

**BATTERY PARK CITY AUTHORITY**

**REQUEST FOR PROPOSALS**

**FOR**

**2015 On Call Construction Management Services**

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### **I. SUMMARY**

Battery Park City Authority d/b/a Hugh L. Carey Battery Park City Authority (“BPCA”) requests proposals (each individually, a “Proposal” or collectively, the “Proposals”) from Consultants (each individually, a “Proposer” or collectively, the “Proposers”) to provide on call construction management services (“On Call CM Services”) from time to time as requested by BPCA during the contract term described in Section IV.B. below. Minority-Owned Business Enterprises (“MBE”) and Women-Owned Business Enterprises (“WBE”) are encouraged to submit Proposals.

The selected Proposer or Proposers will provide On Call CM Services for various construction and capital maintenance and repair projects (the “On-Call Projects”) performed on property owned or controlled by BPCA. The On-Call Projects will include, but not be limited to, projects which are relatively straightforward and/or lower cost (generally less than \$1,000,000, although sometimes more) or which are performed in response to emergency situations or time exigencies. It is anticipated that the total contract value of any single two-year contract for On Call CM Services shall not exceed \$400,000; however, BPCA may award on-call contracts to more than one Proposer.

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: 1) to accept or reject any and all Proposals; 2) to request additional information from any or all Proposers to assist BPCA in its evaluation process; 3) to amend or withdraw this RFP prior to the announcement of the selected firm; and 4) 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, plazas, recreational areas and a mile-long 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 the 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 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 the operations for which BPCA is responsible and the areas of expertise in which the selected Proposer must be proficient. For an overview of BPCPC's operations, please visit its website at [www.bpcparks.org](http://www.bpcparks.org).

### **III. SERVICES REQUIRED**

- A. Proposer will be responsible for the services delineated in the Scope of Work attached hereto as Exhibit A (the "Services Required").
- 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 "Lead PM") 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: August 6, 2015
- Pre-proposal meeting: August 11, 2015 at 2:00 pm. Meeting Location: BPCA Offices, 200 Liberty Street 24<sup>th</sup> floor, New York, NY 10281 (attendance is highly recommended).
- Deadline to submit questions to BPCA: August 14, 2015 by 5:00 p.m. (by email only).

All questions regarding this RFP should be submitted in writing via email to the "Designated Contact": Michael LaMancusa Battery Park City Authority, at [Michael.Lamancusa@bpca.ny.gov](mailto:Michael.Lamancusa@bpca.ny.gov).

- Deadline for BPCA's response to substantive questions: August 20, 2015 (via BPCA Website).
- **DUE DATE FOR RESPONSES TO RFP: August 27, 2015 by 5:00 p.m. (the "Due Date").**
- Pre Award Meetings will be held on or about September 2&3, 2015
- Selection and notification of successful Proposer: To be determined.
- Contract start date: October 2015.

#### B. Anticipated Contract Term/Value

It is anticipated that the term of the contract awarded pursuant to this RFP (the “Contract”) will be for a period of twenty four (24) months and the total value of the services provided pursuant to the Contract will not exceed \$400,000. BPCA reserves the right to terminate the Contract at any time, with or without cause.

#### 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 firm must be licensed to do business in the State of New York.
- 2) The Proposer must complete and submit all mandatory forms with its Proposal.
- 3) The Proposer must have at least five (5) years’ experience in providing on call construction management services in New York City.
- 4) The Proposer must have staffing and experience sufficient to handle a variety of capital construction and repair projects, including but not limited to, projects involving buildings, public spaces, parks, marine infrastructure, pedestrian bridges, mechanical/electrical/plumbing infrastructure, ground settlement/subsidence, historic structures and public art.

### **V. GENERAL REQUIREMENTS**

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

Please see Exhibit B (attached) (“Diversity Exhibit”) 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.

#### **B. Restricted Period**

Applicants 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 5:00 p.m. on August 27, 2015.**

Proposers must submit six (6) paper copies of their Proposals and one (1) electronic CD-Rom copy in a sealed package clearly marked “**2015 On Call Construction Management Services**” to the Designated Contact by messenger, overnight courier or certified mail to the following address:

Michael LaMancusa  
Battery Park City Authority  
One World Financial Center, 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 – 2015 On Call Construction Management 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 either 8½" x 11" or 8½" x 14" paper. The Proposal will be evaluated on the basis of its content, not length. BPCA reserves the right to disqualify Proposals that fail to comply with any of these instructions.

#### **B. Proposal Content**

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

1) Cover Letter, as follows:

The Proposal must include a signed cover Letter from a person within the firm who is authorized to bind the firm. Cover letters must be signed. **Proposals with unsigned Cover Letters will be rejected.**

**The Cover 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) Corporate Overview.
- 3) Firm's discussion of its understanding of the Services Required (see Section III).
- 4) Firm's Responses to the RFP Questions and RFP Additional Information Request, set forth below.
- 5) Firm's Cost Proposal, as described below.
- 6) Firm's Staffing Chart including names of and professional information regarding key personnel that Proposer proposes to make available for this Project, as well as any areas of construction specialization offered by specific individuals.

**C. RFP Questions**

1. Describe your firm's background, staff, and history as they may be relevant to the Services Required, with an emphasis on On Call CM services in New York City.
2. Describe your firm's construction management experience and expertise relevant to projects in public spaces, parks, buildings, marine settings, pedestrian bridges and historic structures.
3. Please describe your experience and approach to managing multiple concurrent projects for a single client.
4. Has your firm or any of the firm's partners/employees been disciplined or censured by any regulatory body or filed for bankruptcy or reorganization or has had bankruptcy proceedings initiated against it/them within the last 5 years? If so, please describe the relevant facts.
5. Are there any potential conflict of interest issues posed by your representing BPCA?
6. Are any of your employees or principals former employees of BPCA? If so, please list their names, current titles, and dates of employment with BPCA.
7. List any professional or personal relationships your firm's employees may have with BPCA's Board and/or staff members of BPCA, a list of whom is attached as Exhibit C.
8. Identify the Lead person who will be the primary contact and lead person in providing services to BPCA, and who will be listed as a "key person" in any contract with BPCA.
9. Describe your proposed team's experience (including both direct contract work and work performed under subcontracts) with similar work for other public agencies and authorities, with a particular emphasis on New York State and City agencies and authorities or Federal government agencies or authorities. Include contract dates, the nature of the work performed, the contracting agency, the contract number (if known) and the agency supervisor for each.
10. Submit a discussion of your approach to the work, which shall briefly address your proposed procedures and approach for, staffing, performance and completion of the work.
11. Provide a list of any proposed sub consultants for the completion of the work.
12. Discuss your ability to take stringent safety measures into account as to work done in public spaces.
13. Identify any and all exceptions taken to BPCA's standard form of contract attached hereto as Exhibit D detailing the reasons for such exceptions. No exceptions to the contract will be considered by BPCA after submission of the proposals. BPCA maintains the right to reject proposals based on non-conformance with the standard form of contract.
14. Please provide any additional information and/or credentials which would serve to distinguish your firm from other firms and that you believe may be relevant to this RFP and your capability to perform the services requested.

**D. RFP Additional Information Request**

1) Insurance:

a. Do you impose any limitations on liability through your contracts?

b. Describe the levels of coverage for any insurance your firm carries. List the insurance carrier(s) or provide an insurance certificate showing your firm's coverage in accordance with the following:

- Commercial General Liability Insurance limits shall not be less than **\$1,000,000** per each occurrence
- and **\$2,000,000** in the aggregate, with Products/Completed Operations limits of not less than;
- Umbrella Liability limits shall not be less than **\$2,000,000**;
- Automobile liability (Combined Single Injury, Bodily Injury and Property Damage) limits shall not
- be less than **\$1,000,000**;
- Workman's Compensation shall not be less than statutory limits;
- Employers' Liability shall not be less than **\$1,000,000**;
- Disability Insurance as required by applicable provisions of law; and
- Professional Liability shall not be less than **\$1,000,000**.

2) References:

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

3) Appendices:

a. Include resumes for all key management personnel listed in your Proposal, including the staff that your firm is proposing to assign to this project.

b. Provide a copy of each addendum submitted by BPCA with regard to this Proposal (if applicable) and a signed acknowledgment of receipt of each addendum.

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

**E. Cost Proposal**

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

1) Cost proposal in the form attached hereto as Exhibit E ("Cost Proposal Form").

2) Labor rates in the form attached hereto as Exhibit F ("Technical Salary Rates").

**VII. THE EVALUATION PROCESS**

A. Objectives



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

- Demonstrates a thorough understanding of the scope of the engagement and the specific responsibilities which it entails;
- Possesses adequate resources to handle assigned responsibilities and to handle unforeseen circumstances that may arise;
- Assigns highly skilled, experienced, diligent, responsible and professional personnel to perform the required services;
- Maintains high ethical standards and has an unblemished reputation;
- Has no conflict of interest in its performance of the Services Required for BPCA.

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) to examine the responses for compliance with this RFP and (2) to identify 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 Required, and to impart to the Committee an understanding of how specific services will be furnished. The proposed Lead PM, 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:

Experience in construction management and in providing on call CM services and expertise in relevant construction types.	50%
Staffing and approach to work.	35%
Proposed MBE/WBE utilization plan (the "Utilization Plan") and/or Firm MBE/WBE status.	15%

#### 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 to BPCA given the requirements of the Project.

## **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**

The selected Proposer shall provide, in response to BPCA's request on an as needed basis, on-call CM services (the "Work") for projects designated by BPCA as On-Call Projects. Among other things, the selected Proposer shall:

- Provide expert and technical support services in all technical disciplines associated with construction management such as, but not limited to, bid preparation, contractor procurement, constructability analysis, budgeting, construction field management, scheduling, inspection, change order preparation and negotiation, and estimating.
- Provide all necessary CM services throughout all phases of an On-Call Project's, including pre-construction, construction and post-construction/close-out phases.
- Provide field oversight and management of capital maintenance, repair, renovation and construction projects, as assigned by BPCA.
- Assist in the formulation of and assume primary responsibility for reviewing and tracking of the overall project schedule. If the contractor changes the schedule, the selected Proposer is required to gain a full understanding of the proposed changes and, if warranted, recommend approval by BPCA of the schedule change. The selected Proposer must be prepared to review the construction schedule in detail at the contractor pre-award interviews and kickoff meetings and is required to work with the contractor to issue a final project schedule ready for tracking no more than 2 weeks after the kickoff meeting.
- Coordinate and monitor construction progress and schedule, including, but not be limited to, preparing daily logs of contractor hours on-site, weather, contractor man-power, deliveries, disposals, work completed, special occurrences, photo-documentation of work, pre-construction conditions, job progress, and work completed. This information must be submitted bi-weekly to BPCA, unless BPCA expressly requests that it be provided in a different format and according to a different frequency.
- Review the contractor submittals along with the engineer/designer and respond to requests for information (RFI's) during the construction phase of any On-Call Project.
- Oversee all financial aspects of an On-Call Project, including, but not limited to, budgets, cost estimates, change orders, pay applications and financial reporting.
- Ensure that all work performed on an On-Call Project adheres to all relevant codes and all Local, City, State, and Federal regulations and guidelines.
- Upon BPCA's request, review and approve contractor's contracts with BPCA and, in all instances, review and approve contractor requisitions for payment.
- For each On-Call Project, convene and preside over a construction kick-off meeting, including preparation and distribution of meeting minutes.
- Schedule and conduct all job progress meetings, including prompt preparation and distribution of meeting minutes.

- Track all contractor submittals including general requirements (bonds, insurance, etc.), schedules, procedures, materials, shop drawings, and subcontractor and supplier qualifications in accordance with the project specifications. The selected Proposer must prepare and submit to BPCA bi-weekly submittal tracking reports and schedule updates for each project, unless BPCA requests that reports be provided according to a different frequency.
- Review and approve contractor's trade payment breakdown and schedule.
- Direct and coordinate the work of the contractor on behalf of BPCA in accordance with the plans and specifications and BPCA's objectives, budget, schedule and standards of quality, including the performance of the work with as little as possible disruption to the adjacent areas (public and private) and as little as possible impact on the community and general public.
- Submit monthly executive summary reports to BPCA which are to include, but not be limited to, a brief narrative of the work status and issues, submittals status and tracking reports, project financial status and schedule.
- Review all requests for change orders and provide all documentary supporting documentation, along with recommendations for acceptance or rejection, to BPCA.
- Determine substantial completion of contractor work and coordinate a punch list inspection.
- Conduct final inspection, approve of the contractor work and issue work acceptance certificates.
- Assume responsible for assuring the On-Call Project is completed by contractors within the approved construction schedule. Any and all delays must be avoided.
- When requested by BPCA, manage concurrent On-Call Projects, with the same management team to the extent feasible, and on a part-time basis when appropriate.

In performing the Work, the selected Proposer shall be required to (1) respond (with appropriate technical staff as required) on an as-needed basis within 24 hours of any request by BPCA and to devote whatever staffing is necessary to manage an assigned On-Call Project, and (2) submit in writing with respect to each On-Call Project, a project proposal that includes proposed staffing, along with total projected hours and total cost for BPCA's approval within three business days of BPCA's notification of a pending On-Call Project, unless BPCA indicates that emergency conditions require submission of the project proposal in less than three business days. As necessary and appropriate, the selected Proposer shall coordinate with the staffs of BPCA, BPCPC and any of BPCA's consultants and/or contractors.

#### Examples of Prior BPCA Projects Managed Through On Call CM Contracts

- Electric grid upgrades;
- Plaza construction;
- Ground settlement remediation;
- Hoop rail installation and paver repair;
- Tree planting; and
- Post-Sandy marine structure repair.

**EXHIBIT B**

**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**

Pursuant to New York State Executive Law Article 15-A, BPCA recognizes its obligation under the law to promote opportunities for maximum feasible participation of certified MBE/WBEs and the employment of minority group members and women in the performance of BPCA contracts.

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

**Business Participation Opportunities for MBE/WBEs and minorities and women**

For purposes of this solicitation, BPCA hereby establishes an overall goal of 30% for MBE/WBE participation, 15% for MBE participation and 15% for WBE participation (based on the current availability of qualified MBEs and WBEs). A contractor (“Contractor”) on the Contract must document good faith efforts to provide meaningful participation by MBE/WBEs as subcontractors or suppliers in the performance of the Contract and Contractor agrees that BPCA may withhold payment pending receipt of the required MBE/WBE documentation. The directory of New York State Certified MBE/WBEs can be viewed at: <http://www.esd.ny.gov/mwbe.html>.

For guidance on how BPCA will determine a Contractor’s “good faith efforts,” refer to 5 NYCRR §142.8.

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

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

By submitting a bid or Proposal, a Proposer agrees to submit the following documents and information as evidence of compliance with the foregoing:

- A. Proposers are required to submit a Utilization Plan with their bid or Proposal. Any modifications or changes to the Utilization Plan after the Contract award and during the term of the Contract must be reported on a revised Utilization Plan and submitted to BPCA.
- B. BPCA will review the submitted Utilization Plan and advise the Proposer of BPCA’s acceptance or issue a notice of deficiency within 30 days of receipt.

C. If a notice of deficiency is issued, Proposer agrees that it shall respond to the notice of deficiency within seven (7) business days of receipt by submitting to BPCA, at the address specified in this RFP, or by facsimile at 212-417-2279 a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by BPCA to be inadequate, BPCA shall notify the Proposer and direct the Proposer to submit, within five (5) business days, a request for a partial or total waiver of MBE/WBE participation goals. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or Proposal.

D. BPCA may disqualify a Proposer as being non-responsive under the following circumstances:

- 1) If a Proposer fails to submit a Utilization Plan;
- 2) If a Proposer fails to submit a written remedy to a notice of deficiency;
- 3) If a Proposer fails to submit a request for waiver; or
- 4) If BPCA determines that the Proposer has failed to document good faith efforts.

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

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

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

The Contractor is required to ensure that it and any subcontractors awarded a subcontract over \$25,000 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor, shall 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.

Proposer further agrees to submit with the Proposal a staffing plan identifying the anticipated work force to be utilized on the Contract and if awarded a Contract, will submit to BPCA a workforce utilization report identifying the workforce actually utilized on the Contract. Contractor will be required to make good faith efforts to achieve a participation goal of 30% of the total number of employees required for the work who are minority group members and a participation goal of 5% of the total number of employees required for the work who are women to perform the work.

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

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

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



**EXHIBIT C**

**List of BPCA Members and Employees**

(attached)

**LIST OF BOARD MEMBERS**

Dennis Mehiel  
Donald Cappocia  
Frank Branchini  
Martha Gallo  
Lester Petracca  
Hector Batista

**BPCPC EMPLOYEES**

1	Dana Anders	
2	Anthony Andriano	
3	Stephen Arciold	
4	Scott Birdseye	
5	Nancy Buivid	
6	Monica Centeno	
7	Betty Chin	
8	Adam Choper	
9	Carlton Chotalal	
10	Gilbert DePadua	
11	Paul Diaz-Larui	
12	Michael Edwards	
13	Abigail Ehrlich	
14	Richard Faraino	
15	Eric T. Fleisher	
16	Lenron Goode	
17	Patrick Greene	
18	Ned Greenberg	
19	Evelyn Gregg	
20	Kelly Grogan	
21	Robert Hansen	
22	Nicole Heater	
23	Sankar Heerah	
24	Craig Hudon	
25	Tessa Huxley	
26	Amy Jogie	
27	Kadia Kane	
28	Roland Kemp	
29	Kurtis King	
30	Betzayda Laboy	
31	Tony Lee	

32	Marianna Lerner	
33	Triny Lima	
34	Luis Lopez	
35	Robert Maggi	
36	Evonne Marche	
37	Philip Mason	
38	Ellen McCarthy	
39	Princess McNeill	
40	Vanessa Mesine	
41	Ronnie Mohammed	
42	Yoshihiro Nishida	
43	Kevin O'Toole	
44	Hector Oyola	
45	Willem Paillant	
46	Gladys Pearlman	
47	Churaman Persaud	
48	Bruno Pomponio	
49	Sandra Power	
50	Madelin Ramirez	
51	Manuel Rivera	
52	Nelson Rogers	
53	Jose Rosado	
54	Holly Ross	
55	Sebastian Rozalski	
56	Carlos Santiago	
57	Jean Schwartz	
58	Lindsey Senn	
59	Sean Simon	
60	Kemnarine Singh	
61	Timothy Skipper	
62	Kareem Starks	
63	Jerome Sturiano	

64	Douglas VanHorn	
65	Noe Velasquez	
66	Evangelio Villalobos	
67	Peter Wheelwright	
68	Eric White	
69	Al Wright	
70	Jouli Yohannes	

**BPCA EMPLOYEES**

1	Elsa Alvarez	
2	Kathleen Bailey	
3	Marie Baptiste	
4	Freddy Belliard	
5	Nidia Blake-Reeder	
6	Marc Brotman	
7	Lauren Brugess	
8	Anthony Buquicchio	
9	Deshay Crabb	
10	Gwen Dawson	
11	Maria Ellison	
12	Robin Forst	
13	Joseph Ganci	
14	Julissa Garcia	
15	Luis Garcia	
16	Abigail Goldenberg	
17	Neresa Gordon	
18	Sonia Henry	
19	Shari Hyman	
20	Benjamin Jones	
21	Susie Kim	
22	Karl Koenig	
23	Leandro Lafuente	
24	Michael LaMancusa	
25	Della Lee	
26	Evelin Maisonet	
27	Kevin McCabe	
28	Brenda McIntyre	
29	Shinay McNeill	
30	Bertha Narcisse	
31	Robert Nesmith	

32	Siu May NG	
33	Nazmije Pila	
34	Dahlia Pena	
35	Anthony Peterson	
36	Alix Pustilnik	
37	Robert Quon	
38	Jason Rachnowitz	
39	Anthony Robinson	
40	Andrea Rodriguez	
41	Robert Serpico	
42	Rekha Sewraj-Kumar	
43	Seema Singh	
44	Linda Soriero	
45	John Tam	
46	Alexis Torres	
47	Ryan Torres	
48	Sharon Wade	
49	Angela Whitehead	
50	Kenneth Windman	
51	Bingxin Zheng	

**EXHIBIT D**

**BPCA's 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 interest in it, either have no business operations in Northern Ireland, or shall take lawful steps in good faith to conduct any business operations they have in Northern Ireland in accordance with the MacBride Fair Employment Principles relating to nondiscrimination in employment and freedom of workplace opportunity regarding such operations in Northern Ireland, as set forth in Section 165(5) of the New York State Finance Law, and shall permit independent monitoring of their compliance with such Principles.

**32. Limitation Periods**

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

**33. Iran Divestment Act**

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



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

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

**35. Comptroller's Approval**

If this 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.

**EXHIBIT E**

**COST PROPOSAL**

(Proposer to submit executed Cost Proposal on its letterhead)

Date:

Battery Park City Authority  
One World Financial Center - 24th Floor  
New York, New York 10281

Attention: Mr. Michael LaMancusa  
Contract Administrator

Dear Mr. LaMancusa:

The undersigned (the "Proposer") hereby proposes to perform **On Call Construction Management Services on a project-by-project basis as requested by BPCA** (collectively, the "On Call Projects"). During the term of the contract awarded pursuant to the RFP associated with this Cost Proposal (the "RFP"), Proposer agrees to submit in writing with respect to each ON Call Project a project proposal that includes proposed staffing, along with total projected hours and total cost (in accordance with the attached Technical Salary Rates), for BPCA's approval within three business days of BPCA's notification of a pending On Call Project (unless BPCA indicates that emergency conditions require submission of the project proposal in less than three business days) and will perform the work as described in Exhibit A of the RFP for the entire term of the Contract for a not-to-exceed amount that will not be more than an aggregate of \$400,000 for all of the On Call Projects performed under the Contract (the "Contract Amount"). Further, the Contract Amount shall include reimbursement for any approved expenses incurred in the performance of the work as described in Exhibit A to the RFP up to a total not-to-exceed amount of \$30,000.

**Technical Salary Rates**

The Proposer has submitted as part of this Cost Proposal technical salary rates for all categories of personnel and areas of specialty, according to the attached form of Technical Salary Rates. Prices shown include base hourly rate, insurance and benefits.

Name of Proposer:

\_\_\_\_\_

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

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

**EXHIBIT F**

**Form of Technical Salaries**

(Attached)

# **TECHNICAL SALARY RATES**

Proposers shall provide all appropriate persons necessary to ensure the highest quality work. Proposers must furnish the names and resumes of all Project personnel. The rates listed below represent contract unit rates for the personnel as listed within the assigned categories. Invoicing will be based on actual hours worked multiplied by the unit rate. The unit rate is the actual salary times an auditable multiplier indicated below. The auditable multiplier shall be limited to the direct payroll burden itemized below, overhead (allowances as defined in list below) and a reasonable profit percentage as indicated below.

## *Itemization of Direct Payroll Burden*

- |   |  |  |
|---|--|--|
| 1. F.I.C.A                                    | 11. Major Medical Insurance              | 19. Employee Bonuses- non-principals and non- shareholders |
| 2. Federal Unemployment Insurance             | 12. Pension and Profit Sharing Plan      | 20. Travel and Meal Allowances – overtime work only        |
| 3. State Unemployment Insurance               | 13. 401K Program ( company contribution) | 21. Premium for Staff Overtime- support or clerical work   |
| 4. Worker's Compensation                      | 14. Medicare                             | 22. Sick Time and Personal Days for employees              |
| 5. Life Insurance                             | 15. Long Term Disability Insurance       |  |
| 6. Accidental death and Disbursement          | 16. Company Automobile Expenses          |  |
| 7. NYS Disability Insurance                   | 17. Tuition and Seminar Reimbursement    |  |
| 8. PL and PD Insurance                        | 18. Company Training Program             |  |
| 9. Group Hospitalization                      |  |  |
| 10. Vacation time attributable to the Project |  |  |

(Attach table(s) to the Proposal Form)

NAME	Title/Function	RATE / Hr (without &Multiplier)	Multipli er	TOTAL Rate/Hr

Proposer: \_\_\_\_\_<Name of Company>

By: \_\_\_\_\_ <Printed Name of Executing Officer>

Title:

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