



**Battery Park
City Authority**

REQUEST FOR PROPOSALS

FOR

Battery Park City Ballfields Foam Padding and Vinyl Cover Replacement

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I. SUMMARY

Battery Park City Authority d/b/a Hugh L. Carey Battery Park City Authority (“BPCA”) requests proposals (individually a “Proposal” and collectively the “Proposals”) from qualified firms (individually a “Proposer” and collectively the “Proposers”) to (i) evaluate the current condition of all foam padding and vinyl covers at the Battery Park City Ballfields (the “Ballfields”); (ii) based on discussions with BPCA, provide detailed shop drawings for an improved design for the padding and covers; (iii) fabricate and install new foam padding and vinyl covers; (iv) dispose of existing foam padding and covers; and (v) provide a minimum of a five (5) year warranty for the new padding and covers. A detailed scope of work for which the selected Proposer will be responsible is attached as Exhibit A (the “Work”).

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

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

II. GENERAL PROVISIONS

This request for Proposals, including attachments, exhibits, and any amendments or addenda (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;
- 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;
- negotiate potential contract terms with any Proposer;

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

III. TIMETABLE & DESIGNATED CONTACT

A. Key Dates

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

- RFP issued: February 15, 2017 by 5:00 p.m

- Pre-proposal meeting: February 28, 2017 at 11:00 a.m. Meeting Location: BPCA Offices, 200 Liberty Street, 24th Floor, New York, NY 10281 (attendance is highly recommended)
- Deadline to submit questions to BPCA: March 3, 2017 by 4:00 p.m. (by email only)

All questions regarding this RFP should be submitted in writing via email to the “Designated Contact”: Michael LaMancusa, Battery Park City Authority, at Michael.LaMancusa@bpca.ny.gov.

- BPCA’s response to substantive questions: March 10, 2017 by 4:00 p.m. (by email)
- PROPOSAL DUE DATE: March 15, 2017 by 3:00 p.m. (the “Due Date”)

B. Anticipated Contract Term

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

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) The Proposer must possess a minimum of five (5) years’ experience fabricating and installing field padding and upholstery.
- 2) The Proposer must be lawfully authorized to perform the Work in the State of New York.
- 3) The Proposer must have prior experience providing similar services to a recreational facility.

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

Contractor requirements and procedures for business participation opportunities for New York State certified MBEs/WBEs/SDVOBs and equal employment opportunities for minority group members and women are attached as Exhibit B. For questions relating to MBE/WBE/SDVOB participation, joint ventures and sub-contracting goals *only*, please contact the “MBE/WBE/SDVOB Designated Contact” Mr. Anthony Peterson at Anthony.peterson@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 award and approval of the Contract by BPCA (the “Restricted Period”). BPCA employees must record certain contacts during the Restricted Period, including, but not limited to, any oral or written communications that could reasonably be seen as intended to influence BPCA’s conduct or award

of this RFP. Upon notice of an improper contact, BPCA must make a determination regarding the Proposer's responsibility.

D. Submission of Proposals

Proposals must be received by BPCA no later than 3:00 p.m. on March 15, 2017.

Each Proposer must submit (8) paper copies and a PDF version (via CD-ROM or flash drive) in a sealed package clearly marked "Proposal Enclosed - **Battery Park City Ballfields Foam Padding and Vinyl Redesign and Replacement 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, 24th Floor
New York, NY 10281

BPCA is not responsible for late Proposals, no matter the cause. Proposals *must* arrive at the time and place specified herein and be time stamped by BPCA by the Due Date. Please leave ample time for building security. 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 – Battery Park City Ballfields Foam Padding and Vinyl Cover Redesign and Replacement Service,**" as long as the amended Proposal is submitted by the Due Date.

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 ten (10) 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 form of contract, attached as Exhibit C to this RFP, and either has no objections or has detailed their objections in an appendix to their Proposal.

Cover Letters must include each of these representations and be signed. Proposals with Cover Letters that are unsigned or that fail to include each of the above representations (including the required appendix if there are objections to BPCA’s form of contract) will be rejected.

- 2) Executive Summary.
- 3) Responses to the Questions as well as all of the Information Required (Sections VI.A. and B.).
- 4) Required Attachments (Section VI. C.).

VI. INFORMATION REQUIRED

A. Questions and Information Sought Relating to the Work

- 1) Describe your firm’s background, services, size, and history as these factors are relevant to the Work, with an emphasis on field padding and upholstery.
- 2) Describe your proposed approach and methodology for the redesign, fabrication and installation of the required services.
- 3) Please describe your experience performing the services detailed in the scope of work.
- 4) List each key member of the team 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.
- 5) 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.
- 6) Identify any subcontractors you intend to use for this engagement, and describe the services to be performed by each subcontractor.
- 7) Describe your proposed team’s experience with similar work for other public entities, with an emphasis on New York State public entities.
- 8) Clearly identify any information in your Proposal that you believe to be confidential and exempt from FOIL, and state the reasons. Please note that this question is for informational purposes only, and BPCA will determine FOIL applicability in its sole discretion.
- 9) Identify any and all exceptions taken to BPCA’s standard form of contract, attached as Exhibit C, 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.
- 10) 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.

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

- 1) 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.
- 2) How does your firm identify and manage conflicts of interest?
- 3) Are there any potential conflict of interest issues posed by your firm's performance of the Work on behalf of BPCA?
- 4) 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.
- 5) 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.
- 6) List any professional or personal relationships your firm's Project Managers may have with BPCA's Board Members and/or employees. List attached as Exhibit E.
- 7) 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.
- 8) 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 contract person, address and telephone number.

C. Required Attachments

- 1) Mandatory Forms:

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

- a) NYS Standard Vendor Responsibility Questionnaire, notarized and signed by the individual(s) authorized to contractually bind the Proposer, indicating the signer's title/position 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 IX.
- 3) Completed MBE/WBE and EEO Policy Statement and Diversity Practices Questionnaire (attached as part of Exhibit B).
- 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 D, 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. 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.

- 6) Appendices:

a) Attach professional biographies for all Project Managers identified in your Proposal.

VII. INSURANCE REQUIREMENTS

A. *General Requirements*

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 work; and (ii) continuing throughout the entire term of the Contract. The insurance policies listed below must also conform to the applicable terms of the Contract, as shown in BPCA's sample form of contract attached as Exhibit C.

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

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

Insurance Requirements for the Selected Proposer

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

BPCA, BPCPC, and the State of New York must be protected as additional insureds on ISO Form CG 2010 (11/85) or its equivalent on policies held by the selected Proposer and any of its subcontractors. 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 and the State of New York for the prescribed timeframe. When providing evidence of insurance, the Proposer must include a completed Acord 855 NY form.

- **Automobile Liability Insurance** with a combined single limit of not less than \$1,000,000. Coverage must apply to the Proposer's owned, hired, and non-owned vehicles and protect BPCA, BPCPC, and the State of New York as additional insureds.
- **Workers' Compensation, Employer's Liability, and Disability Benefits** shall not be less than statutory limits, including United States Longshore and Harbor Workers Act coverage as applicable to the operations of the Proposer.
- **Umbrella Liability Insurance** at a limit not less than \$5,000,000 per occurrence and in the aggregate. BPCA, BPCPC, and the State of New York must be protected as additional insureds on policies held by the selected Proposer and any of its subcontractors.
- **Builder's Risk/Installation Floater Insurance** in an amount not less than 100% of the full contract price. Coverage must be written on ISO Special Form CP 10 30 04 02 or its equivalent on a completed value non-reporting basis and provide coverage for the Proposer, all subcontractors, BPCA, BPCPC, and the State of New York. Coverage must apply to property while on site, off site, and in transit, include an agreed amount provision which eliminates any coinsurance provision, and include BPCA as a loss payee. Coverage must include the insurable interests of all subcontractors retained by the Proposer.

B. Insurance Requirements for all Subcontractors

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

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

BPCA, BPCPC, and the State of New York must be protected as additional insureds on ISO Form CG 2010 (11/85) or its equivalent on policies held by all subcontractors. Should the subcontractor's work include construction activities of any kind then the subcontractor 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 subcontractor 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 subcontractor's owned, hired, and non-owned vehicles and protect BPCA, BPCPC, and the State of New York as additional insureds.
- **Workers' Compensation, Employer's Liability, and Disability Benefits** shall not be less than statutory limits, including United States Longshore and Harbor Workers Act coverage as applicable to the operations of the subcontractor.
- **Subcontractors will also be required to obtain all other insurances listed in Section VII(A) unless otherwise approved in writing by BPCA prior to commencement of any Subcontractor's work.**

VIII. COST PROPOSAL; FORMAT AND REQUIRED INCLUSIONS

Each Cost Proposal must state flat fee for the performance of all Work.

The Cost Proposal must be submitted in its own separate, sealed envelope within the sealed package containing all other Proposal documents. Please provide 8 copies of the Cost Proposal.

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: <http://bpca.ny.gov/public-information/>.

B. Interviews

BPCA reserves the right to decide whether to interview any or all of the Proposers. The Committee may conduct 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 with field padding design and upholstery: 40%
- B) Staffing and approach to Work: 28^[HS1]%
- C) Diversity Practices Questionnaire: 10%
- D) Proposed MBE/WBE utilization plan (the “Utilization Plan”) and/or Proposer MBE/WBE status: 8%
- F) Proposed SDVOB utilization plan and/or Proposer SDVOB status: 2%
- G) Anticipated New York State business usage in contract performance: 2%
- H) Disposal Plan: 5%
- I) Warranty Terms: 5%

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 shall not be violated as they relate to the procurement or the performance of the Contract by any conduct, including the paying or giving of any fee, commission, compensation, gift, or gratuity or consideration of any kind, directly or indirectly, to any member of the board of directors, employee, officer or official of BPCA.

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 shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, seeking compliance, recovering damages, or declaring the selected Proposer in default of the awarded Contract.

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

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

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

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

Proposers can demonstrate their commitment to the use of New York State businesses by responding to the question below. 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

The selected firm will:

- 1) Evaluate the current condition and take field measurements of the existing foam padding and vinyl covers at the Ballfields;
- 2) Prepare detailed shop drawings for improved padding and covers, in discussion with BPCA. Such design shall mitigate the failures of the existing pads and will prioritize durability, weatherproofing, safety and functionality.
- 3) Upon written approval by BPCA, fabricate new foam padding, vinyl covers and plywood supports. (Existing pads shall be kept in place during fabrication.)
- 4) Remove and dispose of existing vinyl covers, foam padding and plywood supports. Debris shall be disposed and discarded in a timely manner. The Ballfields shall be kept in usable condition at all times. The selected Proposer or its subcontractor must be authorized by the New York City Business Integrity Commission to collect and remove commercial waste materials.
- 5) Install new foam padding, vinyl covers and plywood supports on the perimeter walls.
 - a. Sealed plywood support around the perimeter of the Ballfields will be ¾” thick (164 units);
 - b. All foam padding will be high-impact foam of 3” thickness;
 - c. Vinyl covering the foam and plywood will be 18.5 oz. with stainless steel staples;
 - d. Vinyl covers shall be UV, water and mildew resistant;
 - e. Color of vinyl covers shall match the existing covers;
 - f. Custom brackets will be required for installation along the perimeter of the Ballfields on the granite wall.
 - g. Lighting and netting poles shall be wrapped in foam padding and vinyl covers and secured using a durable lace system with metal grommets spaced 6 inches apart (28 units).
 - h. Installation shall be performed by professional, experienced installers.
- 6) Provide a five (5) year warranty as detailed in Section 27 of the sample form of contract attached as Exhibit C.

EXHIBIT B

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

NEW YORK STATE LAW

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

Business Participation Opportunities for MWBEs

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

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

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

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

By submitting a bid or proposal, a Proposer agrees to demonstrate its good faith efforts to achieve the applicable MWBE participation goals by submitting evidence thereof through the New York State Contract System (“NYSCS”), which can be viewed at <https://ny.newnycontracts.com>, provided, however, that a Proposer may arrange to provide such evidence via a non-electronic method by contacting Mr. Anthony Peterson at Anthony.peterson@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. Anthony Peterson at BPCA, by email at Anthony.peterson@bpca.ny.gov, a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by BPCA to be inadequate, BPCA shall notify the Proposer and direct the Proposer to submit, within five (5) business days, a request for a partial or total waiver of MWBE participation goals. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.
- D. BPCA may disqualify a Proposer as being non-responsive under the following circumstances:
 - 1) If a Proposer fails to submit an MWBE Utilization Plan;
 - 2) If a Proposer fails to submit a written remedy to a notice of deficiency;
 - 3) If a Proposer fails to submit a request for waiver; or
 - 4) If BPCA determines that the Proposer has failed to document good faith efforts.

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

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

Business Participation Opportunities for SDVOBs

For purposes of this solicitation, BPCA hereby establishes an overall goal of 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. For guidance on how BPCA will determine a Contractor's "good faith efforts," refer to 9 NYCRR §252.2(f)(2).

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

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

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

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

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

Equal Employment Opportunity Requirements

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

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

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

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

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



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

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

GETTING STARTED

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

VENDOR RESPONSIBILITIES

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

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

For more information, contact your project manager.

MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES

EQUAL EMPLOYMENT OPPORTUNITY POLICY STATEMENT

MBE/WBE AND EEO POLICY STATEMENT

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

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

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

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

- (b) This organization shall state in all solicitation or advertisements for employees that in the performance of the State contract all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex disability or marital status.
- (c) At the request of BPCA, this organization shall request that each employment agency, labor union, or authorized representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of this organization's obligations herein.
- (d) The Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. The Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.
- (e) This organization will include the provisions of sections (a) through (d) of this agreement in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the State contract.

Battery Park City Authority Request For Proposals

Agreed to this _____ day of _____, 2016

By _____

Print: _____ Title: _____

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

MBE/WBE Contract Goals

30% Minority and Women's Business Enterprise Participation

___% Minority Business Enterprise Participation

___% Women's Business Enterprise Participation

EEO Contract Goals (if applicable)

___% Minority Labor Force Participation

___% Female Labor Force Participation

(Authorized Representative)

Title: _____

Date: _____

Diversity Practices Questionnaire

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

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

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

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

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

4. Does your Company provide technical training² to MBEs/WBEs? Yes or No

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

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

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

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

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

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

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

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

If Yes, complete the attached Utilization Plan

¹ Do not include onsite project overhead.

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

Battery Park City Authority Request For Proposals

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

Signature of
Owner/Official
Printed Name of
Signatory
Title

Name of Business

Address

City, State, Zip

STATE OF _____

COUNTY OF _____) ss:

On the _____ day of _____, 2016, before me, the undersigned, a Notary Public in and for the State of _____, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to this certification and said person executed this instrument.

Notary Public

EXHIBIT C

(BPCA Sample Form of Contract)

(attached)

SERVICES AGREEMENT

between

HUGH L. CAREY BATTERY PARK CITY AUTHORITY

and

Dated as of [DATE]

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

EXHIBIT E - MONTHLY UTILIZATION COMPLIANCE REPORTS

SERVICES AGREEMENT

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

W I T N E S S E T H:

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

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

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

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

1. Scope of Work

Contractor 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 Contractor by Owner, and shall be completed to Owner’s satisfaction.

2. Time for Performance

Contractor 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 Contractor, 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. Contractor shall complete the Scope of Work on or before [DATE], unless the time for performance of the Work is extended by written agreement of Contractor and Owner.

3. Compensation

(a) Owner shall pay, and Contractor 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 lump sum of [\$\$\$\$] (the “Fee”)]. The Fee includes any and all reimbursable expenses, which shall not exceed [\$\$\$\$] (the “Reimbursable Amount”), incurred by Contractor in performing the Work.

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

documentation for any qualifying expenses incurred.

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

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

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

(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, 24th 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 Contractor’s Work

Owner shall have the right to make changes to, increase or reduce the scope of Work, or extend the Term or any date set forth in the schedule referenced in Section 2 *supra*, at any time and for any reason, upon written notice to Contractor specifying the nature and extent of such changes. If Contractor believes that any work it has been directed to perform by Owner is beyond the scope of Work set forth in this Agreement and constitutes extra work, Contractor shall so notify Owner within ten (10) business days. Owner shall determine whether or not such work is in fact beyond the scope of the Work and is considered extra work. If Owner determines that such work constitutes extra work to Contractor or any Subcontractor (as defined in Section 25 of this Agreement), Owner will pay Contractor any additional reimbursable expenses approved pursuant to Owner’s policy for reimbursable expenses, and such additional compensation only as mutually agreed in writing by Owner and Contractor at the time of such change.

5. Contractor Cooperation

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

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

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

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

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

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

(iii) Contractor shall make a general assignment for the benefit of its creditors, or a receiver or trustee shall have been appointed on account of Contractor's insolvency, or Contractor otherwise shall be or become insolvent, or an order for relief shall have been entered against Contractor under Chapter 7 or Chapter 11 of Title 11 of the United States Code;

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

(v) Contractor otherwise shall be in default hereunder;

by serving written notice upon Contractor of Owner's intention to terminate this Agreement. Such notice

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

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

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

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

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

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

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

7. Suspension

Owner may, at any time and for any reason, order Contractor in writing to suspend, delay or interrupt performance of all or any part of the Work for a reasonable period of time as the Owner may determine. Upon receipt of a suspension order, Contractor shall, as soon as practicable, cease performance of the Work as ordered and take immediate affirmative measures to protect such Work from loss or damage.

Contractor specifically agrees that such suspension, delay or interruption of the performance of Work pursuant to this 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 Contractor for lost time due to suspension, delay or interruption, and such time extension shall be Contractor's sole compensation for same. Contractor shall resume performance of such Work upon the date ordered by Owner.

8. Assignment

Contractor 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 Contractor's prior written consent.

9. Ownership of Documents

(a) All material specifically prepared for the Project and excluding any intellectual property already owned by Contractor that is furnished by Contractor or any Subcontractors (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. Contractor 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 Contractor. Contractor hereby acknowledges that whatever participation Contractor 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, Contractor hereby irrevocably transfers and assigns to the Owner all of Contractor's right, title and interest, throughout the world, in and to the Work, including, without limitation, all of Contractor'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. Contractor 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 Contractor for the Project shall become property of Owner, and Contractor may not use same for any purpose not relating to the Project without Owner's prior written consent. Contractor may retain such reproductions of plans, drawings or specifications as Contractor may reasonably require. Upon completion of the Work or the termination of this Agreement, Contractor 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 Contractor's permission, for any proper purpose including but not limited to additions or completion of the Project.

10. Insurance

(a) Contractor shall carry the following insurance **[PROJECT SPECIFIC**

INSURANCE REQUIREMENTS TO BE INSERTED- SEE ATTACHMENT FOR INSURANCE REQUIREMENTS]:

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

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

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

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

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

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

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

(vi) Valuable Papers Insurance covering, for the benefit of Contractor and BPCA all documents used under this Agreement by Contractor or any Subcontractor in a total

amount of not less than [\$\$\$\$]. Contractor may furnish full coverage using one policy or may submit separate policies from the Subcontractors for their proportionate shares of such coverage.

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

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

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

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

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

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

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

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

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

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

(i) Workers' Compensation Insurance and New York State Disability Benefits Insurance shall be kept in force until receipt of final payment by Contractor hereunder. This

Agreement shall be void and of no force or effect unless, in compliance with the Workers' Compensation Law, Contractor shall secure Workers' Compensation Insurance for such of their respective employees engaged in the performance of the Work as are required to be insured under said law.

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

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

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

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

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

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

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

(k) Contractor shall not violate, or permit to be violated, any term or condition of its insurance policies, and shall at all times satisfy Owner's safety requirements and any requirements of the insurance companies issuing such policies. Contractor shall take every reasonable precaution against injuries to persons or damage to property, and for the safety of persons engaged in

performing the Work or doing any work in connection with the Project. Contractor shall establish and maintain safety procedures in connection with the Work as required by the New York labor law and regulations of the Occupational Safety and Health Act, as applicable.

11. Authority of Owner

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

12. Entire Agreement

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

13. Contractor as Independent Contractor

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

14. Maintenance, Audit and Examination of Accounts

Contractor shall, until the earlier of six (6) years after completion of the performance of the Work or six (6) years after termination of this Agreement, maintain, and require all Subcontractors to maintain, complete and correct books and records relating to all aspects of Contractor's obligations hereunder, including without limitation, accurate cost and accounting records specifically identifying the costs incurred in performing their respective obligations, and shall make such books and records available to Owner or its authorized representatives for review and audit at all such reasonable times as Owner may request. In the event that Contractor and/or any Subcontractors shall fail to comply with the provisions of this 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 Contractor to refund any such payment made. Any excessive audit costs incurred by Owner due to Contractor's or any Subcontractor's failure to maintain adequate records shall be borne by Contractor.

15. Acceptance of Final Payment; Release and Discharge

Final payment shall be made to Contractor upon satisfactory completion and acceptance by Owner of the Work required under this Agreement, or all Work performed prior to the termination of this Agreement if terminated pursuant to Section 6 hereof, and upon submission of a certification that all Subcontractors have been paid their full and agreed compensation. The acceptance by Contractor of the final payment under this Agreement, or any final payment due upon termination of this Agreement under 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 Contractor, and/or its successors and assigns have, or may have, against Owner under the provisions of this Agreement, unless a detailed and verified statement of claim is served upon Owner prior to the date final payment is tendered by Owner. It is expressly understood and agreed that Owner's or Contractor's termination of this Agreement pursuant to 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 Contractor 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) Contractor represents and warrants to Owner that:

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

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

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

(b) Contractor covenants and agrees that:

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

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

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

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

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

(vi) Contractor shall not commit its personnel to, nor engage in, any other projects during the term of this Agreement to the extent that such projects may adversely affect

the quality or efficiency of the Work or would otherwise be detrimental to the conduct and completion of the Work, and Contractor shall provide sufficient numbers of qualified personnel as shall be required to perform the Work in the time requested by Owner. Contractor shall comply with any reasonable request by Owner to remove and/or replace any of Contractor's personnel from the Project.

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

17. Indemnity

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

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

18. Confidentiality

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

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. Contractor, any guarantor of the performance of its obligations hereunder (“Guarantor”) and their successors and assigns hereby subject themselves to the jurisdiction of any state or federal court located within such county, waive the personal service of any process upon them in any action or proceeding therein and consent that such process be served by certified or registered mail, return receipt requested, directed to the Contractor and any successor at Contractor’s address hereinabove set forth, to Guarantor and any successor at the address set forth in the instrument of guaranty, and to any assignee at the address set forth in the instrument of assignment. Such service shall be deemed made two days after such process is so mailed.

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 Contractor, 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 Subcontractors

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

(b) Contractor shall be responsible for the performance of the Work of any Subcontractors engaged, including the maintenance of schedules, coordination of their Work and resolutions of all differences between or among Contractor and any Subcontractors. It is expressly

understood and agreed that any and all Subcontractors engaged by Contractor hereunder shall at all times be deemed engaged by Contractor and not by Owner.

(c) The fees of any Subcontractor retained by Contractor to perform any part of the Work required under this Agreement shall be deemed covered by the compensation stipulated in Section 3 above. Contractor shall pay its Subcontractors in full the amount due them from the proportionate share of each requisition for payment submitted by Contractor and paid by Owner. Contractor shall make payment to its Subcontractors no later than seven (7) calendar days after receipt of payment from Owner. Contractor shall indemnify, defend and hold Owner harmless with respect to any claims against Owner based upon Contractor's alleged failure to make payments to Subcontractors for Work under this Agreement.

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

26. Employment and Diversity

E. 26.1. Definitions

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

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

(b) "Certified Service-Disabled Veteran-Owned Business Enterprise." A business enterprise, including a sole proprietorship, partnership, limited liability company or corporation that is:

(i) at least 51 percent owned by one or more United States citizens or permanent resident aliens who are service-disabled veterans;

(ii) an enterprise in which the ownership interest of such service-disabled veteran ownership is real, substantial and continuing;

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

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

(v) an enterprise that is a small business, which has a significant business presence in the State of New York, not dominant in its field and employs, based on its industry, a certain number of persons as determined by the SDVOB Director, but not to exceed three hundred,

taking into consideration factors that include, but are not limited to, federal small business administration standards pursuant to 13 CFR part 121 and any amendments thereto; and

(vi) certified by the Office of General Services.

(c) “Commissioner.” The Commissioner of the Office of General Services.

(d) “Diversity Program.” The program by which Owner shall monitor Contractor’s compliance with the requirements set forth in (i) the Required Participation Plan and (ii) the Utilization Plan.

(e) “Division.” The Division of Minority and Women’s Business Development of the New York State Department of Economic Development.

(f) “Director.” The Director or the Executive Director of the Division.

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

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

(i) Black persons having origins in any of the Black African racial groups;

(ii) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American descent of either Indian or Hispanic origin, regardless of race;

(iii) Native American or Alaskan native persons having origins in any of the original peoples of North America; or

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

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

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

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

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

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

(j) “Required Participation Plan.” The plan previously submitted by a Contractor to Owner listing the certified MBEs and/or WBEs and Certified SDVOBs that the Contractor intends to use in the performance of this agreement in order to ensure that MBEs, WBEs, and SDVOBs are awarded a fair share of the total dollar value that is to be paid for the Work.

(k) “SDVOB Director.” The director of the division of service-disabled veterans’ business development.

(l) “SDVOB Division.” The division of service-disabled veterans’ business development in the Office of General Services.

(m) “Service-disabled Veteran.”

(i) in the case of the United States army, navy, air force, marines, coast guard, army national guard or air national guard and/or reserves thereof, a veteran who received a compensation rating of ten percent or greater from the United States department of veterans affairs or from the United States department of defense because of a service-connected disability incurred in the line of duty; and

(ii) in the case of the New York guard or the New York naval militia and/or reserves thereof, a veteran who certifies, pursuant to the rules and regulations promulgated by the director, to having incurred an injury equivalent to a compensation rating of ten percent or greater from the United States department of veterans affairs or from the United States department of defense because of a service-connected disability incurred in the line of duty.

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

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

(p) “Veteran.” A person who served in and who has received an honorable or general discharge from, the United States army, navy, air force, marines, coast guard, and/or reserves thereof, and/or in the army national guard, air national guard, New York guard and/or the New York naval militia.

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

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

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

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

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

F. 26.2. *Equal Employment Opportunities for Minority Group Members, Women, and Service-Disabled Veterans*

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

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

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

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

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

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

(vi) For purposes of providing meaningful participation by MBEs/WBEs/SDVOBs for the Work and achieving the goals established herein, Contractor and its Subcontractors should reference the directory of New York State Certified MBEs/WBEs found at the following internet address:

<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp?TN=ny&XID=7562> and the directory of New York State Certified SDVOBs found at the following internet address:

http://www.ogs.ny.gov/Core/docs/CertifiedNYS_SDVOB.pdf.

Additionally, Contractor and its Subcontractors are encouraged to contact the Division of Minority and Woman Business Development at (518) 292-5250, (212) 803-2414, or (716) 846-8200 to discuss additional methods of maximizing participation by MBEs/WBEs in the Work or the Division of Service-Disabled Veterans' Business Development at 844-579-7570 or VeteransDevelopment@ogs.ny.gov to discuss additional methods of maximizing participation by SDVOBs in the Work.

(vii) Where MBE/WBE goals have been established herein, Contractor must document "good faith efforts," pursuant to 5 NYCRR §142.8, to provide meaningful participation by MBEs/WBEs as Subcontractors or suppliers in the performance of the Work.

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

(c) Miscellaneous provisions:

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

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

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

G. 26.3. Workforce Participation

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

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

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

(d) Contractor shall not participate in the transfer of Minority Group Member employees or women employees from employer to employer or from project to project for the sole

purpose of satisfying the participation goals above set forth.

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

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

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

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

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

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

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

(B) the actions the Contractor and Subcontractors have taken to meet the components of the Diversity Program;

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

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

(i) Contractor shall include the provisions of Section 26.3 in every Subcontract, and

such provisions shall be binding upon each Subcontractor.

H. 26.4. Minority Business Enterprise (MBE) Participation, Women's Business Enterprise (WBE) Participation, and Service-Disabled Veteran-Owned Business Participation

(a) Contractor shall make good faith efforts to attain the participation of [] percent ([]%) MBEs, [] percent ([]%) WBEs, and [] percent ([]%) SDVOBs in the total dollar value of the Work.

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

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

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

(iii) if an MBE, WBE, and/ or SDVOB is Contractor or where Contractor is a joint venture consisting entirely of MBEs, WBEs, and/ or SDVOBs -- the Fee.

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

(i) Compliance Reports shall be submitted to Owner and shall include information with respect to:

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

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

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

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

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

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

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

(ii) Compliance Reports that shall be submitted to the Diversity Department on the monthly basis.

(iii) Compliance Reports shall also include, but not be limited to, the following information:

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

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

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

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

(E) the actual amounts of any payments made by Contractor to each certified MBE, WBE, and SDVOB as of the date the Compliance Report was submitted.

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

(e) Contractor shall provide proof of payment to all Subcontractors and materialmen in the form of a waiver of lien or cancelled check, with each request for payment. Failure to provide such proof of payment shall be an event of default of contractor's obligations pursuant to this Section.

26.5 Failure to Comply

(a) In accordance with 5 NYCRR §142.13, Contractor acknowledges that if it is found to have willfully and intentionally failed to comply with the MBE/WBE participation goals set forth herein or any other requirements set forth in this Article 26, such finding constitutes a breach of contract and Owner may withhold payment from the Contractor as liquidated damages.

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

27. Warranties

(a) Contractor guarantees that all Work performed and all materials furnished will conform to the Scope of Work as to kind, quality, functions, design and characteristics of material and workmanship. Contractor shall remove, replace and repair, at its sole cost and expense, all defects in workmanship, materials, ratings, capacities, or design characteristics occurring in or to the Work including, without limitation, any portion of the Work furnished or performed by any Subcontractor or Materialman, within five (5) years from the date of Owner's acceptance of the Work required under this Agreement. Contractor hereby acknowledges that Owner may be required to incur substantial expense if correction of the Work is required particularly if such correction involves the uncovering, removal or replacement of any concrete, wiring and piping. If Contractor shall fail to reimburse Owner for any such expense which may become payable as provided in this paragraph, Owner shall be entitled to deduct such expense from any payments required to be made by Owner to Contractor pursuant to this Agreement. Contractor, upon demand, shall pay for any and all damage to any Work affected by or from such defects and all expenses necessary to remove, replace and repair such Work that may be damaged in removing, replacing or repairing such defects.

(b) The benefits of this Article 27 shall inure to the benefit of Owner and its respective successors and assigns.

(c) The rights and remedies afforded Owner under this Article are in addition to and not in lieu of and do not in any way affect, change, alter, modify, vary or prejudice any right, remedy or recourse that Owner may have under other provisions of this Agreement or pursuant to law.

28. Responsibility

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

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

performance under the Agreement.

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

29. Interest of Others

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

30. Executory Contract

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

31. Participation in International Boycott Prohibited

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

32. MacBride Fair Employment Principles

If the amount payable to Contractor under this Agreement is greater than \$15,000, Contractor hereby certifies that it and/or any individual or legal entity in which it holds a 10% or greater ownership interest, and any individual or legal entity that holds a 10% or greater ownership 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.

33. Limitation Periods

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

34. 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.

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

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

36. 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).

37. Binding Contract

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

38. 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.

39. 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.

40. Subordination of Terms in the Exhibits

In the event of a conflict of terms, the terms stated in Sections 1-40 herein, shall take precedence over and shall prevail over any printed, typed, or handwritten terms located in the Exhibits.

(SIGNATURE PAGE FOLLOWS)

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

HUGH L. CAREY BATTERY PARK CITY AUTHORITY

By: _____

Name: _____

Title: _____

[CONTRACTOR COMPANY NAME]

By: _____

Name: _____

Title: _____

FEIN# [???

EXHIBIT A

SCOPE OF WORK

EXHIBIT B

RATES

Title _____

EXHIBIT D

HUGH L. CAREY BATTERY PARK CITY AUTHORITY

PROMPT PAYMENT POLICY

Section 9002.1

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

Section 9002.2

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

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

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

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

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

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

(iii) rendering or providing services to the Authority.

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

Office of the Chief Financial Officer

Hugh L. Carey Battery Park City Authority

200 Liberty Street, 24th Floor

New York, New York 10281-1097

Attention: Accounts Payable

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

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

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

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

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

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

Section 9002.3

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

Section 9002.4

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

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

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

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

(iii) This schedule will not apply in those instances where payment is being delayed by reason of any of the exceptions listed in Section 9002.4(e) or where the time in which

to make payment is being tolled for any of the reasons listed in Section 9002.4(f) herein, in which cases the time for payment shall be there provided.

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

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

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

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

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

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

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

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

(vi) Where time is taken in the processing of an invoice by the State Department of Taxation and Finance, the State Division of the Budget, the Office of the State Comptroller, or any other entity external to the Authority that is or may be required by statute, regulation or Contract to approve or process Authority payments.

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

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

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

(iii) A reasonable belief by the Authority in suspected impropriety of any kind. In order to toll the prompt payment schedule without penalty, the Authority has fifteen calendar days after receipt of an invoice to send a Contractor notification of such defects

or improprieties. Authority notification shall be by letter to the Contractor, setting forth any such defect or impropriety in reasonable detail, sent to the address indicated for notices under the Contract or, if no such address is provided, sent to the address set forth in the invoice provided that, in the event that the Authority fails to so notify the Contractor within such fifteen days, the sole effect of such failure to so notify the Contractor shall be that the number of days allowed for payment shall be reduced by the number of days between such fifteenth day and the date of the Authority's transmitting such notifications. In the event that the Authority fails to provide reasonable grounds for its contention that any such defect or impropriety exists, the date by which Contract payment shall be made shall be calculated from the date of receipt of an invoice.

Section 9002.5

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

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

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

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

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

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

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

Section 9002.6

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

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

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

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

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

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

EXHIBIT E

MONTHLY UTILIZATION COMPLIANCE REPORTS

MINORITY, WOMEN, SERVICE-DISABLED VETERAN BUSINESS UTILIZATION –
MONTHLY

Name of Prime/Subcontractor: _____

Address: _____

Phone #: (_____) Fax #: (_____) _____

Contact Person: _____

Tracking Report for the Month of _____ Year _____ Contract # _____

Name of Vendor/Subcontractor Address/Phone-Fax/Contact Person	WBE/ MBE/ SDVOB	Total Amount Contracted to Date	Total Amount Billed to Date	Total Amount Paid to Date	Total % to Date

Please note information is due no later than the first week of the month for the previous month.

This form is to be accompanied with copies of cancelled checks, both front and back, as well as any invoices for said MBE/WBE/SDVOB Firms listed above.

EXHIBIT D

(Acknowledgement of Addenda)

RFP TITLE: _____

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

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 E

List of BPCA & BPCPC Board Members and Employees

(attached)

LIST OF BOARD MEMBERS

Dennis Mehiel

Donald Cappocia

Martha Gallo

Lester Petracca

Hector Batista

Employees:

1. Curtis Afzal
2. Elsa Alvarez
3. Dana Anders
4. Anthony Andriano
5. Stephen Arciold
6. Kathleen Bailey
7. Marie Baptiste
8. Brett Beecham
9. Freddy Belliard
10. Olivia Biller
11. Emily Birdseye
12. Nidia Blake-Reeder
13. Lauren Brugess
14. Nancy Buivid
15. Anthony Buquicchio
16. Peter Campbell
17. Monica Centeno
18. Adam Choper
19. Carlton Chotolal
20. Deshay Crabb
21. Gwendolyn Dawson
22. Gilbert DePadua
23. Paul Diaz-LaRui
24. Tonasia Dopson
25. Abigail Ehrlich
26. Maria Ellison
27. Richard Faraino
28. Anitra Fauntleroy
29. Joseph Ganci
30. Julissa Garcia
31. Lenron Goode
32. Abigail Goldenberg
33. Neresa Gordon
34. Ned Greenberg
35. Evelyn Gregg
36. Kelly Grogan
37. Robert Hansen
38. Nicole Heater
39. Sankar Heerah
40. Sonia Henry
41. Hector Herrera
42. Craig Hudon
43. Shari Hyman
44. Amy Jogie
45. Benjamin Jones
46. Joan Kanarkiewicz
47. Roland Kemp
48. Susie Kim
49. Karl Koenig
50. Betzayada Laboy
51. Leandro Lafuente
52. Michael LaMancusa
53. Della Lee
54. Triny Lima
55. Renee Lopcy
56. Luis Lopez
57. Robert Maggi
58. Evelin Maisonet
59. Kevin McCabe
60. Jonathan McCain
61. Brenda McIntyre
62. Princess McNeill
63. Shinay McNeill
64. Vanessa Mesine
65. Ronnie Mohammed
66. Bertha Narcisse
67. Robert Nesmith
68. Siu May NG
69. Yoshihiro Nishida
70. Anne O'Neill
71. Kevin O'Toole
72. Hector Oyola
73. Janet Ozarchuk
74. Willem Paillant
75. Jonathan Parker
76. Gladys Pearlman
77. Dahlia Pena
78. Churaman Persaud
79. Anthony Peterson
80. Bruno Pomponio
81. Katherine Powell
82. Sandra Power
83. Alix Pustilnik
84. Robert Quon
85. Jason Rachnowitz
86. Madelin Ramirez
87. Manuel Rivera
88. Anthony Robinson
89. Andrea Rodriguez
90. Nelson Rogers
91. Jose Rosado
92. Holly Ross
93. Vincent Rossi
94. Carlos Santiago
95. Nicholas Sbordone
96. Jean Schwartz
97. Lindsey Senn
98. Rekha Sewraj-Kumar
99. Sean Simon
100. Kemnarine Singh
101. Timothy Skipper
102. Sarah Smedley
103. Linda Soriero
104. Bruce Spierer
105. Nicole Stallworth-Roper
106. Jerome Sturiano
107. John Tam
108. Alexis Torres
109. Ryan Torres
110. Douglas VanHorn
111. Noe Velasquez
112. Evangelio Villalobos
113. Sharon Wade
114. David Wallace
115. Peter Wheelwright
116. Eric White
117. Angela Whitehead
118. Dwight Williams
119. Kenneth Windman
120. Al Wright
121. Jouli Yohannes
122. Julian Zapata