

**BATTERY PARK CITY AUTHORITY**

**REQUEST FOR PROPOSALS**

**FOR**

**Battery Park City Pile Remediation - Permit Services**

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## **I. SUMMARY**

Battery Park City Authority d/b/a Hugh L. Carey Battery Park City Authority (“BPCA”) requests proposals (each individually, a “Proposal” or collectively, the “Proposals”) from firms (each individually, a “Proposer” or collectively, the “Proposers”) to provide permit support services for marine and/or land based construction activities, particularly maintenance and repair of pilings, fendering, bulkheads and other structures located in Battery Park City.

Firms that have successfully acquired multi-year general permits for marine and waterfront work are desired. Familiarity with New York City waterfront facilities and is essential. Innovative approaches to addressing the permitting needs identified within this scope of work are also solicited and encouraged. Interested firms must have personnel with extensive and long term permitting experience in the City of New York.

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

This Request For Proposals, the attachments and any additional information submitted herewith, (collectively, the “RFP”) does not obligate BPCA to complete the selection and contract award process. BPCA reserves the right: 1) to accept or reject any and all Proposals; 2) to request additional information from any or all Proposers to assist BPCA in its evaluation process; 3) to amend or withdraw this RFP prior to the announcement of the selected firm; and 4) to award the proposed services, in whole or in part, to one or more firms. In case of an amendment to the RFP, all Proposers will be provided with a copy of any such amendment(s) and will be afforded the opportunity to revise their Proposals in response to the RFP amendment.

## **II. DESCRIPTION OF BPCA**

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

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

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

One of BPCA’s key responsibilities under the Act is to operate, maintain and repair the parks and opens spaces in and around Battery Park City’s residential and commercial areas. This function has been delegated by BPCA to the Battery Park City Parks Conservancy Corporation (“BPCPC”) through a written Management Agreement. The BPCPC carries out its mission by maintaining 36 acres of parks, playgrounds and open spaces, including a mile-long waterfront

esplanade. The BPCPC also develops programs and manages public events for the Battery Park City community. BPCA owns and has built out a commercial condominium unit in a residential building in Battery Park City, which serves as the BPCPC Maintenance Facility.

To obtain a copy of BPCA's most recently completed audited financial statements, please visit BPCA's official website at [www.batteryparkcity.org](http://www.batteryparkcity.org). The audited financial statements and related reports found on BPCA's website will provide you with an overview of the operations for which BPCA is responsible and the areas of expertise in which the selected Proposer must be proficient. For an overview of BPCPC's operations, please visit its website at [www.bpcparks.org](http://www.bpcparks.org).

### **III. SERVICES REQUIRED**

A. All work to be performed by the selected Proposer shall be performed under the supervision of a Project Manager in charge of this engagement (the "Lead Manager") who must ensure that the work completed for BPCA is performed competently and in a timely manner.

B. Proposer will be responsible for the services delineated in Exhibit A (the "Scope of Work"), attached hereto.

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

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

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

- Request for Proposals issued: Friday October 11, 2013
- Pre-proposal meeting: Thursday October 17, 2013 at 9:30 AM. Meeting Location: Battery Park City Authority, One World Financial Center 24th fl, New York, NY 10281 (attendance is highly recommended).
- Deadline to submit questions to BPCA: Tuesday October 22, 2013 by 5:00 p.m. (by email only).

All questions regarding this RFP should be submitted in writing via email to the "Designated Contact": Della Lee, Battery Park City Authority, at [Della.Lee@batteryparkcity.org](mailto:Della.Lee@batteryparkcity.org).

- Deadline for BPCA's response to substantive questions: Friday October 25, 2013 (via BPCA Website).

**■ DUE DATE FOR RESPONSES TO RFP: Wednesday November 6, 2013 by 3:00 p.m. (the "Due Date")**

- Selection and notification of successful Proposer: To be determined.
- Contract start date: November 2013.

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

It is anticipated that the term of the contract awarded pursuant to this RFP (the "Contract") will be for a period of twelve (12) months. BPCA reserves the right to terminate the Contract at any time, with or without cause, upon thirty (30) days written notice. BPCA reserves the right to terminate the Contract at any time, without prior notice, if the partner identified in the Proposal as the Lead Manager for this engagement ceases to be employed by the selected Proposer.

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

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

- 1) The firm must be authorized to do business in the State of New York.
- 2) The firm shall have a minimum of five (5) years experience in providing permit support for marine based repair/maintenance or new marine construction in New York City

## **V. GENERAL REQUIREMENTS**

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

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

For questions relating to MBE/WBE participation, joint ventures and sub-contracting goals ONLY, please contact “MBE/WBE Designated Contact” Mr. Anthony Peterson at 212.417.2337.

### **B. Restricted Period**

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

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

#### **Proposals are due no later than 3:00 p.m. on November 6, 2013.**

Proposers must submit six (6) paper copies of their Proposals and one (1) electronic CD-Rom copy in a sealed package clearly marked “**Proposal Enclosed – Battery Park City Pile Remediation - Permit Services**” to the Designated Contact by messenger, overnight courier or certified mail to the following address:

Della Lee  
Battery Park City Authority  
One World Financial Center, 24<sup>th</sup> Floor  
New York, NY 10281

BPCA is not responsible for any internal or external delivery delays which may cause any Proposal to arrive beyond the stated Due Date. To be considered, Proposals must arrive at the time and place specified herein and be time stamped by BPCA’s time stamp prior to the Due Date. Please leave ample time for building security, as late Proposals will not be accepted. Proposals submitted by fax or electronic transmission will NOT be accepted. A Proposer may, after submitting a Proposal, amend its Proposal by submitting a second, amended Proposal, clearly labeled “**Amended Proposal Enclosed – Battery Park City Pile Remediation - Permit Services,**” as long as the amended Proposal is submitted by the Due Date.

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

#### **D. Mandatory Forms**

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

These Mandatory Forms include the following:

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

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

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

The Proposal must be printed on either 8½” x 11” or 8½” x 14” paper. The Proposal will be evaluated on the basis of its content, not length. BPCA reserves the right to disqualify Proposals that fail to comply with any of these instructions.

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

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

- 1) Cover Letter, as follows:

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

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

- 2) Corporate Overview.
- 3) Firm’s discussion of its understanding of the Services Required (see Section III).
- 4) Firm’s Responses to the RFP Questions and RFP Additional Information Request, set forth below.

- 5) Firm's Cost Proposal, as described below.
- 6) Firm's Staffing Chart for the project.

**C. RFP Questions**

1. Briefly describe your firm's background, staff, and history as they may be relevant to services required, with an emphasis on marine related projects. If your firm has offices at more than one location, please indicate which office will provide the services.
2. Describe your firm's experience and expertise that is relevant to the project, including permitting for marine based projects, located in New York City.
3. Has your firm or any of the firm's partners/employees been disciplined or censured by any regulatory body or filed for bankruptcy or reorganization or has had bankruptcy proceedings initiated against it/them within the last 5 years? If so, please describe the relevant facts.
4. Are there any potential conflict of interest issues in representing BPCA?
5. Are any of your employees or principals former employees of BPCA? If so, please list their names, current titles, and dates of employment with BPCA.
6. List any professional or personal relationships your firm's employees may have with BPCA's Board and/or staff members.
7. Identify the Lead Manager who will be the primary contact and Lead Manager in providing services to BPCA, and who will be listed as a "key person" in any contract with BPCA.
8. Describe your proposed team's experience (including both direct contract work and work performed under subcontracts) with similar work for other public agencies and authorities, with a particular emphasis on New York State and City agencies and authorities or Federal government agencies or authorities. Include contract dates, the nature of the work performed, the contracting agency, the contract number (if known) and the agency supervisor for each.
9. Submit a discussion of your approach to the Work which briefly addresses your conceptual step-by-step approach towards completion of the work and outlines your proposed procedures for executing the work.
10. Itemize the work you intend to perform with your firm's resources and/or workforce as well as the work for which you propose to utilize sub-consultants.
11. Provide a list of all proposed sub-consultants for completion of the Work.
12. Discuss your ability to ensure stringent safety measures for work done in occupied office spaces.
13. Identify any and all exceptions taken to BPCA's standard form of contract attached hereto as Exhibit C and detail the reasons for such exceptions. No exceptions to the contract will be considered by BPCA after submission of the proposals, **including to the insurance provisions of the contract**. BPCA maintains the right to reject proposals based on non-conformance with the standard form of contract.
14. Provide any additional information which would serve to distinguish your firm from other firms and that you believe may be relevant to this RFP and your capability to perform the services requested.
15. Describe your firm's backup plan in the event one or more of your staff assigned to this engagement leave your firm.

**D. RFP Additional Information Request**

1) Insurance:

- a. Do you impose any limitations on liability through your contracts?
- b. Describe the levels of coverage for any insurance your firm carries. List the insurance carrier(s) or provide an insurance certificate showing your firm's coverage in accordance with the following:

- Commercial General Liability Insurance limits shall not be less than \$1,000,000 per each occurrence and \$2,000,000 in the aggregate; Excess Liability limits shall not be less than \$1,000,000; Automobile Liability limits shall not be less than \$1,000,000; and Workman's Compensation not less than Statutory Limits/\$1,000,000, Products/Completed Operations \$1,000,000 & Personal/Advertising Injury \$1,000,000. **The costs of the insurance shall be included in the Proposal.** BPCA, BPCPC and the State of New York should be listed as Additional Insured on CG 2010 (11/85) or similar and should be included on all levels of insurance held by sub-consultants. Policies should contain no limitations/exclusions for Labor Law claims.

2) References:

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

3) Appendices:

- a. Include resumes for all key management personnel listed in your Proposal, including the staff that your firm is proposing to assign to this project.
- b. Provide a copy of each addenda submitted by BPCA with regard to this Proposal (if applicable) and a signed acknowledgment of receipt of each addenda.

4) Financial Statements:

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

**E. Cost Proposal**

Each "Cost Proposal" must be a lump sum with an itemized schedule of values for the services contemplated herein. **To submit a complete Cost Proposal, Proposer must submit each of the following:**

- 1) Cost Proposal in the form attached hereto as Exhibit D ("Cost Proposal Form").
- 2) Labor rates in the form attached hereto as Exhibit E ("Technical Salary Rates").

**VII. THE EVALUATION PROCESS**

**A. Objectives**

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

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

The selection process will begin with the review and evaluation of each of the written Proposals. The purpose of this evaluation process is twofold: (1) to examine the responses for compliance with this RFP; and (2) to identify the complying firms that have the highest probability of satisfactorily performing the Services Required at a



reasonable cost to BPCA. The evaluation process will be conducted in a comprehensive and impartial manner. The evaluation process will be conducted by a committee of BPCA's employees selected by BPCA (the "Committee"). **The Committee will evaluate the Proposals based upon the evaluation criteria for selection set forth below.**

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

#### **B. Interviews**

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

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

Selection will be based upon the following criteria:

- |   |  |            |
|---|--|------------|
| 1 | Cost Proposal:   | <b>30%</b> |
| 2 | Expertise & Experience:  | <b>35%</b> |
| 3 | Schedule, Staffing & Methodology   | <b>25%</b> |
| 4 | Proposed MBE/WBE utilization plan (the "Utilization Plan") and/or Firm MBE/WBE status: | <b>10%</b> |

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

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

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

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

**EXHIBIT A**

**SCOPE OF WORK**

The selected Proposer (“Consultant”) shall provide permit support services for the following activities:

- Marine or land-based construction activities particularly repair and maintenance of pilings, fendering, bulkheads and other structures located in Battery Park City. These structures must be inspected, maintained and periodically repaired or rehabilitated in order to maintain their long term integrity and utility.
- BPCA’s current multi-year pile repair program and/or routine maintenance and repair of waterfront structures. Engineering and design of facilities are not part of the current scope of services.

The selected Proposer must procure all applicable permits including, but not be limited to:

- New York State Department of Environmental Conservation
  - Title 5, Article 25 – Tidal Wetlands
  - Title 5, Article 15 – Protection of Waters
  - Section 401 Water Quality Certification
- U.S. Army Corps of Engineers
  - Section 10, Rivers and Harbors Act of 1899 – Work in Navigable Waters
  - Section 404, Clean Water Act – Discharge of Dredge and Fill Material
- New York State Department of State, Division of Coastal Resources, Coastal Management Program
  - Federal Consistency Assessment Review
- New York City Department of City Planning
  - New York City Waterfront Revitalization Program Consistency Assessment Form

## **EXHIBIT B**

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

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

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

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

For purposes of this solicitation, BPCA hereby establishes an overall goal of 20% for MBE/WBE participation, 10 % for MBE participation and 10% for WBE participation (based on the current availability of qualified MBEs and WBEs). A contractor (“Contractor”) on the Contract must document good faith efforts to provide meaningful participation by MBE/WBEs as subcontractors or suppliers in the performance of the Contract and Contractor agrees that BPCA may withhold payment pending receipt of the required MBE/WBE documentation. The directory of New York State Certified MBE/WBEs can be viewed at: <http://www.esd.ny.gov/mwbe.html>.

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

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

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

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

- A. Proposers are required to submit a Utilization Plan with their bid or Proposal. Any modifications or changes to the Utilization Plan after the Contract award and during the term of the Contract must be reported on a revised Utilization Plan and submitted to BPCA.

- B. BPCA will review the submitted Utilization Plan and advise the Proposer of BPCA's acceptance or issue a notice of deficiency within 30 days of receipt.
- C. If a notice of deficiency is issued, Proposer agrees that it shall respond to the notice of deficiency within seven (7) business days of receipt by submitting to BPCA, at the address specified in this RFP, or by facsimile at 212-417-2279 a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by BPCA to be inadequate, BPCA shall notify the Proposer and direct the Proposer to submit, within five (5) business days, a request for a partial or total waiver of MBE/WBE participation goals. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or Proposal.
- D. BPCA may disqualify a Proposer as being non-responsive under the following circumstances:
  - 1) If a Proposer fails to submit a Utilization Plan;
  - 2) If a Proposer fails to submit a written remedy to a notice of deficiency;
  - 3) If a Proposer fails to submit a request for waiver; or
  - 4) If BPCA determines that the Proposer has failed to document good faith efforts.

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

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

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

The Contractor is required to ensure that it and any subcontractors awarded a subcontract over \$25,000 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor, shall undertake or continue programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, equal opportunity shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, and rates of pay or other forms of compensation. This requirement does not apply to: (i) work, goods, or services unrelated to the Contract or (ii) employment outside New York State.

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

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

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

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

**EXHIBIT C**

**BPCA's standard form of contract**

(attached)

MODEL CONSULTANT AGREEMENT  
[Updated February 2001]

**CONSULTANT AGREEMENT**

**between**

**BATTERY PARK CITY AUTHORITY**

**d/b/a HUGH L. CAREY BATTERY PARK CITY AUTHORITY**

**and**

**[NAME OF CONSULTANT]**

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

**Contract No. \_\_\_\_\_**

## CONSULTANT AGREEMENT

AGREEMENT made as of \_\_\_\_\_ between BATTERY PARK CITY AUTHORITY, d/b/a Hugh L. Carey Battery Park City Authority, a body corporate and politic, constituting a public benefit corporation, having a place of business at One World Financial Center, New York, NY 10281 ("Owner") and \_\_\_\_\_, a \_\_\_\_\_ formed pursuant to the laws of the State of New York, having an office at \_\_\_\_\_ ("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 ("Battery Park City"); and

WHEREAS, Owner is in the process of creating the staged development of 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 \_\_\_\_\_ 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, directly or through the use of consultants, contractors or other third parties (collectively, "Subconsultants"<sup>1</sup>), all the services described in the Scope of Work attached hereto as Exhibit A (the "Work") and in accordance with any schedule for the Work set forth therein. Owner hereby acknowledges that certain portions of the Work may have been performed by Consultant prior to the date hereof, in anticipation of this Agreement.

<sup>1</sup> The Subconsultants are \_\_\_\_\_.



2. Time for Performance

The Work shall commence on the date hereof and terminate not later than \_\_\_\_\_ unless this Agreement is otherwise terminated as hereinafter provided or the time for performance of the Work is extended by Owner upon written notice.

3. Compensation

(a) Consultant shall be entitled to receive as compensation ("Fee") for the Work an amount equal to the lower of (1) \$\_\_\_\_\_ or (2) the amount obtained by multiplying the relevant hourly rates set forth in Exhibit B<sup>2</sup> hereto by the number of hours worked by Consultant. **[if applicable: The Fee includes reimbursement 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 written requests for payment on or about the first (1st) day of each calendar month for Work actually performed by it during the immediately preceding calendar month. Each request shall be accompanied by a statement of Work performed and, at Owner's discretion, time sheets or comparable documentation indicating hours worked in each category **[delete the preceeding underlined phrase if Compensation is based on a fixed Fee]**. Owner shall pay Consultant so much of the amount requested as may be approved by Owner not later than the 30th day following Owner's receipt of each written request. Any amounts indicated in any exhibit hereto as attributable to any phase of the Work which do not in fact become payable to Consultant with respect to such phase of the Work shall be available for payment to Consultant with respect to subsequent phases of the Work, subject to the provisions of this Article 3 and the approval of Owner.

(b) Consultant shall also be reimbursed in accordance with Owner's standard policies for reasonable expenses actually incurred ("Reimbursable Expenses") by Consultant in connection with the performance of the Work, such expenses not to exceed \$\_\_\_\_\_. **[THIS SECTION SHOULD BE OMITTED IF REIMBURSABLE EXPENSES ARE INCLUDED IN THE FEE AS SET FORTH ABOVE.]**

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

Battery Park City Authority  
Office of the Treasurer  
Attention: Accounts Payable  
One World Financial Center, 24th Floor  
New York, New York 10281-1097

A duplicate copy is to be sent to the attention of **[name of project manager.]**

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<sup>2</sup> Subject to the approval of Owner, which shall not be unreasonably withheld, Consultant may substitute personnel during the term of the Agreement, provided that the title(s) and hourly rate(s) for such person(s) remain the same.

4. Increase and Decrease in the Scope of Consultant's Work

Owner shall have the right to make changes or to increase or reduce the scope of the Work or to extend the period set forth in the time schedule in Section 2, at any time and for any reason, upon written notice to Consultant specifying the nature and extent of such changes. In the event any such changes as contemplated herein results in an additional expenditure of time by Consultant or Subconsultant (as hereinafter defined), Owner will pay Consultant an additional fee computed in accordance with the hourly rates set forth in Exhibit B, or if no such rates are set forth, upon terms to be agreed upon.

5. Consultant Cooperation

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.

6. Termination

(a) Consultant acknowledges that Owner may cancel or terminate this Agreement at any time, in whole or in part, without incurring any penalty or damages on account of such cancellations or termination upon three (3) days' written notice, in which event, except as otherwise provided herein, all of Owner's liability hereunder shall cease and terminate as of the date specified in such notice.

(b) If Owner shall so terminate this Agreement for reasons other than those set forth in subsection 6(c), then, with respect to the Work which is the subject of such termination, Consultant shall be entitled to that portion of the Fee which has not theretofore been paid to Consultant and which shall compensate Consultant for all such Work actually and satisfactorily performed by it up to the date of such termination.

(c) Anything herein contained to the contrary notwithstanding, 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;

then Owner may terminate this Agreement as to Consultant for cause, in accordance with the procedure set forth in Subsection 6(a) hereof. Upon termination pursuant to this Subsection 6(c), Consultant shall be entitled to that portion of the Fee which has not theretofore been paid to Consultant and which 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 such amount all additional costs and expenses which Owner may incur to correct and/or complete the Work 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.

(d) 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 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) terminate, or if so directed by Owner, transfer to Owner all Subconsultant contracts, commitments and other agreements made by Consultant relating to the Work;

(iii) transfer to owner in the manner, to the extent, and at the time directed by Owner, all 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.

(e) In the event that the CM, having been terminated for cause pursuant to subsection 6(c), 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 CM shall be entitled to be reimbursed and paid as provided in subsection 6(b) but to no other payments or damages.

(f) Every Subconsultant contract shall include (1) a provision authorizing termination by the CM (in form and substance similar to subsection 6(a) through 6(d)) in the event of a termination of the CM by the Owner, and (2) a provision under which the Subconsultant agrees that its obligations shall be assigned to the Owner, at Owner's option, upon a termination of this Agreement under subsection 6(a), 6(b) or 6(c). *(See Section 25.)*

7. Suspension

Owner may, at any time and for any reason, direct Consultant to delay or suspend the Work or any part thereof under this Agreement for a period of time. Such direction shall be in writing and shall specify the period during which such Work is to be stopped. Consultant shall resume such Work upon the date specified in such direction, or upon such other date as Owner may thereafter specify in writing upon reasonable notice to Consultant, provided, however, that if Owner shall direct a Work stoppage period of more than three (3) months, Consultant, no later than seventy-five (75) days prior to the final day of such Work stoppage period may terminate this Agreement and shall be entitled upon such termination to payment of such amount of the Fee which has not theretofore been paid to Consultant and which shall compensate Consultant for the Work actually and satisfactorily performed by it prior to the termination date.

8. Assignment

Consultant shall have no right to assign, transfer, convey, pledge or otherwise dispose of Consultant's interest in this Agreement without the prior express written consent of Owner.

9. Ownership of Documents

All plans, models and other material prepared and furnished by Consultant or any Subconsultants in connection with the Work shall become the property of Owner. Such documents may be used by Owner, in whole or in part, or in modified form, for all purposes Owner may deem advisable without further employment of, or payment of any additional compensation to, Consultant.

10. Insurance

(a) Consultant shall **provide, or cause to be provided, and thereafter shall keep or cause to be kept in full force and effect** ~~carry, and shall require each Subconsultant to carry,~~ the following insurance:

(i) Workers' Compensation and New York State Disability Benefits Insurance covering all persons employed or retained by Consultant or Subconsultants in connection with the Work.

(ii) Professional Liability Insurance with limits of liability in amounts not less than Two Million Dollars (\$2,000,000) for Consultant, and not less than One Million Dollars (\$1,000,000) for each Subconsultant insuring Consultant, each Subconsultant and any of their respective officers, directors, stockholders, employees, consultants and partners, for liability arising out of the carrying out of Consultant's or Subconsultant's professional responsibilities for the Work. All such professional liability policies shall include coverage for contractual liability, including the matters set forth in Section 17 hereof.

**[INCLUDE FOLLOWING VALUABLE PAPERS INSURANCE AS SET FORTH ABOVE WHERE NATURE OF WORK INVOLVES PREPARATION OF ARCHITECTURAL/ENGINEERING DOCUMENTS SUCH AS DESIGN DRAWINGS AND SCHEMATICS.]**

(iii) Valuable Papers Insurance insuring, for the benefit of Consultant and Owner all plans, designs, drawings, specifications and documents used under this Agreement by Consultant or any Subconsultant in a total amount of not less than Fifty Thousand Dollars (\$50,000). Consultant may furnish full coverage under one policy or may submit separate policies from the Subconsultants for their proportionate shares of such coverage

**[INCLUDE FOLLOWING GENERAL AND AUTOMOBILE LIABILITY INSURANCE WHERE NATURE OF WORK INVOLVES PHYSICAL PRESENCE OF CONSULTANT ON SITE, EXCEPT MERE ATTENDANCE AT MEETINGS]**

(iv) Comprehensive General Liability covering the liability of Consultant for all the Work and operations relating thereto and all obligations assumed by Consultant under this Agreement in an amount which shall not be less than the following limits:

Combined Single Limits, Bodily Injury and Property Damage Liability	
\$2,000,000 . . . . .	Aggregate
\$1,000,000 . . . . .	Each Occurrence

The said insurance shall name Owner, **Battery Park City Parks Conservancy Corporation and the State of New York** as additional insureds as respects this location shall, where applicable, be written on an occurrence basis and shall contain a provision that it is primary and that any similar insurance which Owner, Consultant or a Subconsultant elects to carry for their own benefit is secondary or excess and not contributing insurance.

(v.) Automobile Liability and Property Damage Insurance as follows: A policy covering the use in connection with the Work of all owned, non-owned and hired vehicles bearing, or under the circumstances under which such vehicles are being used being required by the Motor Vehicle Laws of the State of New York to bear license plates. The coverage under such policy shall not be less than the following limits:

Combined Single Limits,  
Bodily Injury and Property Damage Liability

\$1,000,000 per each occurrence.

(b) All required insurance shall be maintained with responsible insurance carriers authorized to do business in the State of New York and approved by Owner. Upon execution of this Agreement and before commencing any performance hereunder, Consultant shall deposit with Owner the original policies of insurance, or certificates therefor, bearing notations or accompanied by other evidence satisfactory to Owner of the payment of all premium payments thereunder. Thereafter, certification of all premium payments shall be deposited with Owner not less than ten (10) days before the expiration dates of the policies. In the case of Valuable Papers Insurance, original policies, not certificates, must be deposited.

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

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

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

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

(i) Worker's Compensation and New York State disability benefits insurance **[and general liability insurance and automobile liability insurance, if applicable]** shall be kept in force until receipt of final payment by Consultant hereunder. This Agreement shall be void and of no force or effect unless, in compliance with the Workers' Compensation Law, Consultant, or Subconsultants, as the case may be, shall secure Workers Compensation Insurance for such of their respective employees engaged in the performance of the Work as are required to be insured under said law.

(ii) Professional Liability Insurance shall be kept in force for the earlier of six (6) years after the completion of the performance of the Work hereunder or six (6) years after termination of this Agreement.

(iii) Valuable Papers Insurance shall be kept in full force and effect until final delivery of all documents prepared by Consultant and/or Subconsultants in connection with the Work.

11. Authority of Owner

The Work shall be subject to the general supervision, direction, control and approval of Owner or its authorized representative, 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. However, nothing in this paragraph shall excuse or relieve Consultant of its failure to comply with any of its responsibilities hereunder.

12. Entire Agreement

This Agreement, including Owner's Prompt Payment Policy annexed 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, or, in the event of litigation concerning the Consultant's Work, until the conclusion of such litigation, 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 from time to time 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

The acceptance by Consultant of the final payment under this Agreement, or any final payment due on earlier 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 which 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 not later than the making of the final payment. It is expressly understood and agreed that Owner's or Consultant's termination of this Agreement pursuant to Sections 6 or 7 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 or Section 7, as the case may be.

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 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 Subconsultants used by Consultant in the performance of its obligations hereunder shall be qualified in all respects for such assignment, employment and use;

(iii) Consultant, in the performance of its obligations hereunder, 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 which is in any way related to the Work, Consultant shall diligently render to Owner any and all assistance which 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.

#### 17. Indemnity

(a) To the fullest extent permitted by law, Consultant shall be liable to, and shall indemnify Owner, each Member, officer, agent and employee of Owner (the "Indemnitees") 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 and disbursements, arising out of the performance of the Work or the breach of any of the provisions set forth in Section 16 hereof, except to the extent caused by or resulting from the negligence of an Indemnatee, and Consultant shall defend any suit or action brought against Owner or any Indemnatee which is based on any loss or liability or alleged loss or liability indemnified herein, except that the CM shall not be required to indemnify or hold harmless the Indemnitees against liability for damages arising out of bodily injury to persons or damage to property caused by or resulting from the negligence of an Indemnatee.

(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.

(c) Consultant shall include in each contract it enters into with a Subconsultant (as defined below) a provision whereby the Subconsultant shall be liable for and agree to indemnify, defend and hold harmless the Indemnitees in terms substantially similar to those pertaining to Consultant in the preceding subsections of this Section 17.

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 change, termination or purported 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

No failure to enforce or exercise any right, remedy, privilege or recourse accorded to either party under this Agreement shall diminish or waive the right, remedy, privilege or recourse, or affect the entitlement of either party thereafter to enforce or exercise the same in the event of another situation, whether or not similar.

21. Severability

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

22. Applicable Law, Forum and Jurisdiction

(a) This Agreement shall be construed under, and be governed by, the laws of the State of New York.

(b) All actions or proceedings relating, directly or indirectly, to this Agreement shall be litigated only in courts located within the County of New York.

(c) 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

All provisions required by law to be included in this Agreement shall be deemed to be included herein with the same effect as if set forth in full herein.

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: **(i) when delivered (if delivered by hand); (ii) one business day after the date when deposited with a reputable national overnight courier service; or (iii) three business days after the date when deposited with the United States Postal Service in a postage prepaid envelope, certified or registered mail.** If to Owner, Notices shall be sent to the attention of \_\_\_\_\_, with a copy to the General Counsel, and if to Consultant, Notices shall be sent to the attention of \_\_\_\_\_. **All Notices shall be addressed to the other party as set forth above; however,** either party may at any time change such address or add additional individuals 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 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, at Owner's option, 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. However, the parties recognize, and any Subconsultants engaged by Consultant shall be advised, that Owner shall be a third-party beneficiary of any agreement between Consultant and a Subconsultant. At the request of Owner, Consultant shall provide Owner a copy of any such agreement between Consultant and a Subconsultant.

(c) 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 Affirmative Action

### 26.1 Definitions

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

(a) "Affirmative Action Program." The program by which Owner shall monitor Consultant's compliance with the requirements set forth in (i) the MBE/WBE Required Participation Plan and (ii) the Utilization Plan.

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

(c) "Division". The Division of Minority and Women's Business Development of the New York State Department of Economic Development.

(d) "Director." The Director or the Executive Director of the Division.

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

(f) "MBE/WBE Required Participation Plan." The plan previously submitted by a Consultant to Owner listing the certified MBEs and/or WBEs which the

Consultant intends to use in the performance of this agreement in order to ensure that MBEs and WBEs are awarded a fair share of the total dollar value that is to be paid for the Work.

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

- (i) Black persons having origins in any of the Black African racial groups;
- (ii) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American descent of either Indian or Hispanic origin, regardless of race;
- (iii) Native American or Alaskan native persons having origins in any of the original peoples of North America; or
- (iv) Asian and Pacific Islander persons having origins in any of the Far East countries, South East Asia, the Indian subcontinent or the Pacific Islands.

(h) "Minority-owned Business Enterprise" ("MBE"). A business enterprise, including a sole proprietorship, partnership or corporation that is:

- (i) at least 51 percent owned by one or more Minority Group Members;
- (ii) an enterprise in which such minority ownership is real, substantial and continuing;
- (iii) an enterprise in which such minority ownership has and exercises the authority to control and operate, independently, the day-to-day business decisions of the enterprise; and
- (iv) an enterprise authorized to do business in the State of New York and is independently owned and operated.

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

(j) "Utilization Plan." A plan previously submitted by Consultant to Owner which sets forth the proposed percentages of employees who are either Minority Group Members or women and who will be used by Consultant to perform the Work.

(k) "Women-owned Business Enterprise" ("WBE"). A business enterprise, including a sole proprietorship, partnership or corporation that is:

- (i) at least 51 percent owned by one or more United States citizens or permanent resident aliens who are women;
- (ii) an enterprise in which the ownership interest of such women is real, substantial and continuing;
- (iii) an enterprise in which such women ownership has and exercises the authority to control and operate, independently, the day-to-day business decisions of the enterprise; and
- (iv) an enterprise authorized to do business in the State of New York and which is independently owned and operated.

26.2 Equal Employment Opportunities for Minority Group Members and Women

- (a) During the performance of the Work, Consultant agrees as follows:
  - (i) Consultant shall not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status; shall undertake or continue existing programs of affirmative action to ensure that Minority Group Members and women are afforded equal employment opportunities without discrimination; and shall make and document its good faith effort to achieve prompt and full utilization of Minority Group Members and women at all levels and in all segments of its work force where deficiencies exist.
  - (ii) At the request of Owner, Consultant shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will

affirmatively cooperate in the implementation of Consultant's obligations herein.

- (iii) Consultant shall state in all solicitations or advertisements for employees that in the performance of the Work, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.
- (iv) Consultant and any Subconsultant shall be required to submit compliance reports in accordance with this Section 26 relating to their operations and the implementation of the Affirmative Action Program in effect as of the date of execution of this Agreement.

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

(c) Miscellaneous

- (i) The provisions of this section shall not be binding upon Consultant or its Subconsultants in the performance of Work or the providing of services, or any other activities that are unrelated, separate or distinct from this Agreement as expressed by its terms.
- (ii) The requirements of this section shall not apply to any employment outside New York State, or application for employment outside such state, or solicitations, or advertisements therefore, or any existing programs of affirmative action regarding employment outside New York State and the effect of contract provisions required by this section shall be so limited.

(d) Enforcement

The parties agree to be bound by provisions of Article 15-A, Section 317 of the Executive Law of the State of New York and by the regulations adopted pursuant thereunder.

### 26.3 Workforce Participation

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

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

(c) Consultant shall not participate in the transfer of Minority Group Member employees or women employees from employer to employer or from project to project for the sole purpose of satisfying the participation goals above set forth.

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

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

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

- (i) Owner may require that Consultant submit Utilization Compliance Reports for the duration of this contract to Owner regarding Consultant's operation and implementation of the Utilization Plan portion of the Affirmative Action Program in effect as of the date of execution of this Agreement.
- (ii) The Utilization Compliance Reports shall include information on any Subconsultant involved in the performance of the contract with regard to the Subconsultant's compliance with the Affirmative Action Program.



- (iii) The Utilization Compliance Reports shall include, but are not limited to the following:
  - (1) a breakdown of the Subconsultants by ethnic background, gender or such other categories as may be required by Owner;
  - (2) the actions the Consultant and Subconsultants have taken to meet the components of the Affirmative Action Program;
  - (3) how Consultant and Subconsultants intend to utilize participation of Minority Group Members and women in their workforce in connection with the performance of the Work and timetables therefor during the remainder of their performance of the Work.

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

#### 26.4 Minority Business Enterprise (MBE) Participation and Women's Business Enterprise (WBE) Participation

(a) Consultant shall make good faith efforts to attain the participation of \_\_\_\_% MBEs and \_\_\_\_% WBEs in the total dollar value of the Work.

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

- (i) if an MBE and WBE is not the Consultant -- the dollar value of the Work subcontracted to MBEs and WBEs; provided, however, that where materials are purchased from an MBE and WBE which acts merely as a conduit for goods manufactured or produced by a non-MBE and non-WBE, only that portion of the price paid for such materials which will accrue as profit to the MBE or WBE and/or the Fee received by the MBE and WBE shall be included;
- (ii) if Consultant is a joint venture including one or more MBEs and WBEs as joint venturers -- the Fee multiplied by the percentage of the joint venture's profits (or losses)

which are to accrue to the MBE and WBE joint venturer(s) under the joint venture agreement; and

- (iii) if an MBE and WBE is Consultant or where Consultant is a joint venture consisting entirely of MBEs and WBEs -- the Fee.

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

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

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

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

- (3) making plans and specifications for prospective work available to MBEs and WBEs in sufficient time for review;

- (4) utilizing the services and cooperating with those organizations providing technical assistance to Owner in connection with the participation of MBEs and WBEs in the project to which the Work relates;

- (5) encouraging the formation of joint ventures, partnerships or other similar arrangements among subcontractors where appropriate;

- (6) ensuring that provision is made to provide progress payments to MBEs and WBEs on a timely basis; and

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

(ii) MBE/WBE Compliance Reports which shall be submitted to the Affirmative Action Officer on the monthly basis.

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

- (1) the name, address and telephone number of each certified MBE and WBE which Consultant is using or intends to use to comply with the MBE/WBE Required Participation Plan.
- (2) a brief description of the contract scope of work to be performed for the Consultant by each certified MBE and WBE and the scheduled dates for performance;
- (3) a statement of whether Consultant has a written agreement with each certified MBE and WBE which Consultant is using or intends to use, and if requested, copies of such agreements;
- (4) the actual total cost of the contract scope of work to be performed by each certified MBE and WBE for this Agreement; and
- (5) The actual amounts of any payments made by Consultant to each certified MBE and WBE as of the date the MBE/WBE Compliance Report was submitted.

(d) Enforcement

The parties agree to be bound by provisions of Article 15-A, Section 317 of the Executive Law of the State of New York and by the regulations promulgated thereunder.

27. 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.

28. 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 which may arise.

29. 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 Export Administration Act of 1979, as amended or the Regulations of the United States Department of Commerce promulgated thereunder. This Agreement shall be rendered forfeit 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.

30. MacBride Fair Employment Principles

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

31. Limitation Periods

Any legal action or proceeding against the Owner must be commenced no later than one (1) year from the time the Work is substantially performed by Consultant in conformity with the Contract Documents ("Substantial Completion") as reasonably determined by Owner's Vice President of \_\_\_\_\_, or, if there has been no Substantial Completion, no later than six (6) months after the earlier of: (a) the termination of this Agreement, or (b) the last day the Consultant performed work physically at the site of the Project. Within 15 days of any such determination, Consultant may appeal the same in writing to the Owner's Vice President of Internal Audit, whose decision shall be final and binding.

32. Special Provisions

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

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

BATTERY PARK CITY AUTHORITY  
(d/b/a Hugh L. Carey Battery Park City Authority)

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

[CONSULTANT]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT D**

**Cost Proposal Form**

**COST PROPOSAL**

(Proposer to submit executed Cost Proposal on its letterhead)

Date:

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

Attention: Ms. Della Lee  
Administrative Assistant

Dear Ms. Lee:

The undersigned (the "Proposer") hereby proposes to provide all specified work necessary to perform the work for the **Battery Park City Pile Remediation - Permit Services**. The Proposer agrees to commence the Work immediately upon receipt of the Initial Letter of Intent in accordance with the terms stipulated in the following pages, for the sum written below.

**A. Base Proposal**

A total Not to Exceed amount of \$\_\_\_\_\_ (\_\_\_\_\_ Dollars and \_\_\_\_\_ Cents) to perform all Work as described in the Authority's Request for Proposals for the Scope of Work (Exhibit A).

A total Not to Exceed amount of \$\_\_\_\_\_ (\_\_\_\_\_ Dollars and \_\_\_\_\_ Cents) for Reimbursable Expenses

**B. Itemized Proposal and Labor Rates**

1. The Proposer has submitted with its proposal an itemized cost for the Work, according to the attached schedule of items, for the Scope of Work in Appendix V.
2. The Proposer has submitted with its proposal, labor rates for all trades, including all costs except overhead and profit. Prices shown include base hourly rate, overtime rate, insurance and benefits.

Name of Proposer:

\_\_\_\_\_

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

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

**EXHIBIT E**

**Form of Technical Salary Rates**

(Attached)

**TECHNICAL SALARY RATES**

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

*Itemization of Direct Payroll Burden*

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

(Attach table(s) to the Proposal Form)

NAME	Title/Function	RATE Day / Hr (without Profit & Multiplier)	# OF DAYS / Hrs	TOTAL

**SUBTOTAL TECHNICAL SALARIES (w/o Profit & multiplier) \$** \_\_\_\_\_

**PROJECT MULTIPLIER =** \_\_\_\_\_

**PROFIT MARGIN =** \_\_\_\_\_ %

**TOTAL FEE = \$** \_\_\_\_\_

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

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

Title:

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