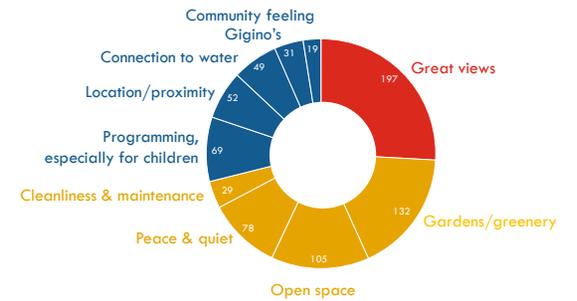
# 18. Public Engagement and Outreach — Survey

An online survey was administered in April 2016 to solicit input on how people used, perceived, and valued Wagner Park. Over 400 responses were received. While answers varied, they revealed that the quality of the environment, the views and the park’s programming were the Park’s main source of attraction. The value placed upon the special quality of the park’s environment, i.e. the gardens and sense of solitude within the city were reinforced in the public and community meetings.

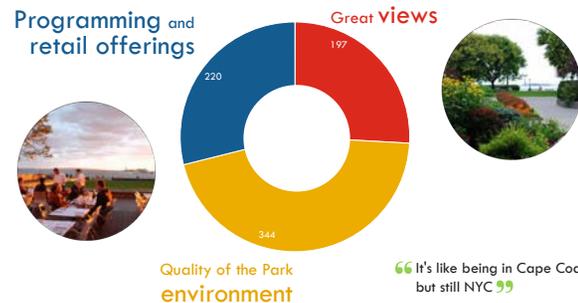
WHY THEY CAME TO WAGNER PARK



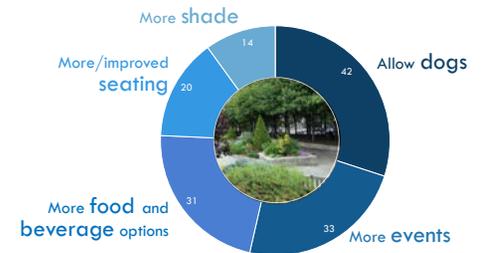
WHAT THEY LIKE BEST ABOUT WAGNER PARK



WHAT THEY LIKE BEST ABOUT WAGNER PARK



HOW WAGNER PARK COULD BE IMPROVED



## EXHIBIT C

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

#### **NEW YORK STATE LAW**

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

#### **Business Participation Opportunities for MWBEs**

For purposes of this solicitation, BPCA hereby establishes an overall goal of 30 percent for MWBE participation, 15 percent for New York State-certified Minority-owned Business Enterprise ("MBE") participation and 15 percent for New York State-certified Women-owned Business Enterprise ("WBE") participation (based on the current availability of MBEs and WBEs). A contractor ("Contractor") on any contract resulting from this procurement ("Contract") must document its good faith efforts to provide meaningful participation by MWBEs as subcontractors and suppliers in the performance of the Contract. To that end, by submitting a response to this RFP, the Proposer agrees that BPCA may withhold payment pursuant to any Contract awarded as a result of this RFP pending receipt of the required MWBE documentation. The directory of MWBEs can be viewed at: <https://ny.newnycontracts.com>. For guidance on how BPCA will evaluate a Contractor's "good faith efforts," refer to 5 NYCRR § 142.8.

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

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

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

By submitting a bid or proposal, a Proposer agrees to demonstrate its good faith efforts to achieve the applicable MWBE participation goals by submitting evidence thereof through the New York State Contract System ("NYSCS"), which can be viewed at <https://ny.newnycontracts.com>, provided, however, that a Proposer may arrange to provide such evidence via a non-electronic method by contacting Mr. Anthony Peterson at [Anthony.peterson@bpcanyc.gov](mailto:Anthony.peterson@bpcanyc.gov) or 212-417-2337. Please note that the NYSCS is a one-stop solution for all of your MBE/WBE and Article 15-A contract requirements. For additional information on the use of the NYSCS to meet the Proposer's MBE/WBE requirements, please see the attached MBE/WBE guidance from the New York State

Division of Minority and Women's Business Development, "Your MWBE Utilization and Reporting Responsibilities Under Article 15-A."

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

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

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

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

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

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

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

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

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

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

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

### **Equal Employment Opportunity Requirements**

By submission of a bid or proposal in response to this solicitation, the Proposer agrees with all of the terms and conditions of the attached MWBE Equal Employment Opportunity Policy Statement. The Proposer is required to ensure that it and any subcontractors awarded a subcontract for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work"), except where the Work is for the beneficial use of the Proposer, undertake or continue programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of

race, creed, color, national origin, sex, age, disability or marital status. For these purposes, equal opportunity shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, and rates of pay or other forms of compensation. This requirement does not apply to: (i) work, goods, or services unrelated to the Contract; or (ii) employment outside New York State.

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

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

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

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



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

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

### GETTING STARTED

To access the system, please login or create a user name and password at <https://ny.newnycontracts.com/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”).

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<b>MBE/WBE</b>	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:
<ol style="list-style-type: none"><li>(1) Actively and affirmatively soliciting bids for contracts and subcontracts from qualified State certified MBEs or WBEs, including solicitations to MBE/WBE contractor associations.</li><li>(2) Requesting a list of State-certified MBEs/WBEs from BPCA and soliciting bids from these MBEs/WBEs directly.</li><li>(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.</li><li>(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.</li><li>(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.</li><li>(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.</li></ol>	<b>EEO</b>
	<ol style="list-style-type: none"><li>(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.</li><li>(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.</li><li>(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.</li><li>(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.</li><li>(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.</li></ol>

Agreed to this \_\_\_\_\_ day of \_\_\_\_\_, 2016

By \_\_\_\_\_

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

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

**MBE/WBE Contract Goals**

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

\_\_\_% Minority Business Enterprise Participation

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

**EEO Contract Goals** (if applicable)

\_\_\_% Minority Labor Force Participation

\_\_\_% Female Labor Force Participation

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

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

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

**Diversity Practices Questionnaire**

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

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

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

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

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

4. Does your Company provide technical training<sup>2</sup> to MBEs/WBEs? Yes or No

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

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

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

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

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

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

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

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

If Yes, complete the attached Utilization Plan

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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.

Battery Park City Authority Request For Proposals

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

Signature of  
Owner/Official  
Printed Name of  
Signatory  
Title

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Name of Business

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Address

---

City, State, Zip

---

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STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_ ) ss:

On the \_\_\_\_\_ day of \_\_\_\_\_, 2016, 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**

**LIST OF BOARD MEMBERS**

Dennis Mehiel  
Hector Batista  
Louis J. Bevilacqua  
Donald Capoccia  
Catherine McVay Hughes  
Lester Petracca  
George Tsunis

**LIST OF BPCA EMPLOYEES**

1. Curtis Afzal
2. Elsa Alvarez
3. Dana Anders
4. Anthony Andriano
5. Stephen Arciold
6. Kathleen Bailey
7. Marie Baptiste
8. Brett Beecham
9. Freddy Belliard
10. Olivia Biller
11. Emily Birdseye
12. Nidia Blake-Reeder
13. Nancy Buivid
14. Anthony Buquicchio
15. Peter Campbell
16. Monica Centeno
17. Adam Choper
18. Carlton Chotalal
19. Deshay Crabb
20. Gwen Dawson
21. Gilbert dePadua
22. Paul Diaz-LaRui
23. Tonasia Dopson
24. Abigail Ehrlich
25. Maria Ellison
26. Richard Faraino
27. Anitra Fautleroy
28. Joseph Ganci
29. Abigail Goldenberg
30. Lenron Goode

Battery Park City Authority Request For Proposals

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31. Neresa Gordon
32. Ned Greenberg
33. Evelyn Gregg
34. Kelly Grogan
35. Jonathan Gross
36. Robert Hansen
37. Nimisha Haribaran
38. Nicole Heater
39. Sanar Heerah
40. Sonia Henry
41. Hector Herrera
42. Stephanie Huayta
43. Craig Hudon
44. Shari Hyman
45. Amy Jogie
46. Benjamin Jones
47. Joan Kanarkiewicz
48. Roland Kemp
49. Susie Kim
50. Karl Koenig
51. Betzayda Laboy
52. Leandro Lafuente
53. Michael Lamancusa
54. Della Lee
55. Rene Lopcy
56. Robert Maggi
57. Evelin Maisonet
58. Kevin McCabe
59. Jonathan McCain
60. Brenda McIntyre
61. Princess McNeill
62. Vanessa Mesine
63. Ronnie Mohammed
64. Lauren Murtha
65. Bertha Narcisse
66. Robert Nesmith
67. Siu May NG
68. Yoshihiro Nishida
69. Anne O'Neill
70. Kevin O'Toole
71. Hector Oyola
72. Willem Paillant
73. Jonathan Parker
74. Gladys Pearlman
75. Dahlia Pena
76. Churaman Persaud

Battery Park City Authority Request For Proposals

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77. Anthony Peterson
78. Bruno Pomponio
79. Katherine Powell
80. Sandra Power
81. Alix Pustilnik
82. Robert Quon
83. Jason Rachnowitz
84. Madelin Ramirez
85. Manual Rivera
86. Anthony Robinson
87. Andrea Rodriguez
88. Nelson Rogers
89. Jose Rosado
90. Holly Ross
91. Carlos Santiago
92. Nicholas Sbordone
93. Jean Schwartz
94. Lindsey Senn
95. Rekha Sewraj-Kumar
96. Sean Simon
97. Kemnarine Singh
98. Timothy Skipper
99. Sarah Smedley
100. Bruce Spierer
101. Nicole Stallworth-Roper
102. Shinay Stewart
103. Jerome Sturiano
104. John Tam
105. Alexis Torres
106. Ryan Torres
107. Douglas Van Horn
108. Noe Velasquez
109. Evangelio Villalobos
110. Sharon Wade
111. David Wallace
112. Peter Wheelwright
113. Eric White
114. Angela Whitehead
115. Dwight Williams
116. Kenneth Windman
117. Al Wright
118. Jouli Yohannes
119. Julian Zapata

**EXHIBIT E**

**STANDARD FORM OF CONTRACT**

(attached)

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 [insert name], 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 of or any political subdivision thereof, and refused to sign a waiver of immunity against subsequent criminal prosecution or to answer any relevant question concerning such transaction or contract.

(b) Consultant covenants and agrees that:

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

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

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

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

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

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

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

## **17. 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**], 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 Agreement 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.