



**Battery Park  
City Authority**

**REQUEST FOR PROPOSALS  
FOR  
PRE-QUALIFIED POOL OF  
MUNICIPAL ADVISORS**

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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 provide BPCA with municipal advisory services and to act in the capacity of BPCA’s Independent Registered Municipal Advisor (“IRMA”). Such services shall include, but not be limited to, the provision of advice and assistance regarding: (1) debt financing; (2) market conditions; (3) credit rating agencies; and (4) investor relations and other financial matters, as required, and shall include both transactional and non-transactional services. 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/>.

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

## **II. GENERAL PROVISIONS**

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

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

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

### III. TIMETABLE & DESIGNATED CONTACT

#### A. *Key Dates*

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

- RFP issued: May 19, 2022
- Deadline to submit questions to BPCA: May 27, 2022 by 3:00 p.m. EST (by email only)

All questions regarding this RFP should be submitted in writing via email to the "Designated Contact": Emily Birdseye, Assistant Contracting Officer, Battery Park City Authority, at [emily.birdseye@bpca.ny.gov](mailto:emily.birdseye@bpca.ny.gov).

- BPCA's response to substantive questions: June 2, 2022. Responses will be posted in the form of an addendum to: [bpca.ny.gov/apply/rfp-opp/](http://bpca.ny.gov/apply/rfp-opp/)
- PROPOSAL DUE DATE: June 10, 2022 by 3:00 p.m. EST (the "Due Date")
- Interview meeting of Proposers, if any: June 21-24, 2022 from 9:00am EST – 4:00pm EST via audiovisual conference or in-person.

#### B. *Anticipated Contract Term*

The anticipated term of the contract awarded pursuant to this RFP (the "Contract") will be three (3) years ("Initial Contract Term"), with three one-year renewal options thereafter that are at the sole discretion of BPCA ("Extension Periods"). BPCA reserves the right to remove a firm from the pool at any time, in its sole discretion, and to terminate any 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 E.

### IV. GENERAL REQUIREMENTS

#### A. *Minimum Qualification Requirements*

The following are the minimum qualification requirements for this RFP. An affirmative statement confirming compliance with the minimum requirements must be included in your response. Proposals that fail to meet these requirements will be rejected.

- 1) Proposer must have an office in New York State (a New York City office is preferred);
- 2) The Proposer must be lawfully authorized to do business in the State of New York;
- 3) Proposer must be registered with the Securities and Exchange Commission ("SEC") as a municipal advisor and provide its registration number;
- 4) Proposer must have demonstrated experience with municipal issuers of tax-exempt and taxable bonds, direct placements;
- 5) Proposer must hold and maintain all current Federal and State licenses and registrations required to offer municipal advisory services; and,

- 6) Proposer must maintain compliance with all Federal and State rules, regulations and provisions that set standards for municipal advisors when engaging in municipal advisory services.

***B. MBE/WBE/SDVOB Participation; Equal Employment Opportunity***

Contractor requirements and procedures for business participation opportunities for State certified MBEs/WBEs/SDVOBs and EEO requirements relating to minority group members and women are attached as Exhibit B: Diversity Requirements. Consistent with the final Contract for each successful vendor, the identification, solicitation, and review of MBE/WBE/SDVOB subcontractors should begin now. While final Diversity goals will be determined after the selection of the panel of vendors, it is recommended that vendors begin planning for the Diversity Submission required for this stage immediately and initiate internal efforts to ensure that MWBE and SDVOB participation is maximized on this procurement. Accordingly, proposals must include the requested Diversity information in order to be considered. Finally, BPCA has determined that sufficient MWBE and SDVOB availability exists such that goals will not be eliminated. For questions relating to MBE/WBE/SDVOB participation, joint ventures and sub-contracting goals only, please contact the “MBE/WBE/SDVOB Designated Contact”: Justin McLaughlin Williams at [Justin.McLaughlin-Williams@bpca.ny.gov](mailto:Justin.McLaughlin-Williams@bpca.ny.gov) or 212-417-2000.

***C. Restricted Period***

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

***D. Submission of Proposals***

**Proposals must be received by BPCA no later than 3:00 p.m. on June 10, 2022.**

- Each Proposer must e-mail their Technical Proposal to the following e-mail address: [technicalproposals@bpca.ny.gov](mailto:technicalproposals@bpca.ny.gov)

The Technical Proposal must be clearly labeled as “Proposal Enclosed – Municipal Advisor.”

- Each Proposer must also e-mail their Cost Proposal to the following e-mail address: [costproposals@bpca.ny.gov](mailto:costproposals@bpca.ny.gov)

The Cost Proposal must be separately attached and clearly labeled as “Cost Proposal — Municipal Advisor.

- Each Proposer is responsible for the successful delivery and receipt of their Proposal. BPCA is not accepting Proposals sent via messenger, overnight courier, or certified mail to BPCA

offices. If a Proposer has already sent a Proposal via one of these methods, please e-mail the Proposal to the above e-mail address by the Due Date. If a Technical Proposal's file size is too large to submit by e-mail, the Proposer must make alternate electronic accommodations (e.g., linking to a file sharing website), which shall also be transmitted through [technicalproposals@bpca.ny.gov](mailto:technicalproposals@bpca.ny.gov). Please contact the Designated Contact prior to the Due Date in order to ensure successful transmission of the documents prior to the Due Date.

- Proposals must arrive at the time and place specified herein. Please leave ample time for submission. Late Proposals, no matter the cause of their lateness, will NOT be accepted. Hard copy or faxed Proposals will NOT be accepted. A Proposer may, after submitting a Proposal, amend its Proposal by submitting an amended Proposal, clearly labeled "Amended Proposal – Municipal Advisor," as long as the amended Proposal is submitted by the Due Date.

This likewise applies to any and all additional references to the Proposal submission method contained within the Municipal Advisor Request for Proposals document.

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

### A. *Proposal Format*

The Proposal must:

- Be in PDF or Word doc format.
- Be formatted to 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 E to this RFP, and either has no objections or has detailed their objections in an appendix to their Proposal.
- 2) Executive Summary.
- 3) Responses to the Questions as well as all of the Information Required (Sections VI.A. and B.).
- 4) Required Attachments (Section VI. C.).

**BPCA reserves the right to reject any Proposals that fail to include any required item described in this Section V. B., including Cover Letters that are unsigned or fail to include each of the above representations (including an appendix, if applicable).**

## **VI. INFORMATION REQUIRED**

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

- 1) Describe your firm's background, services, size, and history and its primary role in providing municipal advisory services to local governments in the State of New York, relevant to the Work.
- 2) Describe your proposed approach and methodology for providing municipal advisory services, with an emphasis on New York State public entities. Explain your leadership in driving the provision of services in partnership with the client.
- 3) Provide a recommended financing plan for the issuance of \$200 million in new bond financing. Given the Authority's existing structure, make any restructuring recommendations. Provide a justification for the recommendations based on the current financial market environment.
- 4) Describe your firm's experience and qualifications as it relates to the Work for public sector entities similar to BPCA or other New York State public entities. Highlight any particular areas of expertise that have not been addressed elsewhere in the proposal.
- 5) Describe your firm's experience or any personnel within your firm with experience as a municipal or financial advisor to BPCA, if any.
- 6) Detail your firm's experience as a municipal advisor for the issuance of municipal debt during the period from January 1, 2019 to present. For each financing please provide the following information (information should be provided in tabular form in an appendix to your Proposal labeled, "Advisory Services - Municipal Debt Issuance 2019 - Present," which will not be counted against the page limit): (a) name of issuer, (b) size and title of issue, (c) date of issue, (d) credit rating, (e) method and type of sale (negotiated or competitive, variable or fixed, new money or refunding), (f) role in investor presentations or rating agency presentations, if any, and (g) the lead advisor responsible at your firm.
- 7) 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, (d) the role supporting BPCA in the Work. Outline the number of active clients being covered that are currently assigned to each team member and the expected percentage of their time available to complete the Work in the next 12 months. Provide each client name (or deal name if confidential) and expected time needed to support their requirements. This can be provided on a monthly or annual timeframe and will be used to gauge availability.
- 8) 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. Provide a description of the expertise and qualifications of these professionals, including brief summaries of relevant experience, highlighting their State of New York experience, where applicable.
- 9) Discuss any recommendations you have regarding how BPCA markets and sells its bonds. Discuss how BPCA can expand its retail marketing efforts and any strategies you may have to expand BPCA's

institutional distributions. Recommend specific marketing approaches BPCA should employ in the short and long term to distinguish its bonds from other issuers.

- 10) 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.
- 11) Describe your proposed team's experience with similar work for other public entities, with an emphasis on New York State public entities.
- 12) Clearly identify any information in your Proposal that you believe to be confidential and exempt from FOIL, and state the reasons. Please note that this question is for informational purposes only, and BPCA will determine, in its sole discretion, whether requested documents are exempt from disclosure under FOIL.
- 13) Identify any and all exceptions taken to BPCA's standard form of contract, attached as Exhibit E, explaining the reasons for such exceptions. Such exceptions must be detailed in an appendix to your Proposal labeled, "Appendix: Objections to BPCA Form of Contract." No exceptions to the Contract will be considered by BPCA after submission of the Proposals. BPCA maintains the right to reject Proposals based on non-conformance with the standard form of Contract.
- 14) Provide three (3) client references for which your firm has served as a municipal advisor during the past twenty-four (24) months, with particular emphasis on clients most similar to BPCA. For each client, describe the project, the project's date, and services performed, and provide the name, address, and telephone number for a key person at client's firm familiar with such work.

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

- 15) 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.
- 16) How does your firm identify and manage conflicts of interest?
- 17) Are there any potential conflict of interest issues posed by your firm's performance of the Work on behalf of BPCA?
- 18) 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? Has your firm and/or any of its principals, or principal subsidiaries or affiliates, been the subject of any investigation relating to the municipal securities industry or any other State or Federal organization that has oversight, regulates or licenses or is otherwise responsible for the municipal securities industry? If so, please describe the relevant facts.
- 19) Within the last five (5) years, has your firm, or a partner or employee in your firm, been involved in litigation, arbitration, disciplinary or other legal proceedings arising from the firm's municipal advisory services, management or handling of municipal securities? If so, please provide an explanation and the current status or disposition of the matter.
- 20) List any professional or personal relationships your firm's partners/employees have or may have with BPCA's Board Members and/or employees, a list of which is attached as Exhibit D.

- 21) 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.
- 22) In the past five (5) years, have any public sector clients terminated their working relationship with your firm? If so, please provide a brief statement of the reasons. Provide the name of the client and provide a contact person, address and telephone number.

**C. Required Attachments**

1) Mandatory Forms:

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

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

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

- 2) Response to the question regarding the use of New York State businesses set forth in Section XII.
- 3) Completed MBE/WBE and EEO Policy Statement and Diversity Practices Questionnaire (attached as part of Exhibit D) along with any supporting information regarding Diversity Practices at the organization.
- 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 C, 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.bpcanewyork.gov](http://www.bpcanewyork.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 key members of the team identified in your Proposal.
- b) Attach the appendix labeled “Advisory Services – Municipal Debt Issuance 2014 – Present” as required by Section VI(A)(4).

**VII. INSURANCE REQUIREMENTS**

**1) General Requirements**

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

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

**2) Insurance Requirements for the Selected Proposer**

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

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

BPCA, BPCPC, and the State of New York must be protected as additional insureds on ISO Form CG 2010 (11/85) or its equivalent on policies held by the selected Proposer and any of its subcontractors. Securing the required limits via a combination of primary and umbrella/excess liability policies is allowed. The General Aggregate limit must apply on a per project basis on the primary General Liability policy should a combination of primary and Umbrella/Excess liability policies be utilized to secure the required total limits of coverage.

- **Workers’ Compensation, Employer’s Liability, and Disability Benefits** shall not be less than statutory limits, including United States Longshore and Harbor Workers Act coverage as applicable to the operations of the Proposer.
- **Professional Liability (“Errors & Omissions”) Insurance** must be maintained at a limit of not less than \$2,000,000 each claim.

### 3) Insurance Requirements for all Subcontractors

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

- **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. Securing the required limits via a combination of primary and umbrella/excess liability policies is allowed. The General Aggregate limit must apply on a per project basis on the primary General Liability policy should a combination of primary and Umbrella/Excess liability policies be utilized to secure the required total limits of coverage.

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

### VIII. COST PROPOSAL; FORMAT AND REQUIRED INCLUSIONS

Each Cost Proposal must include (A) pricing for general financial advisory services on an hourly rate basis by role (or category of employee) and, if selected as the transaction IRMA, (B) pricing for services provided on a specific transaction or bond issuance on a rate-per bond (and/or note) issuance basis (total issuance amount), scaled or flat, with a maximum amount per issuance (for the avoidance of doubt an issuance will include all of the tranches associated with a complete financing structure, whether public or private or negotiated or competitive) basis. Please see subsections A and B below.

All hourly rate pricing provided in the Cost Proposal is to remain valid throughout the entire Initial Contract Term. Adjusted hourly rates may be provided for the Extension Periods; if adjusted rates are not provided in the Cost Proposal, the hourly rates provided for the Initial Contract Term in the Cost Proposal will remain in effect during the Extension Periods. The transactional service rates per bond issuance provided in the Cost Proposal shall remain the same throughout the Initial Contract Term and all Extension Periods.

Please refer to Cost Proposal submission requirements in Section IV.D.

<b>A. General Financial Advisory Services/Hourly Rates</b>	
<p>Hourly rate for provision of services described in Exhibit A-Scope of Work when provided for general financial advice and not as part of a specific transaction or bond issuance, or if not otherwise covered by the rate-per-bond issuance pricing set forth below in Subsection B on a specific transaction or issuance.</p> <p>Hourly rates are to be provided based on the role (title), specifying each staff member assigned to support BPCA by role. The Authority shall be entitled to establish annual, monthly, or per-project caps on maximum permissible hourly fees, provided that such caps shall be established via advance written notice to advisors where applicable. Advisors shall only exceed such caps upon express written authorization by the Authority.</p>	<p>\$ _____ .00/hour by role</p>

<b>B. Transactional Financial Advisory Services/Rate-per-Bonds</b>	
<p>Rate-per-bonds issuance for services provided as part of a specific transaction or bond issuance. The rate-per-bonds issuance pricing is to include all of the services, as needed, outlined in items 1 through 31 inclusive of Exhibit A-Scope of Work.</p> <p>At the sole election of the Authority, any or all transactional services may be requested as general financial advisory services and paid solely on an hourly basis, as per the rates reflected in subsection A above, including for a firm selected as a transaction IRMA.</p>	<p>\$ _____ .00/ bond or as scaled by level of bonds issued</p> <p>\$ _____ .00 maximum per bond issuance</p>
<p>The Authority will select firms based on the best value, which will include consideration of the pricing cost and structure.</p>	

Note that the Authority will not reimburse firms for out-of-pocket expenses pertaining to the fulfillment of their duties as IRMA.

**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://bpcanyc.org/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 Adviser, as well all other key personnel proposed to perform the Work, must be available to participate in the interview, whether such meetings are conducted virtually or in-person.

**C. *Evaluation Criteria for Selection Pre-Qualified Pool***

Selection for inclusion in the Pool will be based upon the following criteria:

1) Technical Evaluation:

- A) Demonstrated relevant experience with public sector entities and knowledge of BPCA ..... 25%
- B) Demonstrated experience and qualifications related to the Work ..... 30%
- C) Experience and expertise of team members and proposal quality:..... 35%
- D) Response to Diversity Practices Questionnaire: ..... 10%

2) Cost Proposal Evaluation.

**D. *Basis for Selection from the Pool***

BPCA may apply additional criteria to determine the successful Proposer for the specific project at the time a Proposer is chosen from the Pool. These criteria may include, but are not limited to, project specific considerations, negotiations, evaluation criteria, and Diversity goals. The Pool is active for five years from the Pool notification date as may be extended, as needed. Selection will be awarded to the highest technically rated Proposer whose Proposal, as may be updated upon request by BPCA related to each assignment, is determined to be responsive and in the best interests of BPCA, subject to a determination that the related Cost Proposal is fair, reasonable, and provides the best value to BPCA given the requirements of the project.

A Firm that has been selected to participate in the Pool may be considered for removal from the Pool at the sole discretion of BPCA.

**E. *Material Change***

All Firms selected to participate in the Pool are required to promptly notify BPCA of a consequential change in a Firm's operational and/or financial condition ("Material Change"), within three (3) weeks of occurrence, throughout the term of the Pool. Material Change includes any of the following:

1. An addition or removal or any staff identified in RFP Proposal;
2. An improvement or deterioration in the in the Proposer's commitment to offering municipal advisory services;
3. Any legal action brought against the Firm subsequent to the initial disclosure provided in the Proposal; and
4. Failure to continue to meet the minimum requirements listed under Section IV.A.

Notification of Material Changes are to be sent to:

Battery Park City Authority  
Office of the Chief Financial Officer  
200 Liberty St., 24<sup>th</sup> floor  
New York, NY 10281

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

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

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

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

**Will New York State businesses be used in the performance of this contract?**

**Yes**       **No**

## EXHIBIT A

### (Scope of Work)

The services to be performed by the Consultant shall include, but not be limited to the following:

1. Act in the capacity of the Authority's Independent Registered Municipal Advisor (IRMA).
2. Assist, when selected, in structuring of each bond issue and/or other sources of funds required to finance approved capital projects.
3. Assist in the preparation and evaluation of requests for proposals ("RFPs") for other professional services related to bond issuance or debt management, such as underwriter RFPs. Assist in the selection of bond financing team(s), including reviewing the capabilities and financial qualifications of proposed investment bankers, underwriters, trustees, escrow agents, escrow verification agents, swap counter parties, and other professionals, as and if appropriate, including tabulating experience, qualifications, and takedown/gross spread of each respondent.
4. Review underwriter or other financial proposals submitted to the Authority, summarize key points and make recommendations.
5. Prepare a pre-pricing book, outlining details of the proposed issuance. Provide market analysis prior to and throughout the pricing period.
6. Assist the Authority with cost-benefit analysis of different structuring options. Provide data on comparable transactions and relevant market indices.
7. Review and participate in any negotiated transaction(s), including: providing financial analysis and marketing advice in connection with current and future financing plans inclusive of review or preparation of a financing schedule and distribution list; advising the Authority on bond pricings, investor and rating agencies relations and presentations; and advising, analyzing and assisting the Authority in connection with the structure and timing of financings and generally identifying and reviewing any potential issues in connection with the foregoing.
8. Provide independent price guidance for each maturity across a range of couponing alternatives using option adjusted spread analyses. Analyze and recommend fair pricing levels based on the Authority's historical pricings and the pricing of comparable credits in the current municipal bond market.
9. Coordinate pricing activities, including gathering and analyzing indicative expressions of interest, for variable rate bond offerings.
10. Provide an independent review of the proposed pricing and other offering terms recommended by the managing underwriter including the components of the gross spread, inclusive of the underwriter discount and other costs of issuance. Review quantitative analyses and verify cash flows performed by the book-running senior manager. Highlight and discuss any changes or key issues. Review and provide input to BPCA on financing issues identified by underwriters.
11. Assist BPCA, if required, in establishing an electronic bidding process, securing contracts for printer and verification agent, and other services as may be required.

12. Review and comment on the retail and institutional marketing plans developed by the underwriters for each bond issue, including investor roadshows. Assist, as requested, with investor outreach and marketing strategy.
13. Conduct or assist in refunding escrow efficiency analysis and in bidding escrows and purchasing open market securities or State & Local Government Securities (“SLGS”). Provide assistance with respect to defeasance/escrow accounts, bond redemptions and prepayments, including reconciliation of cash requirements.
14. Work cooperatively and effectively with Authority personnel, external legal counsel and real estate advisors, including attendance at working groups and other meetings, as well as communications with rating agencies and federal, state and local agencies, entities and officials, as and when needed.
15. Solicit, or assist in the solicitation of, one or more credit ratings on behalf of the Authority, in coordination with the underwriter, with matters pertaining to the Issuer’s credit ratings.
16. Review and comment on all bond and security documents prepared by bond and underwriter counsel.
17. Assist in implementing competitive financings. Competitive financings may be stand- alone or part of a larger negotiated bond sale. Proposer’s responsibilities in this respect shall include but not be limited to the following:
  - a. Prepare notice of sale, and any supplements,
  - b. Prepare bid forms,
  - c. Establish bid procedures and specifications,
  - d. Arrange electronic bidding logistics, if needed,
  - e. Verify winning bids,
  - f. Prepare of cash flows,
  - g. Assist with closing memo logistics,
  - h. Provide certificate(s) for closing.
18. Provide the Authority with weekly updates to summarize issuance status, key open items, and next steps.
19. Provide advice and assistance with variable rate debt facilities and vehicles such as Letters of Credit and Stand-by Bond Purchase Agreements, Floating Rate Notes, and bank loans.
20. Participate in preliminary official statement/offering circular preparation and final official statement/offering circular sessions where and when held.
21. Provide guidance and assistance with investor and rating agency inquiries, meetings, and presentations. Prepare power point presentations of pertinent operating and financial information or other matters to effectively present updates or respond to inquiries, as requested.
22. Review and provide perspective and insight on underwriter reports; review findings with the Authority.
23. Review investment guidelines and recommend improvements. Advise the Authority on debt service payment and debt reserve funds.
24. Upon request, make periodic written and/or oral reports to the Authority’s Board with respect to the Authority’s current, proposed and prospective positions.

25. Assist in evaluating the bond structure and financial implications of the Authority's interest rate derivative agreements and provide financial structuring guidance and recommendations.
26. Make recommendations to the Authority as to liability management and the Authority's outstanding debt, including advice and assistance with respect to defining objectives, performing valuation analyses, structuring, planning, and negotiation.
27. Provide advice to the Authority on all other relevant issues that may arise in connection with the existing or prospective debt position.
28. For any project on which the Consultant has been engaged by the Authority, generally and proactively identifying and evaluating any issues or potential issues and reviewing and advising the Authority on same.
29. Prepare and provide an IRMA Closing Memo for closings as required and/or as requested by the Authority. Steps to be taken include:
  - a. Evaluate finance team performance and bond sale results
  - b. Provide certificate(s) for closing with respect to the bond sale.
  - c. Review all numbers in closing documents for accuracy
  - d. Summarize the issuance, including a follow-up analysis of the sale and final terms, and a summary of retail order information, as well as contributions made by each underwriter.
30. Monitor post-sale trading volume and spreads including an analysis of MSRB trade data showing variances between public issue price and other trades made shortly after the original sale. Provide a summary of notable secondary market trades that occur between pricing and closing, provide commentary, and recommend if any follow-up by the Issuers is warranted based on the data.
31. Perform additional services as needed from time to time including, but not limited to, special projects upon the request of the Issuers and/or other related advisory activities, as requested.
32. Monitor, on an ongoing basis, the Authority's debt positions and make recommendations as to changes that should be made to these positions, as needed. Examine current debt issues and make refunding recommendations for bonds that produce sufficient economic benefit. Evaluate third party refunding proposals and participate in meetings and calls.
33. Provide advice regarding the financial impact of laws and regulations affecting the Authority, including the New York State Finance Law.
34. Assist in developing bonds and debt policies and procedures.
35. Maintain financial debt coverage forecasting models, provide annual debt service forecasting, and assist in determining the annual debt service budget.
36. Keep the Authority informed as to new/innovative financing mechanisms or municipal finance regulator changes, and any federal initiatives that might serve as alternative funding sources.

**EXHIBIT B**

(Diversity Requirements)

**MBE/WBE/SDVOB REQUIREMENTS, MBE/WBE & EEO POLICY STATEMENT AND DIVERSITY PRACTICES QUESTIONNAIRE**

**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 will establish MWBE participation goals, based on the current availability of MWBEs at the time the final RFP is issued. Below is the estimated goal distribution. Vendors are not required to submit a Utilization Plan or designate goal distributions at this time. However, please note that there is a required Diversity section for all proposals that is evaluated as part of the selection process; requirements for that section can be found in the “Evaluation and Selection” section below.

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

**NYS-Certified Minority-Owned Business (“MBE”) Participation: To be determined**

**NYS-Certified Women-Owned Business (“WBE”) Participation: To be determined**

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 successful Proposer will be required to submit M/WBE Contractor Compliance & Payment Reports through the New York State Contract System as requested, or in a different digital or non-digital as agreed to by both parties over the term of the Contract. Notwithstanding, accurately documenting and the timely reporting of progress made toward achievement of the MWBE and SDVOB participation goals of the Contract is the responsibility of the Proposer.

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 RFQ, such finding constitutes a breach of contract and BPCA may withhold or collect payment or other equitable remedies from Proposer of a total amount up to and including the value of liquidated damages as calculated below.

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 Justin McLaughlin Williams at [justin.mclaughlin-williams@bpcanyc.gov](mailto:justin.mclaughlin-williams@bpcanyc.gov) or 212-417-2337. Please note that the NYSCS is a one-stop solution for all of your MBE/WBE and Article 15-A contract requirements. For additional information on the use of the NYSCS to meet the Proposer’s MBE/WBE requirements, please see the attached MBE/WBE guidance from the New York State Division of Minority and Women’s Business Development, “Your MWBE Utilization and Reporting Responsibilities Under Article 15-A.”.

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

- A. An MWBE Utilization Plan with their bid or proposal. Any modifications or changes to an accepted MWBE Utilization Plan after the Contract award and during the term of the Contract must be reported on a revised MWBE Utilization Plan and submitted to BPCA for review and approval.
- B. BPCA will review the submitted MWBE Utilization Plan and advise the selected Proposer of BPCA acceptance or issue a notice of deficiency within 30 days of award or receipt of any revision that is uploaded electronically into the New York State Contract System or via an alternate method of submission agreed to by both parties.
- 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 Justin McLaughlin Williams at BPCA, by email at [justin.mclaughlin-williams@bpcanyc.gov](mailto:justin.mclaughlin-williams@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 MWBE participation goals. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.
- D. BPCA may disqualify a Proposer as being non-responsive under the following circumstances:
  - 1) If a Proposer fails to submit an MWBE Utilization Plan;
  - 2) If a Proposer fails to submit a written remedy to a notice of deficiency;
  - 3) If a Proposer fails to submit a request for waiver; or
  - 4) If BPCA determines that the Proposer has failed to document good faith efforts.

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

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

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

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

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

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

- A. Additionally, a Proposer agrees to submit a Utilization Plan with their bid or Proposal as evidence of compliance with the foregoing. Any modifications or changes to the Utilization Plan after the Contract award and during the term of the Contract must be reported on a revised Utilization Plan and submitted to BPCA.
- B. BPCA will review the submitted Utilization Plan and advise the Proposer of BPCA's acceptance or issue a notice of deficiency within 30 days of receipt.
- C. If a notice of deficiency is issued, Proposer agrees that it shall respond to the notice of deficiency within seven (7) business days of receipt by submitting to Justin McLaughlin Williams at BPCA, by email at [justin.mclaughlin-williams@bpca.ny.gov](mailto:justin.mclaughlin-williams@bpca.ny.gov), a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by BPCA to be inadequate, BPCA 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 Proposal in response to the RFP, Proposer agrees to 1) demonstrate compliance with Section 312 of the New York Executive Law in good faith (Equal employment opportunities for minority group members and women), and 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.

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

Pursuant to Section 312 of the New York Executive Law, contractors and subcontractors will also be required to report the gross wages paid to each of their employees for the work performed by such employees on the contract utilizing the Workforce Utilization Report on a quarterly basis.

Further, pursuant to Article 15 of the Executive Law (the "Human Rights Law"), all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor and sub-contractors will not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and 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 Justin McLaughlin Williams at [justin.mclaughlin-williams@bpca.ny.gov](mailto:justin.mclaughlin-williams@bpca.ny.gov) or 212-417-2337. For verification, in the email, include your business name and contact information.

### VENDOR RESPONSIBILITIES

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

There are several reference materials available to assist you in this process, but to access them, you need to first be registered within the NYSCS. Once you log onto the website, click on the **Help & Support** >> link on the lower left hand corner of the Menu Bar to find recorded trainings and manuals on all features of the NYSCS. You may also click on the **Help & Tools** icon at the top right of your screen to find videos tailored to 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 Justin McLaughlin Williams at [justin.mclaughlin-williams@bpca.ny.gov](mailto:justin.mclaughlin-williams@bpca.ny.gov) or 212-417-2337.

**MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES**

**EQUAL EMPLOYMENT OPPORTUNITY POLICY STATEMENT**

**MBE/WBE AND EEO POLICY STATEMENT**

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

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

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

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

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

Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

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

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

By \_\_\_\_\_

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

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

**MBE/WBE Contract Goals**

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

\_\_\_ % Minority Business Enterprise Participation

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

**EEO Contract Goals** (if applicable)

\_\_\_ % Minority Labor Force Participation

\_\_\_ % Female Labor Force Participation

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

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

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

### Diversity Practices Questionnaire

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

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

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

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

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

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

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

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

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

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

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

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

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

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

If Yes, complete the attached Utilization Plan

---

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

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

Battery Park City Authority Request For Proposals

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

Signature of  
Owner/Official  
Printed Name of  
Signatory  
Title

---

---

---

Name of Business

---

Address

---

City, State, Zip

---

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

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

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

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

**EXHIBIT C**

**(Acknowledgement of Addenda)**

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

**Complete Part I or 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 D**

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

**LIST OF BOARD MEMBERS**

George J. Tsunis

Donald Capoccia

Lester Petracca

Louis J. Bevilacqua

Catherine McVay Hughes

Martha J. Gallo

Anthony Kendall

**LIST OF EMPLOYEES**

Betzayda Abreu	Johnathan Gross	Maril Ortiz
Francis Caamano	Robert Hansen	Bienvenido Osorio
Curtis Afzal	Paul Hart	Hector Oyola
Elsa Alvarez	Nicole Heater	Willem Paillant
Dana Anders	Sankar Heerah	Roman Lora
Anthony Andriano	Raul Hernandez	Nimisha Haribaran Patel
Stephen Arciold	Alex Hing	Gladys Pearlman
Sharmila Baichu	Brendan Hoey	Dahlia Pena
Marie Baptiste	Keiry Holguin	Katherine Powell
Brett Beecham	Craig Hudon	Sandra Power
Freddy Belliard	Jake Jacevicius	Robert Quon
Marieke Bender	Amy Jogie	Jason Rachnowitz
Yipin Benon	William John	Madelin Ramirez
Marcus Billips	Jasmine Johnson	Aline Reynolds
Emily Birdseye	Benjamin Jones	Chad Rimer
Nidia Blake	Jamie Joyeaux	Manual Rivera
LaToya Brooks-Jones	Roland Kemp	Nelson Rogers
Nancy Buivid	Ann Ketring	Jose Rosado
Anthony Buquicchio	Karl Koenig	Holly Ross
Peter Campbell	Varun Kohli	Joel Rufino
Frances Caperchi	Michael LaMancusa	Kwabena Safo
Monica Centeno	Rene Lopcy	Carlos Santiago
Rita Chadha	Janira Lopez	Micah Sapperstein
Julissa Cooke	Rodolfo Machuca	Nicholas Sbordone
Sarah Fisher-Curtin	Robert Maggi	Jean Schwartz
Fiona Cutting	Evelin Maisonet	Bradley Schleyer
Gwen Dawson	Kevin McCabe	Iphigenia Seong
Nicole Dawson	Justin McLaughlin-Williams	Rekha Sewraj-Kumar
Gilbert DePadua	Leah McMillan	Sean Simon
Phillip DeSantis	Princess McNeil	Kemnarine Singh
Joshua DeVoto	Brian Meikle	Sarah Smedley
Paul Diaz-Larui	Vanessa Mesine	Shinay Stewart
Tonasia Dopson	Nazima Mohamed	Jerome Sturiano
Abigail Ehrlich	Ronnie Mohammed	Lance Super
Maria Ellison	Jose Morales	Markus Szejnberg
Richard Faraino	Dana Morgera	Mimi Taft
Anitra Fauntleroy	Franco Morizio	Alexis Torres
Claudia Filomena	Irene Moulketis	Michelle Torres
Tamara Flores	Eric Munson	Ryan Torres
Pamela Frederick	Lauren Murtha	Douglas Van Horn
James Gallagher	Jahmeliah Nathan	Christian Vargas
Abigail Goldenberg	Robert Nesmith	Noe Velasquez
Anastasia Gonzalez	Siu May Ng	Evangelio Villalobos
Lenron Goode	Yoshihiro Nishida	Sharon Wade
Sakina Graves	Anne O'Neill	David Wallace
Ned Greenberg	Kevin O'Toole	Annalise Warren
Evelyn Gregg	Stauart Ohleyer	Eric White

Paul Whitworth  
Dwight Williams  
Al Wright  
Erin Yokoi  
Alaura Zayas

**EXHIBIT E**

**BPCA SAMPLE FORM OF CONTRACT**

CONSULTANT AGREEMENT

between

HUGH L. CAREY BATTERY PARK CITY AUTHORITY

and

[CONSULTANT]

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

Contract No. [CONTRACT #]

([PROJECT NAME])

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EXHIBIT A - SCOPE OF WORK

EXHIBIT B - RATES [if applicable]

EXHIBIT C - FORM OF TIME SHEET [if applicable]

EXHIBIT D - MBWE AND EEO POLICY STATEMENT

## CONSULTANT AGREEMENT

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

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

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

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

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

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

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

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

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

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

#### **3. Compensation**

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

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

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

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

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

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

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

(d) Owner shall pay Consultant no later than the 30<sup>th</sup> calendar day (excluding holidays) following Owner’s receipt of a Proper Invoice (pursuant to, and as such term is defined in Owner’s Prompt Payment Policy, a copy of which can be found at <http://bpca.ny.gov/wp-content/uploads/2018/01/BPCA-Prompt-Payment-Policy-Fiscal-Year-2017.pdf>). Any item(s) of Work indicated in any Exhibit hereto as attributable to a specific phase of the Work that is not performed during the specified phase shall not be compensated by Owner, but payment for any such items of Work shall remain available to Consultant if, with Owner’s advance approval, such Work is actually performed during a subsequent phase of the Work, subject to the provisions of this Article 3 and Owner’s approval of any request for payment. Owner may withhold from any payment an amount equal to any costs or damages incurred by Owner as a result of Consultant’s negligence or breach of this Agreement.

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

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

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

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

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

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

## **5. Consultant Cooperation**

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

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

## **6. Termination**

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

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

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

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

(iii) Consultant shall make a general assignment for the benefit of its creditors, or a receiver or trustee shall have been appointed on account of Consultant's insolvency, or Consultant otherwise shall be or become insolvent, or an order for relief shall have been entered

against Consultant under Chapter 7 or Chapter 11 of Title 11 of the United States Code;

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

(v) Consultant otherwise shall be in default hereunder;

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

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

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

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

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

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

(d) In the event that Consultant, having been terminated, thereafter obtains a

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

## **7. Suspension**

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

## **8. Assignment**

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

## **9. Ownership of Documents**

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

(b) Any plans, drawings, or specifications prepared by or on behalf of Consultant for

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

## **10. Insurance**

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

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

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

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

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

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

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

(i) Worker's Compensation, Employer's Liability insurance (including United States Longshoreman & Harbor Workers and Jones Act coverages) and Disability Benefits during the Term for the benefit of such employees as are required to be insured by the applicable provisions of law and voluntary compensation for employees excluded from statutory benefits.

(ii) Commercial General Liability insurance, as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**11. Authority of Owner**

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

**12. Entire Agreement**

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

**13. Consultant as Independent Contractor**

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

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

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

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

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

**16. Covenants, Representations and Warranties**

(a) Consultant represents and warrants to Owner that:

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

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

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

(b) Consultant covenants and agrees that:

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

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

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

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

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

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

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

## **17. Indemnity**

To the fullest extent allowed by law:

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

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

## **18. Confidentiality**

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

**19. Modification**

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

**20. Waiver**

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

**21. Severability**

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

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

This Agreement shall be construed under, and be governed by, the laws of the State of New York. All actions or proceedings relating, directly or indirectly, to this Agreement shall be litigated only in courts located within the County of New York. Consultant, any guarantor of the performance of its obligations hereunder (“Guarantor”) and their successors and assigns hereby subject themselves to the jurisdiction of any state or federal court located within such county, waive the personal service of any process upon them in any action or proceeding therein and consent that such process be served by certified or registered mail, return receipt requested, directed to the Consultant and any successor at Consultant’s address hereinabove set forth, to Guarantor and any successor at the address set forth in the instrument of guaranty, and to any assignee at the address set forth in the instrument of assignment. Such service shall be deemed made two days after such process is so mailed.

**23. Provisions Required by Law**

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

**24. Notices**

Any notice, approval, consent, acceptance, request, bill, demand or statement required or permitted to be given hereunder (a “Notice”) from either party to the other shall be in writing and shall be deemed given when received by overnight mail or when deposited with the United States Postal Service in a postage prepaid envelope, certified or registered mail, addressed to the other

party at the addresses set forth above. If to Owner, Notices shall be sent to the attention of **[HEAD OF DEPARTMENT]**, with copies to the **[the General Counsel]** and if to Consultant, Notices shall be sent to the attention of **[NAME]**, **[TITLE]**. Either party may at any time change such address or add additional parties to receive a Notice by mailing, as aforesaid, to the other party a Notice thereof.

## **25. Approval and Use of Subconsultants**

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

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

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

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

## **26. Employment and Diversity**

### **26.1 *Participation by Minority and Women-Owned Business Enterprises***

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

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

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

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

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

(b) Contract Goals

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

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

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

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

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

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

(c) Equal Employment Opportunity (“EEO”)

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

(ii) In performing the Agreement, Consultant shall:

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

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

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

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

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

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

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

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

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

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

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

(iv) Workforce Utilization Report

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

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

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

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

(d) MWBE Utilization Plan

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

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

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

(e) Waivers

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

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

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

(g) Liquidated Damages - MWBE Participation

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

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

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

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

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

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

(a) General Provisions

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

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

(b) Contract Goals

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

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

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

(c) SDVOB Utilization Plan

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

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

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

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

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

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

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

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

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

(d) Waivers

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

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

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

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

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

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

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

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

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

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

(f) Monthly SDVOB Consultant Compliance Report

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

(g) Breach of Contract and Damages

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

## **27. Responsibility**

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

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

(c) Upon written notice to Consultant, and a reasonable opportunity to be heard with appropriate officials or staff of Owner, this Agreement may be terminated by Owner or Owner's designee at Consultant's expense where Consultant is determined by Owner or its designee to be

non-responsible. In such event, Owner or its designee may complete the contractual requirements in any manner it deems advisable, and pursue available legal or equitable remedies for breach.

**28. Interest of Others**

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

**29. Executory Contract**

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

**30. Participation in International Boycott Prohibited**

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

**31. MacBride Fair Employment Principles**

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

**32. Limitation Periods**

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

performed work physically at the site of the Work.

**33. Iran Divestment Act**

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

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

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

**35. Comptroller's Approval**

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

**36. Binding Contract**

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

**37. Counterparts**

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

**38. Section Headings**

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

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

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

(SIGNATURE PAGE FOLLOWS)

SAMPLE

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

HUGH L. CAREY BATTERY PARK CITY AUTHORITY

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

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

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

[COMPANY]

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

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

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

FEIN# [???

SAMPLE

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

SAMPLE

**EXHIBIT B**

**RATES**

SAMPLE



**EXHIBIT D**

**M/WBE AND EEO POLICY STATEMENT**

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

**MBWE**

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

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

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

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

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

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

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

**EEO**

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

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

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

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

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

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

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

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