



**REQUEST FOR PROPOSALS**

**FOR**

**PEER REVIEW SERVICES FOR THE**

**SOUTH BPC AND NORTH BPC RESILIENCY PROJECTS**

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## **I. SUMMARY**

Battery Park City Authority d/b/a Hugh L. Carey Battery Park City Authority (“BPCA”) hereby requests proposals (individually, a “Proposal” and collectively, the “Proposals”) from qualified design and engineering firms (individually, a “Proposer” and collectively, the “Proposers”) to provide BPCA with external engineering and design peer review services (the “Peer Review Services”) in support of the South Battery Park City Resiliency Project (the “South BPC Project”), and the North Battery Park City Resiliency Project (the “North BPC Project”). The South BPC Project and the North BPC Project are two (2) of a total of four (4) separate but interrelated Battery Park City (“BPC”) storm resiliency initiatives, each of which has the goal of implementing an effective flood barrier system with stand-alone, independent utility at different locations within Battery Park City (individually, a “Barrier System” and collectively, the “Barrier Systems”).

The Peer Review Services are intended to verify the adequacy, accuracy, efficacy, constructability, and cost effectiveness of the designs currently being developed for the South BPC Project and the North BPC Project (the “Reviewed Projects”) at various specified stages of advancement. In addition, because the Reviewed Projects are intended to be capable of future connection with other waterfront flood barrier systems in Lower Manhattan, the Peer Review Services are further intended to verify and ensure the compatibility of the Reviewed Projects’ assumptions, targets, approaches, and designs with each other and with the projects currently being developed by the City of New York as part of its Lower Manhattan Coastal Resiliency (“LMCR”) Project. A detailed description of the Peer Review Services is provided in the RFP’s Scope of Work attached to the RFP as Exhibit A. A detailed description of the South BPC Project and the North BPC Project can be found in Exhibit B and Exhibit C, respectively.

The selected Proposer will be expected to establish a panel of technical experts (the “Peer Review Panel”) who will review and evaluate various designated elements associated with the ongoing design and engineering for the Reviewed Projects. The selected Proposer must ensure that the members of the Peer Review Panel collectively have appropriate levels of expertise in all engineering and design disciplines associated with the Reviewed Projects to enable the Peer Review Panel to achieve the stated objectives of the Reviewed Projects, including, but not limited to:

- Environmental Science and Engineering;
- Landscape, Architectural and Urban Design;
- Hydrological Engineering (Modeling);
- Civil and/or Structural Engineering;
- Mechanical, Electrical, and Plumbing (“MEP”) Engineering;
- Geotechnical Engineering;
- Environmental Engineering;
- Marine Engineering;
- Surveying;
- Federal, State and Local Agency Permitting;
- Federal Emergency Management Agency (“FEMA”) Certifications; and,
- Cost Estimating and Value Engineering.

Created in 1968, BPCA is a New York State public benefit corporation responsible for financing, developing, constructing, maintaining, and operating Battery Park City as a richly diversified mixed use community providing residential and commercial space, with related amenities such as parks, plazas, recreational areas, and a waterfront esplanade. A summary of BPCA’s structure, mission, and history, as well as a map of Battery Park City, may be viewed at: [www.bpca.ny.gov](http://www.bpca.ny.gov). Public information regarding BPCA’s finances, budget, internal controls, guidelines, and policies may be viewed at: [www.bpca.ny.gov/public-information](http://www.bpca.ny.gov/public-information).

Information relating to the Battery Park City Parks Conservancy Corporation (“BPCPC”), BPCA’s affiliate, may be viewed at: [www.bpcparks.org](http://www.bpcparks.org). New York State-certified Minority-Owned Business Enterprises (“MBE”), Women-Owned Business Enterprises (“WBE”) and Service-Disabled Veteran-Owned Business Enterprises (“SDVOB”) are encouraged to submit Proposals.

## **II. GENERAL PROVISIONS**

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

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

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

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

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

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

- RFP issued: January 8, 2019
- Pre-proposal meeting (attendance is highly recommended):
  - Date: January 15, 2020, 9:30 a.m.
  - Location: BPCA Offices (24<sup>th</sup> floor, 200 Liberty Street, New York, NY 10281)
- Deadline to submit questions to BPCA: January 22, 2020 by 4:00 p.m. (by email only)

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

- BPCA’s response to substantive questions: January 29, 2020 (by email and/or posting on the BPCA website)
- PROPOSAL DUE DATE: February 5, 2020 by 3:00 p.m. (the “Due Date”)



- INTERVIEWS, if determined by BPCA to be necessary: February 12 and/or 14, 2020
- Contract start date: March 2020 (approximate)

***B. Anticipated Contract Term***

The anticipated term of the contract awarded pursuant to this RFP (the “Contract”) will be nine (9) months. BPCA reserves the right to terminate the Contract at any time, with or without cause, in accordance with the terms of the Contract. BPCA’s sample form of contract (the “Standard Form of Contract”) is attached as Exhibit E.

**IV. GENERAL REQUIREMENTS**

***A. Minimum Qualification Requirements***

The following are the minimum qualification requirements for this RFP. Proposals that fail to meet these requirements will be rejected.

- 1) Proposer must have an office in New York State (preferably within New York City);
- 2) Proposer must have a minimum of ten (10) years of experience performing civil, geotechnical, structural, and marine engineering services, and must have performed engineering design services for at least one (1) urban flood resiliency project; and,
- 3) Proposer must have performed multiple peer reviews of projects of similarly complex design and engineering.

***B. MBE/WBE/SDVOB Participation, Joint Ventures, and Subconsulting Goals***

Contractor requirements and procedures for business participation opportunities for New York State certified MBEs/WBEs/SDVOBs and equal employment opportunity requirements relating to minority group members and women are attached as Exhibit D. For questions relating to MBE/WBE/SDVOB participation, joint ventures and sub-contracting goals *only*, please contact the “MBE/WBE/SDVOB Designated Contact” Mr. Justin McLaughlin-Williams at [justin.mclaughlin-williams@bpca.ny.gov](mailto:justin.mclaughlin-williams@bpca.ny.gov), or 212-417-2337.

***C. Restricted Period***

New York State’s State Finance Law sections 139-j and 139-k apply to this RFP, restricting Proposers’ contacts with BPCA. Proposers are restricted from making any contact (defined as oral, written or electronic communications with BPCA under circumstances where a reasonable person would infer that a communication was intended to influence BPCA’s conduct or decision with respect to a procurement) relating to this RFP with anyone other than the Designated Contact, as specified in Section III.A., or MBE/WBE/SDVOB Designated Contact, as specified in Section IV.B., from the time of Proposer’s receipt of notice of this RFP through the date of the Final Award as defined in BPCA’s Procurement Guidelines (the “Restricted Period”). BPCA employees must record certain contacts during the Restricted Period, including, but not limited to, any oral or written communications that could reasonably be seen as intended to influence BPCA’s conduct or award of this RFP. Upon notice of an improper contact, BPCA will make a determination regarding the Proposer’s eligibility to continue participating in this RFP.

#### ***D. Submission of Proposals***

**Proposals must be received by BPCA no later than 3:00 p.m. on February 5, 2020.**

Each Proposer must submit seven (7) paper copies and a PDF version (via CD-ROM or flash drive) of its Proposal in a sealed package clearly marked "Proposal Enclosed - Peer Review Services" to the Designated Contact by messenger, overnight courier or certified mail to the following address:

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

BPCA is not responsible for late Proposals, no matter the cause. Proposals *must* arrive by the time and place specified herein and be time stamped by BPCA by the Due Date. Please leave ample time for building security. Late Proposals will NOT be accepted. Proposals submitted by fax or electronic transmission will NOT be accepted. A Proposer may, after submitting a Proposal, amend its Proposal by submitting an amended Proposal, clearly labeled "Amended Proposal - Peer Review Services [insert RFP number]," as long as the amended Proposal is submitted by the Due Date in the same manner specified in this Section IV.D.

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

##### ***A. Proposal Format***

The Proposal must:

- Be printed on 8½" x 11" paper;
- Have numbered pages; and
- Be no longer than twenty-five (25) single-sided pages, exclusive of the Cover Letter, Cost Proposal, and Required Attachments.

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

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

- 1) Cover Letter, signed by a person within the firm who is authorized to bind the Proposer, which includes representations that:
  - (a) 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;
  - (b) Proposer satisfies all of the minimum qualification requirements in Section IV.A; and
  - (c) Proposer has reviewed BPCA's Standard Form of Contract, attached as Exhibit E to this RFP, and either has no objections or has detailed their objections in an appendix to their Proposal.
- 2) Executive Summary.
- 3) Responses to the Questions as well as all of the Information Required (Sections VI.A and VI.B).

4) Required Attachments (Section VI.C).

**BPCA reserves the right to reject any Proposals that fail to include any required item described in this Section V.B., including Cover Letters that are unsigned or fail to include each of the above representations (including an appendix as required by Section VI.A.13, if Proposer has objections to BPCA's Standard Form of Contract).**

## **VI. INFORMATION REQUIRED**

### ***A. Questions and Information Sought Relating to the Work***

*Note:* Where appropriate, please respond with relevant team member and/or subconsultant information.

- 1) Describe your firm's background, services, size, and history as these factors are relevant to the Services, with an emphasis on the work related to resiliency measures, improvements to public parks and open spaces, streetscapes, right-of-way infrastructure, and/or the architectural design of relevant buildings or structures.
- 2) Describe your firm's experience with the design of flood resiliency projects in New York City and/or other dense urban environments elsewhere in the U.S.
- 3) Please describe examples, if any, of how your designs have successfully been employed to mitigate the risk of significant or catastrophic damage caused by storm- and climate change-related events or conditions.
- 4) Describe in detail your expertise and experience as it relates to obtaining FEMA certification and accreditation.
- 5) Provide examples of your experience performing services for projects of a similar size, scope, and complexity as the services required by this RFP, including an identification of: (a) the number of years Proposer has been performing similar services; and, (b) the most recent projects for which the Proposer has performed similar services. Please also provide a point of contact for your last two (2) projects.
- 6) Describe your approach to performing the Peer Review Services and their specific phases, indicating where and how efficiencies of time and/or cost may be achieved.
- 7) Describe your proposed team's experience with similar work for other public entities, with an emphasis on New York State and New York City public entities.
- 8) List each key member of the team (not including members of the Peer Review Panel) that you intend to assign to this engagement, and include for each listed individual: (a) area(s) of specialization; (b) title and/or position within your firm; (c) the services to be performed; and, (d) relevant experience as related to the project typology. Additionally, provide your firm's current workload and what impact current workloads might have on your firm's ability to perform the duties associated with this RFP within the timeframe specified.
- 9) Provide a representative listing of recommended members for the Peer Review Panel, which list shall include each Panel member's: a) technical background and experience, b) area(s) of specialization,

c) experience serving on peer review panels, and d) proposed role as a recommended member of the Peer Review Panel. (Final selection and approval of individual members of the Peer Review Panel shall be subject to final approval by BPCA once a contract is executed.)

- 10) Identify the person who will be the lead project manager (the “Lead PM”) and primary contact in providing services to BPCA, and any other persons who will be listed as a “key person” in any contract with BPCA.
- 11) Describe your firm’s “backup plan” in the event that one (1) or more of the employees assigned to this engagement leave the firm.
- 12) Identify any subconsultants you intend to use for this engagement, and describe the services to be performed by each subconsultant.
- 13) Clearly identify any information in your Proposal that you believe to be confidential and exempt from FOIL, and state the reasons. Please note that this question is for informational purposes only, and BPCA will determine, in its sole discretion, whether requested documents are exempt from disclosure under FOIL.
- 14) **Identify any and all exceptions taken to BPCA’s Standard Form of Contract, attached as Exhibit E, explaining the reasons for such exceptions. Such exceptions must be detailed in an appendix to your Proposal labeled, “Appendix: Objections to BPCA Form of Contract.” NO EXCEPTIONS TO THE CONTRACT WILL BE CONSIDERED BY BPCA AFTER SUBMISSION OF THE PROPOSALS. BPCA maintains the right to reject Proposals based on non-conformance with the Standard Form of Contract.**
- 15) Provide at least three (3) client references for whom your firm has performed similar work to that requested in this RFP. For each client, describe the project, the project’s date, and services performed, and provide the name, address, and telephone number for a person at client’s firm familiar with such work.
- 16) Please provide any additional information that would serve to distinguish your firm from other firms and that you believe may be relevant to this RFP and your capability to perform the services requested.

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

- 17) Within the past three (3) years, have there been any significant developments in your firm such as changes in ownership or restructuring? Do you anticipate any significant changes in the near future? If so, please describe.
- 18) How does your firm identify and manage conflicts of interest?
- 19) Are there any potential conflict of interest issues posed by your firm’s performance of the Work on behalf of BPCA?
- 20) Has your firm or have any of the firm’s partners/employees been disciplined or censured by any regulatory body within the last five (5) years? If so, please describe the relevant facts.

- 21) Within the last five (5) years, has your firm, or a partner or employee in your firm, been involved in litigation or other legal proceedings relating to the provision of professional services? If so, please provide an explanation and the current status or disposition of the matter.
- 22) List any professional or personal relationships your firm's employees may have with BPCA's Board Members and/or employees, a list of which is attached as Exhibit I.
- 23) If selected, will your firm assign any person to this engagement who was previously an employee of BPCA or BPCPC? If so, please: i) identify when (month and year) that person's employment at BPCA/BPCPC terminated, and ii) describe that person's involvement, if any, with matters related to this RFP during his/her employment at BPCA/BPCPC.
- 24) In the past five (5) years, have any public sector clients terminated their working relationship with your firm? If so, please provide a brief statement of the reasons. Provide the name of the client and provide a contact person, address and telephone number.

**C. Required Attachments**

- 1) Mandatory Forms:

Each Proposal must include a completed copy of all "Mandatory Forms" found at: [www.bpca.ny.gov/wp-content/uploads/2015/03/Mandatory-Forms.pdf](http://www.bpca.ny.gov/wp-content/uploads/2015/03/Mandatory-Forms.pdf).

The Mandatory Forms include the following:

- a) NYS Standard Vendor Responsibility Questionnaire, notarized and signed by the individual(s) authorized to contractually bind the Proposer, indicating the signer's title/position within the firm.\*
- b) State Finance Law § 139 Form 1, signed by the individual(s) authorized to contractually bind the Proposer.\*
- c) W-9 form.
- d) Statement of Non-Collusion.
- e) MBE/WBE/SDVOB Utilization Plans. Please note that all such plans must be submitted even if Proposer is a MBE/WBE/SDVOB.

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

- 2) Response to the question regarding the use of New York State businesses set forth in Section XII.
- 3) Completed MBE/WBE and EEO Policy Statement and Diversity Practices Questionnaire (attached as part of Exhibit D).
- 4) Financial Statements:

Provide a copy of your firm's most recent Audited Financial Statements (within the last year). In the event you do not have audited financials you must provide a statement to that effect with your proposal, and summary financial information for the calendar year most recently ended.

5) Acknowledgement of Addenda:

Attach a completed and signed Acknowledgement of Addenda Form, attached as Exhibit H, acknowledging receipt of all addenda to this RFP, if any, issued by BPCA before the Due Date. Addenda are posted by BPCA as necessary and can be found on the BPCA website at [www.bpca.ny.gov](http://www.bpca.ny.gov). It is the responsibility of each Proposer to check the BPCA website for addenda and to review addenda prior to submitting any proposal in response to this RFP. Additional Appendices:

- a) Attach professional biographies for all "key persons" or core members, and managers and supervisors on the Proposer's team who will be assigned to the Work.
- b) Attach a project schedule showing completion dates for the Services required for each of the Projects, respectively (key tasks, milestones, etc.) and final completion of all Work.

## **VII. INSURANCE REQUIREMENTS**

### **A) General Requirements**

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

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

### **B) Insurance Requirements for the Selected Proposer**

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

- **Commercial General Liability Insurance**, written on ISO Form CG 00 01 or its equivalent and with no modification to the contractual liability coverage provided therein, shall be provided on an occurrence basis and limits shall not be less than:
  - \$6,000,000 per occurrence
  - \$7,000,000 general aggregate which must apply on a per location / per project basis
  - \$7,000,000 products/completed operations aggregate

BPCA, BPCPC, and the State of New York must be protected as additional insureds on ISO Form CG 2010 (11/85) or its equivalent on policies held by the selected Proposer and any of its subconsultants. Should the Proposer's work include construction activities of any kind then the Proposer must maintain Products / Completed Operations coverage for no less than three years after the construction work is completed, and continue to include Additional Insured protection for BPCA, BPCPC & The State of New York for the prescribed timeframe. When providing evidence of insurance the Proposer must include a completed Acord 855 NY form. Securing the required limits via a combination of primary and umbrella/excess liability policies is allowed. The General Aggregate limit must apply on a per project basis on the primary General Liability policy should a combination of primary and Umbrella/Excess liability policies be utilized to secure the required total limits of coverage.

- **Automobile Liability Insurance** with a combined single limit of not less than \$1,000,000. Coverage must apply to the Proposer's owned, hired, and non-owned vehicles and protect BPCA, BPCPC, and the State of New York as additional insured.
- **Workers' Compensation, Employer's Liability, and Disability Benefits** shall not be less than statutory limits, including United States Longshore and Harbor Workers Act coverage as applicable to the operations of the Proposer.
- **Professional Liability ("Errors & Omissions") Insurance** must be maintained at a limit of not less than \$5,000,000 each claim.

**C) Insurance Requirements for all Subconsultants**

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

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

BPCA, BPCPC, and the State of New York must be protected as additional insureds on ISO Form CG 2010 (11/85) or its equivalent on policies held by all subconsultants. Should the subconsultant's work include construction activities of any kind then the subconsultant must maintain Products / Completed Operations coverage for no less than three years after the construction work is completed and continue to include Additional Insured protection for BPCA, BPCPC & the State of New York for the prescribed timeframe. When providing evidence of insurance the subconsultant must include a completed Acord 855 NY form.

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

- **Workers' Compensation, Employer's Liability, and Disability Benefits** shall not be less than statutory limits, including United States Longshore and Harbor Workers Act coverage as applicable to the operations of the subconsultant.
- **Subconsultants will also be required to obtain all other insurances listed in Section (2) unless otherwise approved in writing by BPCA prior to commencement of any Subconsultant's work.**

## **VIII. COST PROPOSAL: FORMAT AND REQUIRED INCLUSIONS**

Each Proposer must submit seven (7) copies of its Cost Proposal, which must be in the form attached here to as Exhibit F. The Cost Proposal shall include the following:

- 1) A total not-to-exceed fee for performance of all Services contemplated herein;
- 2) A not-to-exceed fee for performance of each Phase as delineated in Exhibit A;
- 3) Hourly billing rates for each personnel category Proposer proposes to employ for the completion of the Services including Project Team members and proposed Panelists; and
- 4) A not-to-exceed amount for all reimbursable costs associated with performance of the Services, including an allocation as appropriate of such costs between the Services associated with Scope of Work.

The Cost Proposal must be submitted in its own separate, sealed envelope within the sealed package containing all other Proposal documents.

## **IX. SELECTION PROCESS**

### ***A. Evaluation***

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

### ***B. Interviews***

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

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

Selection will be based upon the following criteria:

- 1) Technical Evaluation:



- a) Expertise and experience in the design and engineering of coastal resiliency projects, including projects that incorporate diverse flood barrier approaches and technologies, and projects involving FEMA certification and accreditation.....35%
  - b) Expertise and experience in performing peer review services for complex design and engineering projects.....35%
  - c) Approach to the provision of Services, schedule, and staffing (demonstrated knowledge of the relevant disciplines).....20%
  - d) Response to Diversity Practices Questionnaire.....10%
- 2) Cost Proposal evaluation.

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

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

**X. NON-COLLUSION**

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

**XI. IRAN DIVESTMENT ACT**

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

During the term of any Contract awarded hereunder, should BPCA receive information that a person (as defined in State Finance Law §165-a) is in violation of the above-referenced certifications, BPCA will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the New York State Iran Divestment Act of 2012 within 90 days after the determination of such violation, then BPCA will 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.

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

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

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

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

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

Proposers can demonstrate their commitment to the use of New York State businesses by responding to the question below. Each proposer must include a response to this question with their proposal. Please note that a "yes" response requires supporting information. If yes, identify New York State businesses that will be used and attach identifying information.

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

## **EXHIBIT A**

### **SCOPE OF WORK**

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

In October 2012, Hurricane Sandy devastated the Northeast United States, resulting in over fifty (50) lives lost in New York alone and billions of dollars in property damage, along with extensive loss of income and productivity and millions of traumatized residents. Although Sandy had been downgraded to tropical storm or “Superstorm” status by the time it reached New York City, it packed an incredibly powerful punch along the Manhattan waterfront, especially at particularly vulnerable points in Lower Manhattan, where streets, office and residential buildings, transit facilities, hospitals, power plants, public facilities and many other points were inundated with flood waters, in some cases to a height of several feet. The bulk of the damage in Lower Manhattan, including in Battery Park City (“BPC”), resulted from storm surge and related flooding.

In the wake of the recovery and restoration process that followed Superstorm Sandy’s devastation of parts of Manhattan, Battery Park City Authority (“BPCA”) began an assessment of Battery Park City’s (“BPC’s”) vulnerabilities to future severe storm events. Through these resiliency assessment projects, and subsequent design and engineering efforts, BPCA has formulated a methodology for the protection of BPC residents and assets that will function independently of other lower Manhattan resiliency measures that may be developed, provide the targeted risk reduction originally contemplated by the BPC segment of the LMCR, and create a coordinated means for the LMCR project, in its revised form and at such time as it may be built, to tie into BPC. More specifically, this assessment process led to the formulation of four (4) discrete yet related BPC resiliency projects. Three (3) of the four (4) waterfront resiliency projects – 1) the South BPC Project, 2) the Western Perimeter Battery Park City Resiliency Project (the “West BPC Project”), and 3) the North BPC Project – will collectively provide the opportunity for an interconnected system of storm and flood risk reduction benefiting all of BPC, as well as certain additional areas within Lower Manhattan. These three (3) storm resiliency projects will provide important benefits within BPC individually and some or all of them may, in the future, be connected with other waterfront resiliency projects in Lower Manhattan currently being planned and designed by the New York City Mayor’s Office of Resiliency (“MOR”) as part of its Lower Manhattan Coastal Resiliency (“LMCR”) Project. It should be noted that just two (2) of the aforementioned (3) storm resiliency projects are subject to the Peer Review Services of this RFP.

Unless the project scope is expanded according to the terms and procedures set forth below, BPCA is seeking through this RFP external engineering and design peer review services (the “Peer Review Services”) in support of the designs for both the South BPC Project and the North BPC Project (individually, the “Reviewed Design” and collectively, the “Reviewed Designs”). The Reviewed Designs are at different levels of design development, and it is BPCA’s desire that the selected Proposer create distinct and separate review processes and work products (individually, the “South Project Review” and the “North Project Review,” and collectively, the “Project Reviews”) for each Reviewed Design in accordance with the requirements set forth herein. The scope of work for the South BPC Project can be found in Exhibit B of this RFP and the scope of work for the North BPC Project can be found in Exhibit C of this RFP.

The BPC-area storm resiliency projects subject to these Peer Review Services (collectively referred to as the “Reviewed Projects”), their respective design consultants (individually, a “Design Consultant” or collectively, the “Design Consultants”), and their respective levels of design development are provided below:

1) South BPC Project

- a. Design Consultant – AECOM;
- b. Current Level of Design – thirty percent (30%), as of November 2019; and,
- c. Anticipated Construction Commencement (phased) – mid-2020.

2) North BPC Project

- a. Design Consultant – AECOM;
- b. Current Level of Design – Pre-Conceptual/Alignment Evaluation, as of November 2019; and,
- c. Anticipated Construction Commencement (phased) – early-2021.

Notwithstanding the need for separate review processes and work products for each Reviewed Design, the members of the selected Proposer's team must have sufficient familiarity with the sites, objectives, and designs for both Reviewed Projects throughout the Peer Review Project duration in order to allow for a thorough and accurate assessment of consistency and compatibility between the Reviewed Projects. The members of the selected Proposer's team also must have sufficient familiarity with the standards, processes, and projects associated with the LMCR Project in order to allow for a thorough and accurate assessment of consistency and compatibility between the Reviewed Projects and the LMCR Project.

Upon commencement of the Peer Review Services, the selected Proposer will submit for BPCA's approval its recommended team of panelists to serve on a peer review panel (the "Peer Review Panel"). The Proposer will select and recommend members of the Peer Review Panel ("Peer Review Panelists") based upon their professional knowledge, experience and expertise, and their collective ability to represent a comprehensive and balanced range of expertise encompassing the following areas:

- Environmental Science and Engineering;
- Landscape, Architectural and Urban Design;
- Hydrological Engineering (Modeling);
- Civil and/or Structural Engineering;
- Mechanical, Electrical, and Plumbing ("MEP") Engineering;
- Geotechnical Engineering;
- Environmental Engineering;
- Marine Engineering;
- Surveying;
- Federal, State and Local Agency Permitting;
- FEMA Certifications; and,
- Cost Estimating and Value Engineering.

Peer Review Panelists must not be employed by, a shareholder or principal of either of the Design Consultants or a property owner, business owner, resident, or other stakeholders affected by or with an interest in the South BPC Project or the North BPC Project. Any additions to or replacements of the Peer Review Panelists must be approved by BPCA.

## **II. Overview of Objectives & Responsibilities**

The primary objective of the Peer Review Services is to ensure the adequacy, efficacy, cost effectiveness, and longevity of the Reviewed Designs, as well as their compatibility and consistency with one other, the LMCR Project, and the surrounding BPC community. The Peer Review Panel will assess whether the design, engineering, and scientific assumptions, principles, approaches, and methodologies utilized by the

Design Consultants for the Reviewed Designs achieve the objectives outlined in their respective scopes of work.

The Peer Review Services will incorporate three (3) key objectives, supported by specific criteria to be established by the selected Proposer and approved by BPCA in advance of the commencement of the Peer Review Services (the “Peer Review Criteria”) as follows:

- 1) Errors or Deficiencies: The Peer Review Panelists will identify and articulate deficiencies, errors, inaccuracies, or discrepancies, if any, in any of the following technical areas incorporated into or associated with the design and/or engineering of the Reviewed Designs:
  - Baseline Project assumptions and target performance levels;
  - Survey (topographic, utility, bathymetric) data;
  - Coastal and/or hydrologic modeling;
  - Scientific data and/or projections;
  - Site and geotechnical analysis;
  - Seepage analysis;
  - Internal drainage analysis;
  - Effectiveness of engineering approach to risk reduction targeted by Barrier System implementation;
  - Effectiveness of engineering approach to existing underground conditions and obstructions;
  - Effectiveness of engineering approach to Barrier System’s foundations, piles, footings, and seepage barriers;
  - Effectiveness and suitability of selected Barrier System components, including passive barrier elements, landscaping elements, and deployable elements;
  - Effectiveness and site compatibility of specific deployable elements when compared with other potential deployable approaches and/or other possible passive applications/strategies;
  - Effectiveness of proposed internal drainage modifications and/or improvements;
  - Opportunities for future modification and/or adaptation of the Barrier System and internal drainage improvements; and,
  - Other areas deemed critical by the Peer Review Panelists, or any of them, to the overall performance and effectiveness of the Reviewed Designs.
- 2) Project Compatibility and Consistency: The Peer Review Panelists will evaluate the compatibility and consistency of the Reviewed Designs with each other as well as with the LMCR Project, and other Lower Manhattan resiliency projects, in the following respects:
  - Consistency of targeted design event and time horizon, including specific identification and description of targeted events and levels of risk reduction to be achieved over a set period of time;
  - Consistency of design assumptions and sources of scientific/climatological data, particularly with respect to projections regarding climate change, sea level rise, and storm activity;
  - Consistency of design flood elevations;
  - Consistency/compatibility of projected sea level rise projections, and targeted points of

intervention to address sea level rise;

- Consistency/compatibility of coastal modeling techniques and approaches;
- Consistency/compatibility of hydrologic modeling techniques and approaches;
- Consistency/compatibility of types of deployable equipment utilized;
- Consistency/compatibility of interior storm drainage data, assumptions, objectives, approaches, and impacts;
- Consistency of considerations as to operation and maintenance of the Barrier Systems and internal drainage improvements/modifications, and integration of such considerations into design decisions; and,
- Any other area of compatibility and/or consistency deemed by the Peer Review Panelists, or any of them, to be critical or important.

3) Overall Effectiveness, Suitability and Constructability: The Peer Review Panelists will evaluate the overall effectiveness, suitability, and constructability of the Reviewed Designs as these considerations pertain to:

- A. Compatibility of the Reviewed Designs with the Site and the BPC neighborhood, including consideration of any significant community opposition to such Reviewed Designs;
- B. Efficacy in meeting Reviewed Project objectives,
- C. Extensiveness of alternative design approaches considered and testing of alternate concepts;
- D. Cost effectiveness of the Reviewed Designs, including consideration of expected useful life of resulting storm resiliency improvements;
- E. Negative quality of life and/or safety impacts of the Reviewed Designs, if any;
- F. Constructability of the Reviewed Designs including, but not limited to, consideration of impacts to/from activities in surrounding areas, difficulty of site access and coordination, phasing possibilities, specific construction challenges, complexity of construction methodologies required, potential points of conflict or interruption, straightforwardness/comprehensibility of design, and potential regulatory/permitting obstacles;
- G. Clarity in design purpose and methodology;
- H. Ease and costs of operations and maintenance of the resulting Barrier Systems, and internal drainage improvements;
- I. Conformance to FEMA design, construction, maintenance and operations standards for flood risk reduction certification; and,
- J. Any other point of overall effectiveness, suitability, and/or constructability deemed by the Peer Review Panelists to be critical or important.

The Peer Review Services will include the formulation of recommendations for adjustments to and/or modification of the Reviewed Designs to achieve improved performance, constructability, compatibility, and cost effectiveness of the respective Resilience Projects; however, the selected Proposer will not be required or expected to redesign or complete either of the Reviewed Designs.

The scopes of work for the South BPC Project the North BPC Project are attached to this RFP as Exhibit B and Exhibit C, respectively. Additional documentation related to each of the Reviewed Projects will be provided once a Proposer is selected and the Contract is executed.

### **III. General Requirements**

- a) Before commencement of the Peer Review Services, the selected Proposer will attend two (2) introductory/kick-off meetings with BPCA and the Design Consultants, one (1) such meeting for each of the two (2) Reviewed Projects, to establish peer review protocols and guidelines – including expected collaboration and deliverable logistics – for the completion of the Peer Review Services. The selected Proposer shall devise and present to BPCA for review and approval a set of peer review guidelines (the “Peer Review Guidelines”) to be utilized and adhered to by the selected Proposer and the Peer Review Panelists in the performance of the Peer Review Services.
- b) For all Peer Review Project phases, the selected Proposer will:
  - i) Establish a schedule for completion of Scope of Work milestones, subject to BPCA approval;
  - ii) Attend regular progress meetings with BPCA; and,
  - iii) Attend other periodic meetings on an as-needed basis.
- c) The selected Proposer will provide BPCA with three (3) hard copies and three (3) electronic copies (in PDF format) of each of the two (2) written reports (the “Peer Review Reports”), along with accompanying PowerPoint presentation slides that document the Peer Review Panel’s findings. A further description of these required deliverables, including the timeframe for their completion, is provided in Section IV | Phase 3, below.
- d) Each Peer Review Project task will require active collaboration and interface between the Peer Review Panel, BPCA staff, and/or the Design Consultants. The selected Proposer will meet with BPCA staff regularly, no less than once every two (2) weeks, throughout performance of the Peer Review Services. The selected Proposer will also meet with the Design Consultants regularly during the course of the Services. BPCA must approve any material change to or modification of the Reviewed Designs resulting from the Peer Review Services.
- e) The target time frame for the selected Proposer’s production of the Peer Review Report for the South BPC Project will be three (3) months following execution of its Contract for the Peer Review Services and, for the North BPC Project, five (5) months following Contract execution. To the maximum extent practicable, the Peer Review Services will not extend the schedules for the Reviewed Designs, but rather adhere to the established timeframe allotted to the respective Reviewed Projects—thereby avoiding or minimizing any delays associated with the completion of the Reviewed Projects.

### **IV. Peer Review Services – Phases**

#### ***Phase One (1): Establishment of Peer Review Panel***

- a) Establish the Peer Review Panel for the performance of the Peer Review Services, comprising individuals with expertise that is appropriate to the Reviewed Projects, and who have been recommended to and approved by BPCA. The Peer Review Panel will consist of individuals who

have experience conducting peer reviews based on a set of pre-established standards and criteria. The subject-matter expertise and the conceptual/analytical skillsets required for successful completion of the Peer Review Services, should determine the type and number of participants selected for the Peer Review Panel. A baseline knowledge of resiliency-related analytical methods is required for all Peer Review Panelists. The selected Proposer will be responsible for adjusting the Peer Review Panel membership to maintain the necessary skillsets in the event that, as the Reviewed Projects progress the need for different types of subject-matter expertise may arise.

- i) To avoid conflicts of interest, Peer Review Panelists engaged in the Peer Review Services should be selected based upon their professional expertise, and **must not** be employed by, or serve as a shareholder or a principal of, either of the Design Consultants or a property owner, business owner, resident, or other stakeholders affected by or with an interest in the South BPC Project or the North BPC Project. The Peer Review Panelists are limited to reviewing, commenting on, and providing cost savings or value engineering recommendations with respect to the work performed by others, and should **not** act as direct consultants or advisors themselves for the respective Reviewed Projects.
  - ii) During the formation of the Peer Review Panel, the selected Proposer should keep in mind the following considerations: a) credentials, including affiliations as well as subject-matter expertise; and, b) any conflicts of interest (including potential biases) that would disqualify prospective Peer Review Panelists from serving on the Peer Review Panel.
- b) The selected Proposer will devise a meeting schedule for the Peer Review Panel that will be subject to BPCA approval. BPCA officials may attend Peer Review Panel meetings, but BPCA will not participate in the direct management or control of the Peer Review Panel.

***Phase Two (2): Compilation and Review of Background Information, Base Site Data, and Reviewed Project Scopes of Work***

- a) BPCA will provide to the selected Proposer, all Reviewed Project-related documents within BPCA's possession or control related to:
1. History of the Reviewed Project sites and prior reports, surveys, mapping, inspections, and analysis pertaining to such sites that are relevant to the Peer Review Services;
  2. All Requests for Proposal and relevant procurement documentation related to the design services for the Reviewed Projects;
  3. Prior assessments and/or analyses pertaining to storm resiliency planning – specifically, such assessments and/or analyses pertaining to the Reviewed Project sites;
  4. All tests, surveys, inspections, assessments, analyses, and coastal modeling results performed by the Design Consultants with respect to the Reviewed Projects;
  5. Documents reflecting the methodology and calculations utilized by the Design Consultants to inform and support their design decisions (to the extent not precluded by the terms of BPCA's contracts with the Design Consultants);
  6. All Community Board, property owner, public agency, and stakeholder feedback, comments, and resolutions pertaining to the Reviewed Projects;
  7. Design development drawings and documentation, including early alignment studies, design studies, and alternate design approaches considered and/or evaluated;
  8. Project cost estimates; and,
  9. Other relevant Project-related documentation within BPCA's possession and/or control.



- b) It will be the responsibility of the selected Proposer and the Peer Review Panelists to identify and obtain such other documentation and/or information deemed pertinent, necessary, and/or desirable to aid and support the performance of the Peer Review Services. Such additional documentation and/or information may include, but will not be limited to:
  - 1. Off-site and on-site utility locations, and street and drainage infrastructure not otherwise reflected by documentation that is generated by the Design Consultants or available from BPCA;
  - 2. City, regional, national, and international data relating to climate change, storm activity, and sea level rise projections;
  - 3. Data or information related to other comparable resiliency programs and projects, including other New York City storm resiliency projects and programs; and,
  - 4. Other data, documentation, or information necessary to facilitate the performance of the Peer Review Services.
- c) The selected Proposer will create a plan and schedule for proposed limited, coordinated points of direct communication and consultation with the Design Consultants in order to ensure a full understanding of the Design Consultants' approach and methodology pertaining to the Reviewed Projects. The proposed communication plan (the "Consultant Communication Plan") may include meetings, phone calls, and/or written correspondence, and will be submitted to BPCA for review and approval within two (2) weeks prior to the commencement of the Peer Review Services. The Consultant Communication Plan shall be devised in a manner that will be efficient and effective in gaining the information required for the proper execution of the Peer Review Services—while minimizing any potential disruptions to the Reviewed Projects, including the amount of time required to be expended by the Design Consultants. All requests for documents shall be submitted in writing by the selected Proposer to BPCA. It should be noted that neither the selected Proposer nor any individual Peer Review Panelist shall submit document requests directly to the Design Consultants.

### ***Phase Three (3): Performance of Peer Review Analyses***

Based upon the information acquired and reviewed during Phase Two (2), the selected Proposer shall conduct separate and individual processes for the South Project Review and the North Project Review, respectively. It is expected that both the South Project Review and the North Project Review will be performed and completed based upon a level of design as performed by the Design Consultants that is between thirty percent (30%) and fifty percent (50%).

The peer review analysis for each Reviewed Project shall be performed in accordance with, and shall specifically address, each of the Peer Review Criteria as listed above, and progress with the Peer Review Services shall be reported to BPCA at the regularly scheduled progress meetings. The analyses of the Peer Review Panelists shall be closely coordinated in order to provide a complete and integrated peer review of each Reviewed Project. In advance of the preparation of a draft Peer Review Report for each of the Reviewed Projects, the selected Proposer shall provide BPCA with an in-person presentation of its preliminary peer review findings and conclusions. Any questions resulting from, and/or clarifications obtained as a result of, such presentation shall be addressed in the draft Peer Review Reports.

In the event that the selected Proposer or any individual Peer Review Panelist determines through its preliminary analysis that there is a significant problem or deficiency with any element of the Project design that could result in the need for a material change to that Project design element or the entire Project design, the selected Proposer shall immediately notify BPCA of such significant problem or deficiency even if it is before the completion of the peer review analysis and before the drafting of the Peer Review Reports, respectively, for the Reviewed Projects.

The peer review analysis for each Reviewed Design shall completely and comprehensively address the Peer Review Criteria and adhere to the Peer Review Guidelines, and shall take into account review of the written documentation identified above, as well as direct communications (albeit limited communications) with members of the Design Consultants for the Reviewed Projects, BPCA representatives, and other parties as identified by the Peer Review Guidelines.

#### ***Phase Four (4): Preparation of Peer Review Reports***

The selected Proposer will prepare and submit to BPCA in accordance with the timeframes specified above, in Section III.f, two (2) separate written reports (individually, a “Peer Review Report” or collectively, the “Peer Review Reports”) that summarize and detail the evaluation analysis and conclusions of the Peer Review Panelists with respect to the Reviewed Designs. The selected Proposer will submit to BPCA three (3) hard copies of each Peer Review Report, along with an electronic version.

The Peer Review Reports will include findings in the form of review comments (individually, a “Review Comment” and collectively, the “Review Comments”) which shall be specific, detailed, succinct, and accommodating of a timely and appropriate resolution and/or response from BPCA and/or the Design Consultants. The Review Comments should adhere to the following directives: a) Clearly state the concern; b) Explain the basis for the concern; c) Explain the significance and relevance of the concern vis-à-vis the Reviewed Projects’ respective design objectives; and, if applicable, (d) Briefly specify potential options and/or recommendations for addressing the concern or rectifying the issue.

The selected Proposer’s project manager assigned to manage each Peer Review Report will be responsible for ensuring that all Review Comments entered into the Peer Review Report represent the Peer Review Panel as a whole and are non-attributable to any particular member of the Peer Review Panel. Should there be a lack of consensus about one (1) or more of the Review Comments for any of the two (2) Peer Reviews, the applicable project manager should clearly note the nature of the non-concurrence among the Peer Review Panelists and the reasons for the non-concurrence.

#### ***Phase Five (5): Submission and Presentation of Peer Review Reports***

As an accompaniment to the Peer Review Reports, the selected Proposer will deliver two (2) in-person presentations of its findings – one (1) such presentation for each peer review – to BPCA and each respective Design Consultant team. Each such presentation will be scheduled to occur within ten (10) days of the submission to BPCA of the Peer Review Report related to a particular Review Design. The selected Proposer will provide BPCA with an electronic copy of all presentation materials associated with the Peer Review Report presentations.

#### ***Phase Six (6): Post-Review Actions***

Each of the Peer Review Reports will be jointly assessed and reviewed by BPCA in conjunction with the Design Consultants, and its recommendations may be incorporated into the Projects as is deemed appropriate. The recommendations of the Peer Review Reports will either be implemented, or a response will be provided as to the decision not to implement such recommendations. BPCA will collaborate with each of the Design Consultants to prepare written responses to the Peer Review Reports that explain the agreements or disagreements with the recommendations included the Peer Review Reports, the actions (or lack thereof) to be undertaken in response to the Peer Review Reports, and, if applicable, the reasons those actions are believed to satisfy the key concerns stated in the Peer Review Reports.

As necessary, BPCA will be responsible for facilitating resolutions in circumstances where the Peer Review Panel and the Design Consultants disagree about Project design or engineering considerations.

It should be noted, however, that the Peer Review Panel will not directly make any Project decisions; the responsibility for the Reviewed Projects remains with the Design Consultants and BPCA. As such, the Peer Review Panel must refrain from directly participating in the development of any final work products of the Design Consultants.

## **EXHIBIT B**

### **SBPC Resiliency Project: Scope of Work**

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

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

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

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

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

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

## **II. Objectives and Overview**

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

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

The Services will comprise four primary phases, specifically:

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

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

### *Phase 2: Wagner Park:*

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

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

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

contractor procurement will be initiated and construction will proceed to completion.

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

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

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

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

### **III. General Requirements**

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

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

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

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

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

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

- i) The selected Proposer shall conduct preliminary meetings with the local community members, the Community Board and interested groups as directed by BPCA. The selected Proposer shall present the progress of this Services Phase and take under consideration all concerns and ideas

expressed about this Services Phase. The selected Proposer shall submit to BPCA a summary documenting the minutes of each meeting and/or presentation. The selected Proposer shall document all attendees of the meetings and may distribute, upon BPCA's approval, copies of the meeting minutes to attendees.

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

#### Task b): Design Development

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

#### Task c): Construction Documents

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



following general guidelines:

- 75% final design documents,
- 95% final design documents, and
- Contract documents (for bidding and procurement).

Task d): Bidding and Negotiation

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

Task e): Construction Administration

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

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

Task a): Community & Stakeholder Outreach

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

Task b): Design Development

- i) The selected Proposer shall incorporate the contents of the completed topographic and utility surveys into the design documents. The selected Proposer shall utilize as much information from these surveys as may be necessary to check design assumptions of the preliminary design and potential interference

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

Task c): Construction Documents

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

Task d): Bidding and Negotiation

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

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

**Task e): Construction Administration**

- i) The selected Proposer shall review shop drawings, product data, samples and similar submittal materials of the contractors.
- ii) The selected Proposer shall visit the site periodically over the construction duration to determine whether the work is in accordance with the requirements of the contract documents.
- iii) The selected Proposer shall participate in regular construction meetings during construction with BPCA and others.
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- v) The selected Proposer shall provide services in support of the closeout of this Services Phase with the contractors and all authorities having jurisdiction.

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

**Phase 4 -- Battery Bikeway Segment**

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

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

**Task b): Design Development**

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

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

#### Task c): Construction Documents

- i) The selected Proposer shall prepare contract documents for the purpose of contractor bidding and procurement. Drawings included in the contract documents shall be prepared with necessary construction details, fully dimensioned and with detailed specifications from which prospective bidders can make accurate and reliable estimates of the quantities, quality and character of the labor and materials required to complete the particular bid contract and to install any equipment therein.
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  - 75% final design documents,
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- v) The selected Proposer shall provide services in support of the closeout of this Services Phase with the contractors and all authorities having jurisdiction.

**EXHIBIT B-1**

**South BPC Resiliency Report**

**[NO FURTHER TEXT ON THIS PAGE]**



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

E X E C U T I V E   S U M M A R Y



**Battery Park  
City Authority**

July 13, 2017

**Perkins Eastman**



## Credits

Perkins Eastman

W Architecture & Landscape Architecture

Arup

KS Engineers

Muesser Rutledge Consulting Engineers

HR&A Advisors



July 13, 2017



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# 1. Introduction

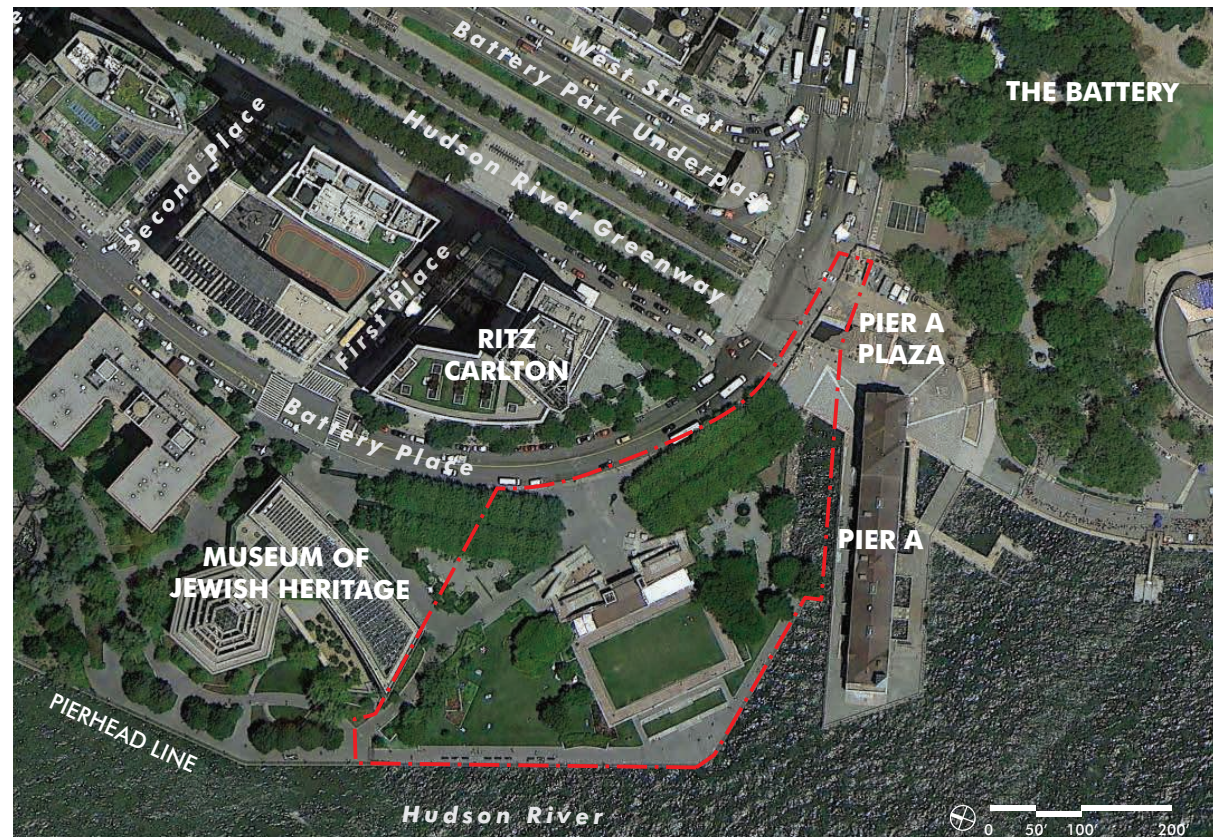
In the years since Wagner Park opened in 1994, much has changed: New Yorkers' sensibility toward public spaces, the water and waterfront access has become more sophisticated. Lower Manhattan suffered a devastating tragedy in 2001 but has recovered to become an incredibly vibrant mixed-use neighborhood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

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

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

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

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



Study Area

July 13, 2017



## 2. Planning Objectives

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

### 3. Overall resiliency context



100 yr flood & Sandy 2012 inundation map

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

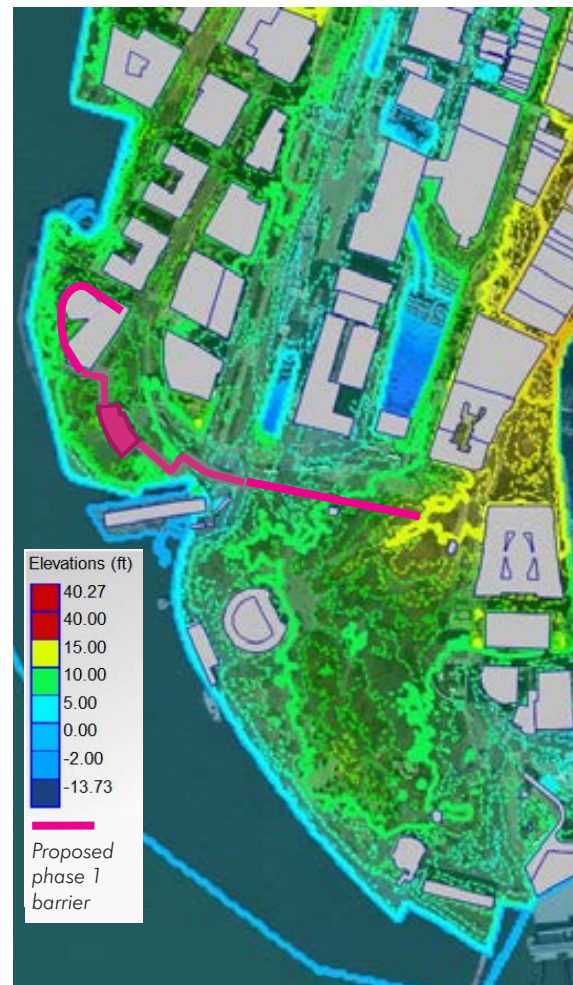
The study area also occupies a pivotal location, between the larger Battery Park City perimeter resiliency concept that begins just north of Wagner Park (primarily utilizing existing building faces and garden walls as the basis of a new storm barrier), and the Lower Manhattan Coastal Resiliency protection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



## 4. South Battery Park City Resiliency Plan

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

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



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

July 13, 2017



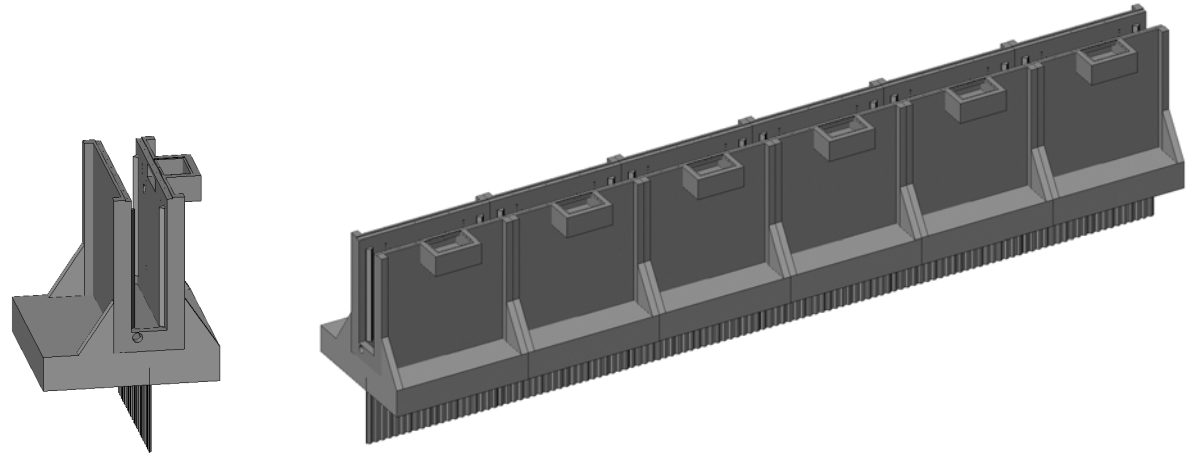
BPCA Resiliency plan

## 5. Deployable Flood Barrier Concept

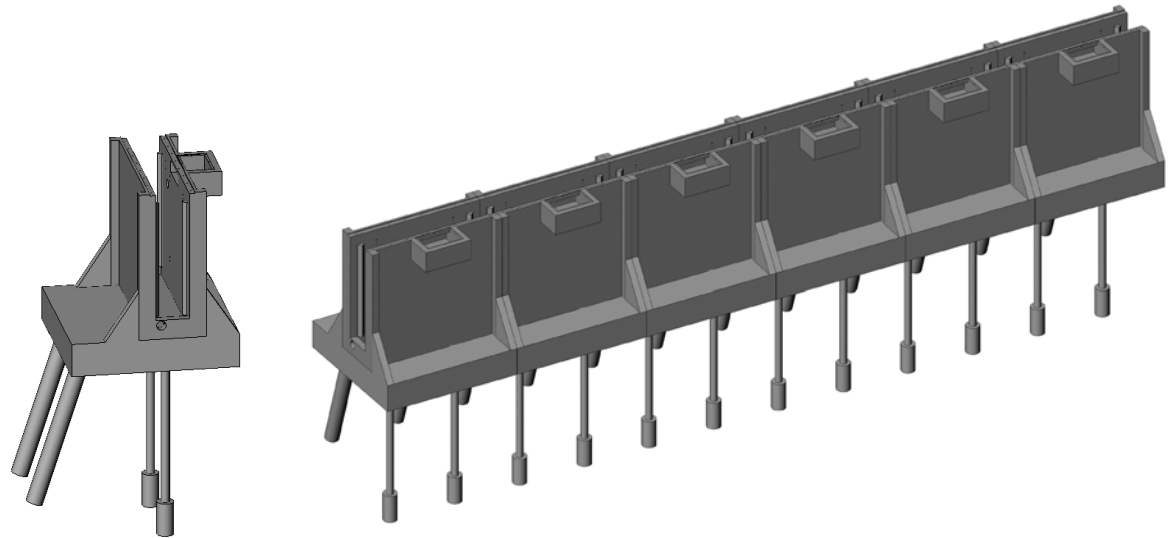
### Flood Barrier System

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

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



*Foundation base assembly with sheet piles*



*Foundation base with batter piles and rock anchors*

## 6. Deployable Flood Barrier Design Integration

### Precedent: Georgetown Harbor

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

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

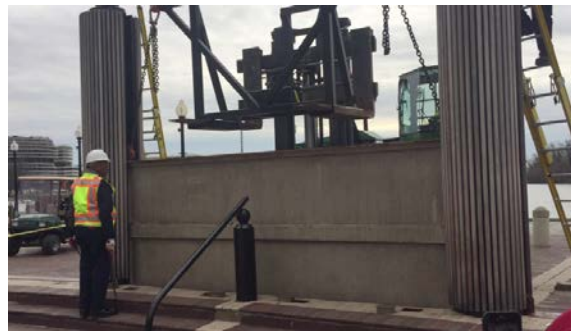
efficient to operate, this system has several benefits: It does not rely on expensive-to-maintain technology, and it does not depend on components being delivered from off site, which would add significant time & expense and risk in the event that the gates are deployed.

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

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



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



Georgetown Harbor: barrier being deployed



Georgetown Harbor: barrier raised during flood



## Columns as Civic Design

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

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

*Hudson River Park near Morton Street, NY*



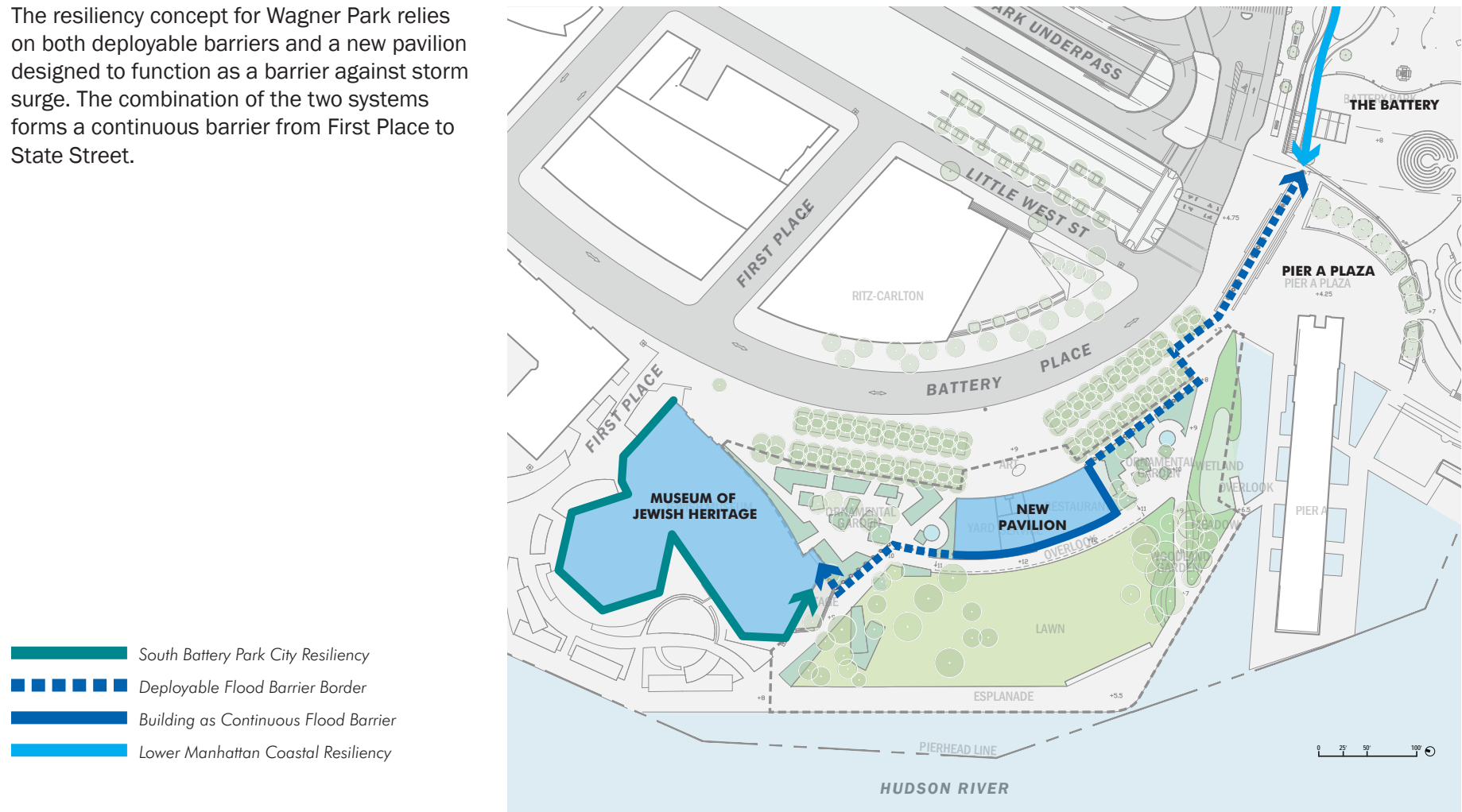
*Target Field, Minneapolis, MN*

July 13, 2017



## 7. Wagner Park Resiliency Concept

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



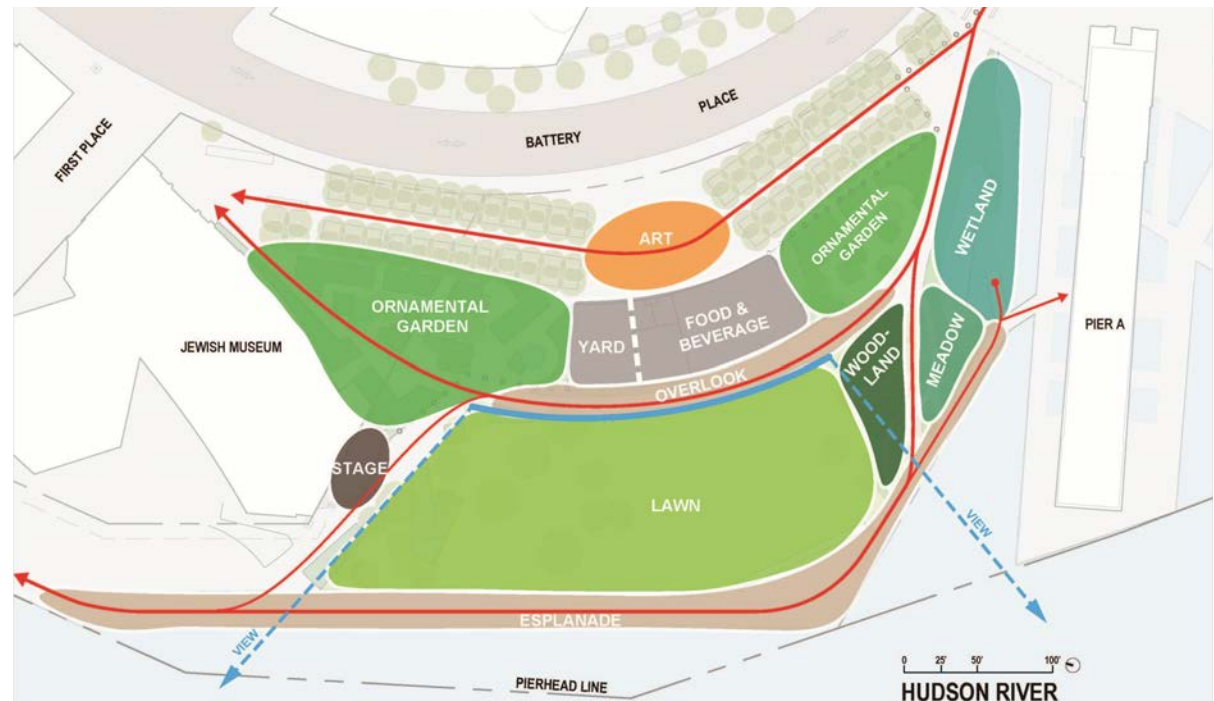
Continuous line of protection formed by the new proposed pavilion and deployable flood barrier.

July 13, 2017

## 8. Wagner Park Landscape Concept

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

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



Landscape concept

## 9. Wagner Park — Use Allocation

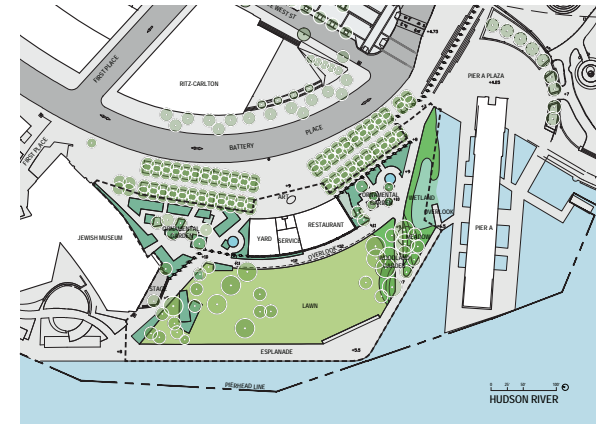
The proposed Wagner Park landscape concept of the South Battery Park City Resiliency Plan enhances the quality of the Park experience by :

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



### Existing

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

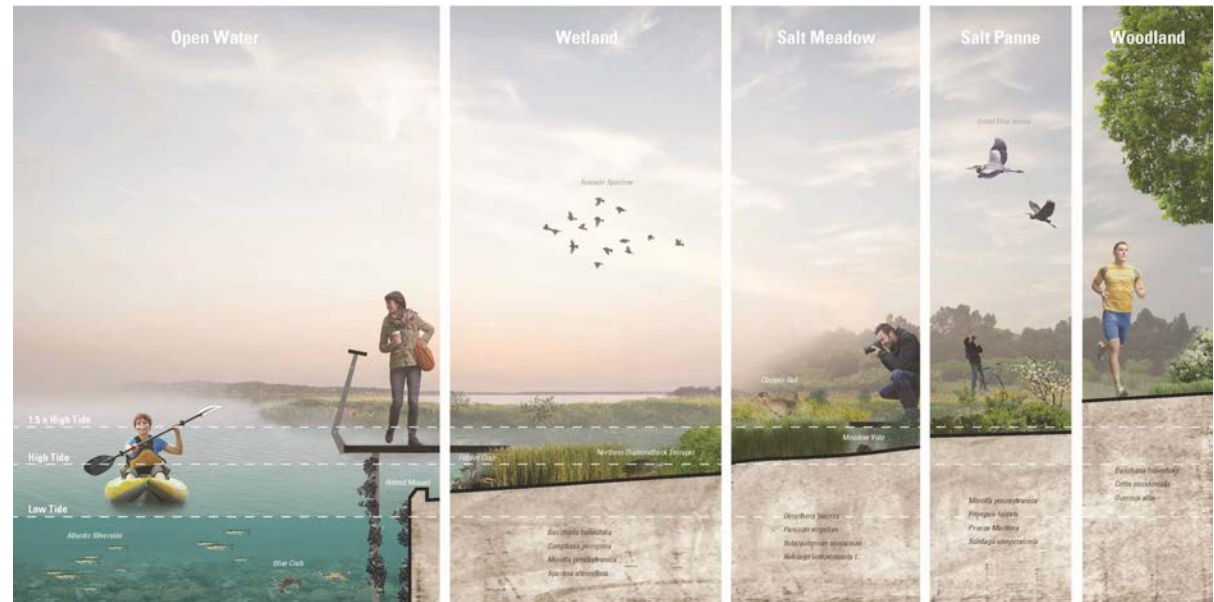


### Proposed

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

## 10. Woodland–Wetland Gardens

The proposed Wagner Park landscape concept of the South Battery Park City Resiliency Plan enhances the quality of the Park experience by expanding the ornamental gardens and lawn, increasing the planted areas to include a new wetlands feature at the Pier A cove, and reducing existing paved areas. The excess of the wetland excavation can be reused to create topography elsewhere in the park, expose park users to even better waterfront views and protect valuable assets by elevating the overlook and the building up to a higher elevation. As part of the integrated flood protection system, the new wetland-woodland transect will make Wagner Park and Battery Park City more resilient to the rising tides and more enriched to its residents and visitors.

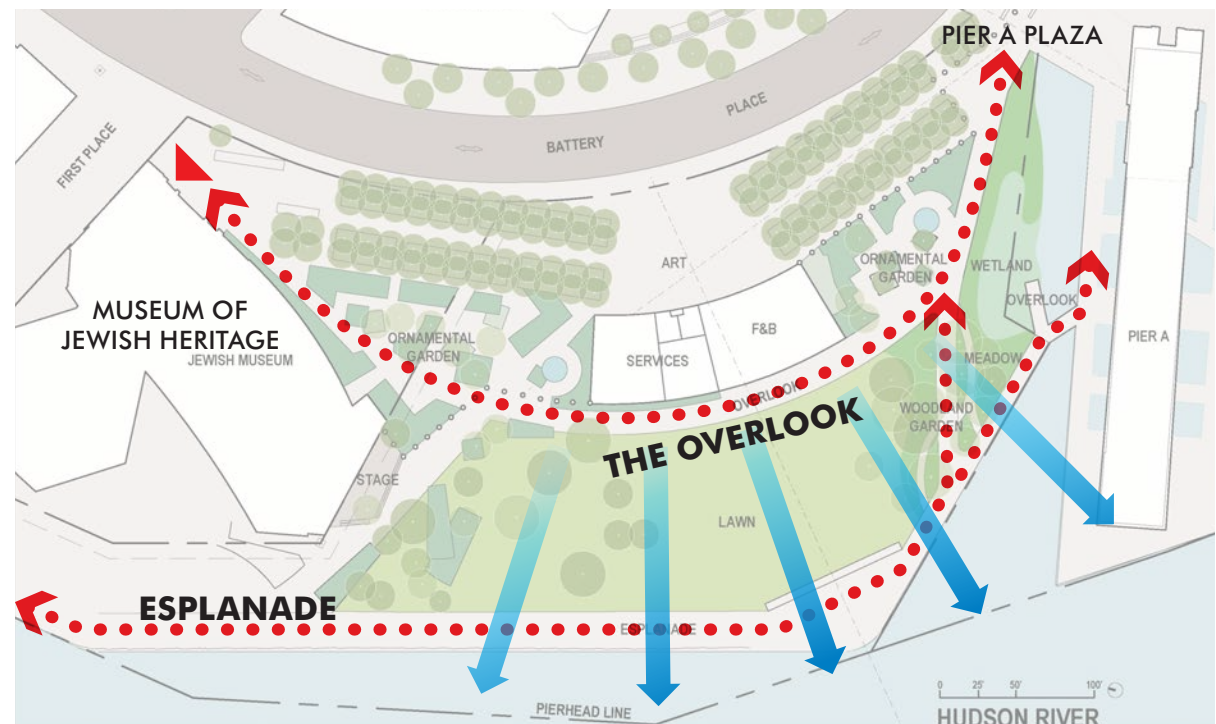


*Section showing Native Ecology Transect: The proposed wetland and woodland areas make a gradual topographic transition from the central lawn down to the water's edge. Instead of the existing wall and riprap which bring the esplanade to an abrupt end right before it could reach Battery Park, this new transect will not only establish better visual and physical connections to Battery Park and Pier A, it will also create a more natural and diverse ecological environment for Wagner Park, adding new types of gardens with native wetland and woodland plant species, as well as offering a rare opportunity along the west bank of Manhattan to get down close to the river.*

# 11. Wagner Park — Pedestrian Access/Navigation

Added pedestrian benefits:

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





## 12. Wagner Park — Existing Pavilion

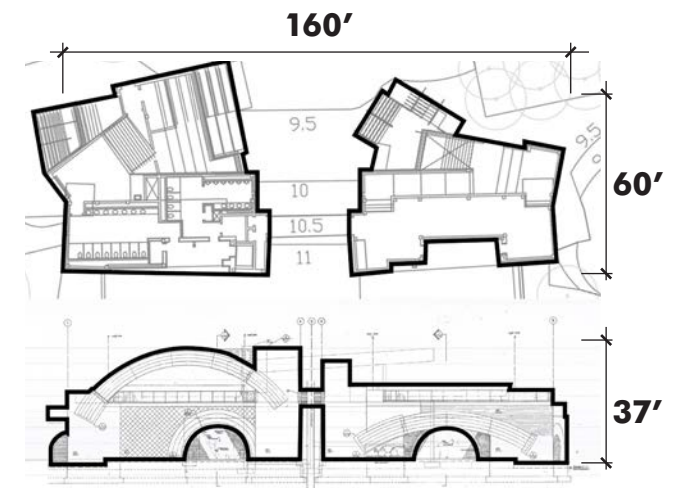
Following an evaluation of the existing pavilion and its compatibility with the study's resiliency objectives, the Assessment Team recommends that the existing pavilion be replaced with a new pavilion structure. The South Battery Park City Resiliency Plan envisions a new structure of similar footprint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

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

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



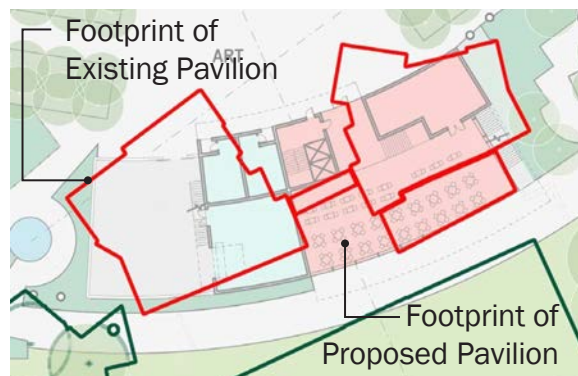
*Efflorescence on west elevation façade, northern structure*



*Existing Wagner pavilion*

## 13. Park Pavilion Programming

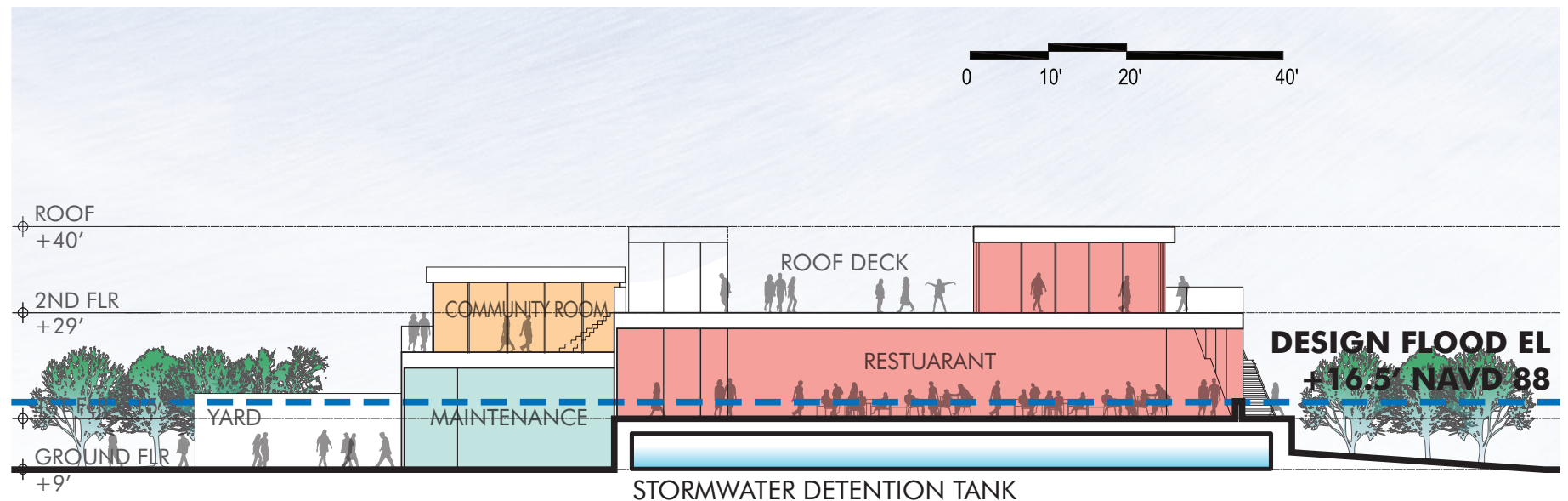
The new Wagner Park pavilion, in addition to forming a significant element of the flood barrier system for the South Battery Park City Resiliency Plan, is intended to offer enhanced utility and support for the Park by creating improved maintenance, storage and service yard space for BPCA Parks operations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



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

## 14. Park Pavilion as Flood Barrier

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

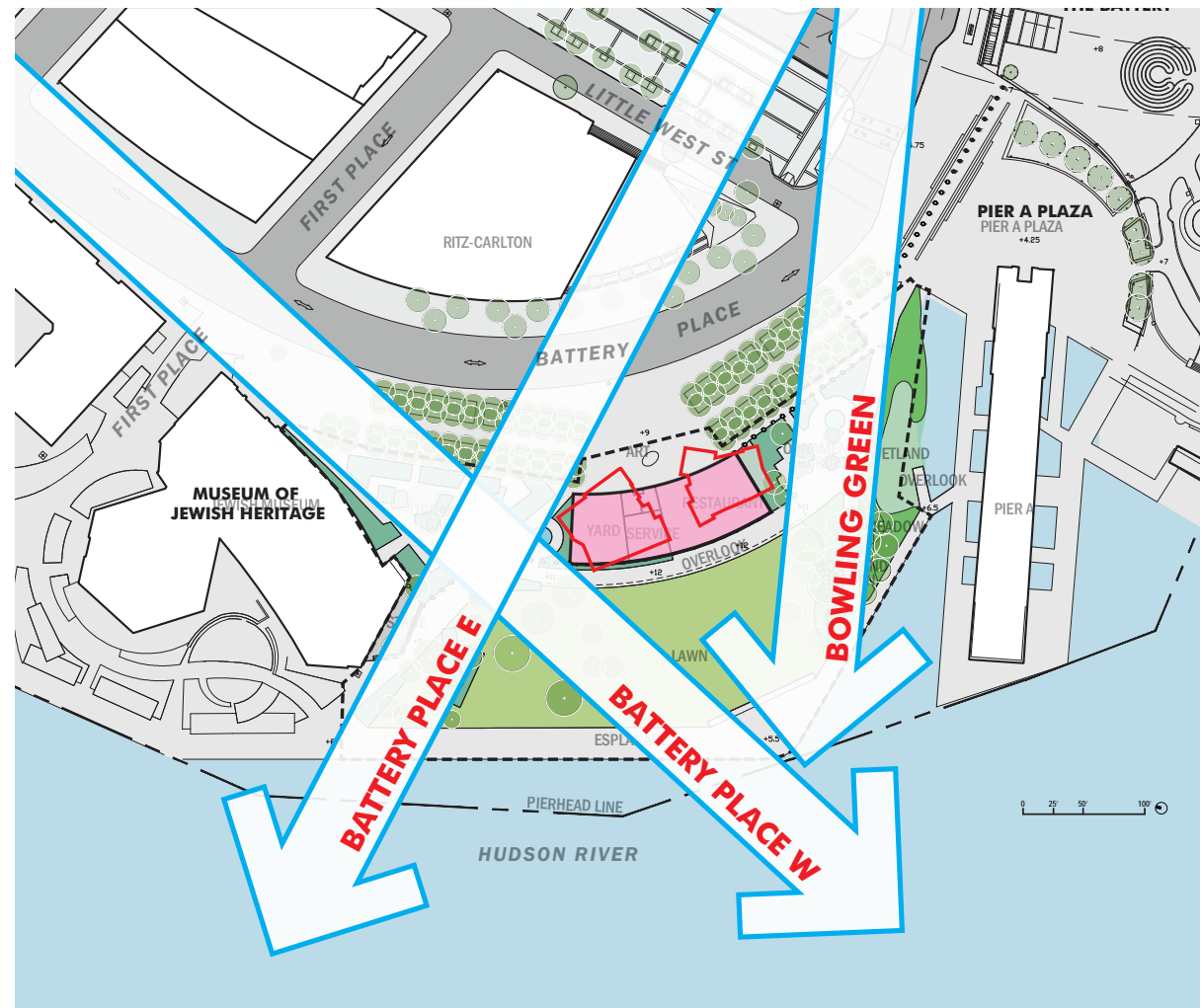


*The proposed pavilion would need to be built to a height sufficient to allow the building to act a barrier for storm surge.*



## 15. Siting of a New Pavilion

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

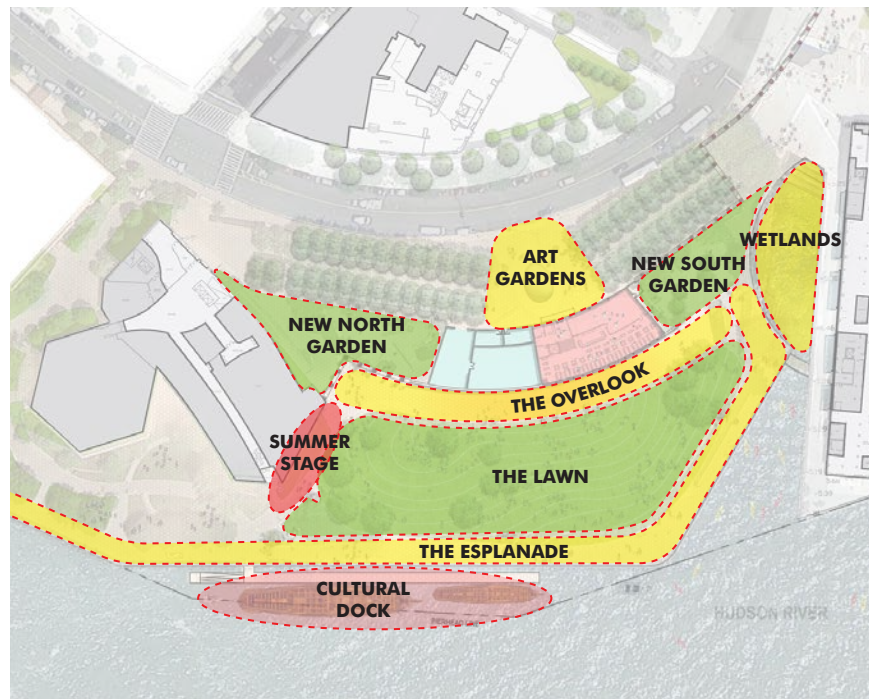


The new pavilion should occupy within footprint constraints

July 13, 2017

## 16. Key Park Places

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



Key places with programs



Sketch of The Lawn looking toward Pier A





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

July 13, 2017

# 17. Public Engagement and Outreach — Meetings/Presentations

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

## **Public Agencies and Elected Officials**

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



Town Hall Meeting, November 9, 2016

## **Open Public Meetings**

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

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

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

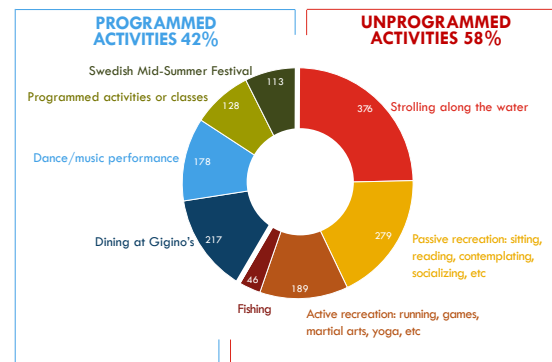
July 13, 2017



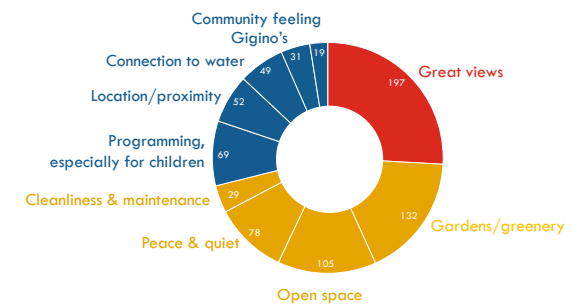
# 18. Public Engagement and Outreach — Survey

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

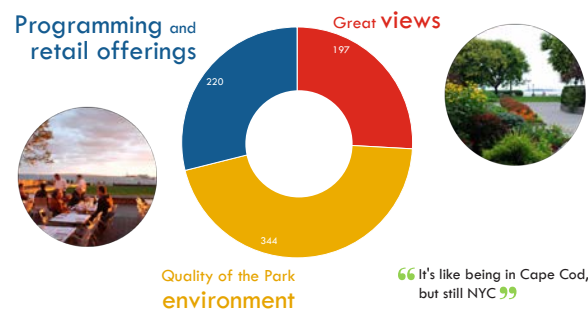
WHY THEY CAME TO WAGNER PARK



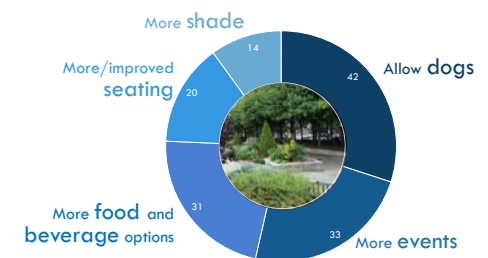
WHAT THEY LIKE BEST ABOUT WAGNER PARK



WHAT THEY LIKE BEST ABOUT WAGNER PARK



HOW WAGNER PARK COULD BE IMPROVED



## **EXHIBIT C**

### **North BPC Resiliency Project: Scope of Work**

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

One of the two most seriously vulnerable points in Battery Park City for storm surge inundation and flooding (the other being the South Battery Park City Resiliency Project site), the North BPC Project Site area stretches from the Northern Esplanade abutting Stuyvesant High School, Stuyvesant Plaza, Route 9A just north of Chambers Street and the northerly side of Chambers Street to West Broadway. Much of the damage suffered by Battery Park City during Superstorm Sandy resulted from flooding that occurred after water from the Hudson River breached the low-lying land area that forms the North BPC Project Site. Flood waters were channeled at West Street and flowed southward creating the flow that ultimately damaged and/or destroyed major components of the Battery Park City Ballfield and Community Center. Water that entered at the North BPC Project Site also flooded other parts of Lower Manhattan, including portions of Tribeca and the World Trade Center site. Additional points within Battery Park City and areas east of West Street are at risk due to this particular point of vulnerability in the face of future, more severe storm events.

BPCA, which is responsible for planning and maintaining BPC, has both monitored and participated in collaborative discussions associated with the resiliency efforts initiated by the State of New York (through the Governor's Office of Storm Recovery) and the City of New York (through the Mayor's Office of Recovery and Resiliency), as well as other resiliency-focused efforts and organizations. The Lower Manhattan Coastal Resiliency Project ("LMCR") is the culmination of several of these early collaborations and is currently the City of New York's planning vehicle for a targeted system of flood barrier protection to extend from Montgomery Street on the Lower East Side, southward around the tip of Manhattan and up through BPC to a point just north of Chambers Street. The LMCR project, aside from design, is not yet funded. Given the urgency of the need, BPCA initiated its own resiliency assessment projects, aimed at evaluating BPC's peculiar vulnerabilities to storm-related flood damage and sea level rise. Through these resiliency assessment projects, BPCA has devised several distinct projects for the protection of BPC residents and assets that will function independently of each other and independently of other lower Manhattan resiliency measures that may be developed, and also afford a preferred means for the LMCR project, if it is built, to tie into BPC.

In follow up to its initial resiliency assessment, BPCA retained H2M Engineering + Architects to perform a more detailed conceptual assessment of the North BPC Project Site. The resulting North BPC Report, issued in 2018, identifies a preliminary conceptual placement, configuration and composition of a barrier system to provide the needed flood protection for the North BPC Project Site (the "North BPC Resiliency Concept"). The North BPC Report is attached to the RFP as Exhibit A-1. The North BPC Report provides evaluations and recommendations based on the Design Flood Elevation (DFE) of 16.5 feet (which reflects an event of greater magnitude than Superstorm Sandy), given by the North American Vertical Datum of 1988; however, it is important to note that the Project must be designed to an elevation of not less than the LMCR's DFE as it exists as the time of Contract award.

In order to provide a system with stand-alone, independent utility, the alignment for the Project must incorporate areas outside the Battery Park City boundary. In recognition of the additional property interests, the North BPC Project Site is further divided into a "Base Project Site" (including all portions of the North BPC Project Site west of Route 9A) and an "Add Alt Site" (including all portions of the North BPC Project Site east of the western right of way boundary of Route 9A). The Add Alt Site comprises property not owned or controlled by BPCA. The North BPC Plan envisions the creation of the Barrier System and the capability of the Barrier System to eventually tie into New York City's broader Lower Manhattan Coastal Resiliency ("LMCR") project, assuming one is funded and built.

#### **II. Objectives and Overview**

The Project incorporates two key objectives:

- (1) Advancing the North BPC Resiliency Concept through detailed design and engineering to final sets of construction documents suitable for contractor bidding; and
- (2) Providing construction administration services for the construction of the final Project design.

The final design must be adequate to independently protect the North BPC Project Site from floodwater inundation to an elevation of 16.5 feet NAVD, but in no event lower than the LMCR Design Flood Elevation.

The selected Proposer shall coordinate, as appropriate and as requested, with other entities or individuals that are either contracted by BPCA or identified by BPCA as having information relevant to, or an interest in, the Project. BPCA expects to procure and retain a Construction Manager in advance of the contractor procurement. The Construction Manager, outside legal counsel and other consultants shall participate in the provision of the Services through regularly scheduled meetings with the selected Proposer.

**All General and Phase 1, 2 and 3 Requirements shall apply to the Work to be performed for the Base Project Site and, *if elected by BPCA*, for the Add Alt Site. Certain efficiencies and overlap may be achieved based upon the integration of both sites into the Project, and those efficiencies and instances of overlap should be considered by the selected Proposer in its overall Project scheduling and pricing. If the inclusion of the Add Alt Site is elected by BPCA, it is anticipated that the Work associated with each site will proceed in a roughly concurrent fashion, although the rates of progress on the sites may vary. Use of the term “Site” in any provision of the General Requirements shall be deemed to refer to either the Base Project Site or the Add Alt Site, as the case may be.**

**If the Add Alt Site is elected by BPCA, designs for the Add Alt Site will involve reviews and approvals by property owners and stakeholder entities over and above those directly involved in review and approval of the designs for the Base Project Site. These additional reviews and approvals should be taken into account by the Selected Proposer in developing its Project pricing and scheduling.**

### **III. General Requirements**

- a) Before commencement of any Services the selected Proposer shall:
  - i) Attend an introductory meeting with BPCA and its consultants to allow for an open exchange of information pertinent to the Services to date.
  - ii) Establish a detailed list of contacts for, and attend an initial meeting with, relevant and interested organizations, stakeholders, government entities, agencies and departments, community groups and boards, and adjacent businesses and property owners.
- b) For all Project tasks, the selected Proposer shall:
  - i) Establish a schedule for completion of Scope of Work milestones, subject to revision by and approval of BPCA;
  - ii) Attend regular progress meetings with BPCA;
  - iii) As needed, appropriate or requested by BPCA, attend periodic meetings or otherwise communicate with relevant agencies, government entities, regulatory bodies or other relevant stakeholders.
  - iv) Establish a detailed community outreach plan, subject to BPCA approval, appropriate to the particular Site, including opportunities for regular community updates and feedback, as well as periodic meetings and presentations.

- c) The selected Proposer shall provide each draft and final submission of drawings and/or specifications in paper and electronic (Adobe Reader and AutoCAD formats, as applicable) formats, and all photos, images, renderings, etc. in high resolution JPG format.
- d) Each Project task will require active collaboration and interface between the selected Proposer and BPCA staff, attorneys and/or consultants. The selected Proposer shall meet with BPCA staff regularly, no less than once every two weeks, throughout performance of the Services. The selected Proposer shall also meet with other relevant entities and organizations determined to be necessary or beneficial by the selected Proposer and/or BPCA.
- e) The target date for the Selected Proposer's production of bid documents for the Base Project Site shall be six to eight months following contract execution, with the target date for the production of biddable documents for the Add Alt Site (**IF INCLUDED**) being ten to twelve months following contract execution. It is possible that portions of the North BPC Resiliency construction project may be bid under separate contracts and at different stages in order to allow construction to begin at the earliest possible date. The selected Proposer, in consultation with BPCA, may propose alternate phasing plans and timeframes for the various tasks associated with the Project; however, the target date for completion of the Project shall remain thirty-three (33) months from execution of the selected Proposer's contract.

#### **IV. Project Phases**

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

- a) The selected Proposer shall prepare topographic and utility surveys in accordance with commonly accepted industry standards of the Base Project Site, which, for purposes of this task, shall be expanded to include all areas West of Route 9A and North of Warren Street (to the water's edge). Also, if elected by BPCA, the selected Proposer shall prepare topographic and utility surveys in accordance with commonly accepted industry standards of the Add Alt Site, which for purposes of this task, shall be expanded to include all areas within the boundary formed by Route 9A, Warren Street West Broadway, and Reade Street (which shall include a line of projection back to Route 9A).
- b) The selected Proposer shall prepare topographic and utility surveys in accordance with commonly accepted industry standards of all roadways, sidewalks and waterfront areas (not otherwise included in the site descriptions above) that are south of Chambers Street and east of the west curb line of Route 9A.
- c) Based upon the results of the surveys, the selected Proposer shall perform coastal modeling to confirm the extent of potential protection afforded by, and any potential adjustments to, the conceptual alignment of the Barrier System (within the same general area of the identified segments) recommended for the purpose of providing improved protection, lessening of visual impacts, avoidance of impediments, and/or potential cost savings.

##### ***Phase 2: Design Development and Construction Documents***

###### ***a) Community & Stakeholder Outreach***

- i) The selected Proposer shall conduct preliminary meetings with the local community members, the Community Board and interested groups as directed by BPCA. At such meetings, the selected Proposer shall present the status and/or outcomes of Phase 1, as well as the status and plans for design development, and take under consideration all concerns and ideas expressed about the North BPC Resiliency Project. The selected Proposer shall submit to BPCA a summary documenting the minutes of each meeting and/or presentation. The selected Proposer shall document all attendees of the meetings and may distribute, upon BPCA's approval, copies of the meeting minutes to attendees.



- ii) Although it is not possible to specify the exact number of community and stakeholder-related meetings the North BPC Resiliency Project will require, as it will depend in part upon the number and complexity of specific issues that may arise during the course of the Project, as well as the number of presentations that BPCA determines would be advantageous to the Project. However, for purposes of the Proposals, Proposers should plan for two initial meetings **for each Project site (the Base Project Site and the Add Alt Site)** to include community and stakeholder constituents, along with an additional six meetings to follow through the design development phase, for a total of eight (8) community/stakeholder meetings **for each Project site (the Base Project Site and the Add Alt Site)**. If additional meetings are required for the Project, the additional cost associated with the additional meeting(s) will be addressed either through an allowance incorporated into or an amendment of the Contract.

*b) Design Development*

- i) Based on the input and comments obtained from BPCA, the community and interested stakeholders, coupled with its analysis of required features and elements sufficient to achieve the desired degree of flood protection (approximately 16.5' NAVD, but in no event lower than the LMC Design Flood Elevation), the selected Proposer shall prepare design plans that include details of site design, landscape design, street design, streetscape design, existing and proposed plans, elevations, cross-sections, lighting design and all other appropriate elements and details. The selected Proposer shall present the proposed treatments in a schematic plan view, together with typical cross-section views showing the interrelationship between the various elements, as well as the existing and proposed utilities. Illustrative streetscape views, including perspectives shall be shown as required to demonstrate the interrelationship of the distinctive design elements and the overall effect of the proposed improvements to the urban environment.
- ii) The selected Proposer shall incorporate the contents of the completed topographic and utility surveys into the design documents. The selected Proposer shall utilize as much information from these surveys as may be necessary to check design assumptions of the preliminary design and potential interference with substructures and/or abutting properties.
- iii) The selected Proposer shall provide a geotechnical survey of the Site, which survey shall be prepared in accordance with commonly accepted industry standards.
- iv) The selected Proposer shall further develop the plans and details, including but not limited to: preliminary foundation design, landscape design, utility impacts, and site impacts.
- v) The selected Proposer shall review the design development documents with BPCA as they are being developed.
- vi) Upon completion of the design development documents, or as otherwise deemed appropriate by BPCA, the selected Proposer shall submit plans (making presentations if requested by BPCA), applications and other related documents and materials, as required, to all interested agencies, entities, organizations and/or other parties that have jurisdiction over the area involved in this Services Phase, or that, in the opinion of BPCA, have a legal or otherwise legitimate interest in the Project, in order to obtain required approvals, permits, certifications, consents or franchises.
- vii) The selected Proposer shall revise, modify or correct, as appropriate, the design development documents in accordance with the comments received from the interested reviewing parties. The affected portions of the revised drawings shall be resubmitted, as necessary, to the interested parties for review and, where required, approval. The selected

Proposer shall initiate all follow-up meetings, as necessary, to expeditiously resolve all questions and concerns and to obtain required approvals.

- viii) The selected Proposer shall provide services, as necessary, to obtain certification of the Federal Emergency Management Agency (“FEMA”) for flood protection systems which must meet or exceed the requirements of Title 44, Chapter 1, Section 65.10 of the Code of Federal Regulations (“44 CFR 65.10”).

*c) Construction Documents*

- i) The selected Proposer shall prepare contract documents for the purpose of contractor bidding and procurement. Drawings included in the contract documents shall be prepared with necessary construction details, fully dimensioned and with detailed specifications from which prospective bidders can make accurate and reliable estimates of the quantities, quality and character of the labor and materials required to complete the bid contract and to install any equipment therein.
- ii) The selected Proposer shall prepare all required contract documents in a manner and form that enables BPCA to award the necessary contract/s for construction. The contract documents shall include, but shall not be limited to final drawings and specifications for all elements of the Project.
- iii) The selected Proposer shall participate in a constructability review of the contract documents that shall be carried out by the Construction Manager and BPCA.
- iv) The selected Proposer shall subsequently prepare, and revise as necessary, an interim and a final cost estimate for construction of the final design of the Site as reflected by the contract documents, which shall be prepared in a format approved by the Construction Manager and BPCA and shall evaluate and perform cost estimates for any proposed value engineering options.
- v) The selected Proposer shall make progress submissions as requested by BPCA adhering to the following general guidelines:
  - 60% final design documents
  - 90% final design documents
  - Contract documents (for bidding and procurement)
- vi) The selected Proposer shall develop construction phasing plans in consultation with BPCA, the Construction Manager and other consultants.

***Phase 3: Bidding and Construction Administration***

*a) Bidding and Negotiation*

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

*b) Construction Administration*

- i) The selected Proposer shall review and approve shop drawings, product data, samples and similar submittal materials of the contractors.
- ii) The selected Proposer shall visit the site periodically over the construction duration to determine whether the construction work is being performed in accordance with the requirements of the contract documents.
- iii) The selected Proposer shall participate in regular construction meetings during construction with BPCA and others and conduct site visits when needed or requested.

- iv) The selected Proposer shall periodically observe the status of the construction work to determine recommendations as to the dates of substantial completion and final completion and prepare and update punch lists as required to inform BPCA and the contractors of any deficiencies in the construction work.
- v) The selected Proposer shall develop and revise required cost estimates for change order work if requested.
- vi) The selected Proposer shall provide services in support of the closeout of the Project with the contractors and all authorities having jurisdiction. Such closeout services shall include completion of FEMA accreditation.

**EXHIBIT C-1**

**NORTH BPC RESILIENCY REPORT**

**[NO FURTHER TEXT ON THIS PAGE]**

# PRELIMINARY PLANNING REPORT

Battery Park City Authority  
Resiliency Concept Plan Evaluation  
Final Report

200 Liberty Street, 24<sup>th</sup> Floor  
New York, New York 10281

H2M Project No.  
BPCA 1701

**AUGUST 2018**

**Prepared for:**

Battery Park City Authority  
200 Liberty Street, 24<sup>th</sup> Floor  
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**Prepared by:**

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architects + engineers

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FIGURE 5.1	Stormwater and Combined Sewer Overflow (CSO) Outfalls Serving the North and Central Portions of Battery Park City

## **1.0 INTRODUCTION**

### **1.1 Project Overview**

The Battery Park City Authority (BPCA) is evaluating the potential for implementation of a flood barrier system (FBS) that would minimize risks to its northwestern and norther borders from coastal flooding. In the aftermath of Hurricane Sandy with its historic 14-foot storm surge<sup>1</sup> causing unprecedented financial damages and disruptions, New York City and other locations on the eastern sea board, governments, business and property owners have begun to plan for a future where coastal development is more resilient to events such as these. While the potential for severe weather associated with climate change continues to threaten coastal areas, such endeavors are critical to ensure that investments are protected.

This report provides a preliminary review of an FBS that would protect the BPCA from the design flood elevation (DFE) of 16.5 feet North American Vertical Datum of 1988 (NAVD88), an event of greater flooding magnitude than Hurricane Sandy's. Various types of barrier structures and flooding protection options have been reviewed and preliminary options that may be promising along each segment of the route are discussed.

### **1.2 Report Purpose**

The purpose of this report is to provide preliminary consideration and visual renderings of an FBS that would achieve BPCA goals of protection to the DFE and identify options that may be viable for further detailed engineering evaluation and discussion with stakeholders. The options discussed and depicted within this report are at the earliest stages of concept planning; barrier heights along varying segments of the FBS route have been preliminarily estimated and potentially effective FBS options are discussed for the purposes of furthering the planning process. This high-level overview of barrier concepts and renderings of different techniques is intended for use in explaining the FBS concept and is not a detailed engineering study. All the concepts identified within should be subject to further detailed planning, design and consideration. Section 5 "General Conclusions and Next Steps" includes information about the type of future engineering and planning studies that would be recommended should any of the FBS strategies be further pursued.

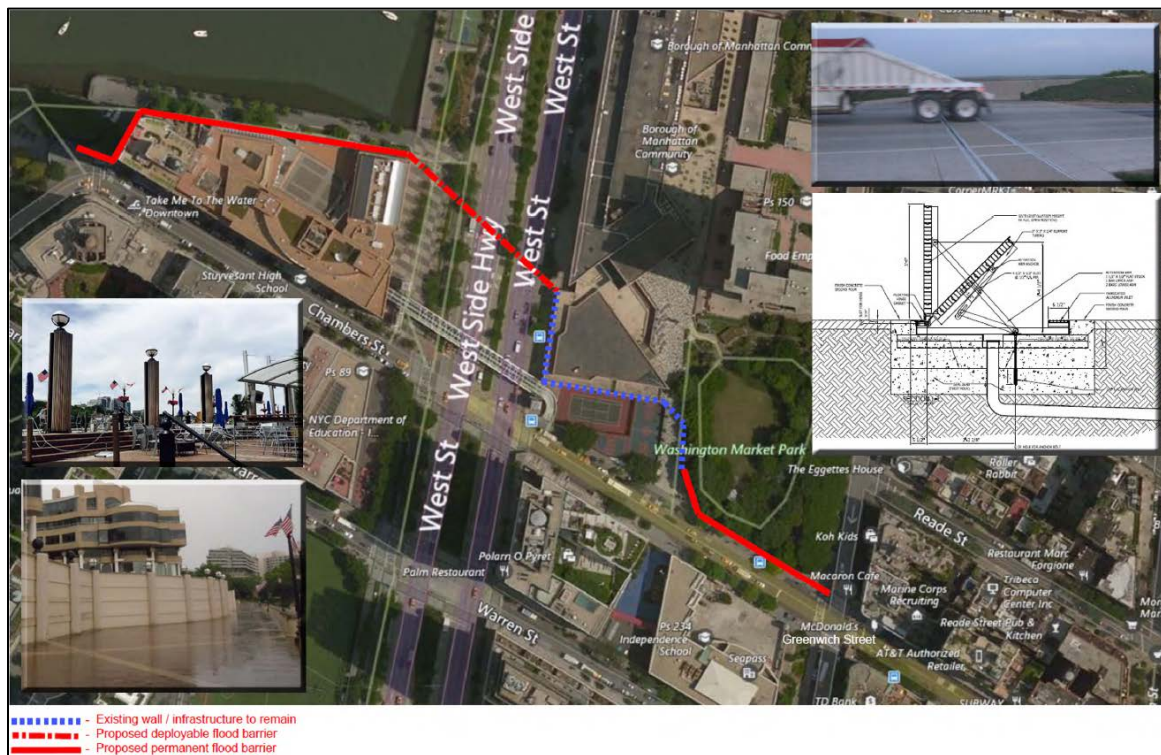
### **1.3 Elevation Review**

The initial concept provided by BPCA shown in Figure 1.1 identified the proposed route for the wall/barrier system beginning at the intersection of Chambers Street and River Terrace, crossing West Street on a diagonal path, and continuing east on Chambers Street to terminate at the northwest corner of the intersection of Chambers and Greenwich Streets. The extent of this route correlates well to the 2050s sea level rise (SLR) 100-year flood plain currently being used by New York City for resiliency planning (See Figure 1.2).

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<sup>1</sup> A Stronger More Resilient New York. June 2013. New York City. [http://s-media.nyc.gov/agencies/sirr/SIRR\\_singles\\_Lo\\_res.pdf](http://s-media.nyc.gov/agencies/sirr/SIRR_singles_Lo_res.pdf)







As part of the conceptual evaluation, H2M utilized several sources of elevation information along the proposed FBS route to identify estimated required heights and extent of potential flood barrier wall options. Available data for the proposed route of the wall/barrier system included several record plans for portions of Chambers Street, West Street and the walkway north of Stuyvesant High School. These plans included topographic information based on the Manhattan Borough Datum, which varies from the North American Vertical Datum of 1988 (NAVD88) referenced throughout this study. It is necessary to add 1.65 to all elevations on these record plans to convert the information to NAVD88. The plans also included limited utility information.

Field elevations were also obtained. Initially, several spot elevations were taken along the proposed route using a Trimble Geo7X Handheld GPS Device. The spot elevations confirmed that the ground elevation at the western beginning point of the proposed barrier system exceeded 16.5, which would provide the necessary protection against the design flood elevation (DFE) of 16.5 feet. However, at the eastern terminus, ground elevations at the planned FBS terminus did not reach 16.5, which would not provide the required protection for the design flood, as water could flow to the south along Greenwich Street and beyond.

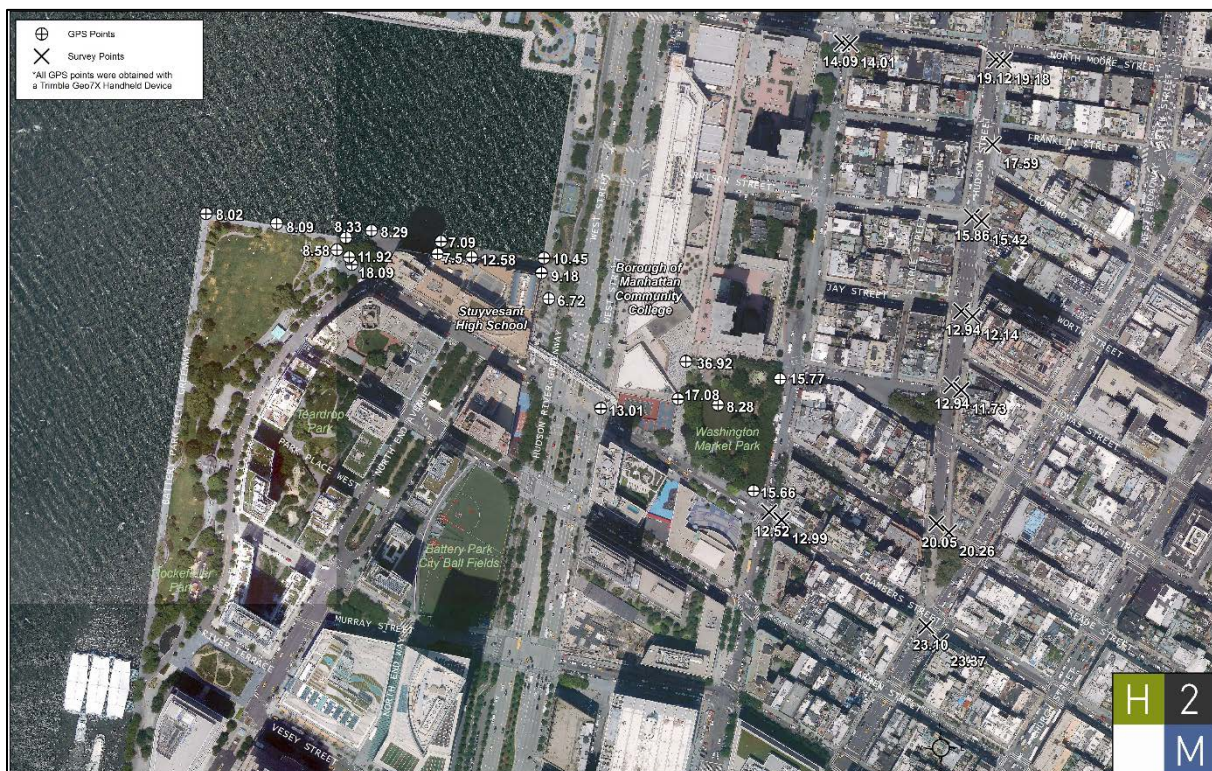


Figure 1.3 Field Elevation Survey Values

This finding indicated that in order to achieve protection to the 16.5 DFE, the wall route would need to be extended further to the east in order to terminate at a ground elevation of 16.5. Reliable topographic information was unavailable for this area, and therefore additional elevations were obtained via survey at various points along Greenwich Street and Hudson Street as shown in Figure 1.3. Based on this information, the approximate location of the 16.5 contour shown in Figure 1.3 was identified. As a result, to achieve full protection for the 16.5 feet design flood elevation (DFE) the proposed flood wall/barrier system needs to extend east along Chambers Street to approximately the midblock to meet this elevation as shown in Figure 1.4.

These limited elevations studies provided potential barrier heights to be used for planning purposes based on the difference between ground elevations and the DFE along the route. They also confirmed that a



portion of Manhattan Community College Performing Arts Center would be an integral portion of the flood barrier system along the current route and that the walkway between the basketball/tennis courts on Chambers Street and Washington Market Park includes ground above the DFE. These areas therefore could be integrated into the overall flood barrier system.

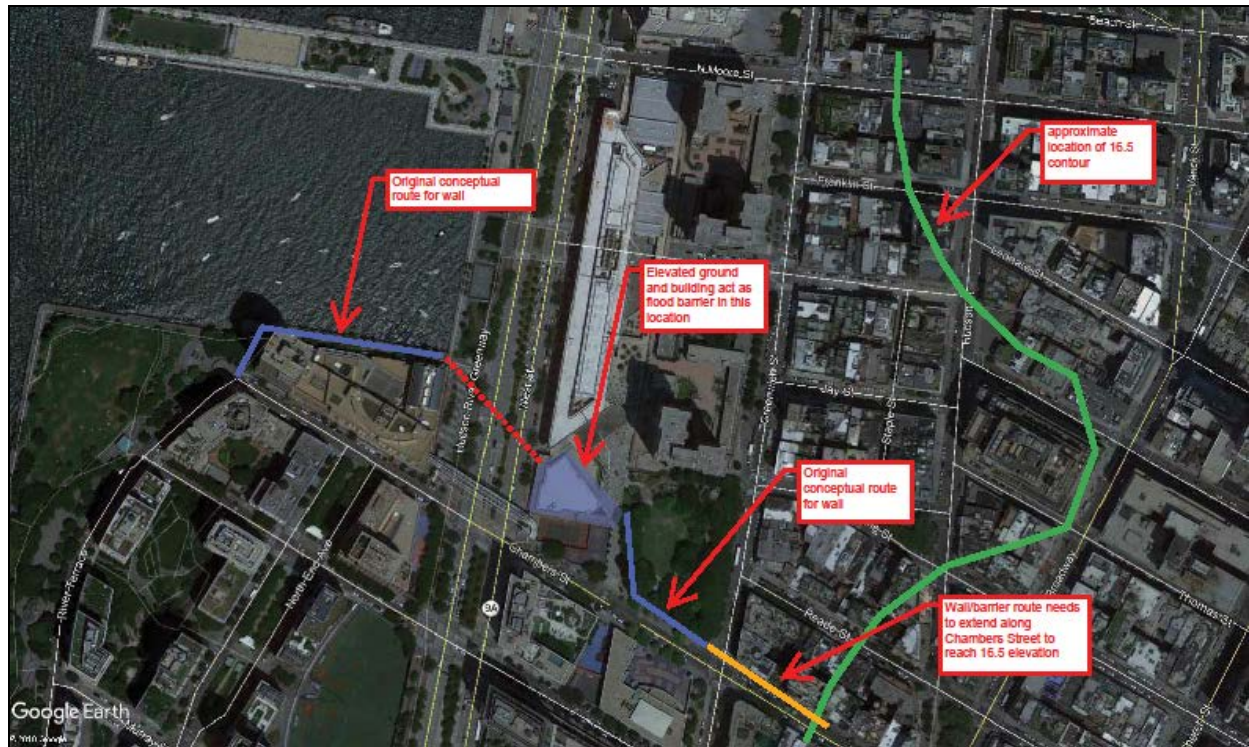


Figure 1.4 FBS Eastern Extent to Achieve 16.5 DFE Protection

The preliminary planning that has been conducted has identified potential strategy types that may be suitable for each segment of the FBS. A discussion of the strategies considered in this report follows in Section 2.0 “Wall Barrier Technology Options”. Section 3.0 “Potential Use of Barrier Options Along The Proposed FBS Route” discusses potential siting and placement of each technology along different segments within the FBS.

## 2.0 WALL/BARRIER TECHNOLOGY OPTIONS

There are numerous wall and barrier options available to provide resiliency during flood events. For the purpose of this preliminary review, we have focused on strategy types including:

- Permanent Barrier;
- Semi-permanent Barrier;
- Removable Barrier;
- Deployable Barrier; and
- Flood Doors and Floodproofing.

A discussion of each follows.

## 2.1 Permanent Barrier

This type of barrier is a permanent wall. Options for a permanent wall can include solid concrete or concrete and glass combinations. Concrete walls can be constructed with form liners and concrete pigments to incorporate aesthetic finishes, or brick or stone veneers that would enable the wall to blend with the character of the surroundings. Additionally, glass panels can also be incorporated into the wall design to maintain a visual line of sight. Examples of permanent walls are shown below.



Figure 2.1 Glass Permanent Wall



Figure 2.2 Concrete Wall with Form Liner

## 2.2 Semi-permanent Barrier

A semi-permanent barrier consists of a foundation plus elements that require assembly before a flooding event. Such a barrier could incorporate a small wall typically utilized as a planter, retaining wall or other architectural element. In advance of a storm event, additional wall height is provided by incorporating panels to the desired height. Examples of semi-permanent barriers are shown in Figure 2.3 and 2.4.





**Figure 2.3 Semi Permanent Wall with Permanent Concrete Pillars**



**Figure 2.4 Semi Permanent Wall with Removable Pillars**

The two types of semi-permanent barriers shown employ different options. Although both barriers utilize waterproof panels that are stacked manually, Figure 2.3 is of a barrier system that includes permanent columns. Figure 2.4 is of a system that also requires the installation of support columns. Incorporating permanent columns would reduce the installation time in advance of a storm, but it would create a partial visual obstruction. However, similar to the permanent walls, form liners and dyes could incorporate an aesthetic element, if desired.

### **2.3 Removable Barrier**

A removable barrier consists of foundation/footings installed below ground with minimal or no above ground elements. This type of barrier is similar to a semi-permanent barrier, except all elements are fully assembled before a storm event and are constructed from the ground up. This will allow full use of the site when not installed. Some types of these systems require a flat and level surface at the base of the wall, so localized site grading must be considered in the design. Materials for wall construction are typically stored off site.

Another type of this system is a proprietary product known as Flex-wall®, a barrier that uses a waterproof fabric curtain that drops from the top or is pulled from the side of an opening/ storage area. The benefit to this fabric based system is that it is more easily and quickly put in place before a storm (by motor or manually), stored at the point-of-use and can be adapted to uneven ground and around obstacles. This type of strategy can also be utilized to flood-proof doors and windows, assuming the building is structurally capable of withstanding the loads imposed by flood water. Such an example is shown in Figure 2.7.



**Figure 2.5 Removable Window/ Door Barrier**



**Figure 2.6 Base Plates at Grade Over Removable Barrier Foundations Below Grade**





Figure 2.7 FlexWall® Example<sup>2</sup>

## 2.4 Deployable Barrier

A deployable barrier consists of barrier elements that remain in place and are either triggered during a flood event with no human intervention or are triggered manually but do not require manpower to construct. They are typically housed below ground or adjacent to openings in buildings or other barrier systems. These barriers are either activated by rise in water levels or can be deployed with little advanced notice so vehicular and pedestrian traffic can be maintained until the road is closed due to rising flood waters. Literature review was conducted to evaluate different type of deployable barriers that may be viable and a summary of the findings and preliminary assessment of the advantages and disadvantages of the various options like this is shown in Table 2.1 Comparison of Deployable Barrier Products (see attached).

## 2.5 Flood Proofing and Flood Doors

It is possible that building walls can also serve as flood barriers. The structure of each of the walls being considered must be evaluated for their ability to resist the force of water pushing against one side as part of a subsequent study. If necessary, walls may need to be reinforced to accommodate the additional pressure from the water. Walls can be flood proofed below flood elevations with waterproof coatings, impermeable membranes, or a supplemental layer of concrete. Using the existing walls is typically less costly than other barrier options, but will require regular maintenance to keep the coating intact.

Doors can be replaced with flood proof doors that are sealed with gaskets along the perimeter frame. The structure around the openings must be strong enough to resist the force of water against the door, so some structural enhancements may be required.

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<sup>2</sup> <https://dryfloodproofing.com/>





**Figure 2.8 Flood Door<sup>3</sup>**

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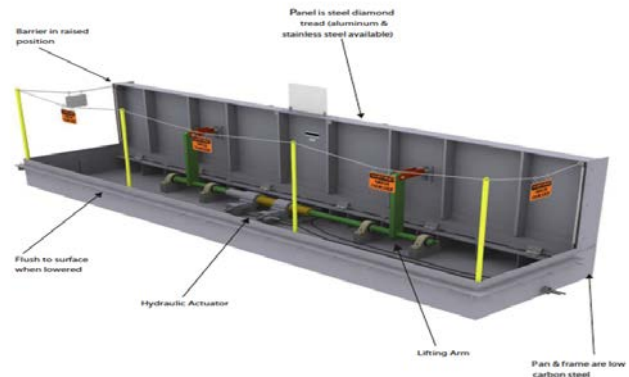

<sup>3</sup> Psdoors.com

TABLE 2.1 COMPARISON OF POTENTIAL DEPLOYABLE ROADWAY BARRIER PRODUCTS

BARRIER TYPE	CONSIDERATIONS SUMMARY	EXAMPLE
FloodBreak <sup>4</sup> Roadway Gate	<p><b>Advantages</b></p> <ul style="list-style-type: none"> <li>Fully Automatic- activated by rising floodwaters</li> <li>Manufactured to exact size requirements</li> <li>HS-25 load specifications</li> <li>Hidden Underground</li> <li>Gate can be manually lifted if needed by a crane with a spreader bar or the manufacturer's optional hydraulic lift.</li> <li>Simpler mechanism as compared to Self-Closing Floor Barrier. Here below ground initial work and maintenance will be less because of less underground depth required.</li> </ul> <p><b>Disadvantages</b></p> <ul style="list-style-type: none"> <li>Utilities need to be rerouted if they conflict with the foundation. Any utilities below the foundation may need to be sleeved or encased.</li> <li>FEMA requires annual deployment to test the system. A crane is required to deploy the manual barrier system for testing, which requires closing the entire road for several hours (The optional hydraulic lift system allows sections of the barrier to be tested individually, eliminating the need to close the entire road or employ a crane for testing).</li> </ul>	
Self-Closing Flood Barrier <sup>5</sup>	<p><b>Advantages</b></p> <ul style="list-style-type: none"> <li>Fully Automatic- activated by rising floodwaters</li> <li>Hidden Underground</li> <li>HS-20 Loading</li> </ul> <p><b>Disadvantages</b></p> <ul style="list-style-type: none"> <li>Requires deeper foundation to accommodate height of wall plus foundational elements.</li> <li>Cannot raise the barrier manually before flood.</li> </ul>	

<sup>4</sup> <http://floodbreak.com/><sup>5</sup> <http://www.floodcontrolinternational.com/PRODUCTS/FLOOD-BARRIERS/self-closing.html>

TABLE 2.1 COMPARISON OF POTENTIAL DEPLOYABLE ROADWAY BARRIER PRODUCTS

BARRIER TYPE	CONSIDERATIONS SUMMARY	EXAMPLE
Bottom Hinged Flood Gate <sup>6</sup>	<p><b>Advantages</b></p> <ul style="list-style-type: none"> <li>▪ Trigger automatic deployment via simple mechanism</li> <li>▪ Hidden Underground</li> </ul> <p><b>Disadvantages</b></p> <ul style="list-style-type: none"> <li>▪ Flush surface required</li> <li>▪ Built 25' wide and 5' height</li> </ul> <p>This product would not be applicable for a West Street crossing as the 5' height maximum does not meet DFE height requirements.</p>	
Sliding Flood Barrier <sup>7</sup>	<p><b>Advantages</b></p> <ul style="list-style-type: none"> <li>▪ Manufactured to size requirements</li> <li>▪ Deployment manually performed via simple steps</li> </ul> <p><b>Disadvantages</b></p> <ul style="list-style-type: none"> <li>▪ Requires some space to install</li> <li>▪ Most applicable to building openings and garages</li> </ul> <p>This product would not be applicable for a West Street crossing as buildings and walls adjacent would not be suitable to anchor this facility.</p>	

<sup>6</sup> [https://cdn2.hubspot.net/hub/187435/file-19125633-pdf/docs/fb55\\_fact\\_sheet.pdf](https://cdn2.hubspot.net/hub/187435/file-19125633-pdf/docs/fb55_fact_sheet.pdf)

<sup>7</sup> <http://www.presray.com/flood-protection/sliding-flood-barrier-cg3s>



### 3.0 POTENTIAL USE OF BARRIER TECHNOLOGIES ALONG THE PROPOSED FBS ROUTE

Different barrier technologies can be utilized along the proposed route of the wall barrier system. In some cases, more than one technology may be utilized, depending upon further evaluation and/or stakeholder preferences. The proposed FBS route has been separated into segments that can incorporate one or more of the specific technology options described above. Following are discussions regarding the suitability of the various technology options for each FBS segment.

#### 3.1 Segment 1 Chambers Street/River Terrace Intersection to Northwest Corner of Stuyvesant High School

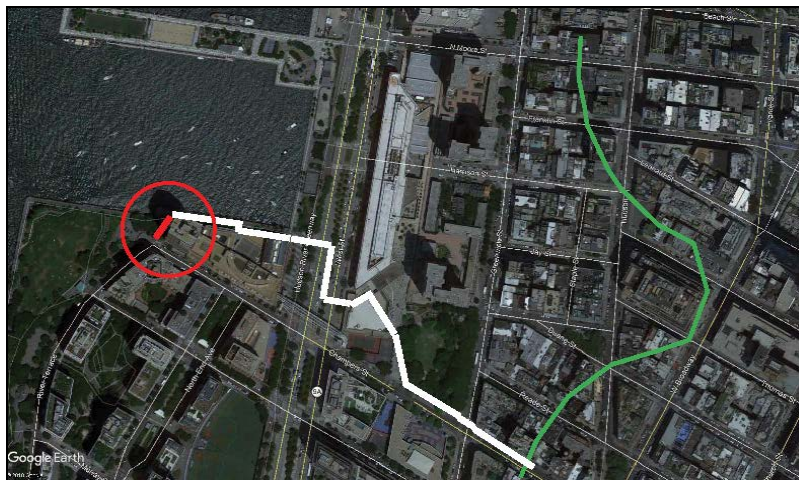


Figure 3.1 Segment Location

Segment 1 is located at the westernmost segment of the proposed FBS and starts at an elevation of approximately 18.5. The embankment that comprises this portion of Chambers Street and River Terrace provides protection against flooding. This portion of the FBS would need to protect the western wall of Stuyvesant High School for approximately 100 feet and would need to be 6-8 feet high.



Figure 3.2 Existing Conditions in Segment 1

The image above is a view looking eastward towards Stuyvesant High School. Strategies considered for this Segment include:

- Utilizing existing building walls with the addition of flood proofing elements and doors (see red area in figure 3.2)
- Permanent barrier
- Semi-permanent barrier
- Removable barrier or a horizontally deployable barrier

A permanent barrier in front of the building foundation can be used in this segment. However, this would create an alley alongside the building that may not be desirable. A semi-permanent or removable barrier may be more appropriate in this segment to avoid alleyway creation, although these would require manpower to install or deploy in advance of the storm. A strategy incorporating the foundation of the building could also be utilized here. However, there are two doors within the foundation, showing in Figure 3.2, that would need to be either floodproofed, or replaced with flood doors.

The preliminary option recommended for further investigation on this segment is floodproofing the existing building wall and the addition of flood doors. This option provides protection from flooding with the benefit of minimizing pre-storm event deployment activities, avoids costs associated with wall construction and avoids the creation of an alleyway. A structural evaluation of the building wall would be required if this option were pursued.

### 3.2 Segment 2 North Side of Stuyvesant High School (Western End)

Segment 2 of the barrier route is approximately 250 feet long and is located along the north side of a residential building and Stuyvesant High School. This portion of the route includes a small masonry wall, approximately 2 feet high that creates a planting bed along the north side of the building. Additionally, there are a series of louvers and a set of doors located along the building foundation.



Figure 3.3 Segment 2 Location





**Figure 3.4 Existing Conditions in Segment 2, Doorways**



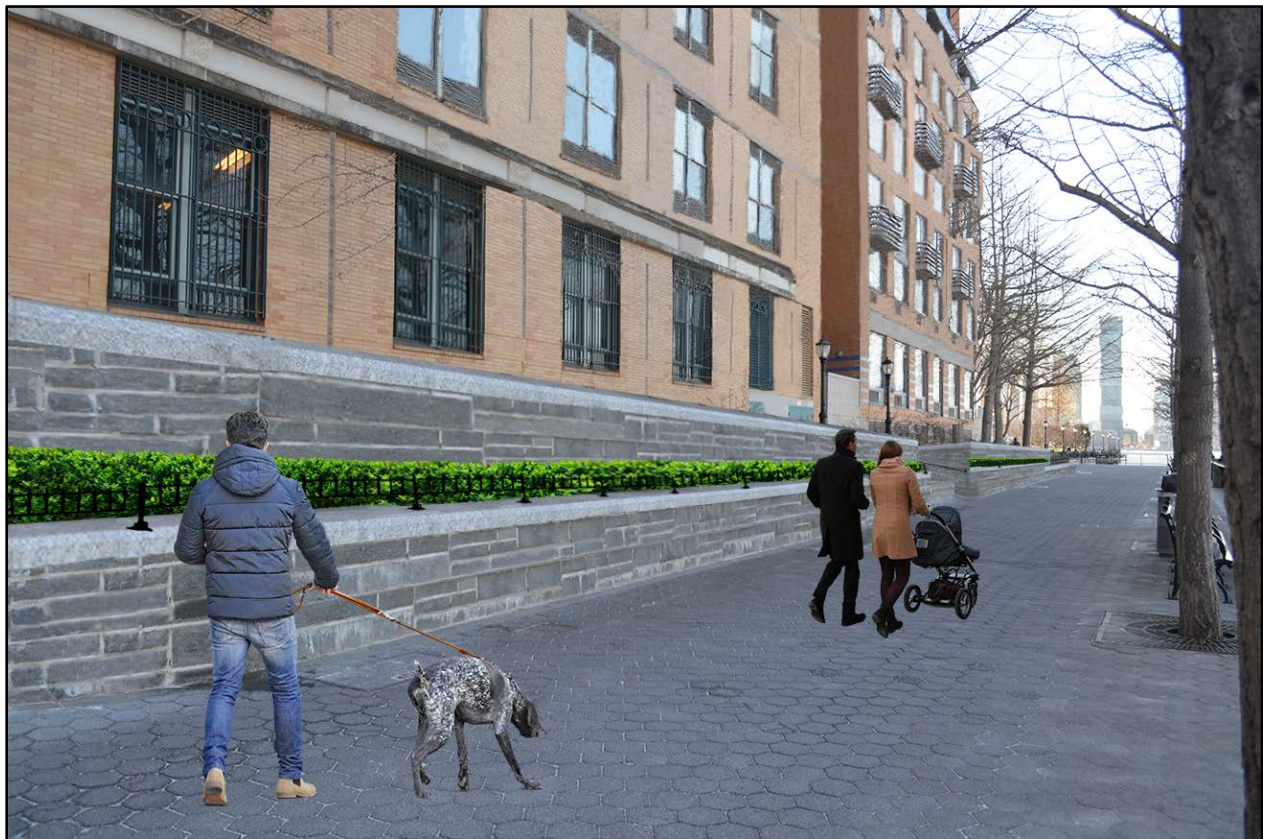
**Figure 3.5 Existing Conditions in Segment 2, Existing Planting Beds and Doors**

Strategies considered for this Segment include:

- Replacing the existing wall with a permanent wall that incorporates glass to maintain a line of sight
- Replacing the existing wall with a semi-permanent wall
- Utilizing the existing building foundation as floodproofing and installing a removable barrier in front of each louver and set of doors.
- Replacing the existing wall with a permanent wall

Each of these options would need to be constructed to an elevation approximately 6-8 feet above walkway elevations.

The preliminary option recommended for further investigation along this Segment is the construction of a permanent wall. This option provides protection from flooding with the benefit of minimizing pre-storm event deployment activities. Stone or other decorative facing could be made consistent with existing finishing in the park and surrounding environs and plantings could be incorporated to soften the aesthetics of the new feature. Importantly, proper air flow for the louvers on the residential building on the western side of this Segment would have to be incorporated into the wall design. Additionally, to maintain access to the building, the two sets of double doors would also need to be replaced with floodproof doors. Figure 3.6 shows a rendered view of this wall and Figure 3.7 provides a cross section of the view of this new feature looking west from the Hudson River at the residential building.



**Figure 3.6 Rendered View of Permanent Wall in Segment 2**



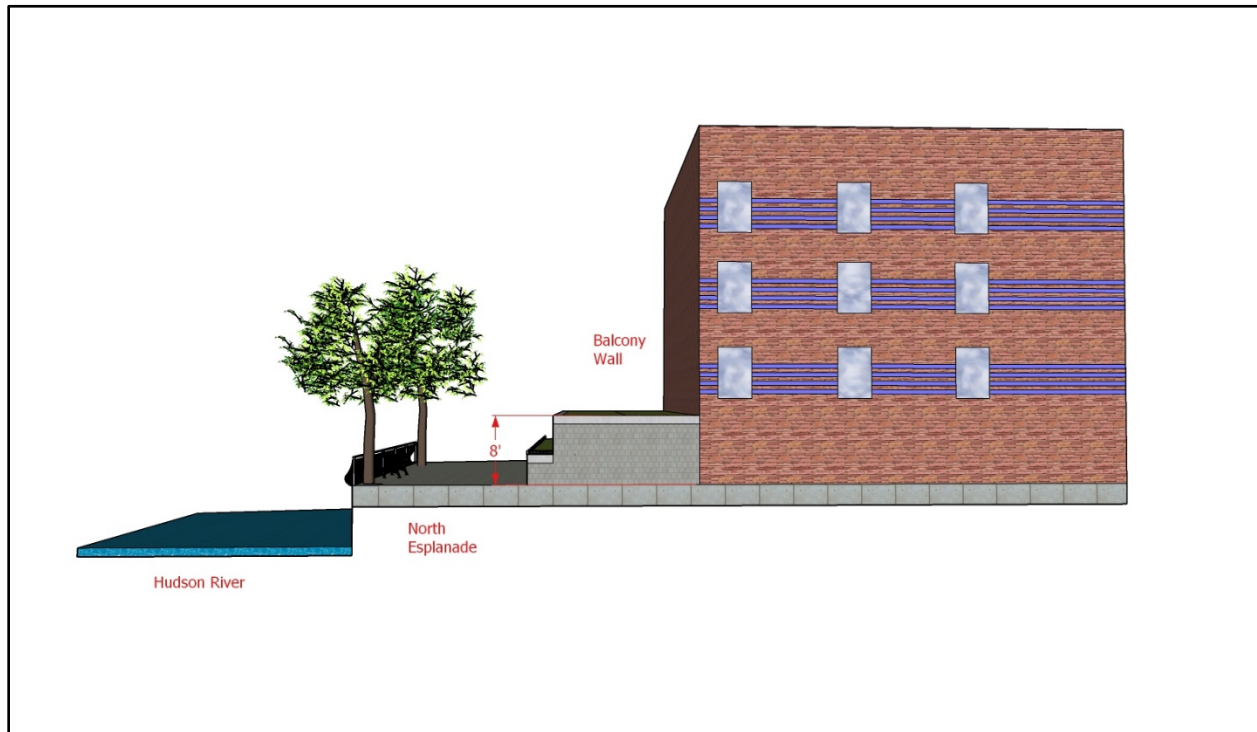


Figure 3.7 Cross Section View of Permanent Wall in Segment 2

### 3.3 North Side of Stuyvesant High School (Eastern End)

Segment 3 of the barrier route is approximately 200 feet long and is located along the north side of Stuyvesant High School. This portion of the route is similar in construction to Segment 2, but includes a series of larger walls, steps and ramps that are part of the entrance to Stuyvesant High School.

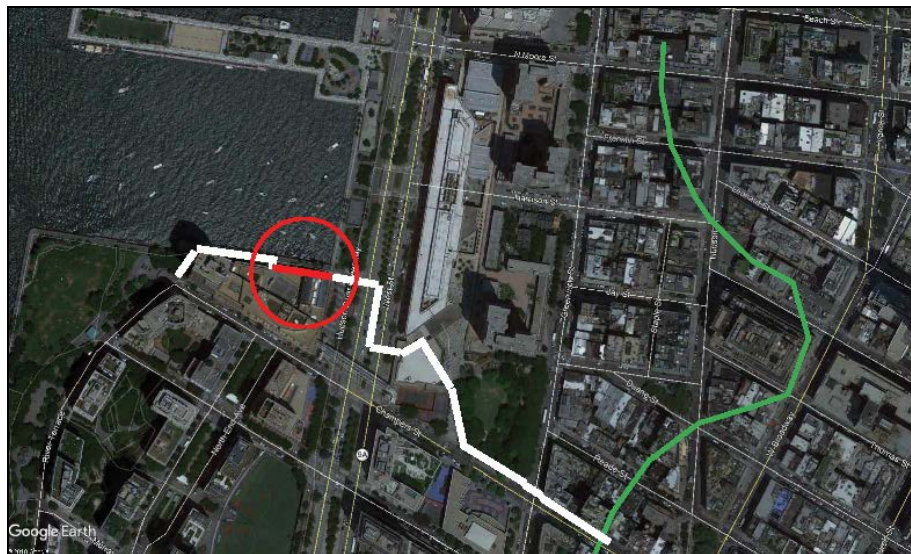


Figure 3.8 Location of Segment 3



**Figure 3.9 Existing Conditions Segment 3 Doorways on North Side of Stuyvesant High School**



**Figure 3.10 Existing Conditions Segment 3**

The existing wall currently extends to an approximate elevation of 15 feet in several locations. The preliminary option recommended for further investigation in this Segment is replacing this wall with a slightly taller wall (18 inches higher) which would create a permanent barrier that would not require manpower to install in advance of the storm. With this option, the doorway would require additional floodproofing in the form of replacement with flood doors, or protection with either removable or deployable barriers. Currently, replacing the doors with flood doors is thought to be the most promising and cost-effective approach.



### 3.4 Segment 4 West Street

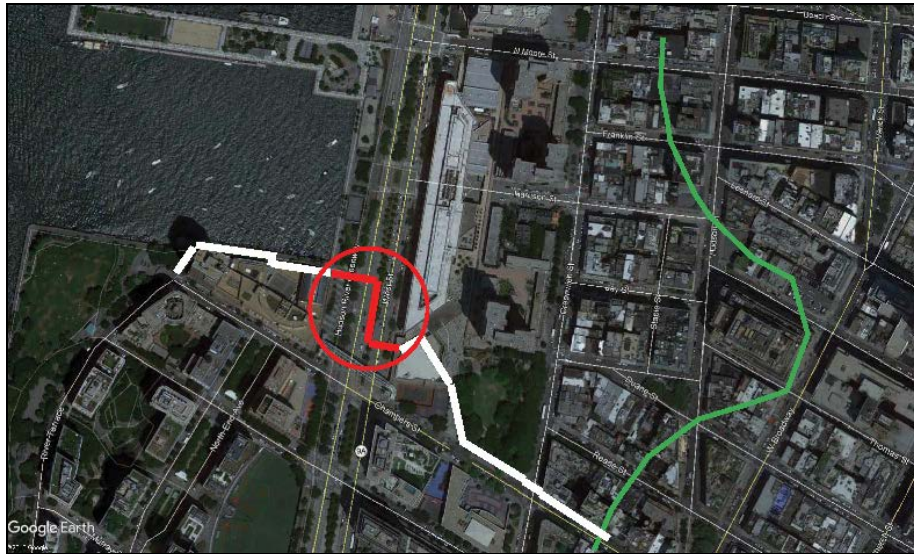


Figure 3.11 Location of Segment 4 West Street

Segment 4 of the barrier route includes the portion that crosses West Street also known as Route 9A, a road under the jurisdiction of the New York State Department of Transportation (NYSDOT). Because the unimpeded operation of this roadway is important, walls with minimal deployment and surface features are thought to be the only viable strategies for protecting this roadway. Because significant time is required to install any sort of removable barrier, which would require interruption to traffic on West Street well in advance of any storm event, these are also not considered a viable option.

The preliminary option recommended for consideration for this segment is a deployable barrier. The model from FloodBreak described in Table 3.1 or an equivalent system would appear to be a suitable option pending further investigation and evaluation. The use of 300 feet of deployable barrier across West Street will enable traffic to be maintained until flood waters activate the barrier to rise. At such a time, the road will have already been closed to traffic by emergency services due to inundation. This option provides for the minimization of flood risk while also minimizing pre-storm event deployment activities. Though construction would be expected to be disruptive, once in place, the deployable barrier would be completely underground (see Figure 3.14), leaving West Street traffic unobstructed. These barriers require a fairly large foundation, which needs to be considered with respect to potential interference from existing buried utilities on West Street as part of the design. Also, barrier strategies to protect the area from the curb line connecting to the next FBS segment on both the western and eastern ends of this deployable strategy would be needed.

A slightly modified method for crossing West Street as compared to the original route is offered for consideration. Utilizing two separate sections of deployable barriers (one placed in each street bed) connected by a wall through the West Street median reduces the overall length of deployable barrier required by approximately 50 feet (25%). This alignment could help to minimize the potential conflicts with existing utilities as the perpendicular sections placed in the West Street street-bed could be sited to avoid major utility conflicts. This approach would then require a 200-foot permanent or semi-permanent barrier within the median on West Street. Such a feature could be enhanced with either decorative facing or public art to soften aesthetic appearance. Figure 3.13 shows the rendering of the barrier in the deployed position and Figure 3.15 shows a cross section of the barrier.

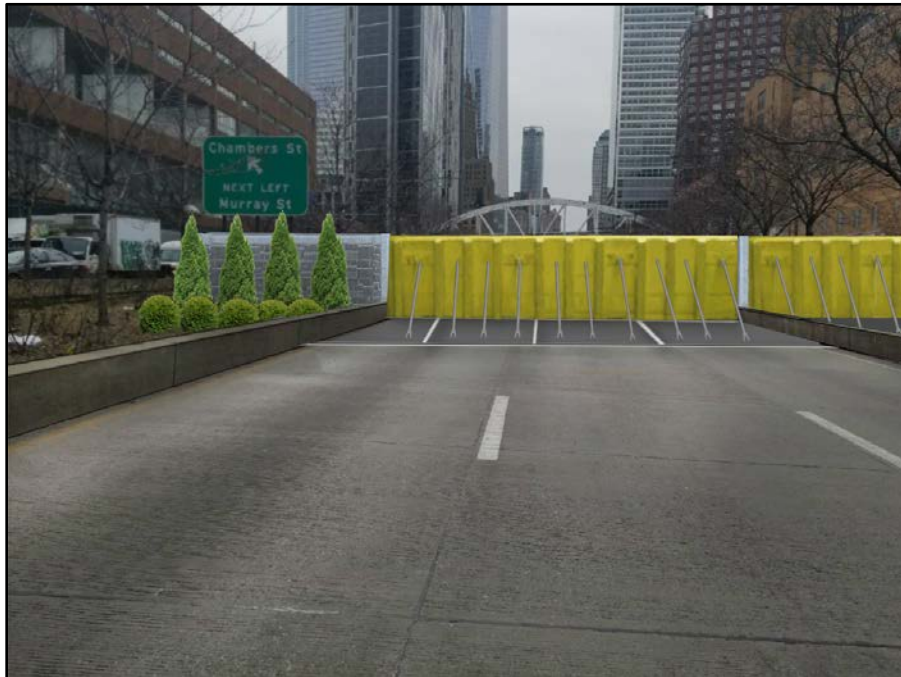
Segment 4 also includes two sidewalk areas on West Street that would need protection: the north-westernmost portion of the Segment, which is the sidewalk between Stuyvesant Highschool and the

western road bed of West Street; and the south-eastern most portion of the Segment, which is the sidewalk between the eastern road bed of the West Street deployable barrier and the beginning of the Segment 5 FBS at the Borough of Manhattan Community College. Considerations for flood protection of these areas include the need to minimize pre-storm activities and keep busy sidewalk areas open as long as possible before the flood event. Accordingly, a removable wall that minimizes time associated with pre-storm assembly installed could possibly be best suited for locations such as these. Deployable barriers, similar to the FloodBreak considered for West Street, may also be a viable option. Any option considered would need to be able to connect to the FBS traversing West Street over the curb areas, to ensure that one continual water proof FBS is in place.

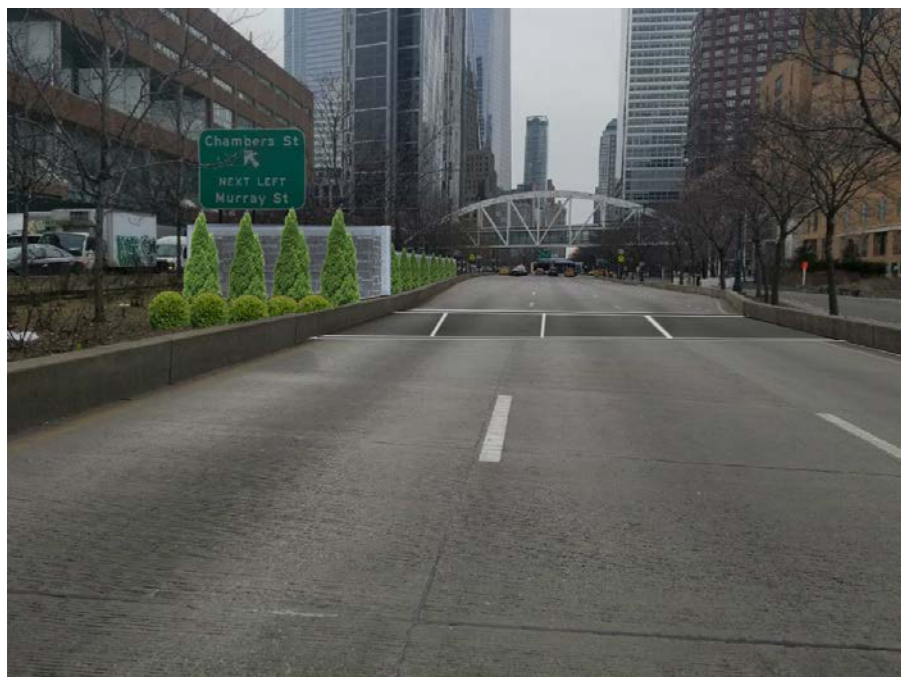


**Figure 3.12 Existing Conditions in Segment 4**





**Figure 3.13 Rendered View of Deployable Wall in Deployed Position**



**Figure 3.14 Rendered View of Deployable Wall in Down Position**

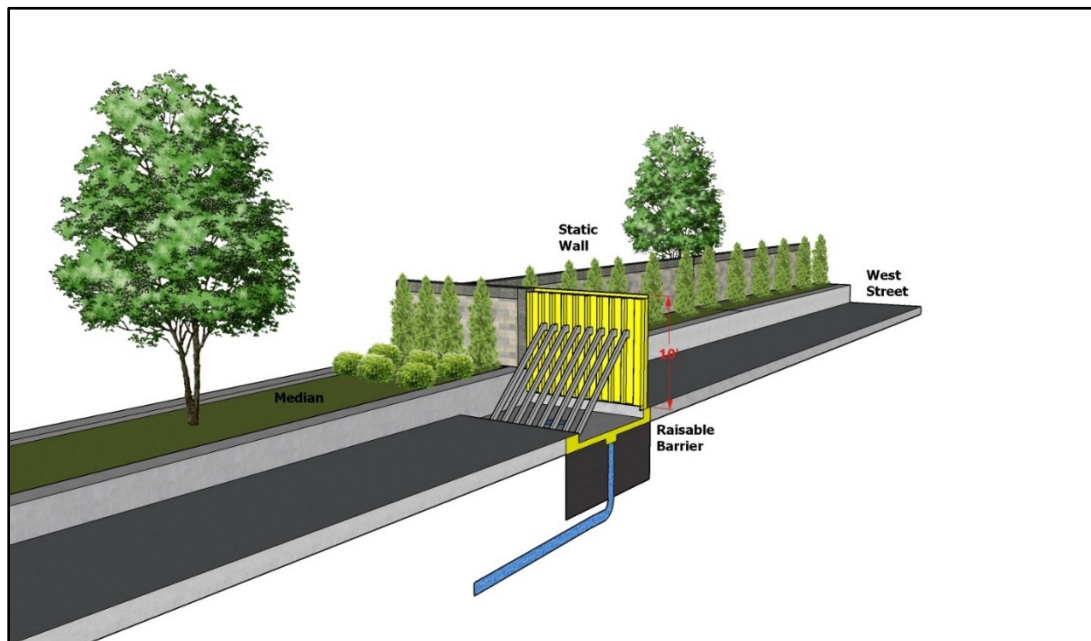


Figure 3.15 Cross Section View of Deployable Wall in Deployed Position

### 3.5 Segment 5 Manhattan Borough Community College (BMCC)

This portion of the barrier route crosses through the Manhattan Borough Community College north and east of the Tribeca Performing Arts Center building. The existing ground **north of the building** exceeds the required 16.5 elevation. As a result, the building would need to become part of the resiliency plan. On the north side of the Tribeca Performing Arts Center Building, there are a series of entrance doors as shown in the photograph in Figure 3.17.

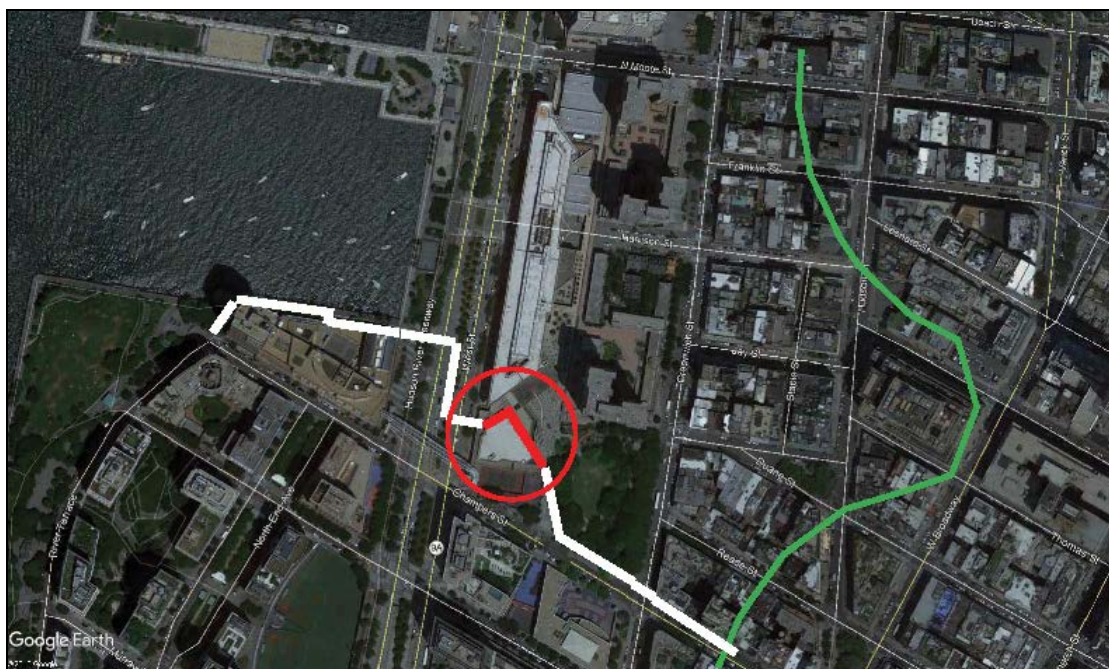


Figure 3.16 Location of Segment 5





**Figure 3.17 Tribeca Performing Arts Center North Side**

Strategies considered for this Segment include:

- Deployable barrier
- Removable barrier
- Floodproofing of ground level doors on northern side of the building

Several options could be employed to incorporate this building into the FBS with protection of the doors shown in Figure 3.17 important to maintaining the integrity of the remainder of the FBS. A ground-level deployable barrier could potentially be utilized for this area. However, the costs for these systems are high and other options could be considered. This area could also be fitted with a removable barrier that would be stored in place and assembled before the flood event to a height of 8-10 feet.

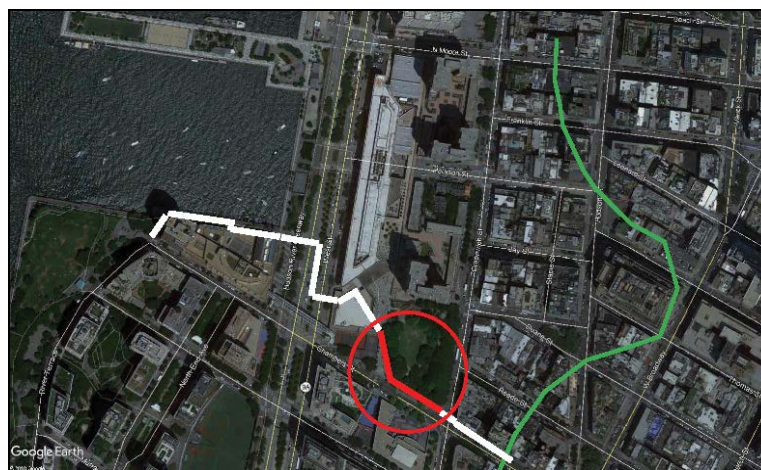
Since this portion of the FBS needs to be incorporated into private property, the Tribeca Performing Arts Center would have the responsibility to ensure the selected strategy was operational on the north side of the building before the flood event. Since the overall integrity of the FBS would need to rely upon these forces outside the control of Battery Park City Authority, it is recommended that a secondary means of flood resilience be incorporated into the system. In the event the FBS on private property is not deployed before a storm event, the building interior would flood and ultimately have the potential to allow water to bypass the remainder of the FBS through doors and vents on the west side of the building. Therefore, the western wall would need to be flood-proofed from the interior. This would be a highly unconventional approach to flood-proofing and would require additional evaluation of the interior of the structure to determine if such an approach would be feasible. As an alternative secondary approach, a removable or deployable barrier could be utilized and would need to extend south from the end of Segment 4, along the sidewalk on the east side of West Street to the southwest corner of the Performing Arts Center under the pedestrian bridge.



**Figure 3.17-aTermination Point for Secondary Barrier System**

### **3.6 Segment 6 Washington Market Park**

Segment 6 follows the southern portion of Washington Market Park. Currently, there is a small concrete wall (approximately 3 feet high) with a cast iron fence on top that surrounds most of the park. Along the western portion of the park, the wall increases in height and is incorporated into the southern entrance to Manhattan Borough Community College. This entrance rises above elevation 16.5 and a portion of the park wall adjacent to it would be suitable to provide resiliency protection during a flood event (see Figure 3.18). The FBS for Segment 6 would join this walkway-adjacent wall and proceed east along the park's frontage with Chambers Street as the portions closer to Chambers Street are below elevation 16.5. Because the FBS segment here would need to be constructed to heights up to 6 feet above current ground elevations, the view of Washington Market Park from the street is a consideration.



**Figure 3.18 Location of Segment 6**

Strategies considered for this segment include various types of permanent walls including:

- Permanent concrete wall with and without parkland use incorporated
- Concrete wall with glass panels to maintain line of site
- Removable or semi-permanent barrier.



Two options for this segment were rendered to facilitate further planning of the FBS for this area as shown in Figures 3.21 and 3.23. Figure 3.21 shows a permanent concrete wall incorporated into parkland use through the provision of a sitting wall and decorative plantings (see Figure 3.22 for cross section view). Figure 3.23 shows a permanent concrete wall constructed to replace the existing three-foot-high concrete wall (see figure 3.24 for cross section view). These options provide the benefit of minimizing risk from coastal flooding with no pre-storm deployment activities for this area. The park sitting wall provides the benefit of maintaining park use and enjoyment up to the sidewalk line and helps to facilitate continued connectivity between the park and the sidewalk.



**Figure 3.19 Existing View of Washington Market Park Border with BMCC Walkway**



**Figure 3.20 Existing Conditions on South Side of Washington Market Park**

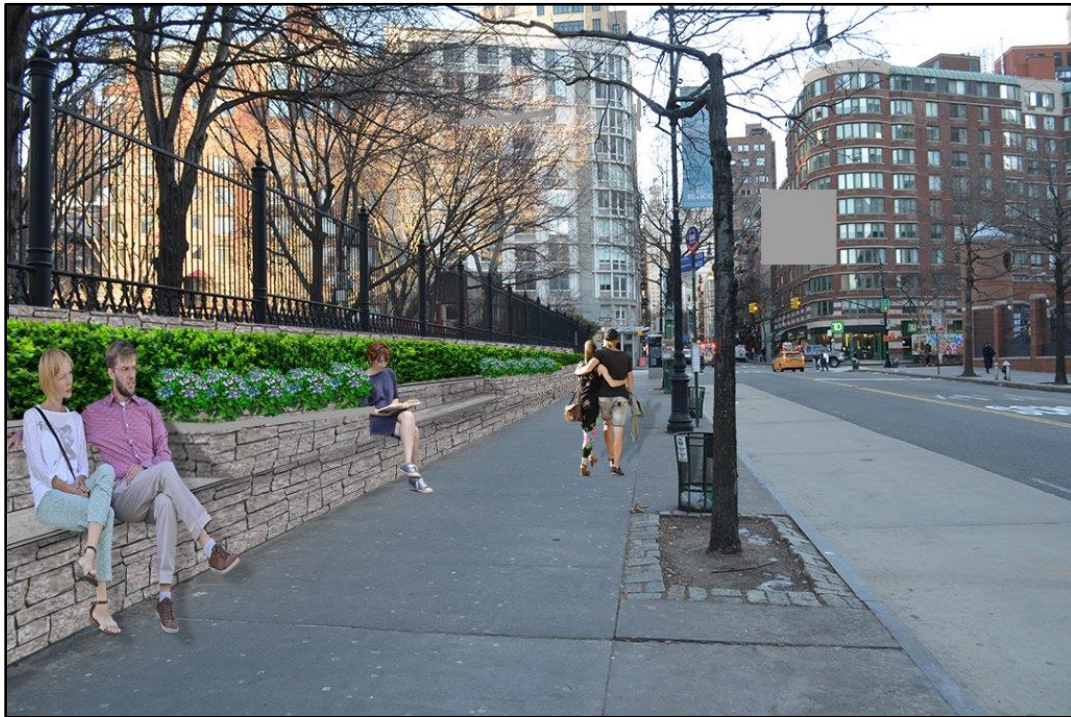


Figure 3.21 Rendered View of Permanent Barrier/ Sitting Wall Fronting Washington Market Park



Figure 3.22 Cross Section View of Sitting Wall





Figure 3.23 Rendered View of Permanent Barrier Fronting Park

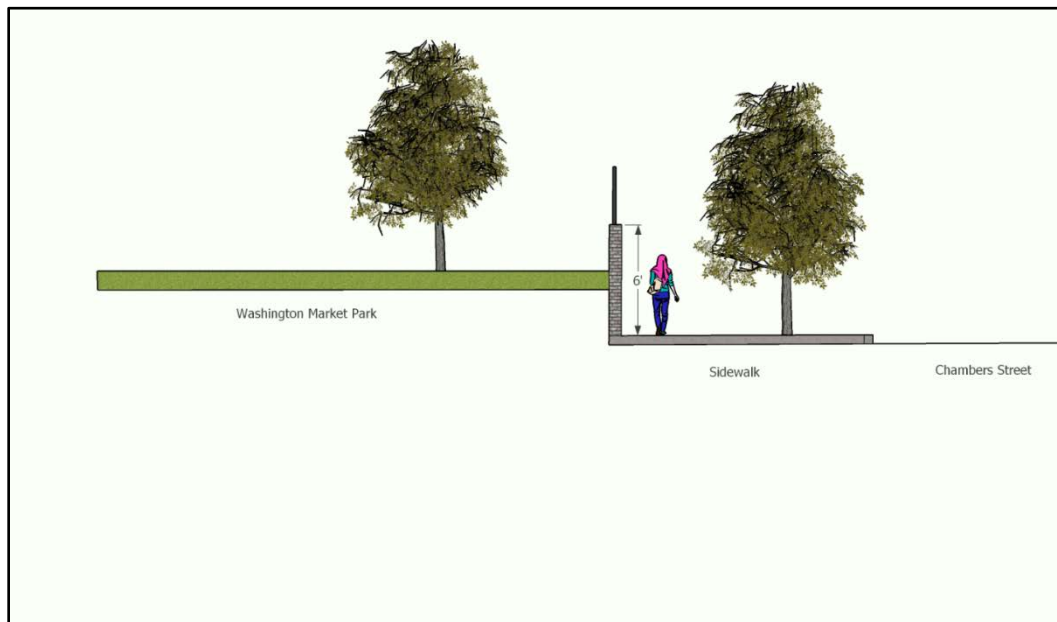


Figure 3.24 Cross Section View of Permanent Wall

### 3.7 Segment 7 Greenwich Street Intersection with Chambers Street

Segment 7 includes a portion of the FBS added to reach ground elevations of 16.5. Similar to Segment 4 (West Street), the only viable alternative would be a ground-based deployable barrier due to constraints associated with time required to assemble semi-permanent or removable strategy types prior to a storm event.

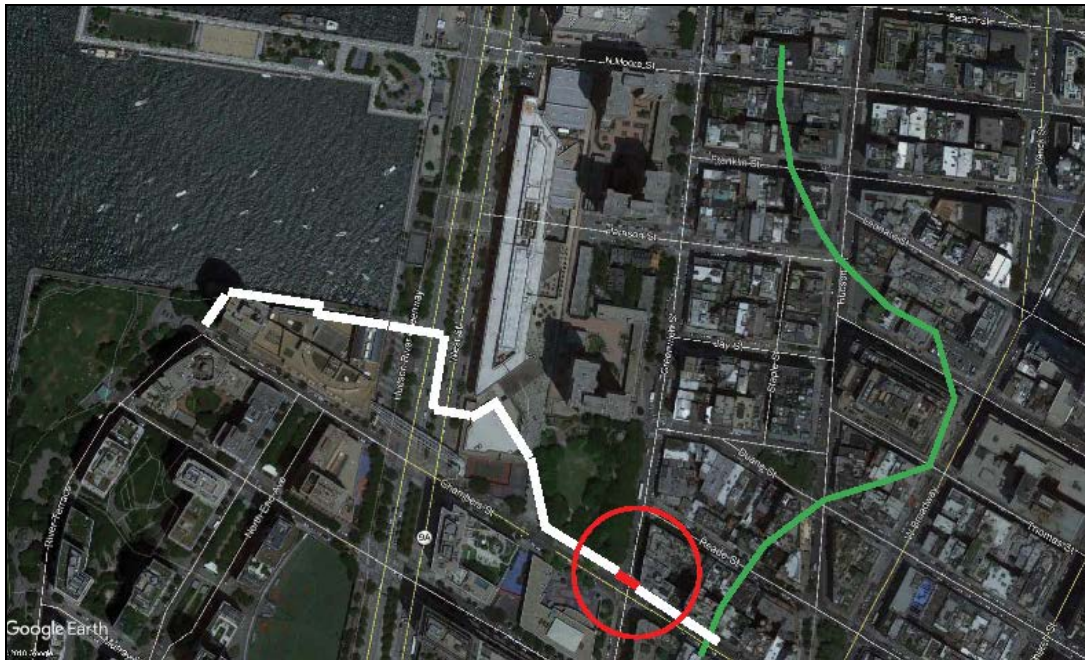


Figure 3.25 Location of Segment 7



Figure 3.26 Existing Conditions in Segment 7

### 3.8 Segment 8 Chambers Street between Greenwich Street and Hudson Street

Segment 8 includes the portion of the barrier route extended east along Chambers Street towards Greenwich Street to reach ground elevations of 16.5. This area of Chambers Street is populated by ground floor commercial storefronts.

The main strategies considered for this Segment include various types of removable walls. This is due to the considerations associated with accessing businesses on Chambers Street and to provide for continued unimpeded use of the street and sidewalk. Due to the time and potential disruption to traffic required to install and assemble a traditional removable wall within the street bed in advance of the storm, they are not



considered optimal. A removable wall that minimizes time associated with pre-storm assembly installed outside of the street bed on the north side of Chambers Street could possibly be best suited for a location such as this. As alternatives, removable door and window barriers along with flood proofing of the buildings or the use of a removable barrier or Flexwall® along the south side of Chambers Street could also be utilized. However, this would then require an additional deployable barrier across Chambers Street, which would add significantly to the cost.

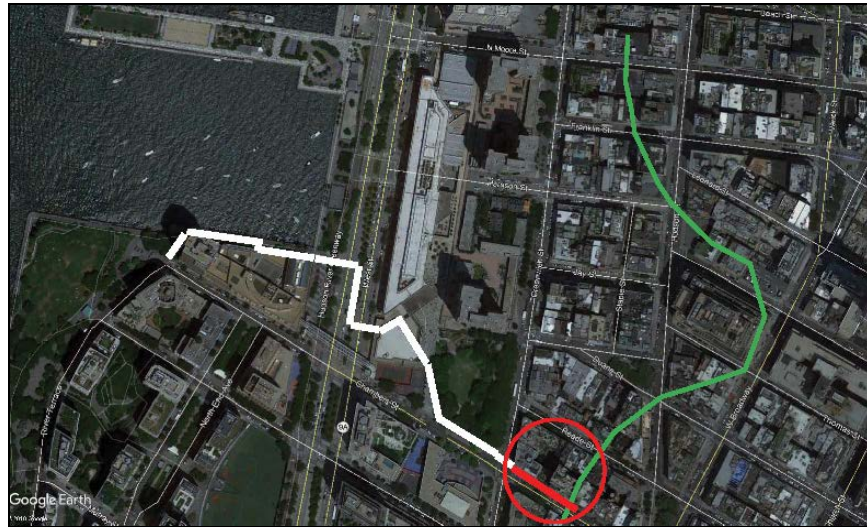


Figure 3.27 Location of Segment 8 Chambers Street Between Greenwich and Hudson Street



Figure 3.28 Existing Conditions on Segment 8

## 4.0 PERMITTING ASSESSMENT

The planning, design and implementation of the FBS will involve permits, approvals and coordination with many federal, state and local agencies. It is possible that the BPCA's status as a NYS agency may relieve them from certain aspects of the local coordination processes. This would need review and study by BPCA legal counsel.

Table 4.1 includes an initial list of potential permits, approvals and coordination. As plans progress past the initial concept planning it is likely that additional entities involvement and permit types could be triggered.

TABLE 4.1 POTENTIAL PERMITS, APPROVALS AND COORDINATION		
	Agency	Permit/ Approval/ Coordination
Federal United States (US)	Fish and Wildlife Service (FWS)	Coordination regarding threatened and endangered species potentially occurring in the project area
	Federal Emergency Management Agency (FEMA)	Coordination regarding federal guidelines; potential funding under programs such as the Hazard Mitigation program
	Army Corps of Engineers (ACOE)	For placement of outfall structures (if new outfalls are required)
New York State (NYS)	Department of State (DOS)	Coastal Zone Consistency Determination
	Department of Environmental Conservation (DEC)	State Pollution Discharge Elimination System (SPDES) General Permit for stormwater discharges from Construction Activity Construction General Permit
		SPDES Permit for point source discharges (if new stormwater or combined outfalls are required to provide drainage for FBS segments)
		Section 401 Water Quality Certification
		Threatened and Endangered Species Review
	Office of Parks, Recreation and Historic Preservation (OPRHP)	Coordination regarding any potential archeological or historic resources pursuant to the State Historic Preservation Act
	Department of Transportation	Coordination regarding placement of structures in an NYS Roadway (Route 9A) and design/ placement of structures in the NYS Roadway median. Highway work permit.
	Battery Park City Authority (BPCA)	State Environmental Quality Review Act- environmental review for discretionary actions associated with siting and construction of the flood barrier system (FBS). An Environmental Impact Statement (EIS) would likely be required.
	Governor's Office of Storm Recovery	Coordination on plans and strategy
New York City (NYC)	State Legislature	Parkland alienation may apply if placement of wall structures within NYC park property is proposed.
	Department of Environmental Protection (DEP)	Connection approval for connection of FBS drains, consultation regarding potential tide gates on outfalls serving area to reduce potential for 'backdoor flooding', and coordination on infrastructure protection/ relocation of water and wastewater facilities in the right of way.
	Department of Buildings (DOB)	Compliance with Building Code for work on buildings and for resiliency standards in flood zones.
	Public Design Commission (PDC)	Approval for structures and signs in the NYC right of way.
	Department of City Planning (DCP)	Consistency review associated with the NYC Local Waterfront Revitalization Program; zoning and land use approvals potentially associated with FBS strategy vertical heights and setback from sidewalks.
	Department of Parks and Recreation (DPR)	Approval for siting structures and potential tree removal within Washington Market Park.
	Department of Transportation (DOT)	Permits and approvals for work within NYC streets and sidewalks.
	Landmarks Preservation Commission (LPC)	Consultation regarding potential historical and archeological resources.
	Office of Recovery and Resiliency (ORR)	Coordination regarding NYC Coastal Flood Resiliency Plans.
	Police Department (PD)	Coordination regarding West Street deployable barrier potential to impact emergency services



TABLE 4.1 POTENTIAL PERMITS, APPROVALS AND COORDINATION		
	Agency	Permit/ Approval/ Coordination
	Fire Department (FD)	Coordination regarding West Street deployable barrier potential to impact emergency services, review of building flood door/ floodproofing and barrier strategies to ensure acceptability for ingress/ egress.
	City University of New York (CUNY) Borough of Manhattan Community College (BMCC)	Coordination to support integration of BMCC buildings into FBS.
	Community Board 1	Coordination regarding projects within CB 1 boundaries.
	Office of Emergency Management (OEM)	Consultation regarding deployable strategy in West Street and relationships to existing emergency management plans including the Coastal Storm Emergency Plan.
Private Entities	Con Edison	Coordination for plans for structures that might conflict with Con Edison utilities placed in the right of way, potential movement or protection of utilities
	Local business association and business owners	For businesses that might be adjacent to structures placed in the sidewalks or right of way

## 5.0 GENERAL CONCLUSIONS/ NEXT STEPS

This report identifies potential strategies along each segment of the FBS route that could minimize risk from future damages and disruptions caused by coastal flooding. However, although these strategies are promising in terms of their potential to protect the area, an investment of this complexity and magnitude must be subject of the most careful of planning, design, coordination process in order to ensure the FBS performs as is intended. Coordination with stakeholders along the FBS route including property owners, regulatory authorities and residential and commercial residents would also be important.

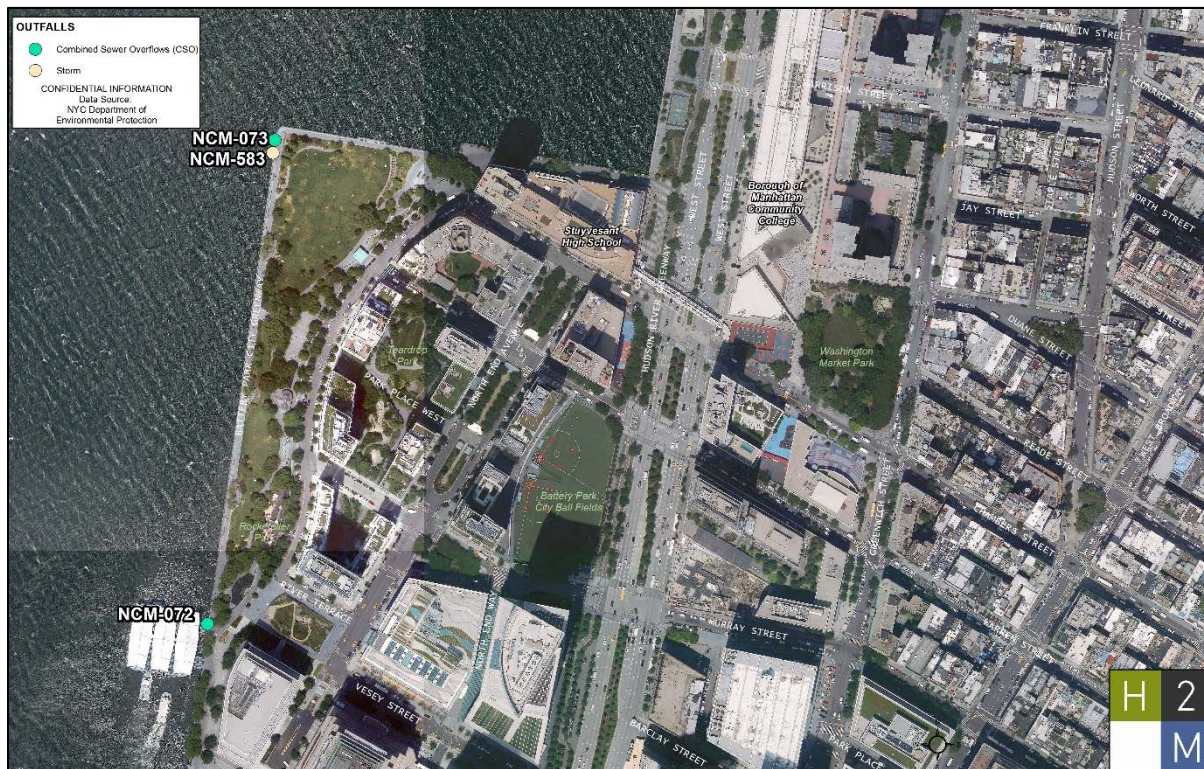
The following is an overview of the types of studies and evaluations that would be appropriate as next steps to further the planning and design process for this project.

In order to adequately design and fully evaluate each of the barrier options discussed above, detailed information about each site where a barrier or technology would be sited is required. These would include but not be limited to:

- A detailed topographic survey to identify exact height of the barriers, street and sidewalk width, and other physical setting characteristics along the route must be conducted.
- Geotechnical borings taken along the route will provide the design parameters for the foundations needed to support the new wall structures. Allowable vertical and lateral bearing capacities of the soil as well as depth to water will be used to determine the length and width of the proposed foundations.
- Construction drawings of the affected buildings and walls will be needed. The structure of the walls can be reviewed for their ability to resist the force of water pushing against one side. Affected openings, like doors and windows, will be analyzed. Their elevation will govern whether they need to be covered during flood events. The perimeter of the openings must be strong enough to resist the force against the barrier that spans the width.
- Thorough research around buried structures and utilities would also be needed around the project route. The placement and type of buried conduits, vaults, and other structures will determine exactly where the barrier should be installed, and may limit the type of construction and depths of foundations that is permitted due to depth and utility protection restrictions. Further, special conditions will exist where utilities are crossed.

Another key to successful project implementation is thorough planning around sanitary wastewater and stormwater infrastructure, analyses of which will be crucial to the successful function of the FBS.

Specifically, initial review of the geographic information system (GIS) maps of stormwater and sanitary wastewater information provided by the New York City Department of Environmental Protection indicate that there are three outfalls that discharge to the Hudson River serving the project area, one conveying stormwater only and the other two conveying combined flow (sanitary flow that mixes with stormwater during heavy rains) (see Figure 5.1). During storm surge conditions, these pipes could fill with water from the Hudson River and, via manholes and catch basins, become a pathway for flood waters to reach street level, thus entering the land area behind the protection of the FBS. This condition is sometimes referred to as 'backdoor flooding'. Accordingly, these outfalls or sewers would require protections, in the form of tide gates or check valves that would be activated to close when flood water from the Hudson River enters the pipes. These features would have to be sited with considerations including how to ensure stormwater continues to drain appropriately. Review of drainage information also revealed that the interceptor sewer for the Newtown Creek Wastewater Treatment Plant runs beneath West Street in the vicinity of the potential FBS. The interceptor sewer collects wastewater flow and is connected to other outfalls outside the project area. It is possible that several outfalls along its path could require protections in form of tide gates or check valves to protect them from becoming a conduit through which potential flooding reaches the Battery Park City property.



**Figure 5.1 Stormwater and Combined Sewer Overflow (CSO) Outfalls Serving the North and Central Portions of Battery Park City**



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## **EXHIBIT D**

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

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

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

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

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

**Overall goal for total MWBE participation: 30%**

**NYS-Certified Minority-Owned Business (“MBE”) Participation: 15%**

**NYS-Certified Women-Owned Business (“WBE”) Participation: 15%**

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## PRE-AWARD PROPOSED M/WBE & SDVOB UTILIZATION PLAN

**INSTRUCTIONS:** This form must be submitted with any bid, proposal, or proposed negotiated contract or within a reasonable time thereafter, but prior to contract award. This Utilization Plan must contain a detailed description of the supplies and/or services to be provided by each certified Minority and Women-owned Business Enterprise (M/WBE) and Service Disabled Veteran Owned Business (SDVOB) under the proposed bid or contract. Attach additional sheets if necessary.

Offeror (Contractor) Name:

Federal Identification No.:

Address:

Project/Contract No.:

City, State, Zip Code:

Telephone No.:

Goals: MBE      %    WBE      %    SDVOB      %

Project Description:

1. Certified M/WBE Subcontractors/Suppliers Name, Address, Email Address, Telephone No.	2. Classification	3. Federal ID No.	4. Detailed Description of Work (Attach additional sheets, if necessary)	5. PERCENTAGE of Total Proposed Award
	<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> SDVOB <input type="checkbox"/> N/A			
	<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> SDVOB <input type="checkbox"/> N/A			
	<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> SDVOB <input type="checkbox"/> N/A			
	<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> SDVOB <input type="checkbox"/> N/A			
	<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> SDVOB <input type="checkbox"/> N/A			

**6. IF UNABLE TO FULLY MEET THE MBE AND WBE GOALS SET FORTH IN THE CONTRACT, OFFEROR MUST SUBMIT A REQUEST FOR WAIVER FORM**

<b>PREPARED BY (Signature):</b> <b>DATE:</b>  <b>NAME AND TITLE OF PREPARER (Print or Type):</b> SUBMISSION OF THIS FORM CONSTITUTES THE OFFEROR'S ACKNOWLEDGEMENT AND AGREEMENT TO COMPLY WITH THE M/WBE REQUIREMENTS SET FORTH UNDER NYS EXECUTIVE LAW, AND THE ABOVE-REFERENCED SOLICITATION. FAILURE TO SUBMIT COMPLETE AND ACCURATE INFORMATION MAY RESULT IN A FINDING OF NONCOMPLIANCE AND POSSIBLE TERMINATION OF YOUR CONTRACT.	<b>TELEPHONE NO.:</b>	<b>EMAIL ADDRESS:</b>
	<b>FOR M/WBE USE ONLY</b>	
	<b>REVIEWED BY:</b>	<b>DATE:</b>





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

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

### **GETTING STARTED**

To access the system, please login or create a user name and password at [www.ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp?TN=ny&XID=7562](http://www.ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp?TN=ny&XID=7562). If you are uncertain whether you already have an account set up or still need to register, please send an email to the customer service contact listed on the Contact Us & Support page, or reach out to Mr. Justin McLaughlin-Williams at [justin.mclaughlin-williams@bpca.ny.gov](mailto:justin.mclaughlin-williams@bpca.ny.gov), or 212-417-2337. For verification, in the email, include your business name and contact information.

### **VENDOR RESPONSIBILITIES**

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

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

For more information, contact Mr. Justin McLaughlin-Williams at [justin.mclaughlin-williams@bpca.ny.gov](mailto:justin.mclaughlin-williams@bpca.ny.gov), or 212-417-2337.

## MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES

### EQUAL EMPLOYMENT OPPORTUNITY POLICY STATEMENT

#### MBE/WBE AND EEO POLICY STATEMENT

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

##### **MBE/WBE**

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

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

##### **EEO**

- (a) This organization will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing diversity programs to ensure that minority group members are afforded equal employment opportunities without discrimination, and will make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts.
- (b) This organization will state in all solicitation or advertisements for employees that in the performance of the State contract all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, disability or marital status.
- (c) At the request of BPCA, this organization will request that each employment agency, labor union, or authorized representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of this organization's obligations herein.
- (d) The Contractor will comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. The Contractor and subcontractors 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 will also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.
- (e) This organization will include the provisions of sections (a) through (d) of this agreement in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the State contract.

Battery Park City Authority Request For Proposals

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Agreed to this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

By \_\_\_\_\_

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

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

**MBE/WBE Contract Goals**

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

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

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

**EEO Contract Goals** (if applicable)

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

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

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

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

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

## Diversity Practices Questionnaire

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

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

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

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

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

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

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

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

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

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

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

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

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

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<sup>1</sup> Do not include on-site project overhead.

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



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

If Yes, complete the attached Utilization Plan

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

Signature of  
Owner/Official  
Printed Name of  
Signatory  
Title

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Name of Business

Address

City, State, Zip

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

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

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

\_\_\_\_\_  
Notary Public

**EXHIBIT E**

CONSULTANT AGREEMENT

between

HUGH L. CAREY BATTERY PARK CITY AUTHORITY

and

[CONSULTANT]

Dated as of \_\_\_\_\_

Contract No. [CONTRACT #]

([PROJECT NAME])

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EXHIBIT A - SCOPE OF WORK

EXHIBIT B - RATES [if applicable]

EXHIBIT C - FORM OF TIME SHEET [if applicable]

EXHIBIT D - MBWE AND EEO POLICY STATEMENT



## CONSULTANT AGREEMENT

AGREEMENT (the “Agreement”) made as of \_\_\_\_\_ by and between BATTERY PARK CITY AUTHORITY d/b/a HUGH L. CAREY BATTERY PARK CITY AUTHORITY, (the “Owner”), a body corporate and politic, constituting a public benefit corporation, having a place of business at 200 Liberty Street, 24<sup>th</sup> Floor, New York, New York 10281, and [COMPANY], formed under the laws of the State of [INCORP. STATE], having an office at [CITY, STATE AND ZIP] (the “Consultant”).

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

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

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

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

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

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

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

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

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

#### **3. Compensation**

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

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

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

(c) Consultant shall submit monthly requests for payment 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 can be found at <http://bpca.ny.gov/wp-content/uploads/2018/01/BPCA-Prompt-Payment-Policy-Fiscal-Year-2017.pdf>). Any item(s) of Work indicated in any Exhibit hereto as attributable to a specific phase of the Work that is not performed during the specified phase shall not be compensated by Owner, but payment for any such items of Work shall remain available to Consultant if, with Owner’s advance approval, such Work is actually performed during a subsequent phase of the Work, subject to the provisions of this Article 3 and Owner’s approval of any request for payment. Owner may withhold from any payment an amount equal to any costs or damages incurred by Owner as a result of Consultant’s negligence or breach of this Agreement.

(e) All 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  
200 Liberty Street, 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**

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

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

(c) Consultant shall furnish to Owner, before or upon execution of this Agreement, attention: **[name]**, a certificate or certificates of the insurance required under this Section 10 and, upon Owner's request, certified copies of the original policies of insurance, within the time period required by Owner and before commencing performance of the Work. Such certificate or certificates shall be in form satisfactory to Owner, shall list the various coverages and shall contain, in addition to any other provisions required hereby, a provision that the policy shall not be changed, canceled or reduced and that it shall be automatically renewed upon expiration and continued in force until two years after the Work is completed unless Owner is given 90 days' written notice to the contrary. Such certificates shall also include riders providing that violation of any of the terms of any policy shall not by itself invalidate such policy. Such policies and certificates must name as additional insureds Owner, Battery Park City Parks Conservancy Corporation ("BPCPC") and the State of New York.

(d) All insurance required to be procured and maintained must be procured from insurance companies that have a financial rating by A.M. Best Company as published in the most current key rating guide of A-VII or better and which are authorized to do business in the State of New York.

(e) If at any time any of the required insurance policies should be canceled, terminated or modified so that insurance is not in effect as required, then Consultant shall suspend performance of the Work. If the Work is suspended then Owner may, at Owner's option, obtain insurance affording coverage equal to that required herein and the cost of such insurance shall be payable by Consultant to Owner.

(f) All additional insured protection afforded Owner, BPCPC, and the State of New York must be on a primary and non-contributory basis and all policies must include a waiver of subrogation in favor of Owner, BPCPC, and the State of New York.

(g) Consultant and Subconsultants shall secure in a form satisfactory to Owner the following:

(i) Worker's Compensation, Employer's Liability insurance (including United States Longshoreman & Harbor Workers and Jones Act coverages) and Disability Benefits 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.

(ii) Commercial General Liability insurance, as follows:

(A) Coverage must be written on ISO Form CG 00 001 or its equivalent and with no modification to the contractual liability coverage provided therein, and shall be provided on an occurrence basis with limits not less than:

- \$1,000,000 per occurrence
- \$2,000,000 General Aggregate, which must apply on a per project basis
- \$2,000,000 Products/Completed Operations aggregate

(B) Owner, BPCPC and the State of New York must be protected as additional insureds with coverage at least as broad as the combination of the most recent editions of ISO Forms CG 20 26 and CG 20 37 on policies held by the Consultant and any of its Subconsultants. Subconsultants may not use blanket additional insured endorsements to provide additional insured protection to Owner, BPCPC, and the State of New York "by written contract" but must use ISO Form CG 20 38 or its equivalent. The policy must provide coverage for defense and indemnification of claims and/or lawsuits, including third party actions, claims and/or lawsuits for bodily injury to the employees of Consultant or Subconsultants arising from the injured worker's employment with the Consultant or any of its Subconsultants

(C) Consultant and any of its Subconsultants must maintain Products/Completed Operations coverage for no less than three years after the Work is completed and continue to include Additional Insured protection for Owner, BPCPC & the State of New York for the prescribed timeframe and coverage shall contain, in addition to any other provisions required hereby, a provision that the policy shall not be changed, canceled or reduced. As a condition precedent to the making of final payment, Consultant shall furnish Owner with a then current certificate of insurance that confirms the Completed Operations coverage is in effect.

(D) When providing evidence of this insurance the Consultant and any of its Subconsultants must include a completed Acord 855 NY form.

(iii) Automobile Liability insurance covering the use in connection with the Work of all owned, non-owned and hired vehicles. The coverage must protect Owner, BPCPC, and the State of New York as additional insureds under such policy and shall not be less than a \$1,000,000 Combined Single Limit

(iv) Professional Liability ("Errors and Omissions") insurance must be maintained at a limit of not less than \$1,000,000 per claim.

(v) Data Breach and Privacy/Cyber Liability Insurance including coverage for

failure to protect confidential information and failure of the security of Consultant's computer systems or Owner's/BPCPC's systems due to the actions of Consultant which results in unauthorized access to Owner's and/or BPCPC's data. The limit applicable to this policy shall be no less than \$1,000,000 per occurrence, and must apply to incidents related to the cyber theft of Owner's and BPCPC's property, including but not limited to, money and securities. Owner, BPCPC, and the State of New York must be protected as additional insureds on policies held by Consultant and any of its Subconsultants.

(vi) Technology Errors and Omissions insurance with a limit of not less \$1,000,000 for damages arising from computer-related services including, but not limited to, the following:

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

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

(vii) Valuable Papers insurance insuring, for the benefit of Consultant and Owner, all plans, designs, drawings, specifications, and documents used under this Agreement by Consultant in a total amount of not less than **[amount]**. Consultant may furnish full coverage under one policy, or may submit separate policies from any Subconsultant(s) for their proportionate shares of such coverage.

(viii) Comprehensive Crime/Employee Dishonesty insurance in a reasonable amount or an amount which is customary in the applicable industry, trade or profession. Coverage must extend to Third Parties.

(ix) Umbrella Liability insurance in an amount of not less than **[amount]**. Owner, BPCPC, and the State of New York must be protected as additional insureds on policies held by the Consultant and any of its Subconsultants.

(h) The insurance required under subsections 10(g)(ii) and (iii) shall provide that the insurance company or an attorney approved and retained by the insurance company shall defend any suit or proceeding against Owner or any officers, agents or employees of Owner whether or not such suit is groundless, false or fraudulent. Notwithstanding the foregoing, Owner shall have the right to engage its own attorneys for the purpose of defending any suit or proceeding against it or its respective officers, agents or employees, and, in such event, Consultant shall, indemnify Owner for all attorneys' fees and disbursements and other costs incurred by it arising out of, or incurred in connection with, any such defense.

(i) Owner, at Owner's cost and expense, may, at its sole option, procure and maintain such insurance as shall in the opinion of Owner, protect Owner from contingent liability of Owner to others for damages arising from bodily injury, including death and property damages which may arise from operations under this Agreement. The procurement and maintenance of such insurance by Owner shall not in any way be construed or be deemed to relieve Consultant from, or to be a limitation on the nature or extent of, such obligations and risk.

**11. Authority of Owner**

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

**12. Entire Agreement**

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

**13. Consultant as Independent Contractor**

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

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

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

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

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

## **16. Covenants, Representations and Warranties**

(a) Consultant represents and warrants to Owner that:

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

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

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

(b) Consultant covenants and agrees that:

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

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

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



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

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

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

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

## **17. Indemnity**

To the fullest extent allowed by law:

(a) Consultant shall be liable to, and shall indemnify Owner, each Member, officer, agent and employee of Owner for, and shall hold each of the foregoing harmless from and against, any and all claims, losses, damages, expense, penalties, costs or other liabilities, including, without limitation, attorneys' fees, costs, disbursements and interest, arising out of the performance of the Work or Consultant's breach of this Agreement, including but not limited to any 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 **[the General Counsel]** 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 *Participation by Minority and Women-Owned Business Enterprises***

#### **(a) General Provisions**

(i) Owner is required to implement the provisions of New York State Executive Law Article 15-A and Parts 140-145 of Title 5 of the New York Codes, Rules and Regulations (“NYCRR”) for all contracts, as defined therein, with a value (1) in excess of \$25,000 for labor,

services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.

(ii) Consultant agrees, in addition to any other nondiscrimination provision herein and at no additional cost to Owner, to fully comply and cooperate with Owner in the implementation of New York State Executive Law Article 15-A and the regulations promulgated thereunder. These requirements include equal employment opportunities for minority group members and women (“EEO”) and contracting opportunities for New York State-certified minority and women-owned business enterprises (“MWBEs”). Consultant’s demonstration of “good faith efforts” pursuant to 5 NYCRR § 142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the “Human Rights Law”) and other applicable federal, state, and local laws.

(iii) Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility and/or a breach of contract, leading to the assessment of liquidated damages pursuant to Section 26.1(g) and such other remedies as are available to Owner.

(b) Contract Goals

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

(ii) For purposes of providing meaningful participation by MWBEs on the Agreement and achieving the MWBE Contract Goals established in Section 26.1(b)(i) hereof, Consultant should reference the directory of MWBEs at the following internet address: <https://ny.newnycontracts.com>.

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

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

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

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

(c) Equal Employment Opportunity (“EEO”)

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

(ii) In performing the Agreement, Consultant shall:

(A) Ensure that each Consultant and Subconsultant performing work on the Agreement shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.

(B) Consultant shall submit an EEO policy statement to Owner within seventy-two (72) hours after the date of the notice by Owner to award the Agreement to Consultant.

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

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

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



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

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

(4) Consultant will include the provisions of Sections 26.1(c)(ii)(D)(1) through (3), which provides for relevant provisions of the Human Rights Law, in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each Subconsultant as to the Work.

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

(iii) Staffing Plan. To ensure compliance with this Section, Consultant shall submit a staffing plan to document the composition of the proposed workforce to be utilized in the performance of the Agreement by the specified categories listed, including ethnic background, gender, and Federal occupational categories. Consultant shall complete the staffing plan form (<https://www.ogs.ny.gov/MWBE/Docs/EEO100.docx>) and submit it as part of their bid or proposal or within a reasonable time, as directed by Owner.

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

(iv) Workforce Utilization Report

(A) Consultant shall submit a Workforce Utilization Report ([https://its.ny.gov/sites/default/files/documents/eeo\\_workforce\\_utilization\\_report.xlsx](https://its.ny.gov/sites/default/files/documents/eeo_workforce_utilization_report.xlsx)) and shall require each of its Subconsultants to submit a Workforce Utilization Report, in such form as shall be required by Owner on a quarterly basis during the term of this Agreement.

(B) Separate forms shall be completed by Consultant and any Subconsultants.

(C) Pursuant to Executive Order #162, Consultants and Subconsultants are also required to report the gross wages paid to each of their employees for the work performed by such employees on the contract on a quarterly basis.

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

(d) MWBE Utilization Plan

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

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

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

(e) Waivers

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

(ii) If Owner, upon review of the MWBE Utilization Plan, quarterly MWBE Consultant Compliance Reports described in Section 26.1(c)(iv)(C), or any other relevant information, determines that Consultant is failing or refusing to comply with the MWBE Contract Goals, and no waiver has been issued in regards to such non-compliance, Owner may issue a notice of deficiency to Consultant. Consultant must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE Contract Goals.

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

(g) Liquidated Damages - MWBE Participation

(i) Where Owner determines that Consultant is not in compliance with the requirements of this Section 26.1 and Consultant refuses to comply with such requirements, or if Consultant is found to have willfully and intentionally failed to comply with the MWBE participation goals, Consultant shall be obligated to pay to Owner liquidated damages.

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

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

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

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

26.2 *Participation by Service-Disabled Veteran-Owned Businesses*

(a) General Provisions

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

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

(b) Contract Goals

(i) Owner hereby establishes an overall goal of \_\_\_% for SDVOB participation, based on the current availability of qualified SDVOBs. For purposes of providing meaningful participation by SDVOBs, the Consultant should reference the directory of New York State Certified SDVOBs found at: [http://ogs.ny.gov/Core/docs/CertifiedNYS\\_SDVOB.pdf](http://ogs.ny.gov/Core/docs/CertifiedNYS_SDVOB.pdf). Questions regarding compliance with SDVOB participation goals should be directed to Shinay Stewart at

shinay.stewart@bpca.ny.gov or (212) 336-9353. Additionally, following execution of this Agreement, Consultant is encouraged to contact the Office of General Services' Division of Service-Disabled Veterans' Business Development at 518-474-2015 or VeteransDevelopment@ogs.ny.gov to discuss additional methods of maximizing participation by SDVOBs on the Agreement.

(ii) Consultant must document "good faith efforts" to provide meaningful participation by SDVOBs as subcontractors or suppliers in the performance of the Contract (see Section 26.2(d) below).

(c) SDVOB Utilization Plan

(i) In accordance with 9 NYCRR § 252.2(i), Consultants are required to submit a completed SDVOB Utilization Plan on Form SDVOB 100 ([https://ogs.ny.gov/Veterans/Docs/2016/SDVOB\\_100\\_Utilization\\_Plan.docx](https://ogs.ny.gov/Veterans/Docs/2016/SDVOB_100_Utilization_Plan.docx)) with their bid.

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

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

(iv) If a notice of deficiency is issued, Consultant agrees that it shall respond to the notice of deficiency, within seven business days of receipt, by submitting to Owner a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by Owner to be inadequate, Owner shall notify Consultant and direct the Consultant to submit, within five business days of notification by Owner, a request for a partial or total waiver of SDVOB participation goals on Form SDVOB 200 ([https://ogs.ny.gov/Veterans/Docs/2016/SDVOB\\_200\\_Waiver\\_Form.docx](https://ogs.ny.gov/Veterans/Docs/2016/SDVOB_200_Waiver_Form.docx)). Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.

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

- (A) If Consultant fails to submit an SDVOB Utilization Plan;
- (B) If Consultant fails to submit a written remedy to a notice of deficiency;
- (C) If Consultant fails to submit a request for waiver; or

(D) If Owner determines that Consultant has failed to document good faith efforts.

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

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

(d) Waivers

(i) Prior to submission of a request for a partial or total waiver, Consultant shall speak to Shinay Stewart at [shinay.stewart@bpca.ny.gov](mailto:shinay.stewart@bpca.ny.gov) or (212) 336-9353 for guidance.

(ii) In accordance with 9 NYCRR § 252.2(m), a Consultant that is able to document good faith efforts to meet the goal requirements, as set forth in Section 26.2(e) below, may submit a request for a partial or total waiver on Form SDVOB 200 ([https://ogs.ny.gov/Veterans/Docs/2016/SDVOB\\_200\\_Waiver\\_Form.docx](https://ogs.ny.gov/Veterans/Docs/2016/SDVOB_200_Waiver_Form.docx)), accompanied by supporting documentation. Consultant may submit the request for waiver at the same time it submits its SDVOB Utilization Plan. If a request for waiver is submitted with the SDVOB Utilization Plan and is not accepted by Owner at that time, the provisions of Section 26.2(c)(iii), (iv) and (v) will apply. If the documentation included with the Consultant's waiver request is complete, Owner shall evaluate the request and issue a written notice of acceptance or denial within 20 days of receipt.

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

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

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

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



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

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

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

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

(f) Monthly SDVOB Consultant Compliance Report

In accordance with 9 NYCRR § 252.2(q), Consultant is required to report Monthly SDVOB Consultant Compliance to Owner during the term of the Agreement for the preceding month's activity, documenting progress made towards achieving the SDVOB goals. This information must be submitted using form SDVOB 101 available at [https://ogs.ny.gov/Veterans/Docs/2016/SDVOB\\_101\\_Monthly\\_Compliance%20Report.docx](https://ogs.ny.gov/Veterans/Docs/2016/SDVOB_101_Monthly_Compliance%20Report.docx) and should be completed by the Consultant and submitted to Owner, by the 10th day of each month during the term of the Contract, for the preceding month's activity to: Shinay Stewart at [shinay.stewart@bpca.ny.gov](mailto:shinay.stewart@bpca.ny.gov).

(g) Breach of Contract and Damages

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

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

**36. Binding Contract**

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

**37. Counterparts**

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

**38. Section Headings**

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

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

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

(SIGNATURE PAGE FOLLOWS)

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

HUGH L. CAREY BATTERY PARK CITY AUTHORITY

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

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

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

[COMPANY]

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

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

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

FEIN# [???



**EXHIBIT A**  
**SCOPE OF WORK**

**EXHIBIT B**

**RATES**

**EXHIBIT C**

**FORM OF TIME SHEET**

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

**Total:**

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

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

Title \_\_\_\_\_

## **EXHIBIT D**

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

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

---

#### **MBWE**

Consultant will and will cause its Subconsultants to take good faith actions to achieve the M/WBE contract participations goals set by the Owner for that area in which the Owner-funded project is located, by taking the following steps:

(a) Actively and affirmatively solicit bids for contracts and subcontracts from qualified State-certified MBEs or WBEs, including solicitations to M/WBE consultant associations.

(b) Request a list of State-certified M/WBEs from Owner and solicit bids from them directly.

(c) Ensure that plans, specifications, request for proposals and other documents used to secure bids will be made available in sufficient time for review by prospective M/WBEs.

(d) Where feasible, divide the work into smaller portions to enhance participation by M/WBEs and encourage the formation of joint ventures and other partnerships among M/WBE consultants to enhance their participation.

(e) Document and maintain records of bid solicitation, including those to M/WBEs and the results thereof. Consultant will also maintain records of actions that its Subconsultants have taken toward meeting M/WBE contract participation goals.

(f) Ensure that progress payments to M/WBEs are made on a timely basis so that undue financial hardship is avoided, and that bonding and other credit requirements are waived or appropriate alternatives developed to encourage M/WBE participation.

#### **EEO**

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

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

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

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

(e) Consultant will include the provisions of sections (a) through (d) above in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each Subconsultant as to work in connection with Owner's contract.

---

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

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

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

**EXHIBIT F**

**Form of Cost Proposal**

**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 provide all specified work necessary to perform the work for the **Peer Review Services**. The Proposer agrees to commence the Work immediately upon receipt of an Initial Letter of Intent or executed contract, in accordance with the terms stipulated in the following pages, for the sum written below.

**A. Base Proposal**

A total not-to-exceed amount of \$\_\_\_\_\_ (\_\_\_\_\_ Dollars and \_\_\_\_\_ Cents) to perform all work as described in, and associated with, Exhibit A ("Scope of Work").

**B. Reimbursable**

A total not-to-exceed amount of \$\_\_\_\_\_ (\_\_\_\_\_ Dollars and \_\_\_\_\_ Cents) for any reimbursable costs to be incurred in performing the work as described in Exhibit A of the RFP.

**C. Itemized Proposal and Labor Rates**

Enclosed with its Cost Proposal, Proposer has submitted a completed Form of Technical Salaries (Exhibit F), showing hourly billing rates for all.

Name of Proposer:

\_\_\_\_\_

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

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



**EXHIBIT G**

**(Acknowledgement of Addenda)**

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

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

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

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

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

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

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

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

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

**Part II Acknowledgement of No Receipt**

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

**Part III**

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

Proposer's Authorized Representative:

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

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

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

**EXHIBIT H**

**List of BPCA & BPCPC Board Members and Employees**

(attached)

**LIST OF BOARD MEMBERS**

George J. Tsunis

Donald Capoccia

Lester Petracca

Louis J. Bevilacqua

Catherine McVay Hughes

Martha J. Gallo

Anthony Kendall

**Employees:**

Betzayda Abreu  
Deborah Addison  
Curtis Afzal  
Elsa Alvarez  
Dana Anders  
Anthony Andriano  
Stephen Arciold  
Sharmila Baichu  
Marie Baptiste  
Brett Beecham  
Freddy Belliard  
Marieke Bender  
Marcus Billups  
Emily Birdseye  
Nidia Blake-Reeder  
LaToya Brooks-Jones  
Nancy Buivid  
Anthony Buquicchio  
Peter Campbell  
Frances Caperchi  
Monica Centeno  
Farely Compres  
Julissa Cooke  
Sarah Fisher-Curtin  
Gwen Dawson  
Nicole Dawson  
Gilbert DePadua  
Paul Diaz-Larui  
Tonasia Dopson  
Jennifer Dudgeon  
Abigail Ehrlich  
Maria Ellison  
Richard Faraino  
Anitra Fauntleroy  
Claudia Filomena  
Tamara Flores  
Pamela Frederick  
James Gallagher  
Abigail Goldenberg  
Anastasia Gonzalez  
Lenron Goode  
Neresa Gordon  
Sakina Graves  
Ned Greenberg  
Evelyn Gregg  
Jonathan Gross  
Robert Hansen  
Nicole Heater

Sankar Heerah  
Robert Hinkelman  
Craig Hudon  
Jake Jacevicius  
Amy Jogie  
William John  
Jasmine Johnson  
Benjamin Jones  
Roland Kemp  
Ann Ketrang  
Susie Kim  
Karl Koenig  
Leandro Lafuente  
Michael LaMancusa  
Della Lee  
Rene Lopcy  
Janira Lopez  
Robert Maggi  
Evelin Maisonet  
Jonathan McCain  
Princess McNeill  
Justin McLaughlin-Williams  
Brian Meikle  
Vanessa Mesine  
Ronnie Mohammed  
Dana Morgera  
Irene Moulketis  
Eric Munson  
Lauren Murtha  
Bertha Narcisse  
Jahmeliah Nathan  
Robert Nesmith  
Siu May Ng  
Yoshihiro Nishida  
Anne O'Neill  
Maril Ortiz  
Bienvenido Osorio  
Kevin O'Toole  
Hector Oyola  
Willem Paillant  
Jonathan Parker  
Nimisha Haribaran Patel  
Gladys Pearlman  
Dahlia Pena  
Bruno Pomponio  
Katherine Powell  
Sandra Power

Robert Quon  
Jason Rachnowitz  
Madelin Ramirez  
Aline Reynolds  
Chad Rimer  
Manual Rivera  
Anthony Robinson  
Kim Robledo  
Nelson Rogers  
Jose Rosado  
Holly Ross  
Carlos Santiago  
Nicholas Sbordone  
Jean Schwartz  
Iphigenia Seong  
Rekha Sewraj  
Sean Simon  
Kemnarine Singh  
Sarah Smedley  
Bruce Spierer  
Shinay Stewart  
Jerome Sturiano  
Lance Super  
John Tam  
Alexis Torres  
Ryan Torres  
Douglas Van Horn  
Noe Velasquez  
Evangelio Villalobos  
Jeffrey Vixamar  
Sharon Wade  
David Wallace  
Annalise Warren  
Eric White  
Dwight Williams  
Kenneth Windman  
Al Wright  
Erin Yokoi  
Nishida Yoshihiro  
Alaura Zayas