

BATTERY PARK CITY AUTHORITY

REQUEST FOR PROPOSALS

FOR

IRISH HUNGER MEMORIAL WATERPROOFING PROJECT

DESIGN CONSULTANT SERVICES



HUGH L. CAREY
BATTERY PARK
CITY AUTHORITY

Table of Contents

| | |
|--|-------------------------------------|
| Table of Contents | 1 |
| I. SUMMARY | 3 |
| II. DESCRIPTION OF BPCA..... | 3 |
| III. SERVICES REQUIRED | 4 |
| IV. KEY DATES, CONTRACT TERM AND MINIMUM QUALIFICATIONS | 4 |
| A. Key Dates | 4 |
| B. Anticipated Contract Term | 5 |
| C. Minimum Qualification Requirements | 5 |
| V. GENERAL REQUIREMENTS..... | 5 |
| A. Questions regarding MBE/WBE participation, joint ventures and sub-contracting goals | 5 |
| B. Restricted Period | 5 |
| C. Submission of Proposals | 6 |
| D. Mandatory Forms | 6 |
| VI. PROPOSAL FORMAT AND CONTENTS | 6 |
| A. Proposal Format | 7 |
| B. Proposal Content | 7 |
| C. RFP Questions | 7 |
| D. RFP Additional Information Request | 9 |
| E. Cost Proposal | 9 |
| VII. THE EVALUATION PROCESS | 9 |
| A. Objectives..... | 9 |
| B. Interviews | 10 |
| C. Evaluation Criteria for Selection | 10 |
| D. Basis for Contract Award..... | 10 |
| VIII. NON-COLLUSION | 10 |
| IX. NEW YORK STATE OMNIBUS PROCUREMENT ACT OF 1992..... | Error! Bookmark not defined. |
| X. MACBRIDE FAIR EMPLOYMENT PRINCIPLES | Error! Bookmark not defined. |
| EXHIBIT A | 12 |
| Business Participation Opportunities for MBE/WBEs | 12 |
| Equal Employment Opportunity Requirements | 13 |
| EXHIBIT B - SCOPE OF WORK | 14 |
| EXHIBIT C - COST PROPOSAL | 17 |

| | |
|---|-------------------------------------|
| EXHIBIT D - MODEL AGREEMENT | 21 |
| EXHIBIT E - PROMPT PAYMENT POLICY | 22 |
| EXHIBIT F - M/WBE FORM..... | Error! Bookmark not defined. |
| EXHIBIT G - SUBMITTALS TO ACCOMPANY PROPOSAL..... | 24 |
| EXHIBIT H – STATEMENT OF QUALIFICATION FORM – MANDATORY FORMS | Error! Bookmark not defined. |

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 Design Consultants (each individually, a “Proposer” or collectively, the “Proposers”) to provide design consulting services to BPCA.

The Design Consultant shall provide Architectural, Landscaping and all other services related to the design and development of the scope work for the Irish Hunger Memorial – Waterproofing Project. The Consultant shall perform the services described in the Scope of Work attached hereto as Exhibit B (the “Work”) and in accordance with any schedule(s) for the Work set forth therein.

The design consulting services shall include, but not be limited to:

1. Investigation and analysis of the existing structure to determine water infiltration locations.
2. The preparation of reports documenting observations and define required scope of Work.
3. Design development of construction drawings and technical specifications for the Work.
4. Assist the Construction Manager (“CM”) with the development and preparation of construction RFPs.
5. Co-Chair pre-bid meeting and respond in writing to questions from bidders and prepare addenda as necessary.
6. Assist the CM and BPCA with the selection of contractors.
7. Attend construction kick off meeting.
8. Review submittals.
9. Conduct site visits to observe concrete restoration and waterproofing for compliance with contract documents.
10. Issue field reports with photographs.

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 and BPCPC

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.

To obtain a copy of BPCA’s most recently completed audited financial statements, please visit BPCA’s official website at 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.bpcpc.org.

III. SERVICES REQUIRED

A. If selected, Proposer will be responsible for the provision of the services described in the Scope of Work attached hereto as **Exhibit B** (the “Work”) and in accordance with any schedule(s) for the Work set forth therein.

B. All Work to be performed by the selected Proposer shall be performed under the supervision of a Partner, Principal or Senior Associate of the firm in charge of this engagement (the “Lead Partner, Principal or Senior Associate”), who must ensure that the Work completed for BPCA is performed competently and in a timely manner.

C. If selected, Proposer shall provide BPCA with the following:

1. A detail design schedule of the Work, showing the sequencing of the design work, significant milestone dates, overall design completion date and manpower staffing level, ten (10) days after contract award.
2. **An investigative plan that outlines approach, means and method for identification, repair and restoration of the waterproofing at the Memorial.**
3. **A Design for repair and restoration, including all associated drawings and specifications.**
4. **A cost estimate for the referenced repair and restoration.**

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, MARCH 1, 2013**

- Pre-Proposal Meeting: FRIDAY, MARCH 8, 2013 at 10:30 AM at One World Financial Center, 24th flr
- Deadline to submit questions to BPCA: **FRIDAY, MARCH 15, 2013** by 4:00 p.m. (by email only)

All questions regarding this RFP should be submitted in writing via email to the “Designated Contact”:
Sharon Wade, Administrative Assistant, Battery Park City Authority, at
sharon.wade@batteryparkcity.org.

- Deadline for BPCA’s response to substantive questions: **WEDNESDAY, MARCH 20, 2013** (by email)
- **DUE DATE FOR RESPONSES TO RFP: FRIDAY, MARCH 29, 2013 by 3:00 p.m. (the “Due Date”)**
- Selection and notification of successful Proposer: To be determined.
- Contract start date: To be determined.

B. Anticipated Contract Term

It is anticipated that the term of the contract awarded pursuant to this RFP (the “Contract”) will be **Twenty-four (24) 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 Partner, Principal or Senior Associate 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, Partner, Principal or Senior Associate must be licensed to do business in the State of New York.

V. GENERAL REQUIREMENTS

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

Please see **Exhibit A** (attached) (“Diversity Exhibit”) for consultant 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 FRIDAY, MARCH 29, 2013

Proposers must submit five (5) paper copies of their Proposals and one (1) electronic CD-Rom copy in a sealed package clearly marked “**Proposal Enclosed: IRISH HUNGER MEMORIAL WATERPROOFING PROJECT- DESIGN CONSULTANT SERVICES.**” to the Designated Contact **by messenger, overnight courier or certified mail** to the following address:

Sharon Wade
Battery Park City Authority
One World Financial Center, 24th 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: IRISH HUNGER MEMORIAL WATERPROOFING PROJECT- DESIGN CONSULTANT 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 all “Mandatory Forms,” which can be found at the following URL address: 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 8½” x 11” or 8½ “x14” paper. Pages should be numbered. 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. Executive Summary.
3. Firm’s discussion of its understanding of the required services **(see Section III and Exhibit B).**
4. Firm’s Responses to the RFP Questions and RFP Additional Information Request, set forth below.
5. Provide examples of no more than five (5) similar type projects that the firm has completed within the past five years. Provide contact information for at least three (3) of these projects.
6. Firm’s Cost Proposal, as described below.
7. Resumes of the individual(s) that will be assigned to the Project.

C. RFP Questions

1. **Briefly** describe your firm’s background, size, and history as it may be relevant to the Services required, with an emphasis on the designing of waterproofing for green roof systems and historical preservation Work. If your offices are located in more than one city, indicate which office will provide the services.
2. Describe the relevant special services your firm provides, particularly those that may not be offered by other firms.
3. Describe your experience with the designing of waterproofing systems, in particular for concrete structures.
4. Describe your experience with restoration of illuminated glass walls, the transplanting and replanting of various species of plants and grasses and the retro fitting of irrigation systems.
5. Describe your experience with the restoration and historical preservation of museums, outdoor structural concrete covered memorial structures and/or urban landscaping.
6. Describe your experience and methodology for the designing and construction of green roof systems and landscaping in particularly the retro fitting and repairing of **intensive** green roof systems.
7. Submit a discussion of your approach to the work which shall briefly address your conceptual step-by-step approach towards completion of the work and outline the proposed procedures for the executing the work.
8. Submit a bar chart schedule for completion of the work which should include sequencing of the work, manpower staffing level, and show all project milestones and successful overall completion.

9. Identify any and all exceptions taken to BPCA’s standard form of contract attached hereto as Exhibit D detailing the reasons for such exceptions. No exceptions to the contract will be considered by BPCA after submission of the proposals. BPCA maintains the right to reject proposals based on non-conformance with the standard form of contract.
10. Within the past three 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.
11. Provide a list of all proposed subcontractors/suppliers for the completion of the work.
12. Has your firm or any of the firm’s partners/employees been disciplined or censured by any regulatory body within the last 5 years? If so, please describe the relevant facts.
13. Within the last five years, has your firm, or a partner or employee in your firm, been involved in litigation or other legal proceedings relating to the provision of design services? If so, please provide an explanation and the current status or disposition of the matter.
14. Are there any potential conflict of interest issues in representing BPCA?
15. List any professional or personal relationships your firm’s partners, principals, associates or any other employees may have with BPCA’s Board and/or staff members of BPCA.
16. List all the titles of all the individuals you intend to assign to this engagement and the area(s) of specialization for each. Describe the role of each individual who will be assigned to this engagement.
17. Identify the Lead partner, principal or senior associate, who will be the primary contact and lead Project Manager in providing services to BPCA, and who will be listed as a “key person” in any contract with BPCA.
18. Describe your proposed team’s experience with similar Work for other public agencies and authorities, with a particular emphasis on New York State agencies and authorities
19. Describe your firm’s “backup plan” in the event one or more of the individuals assigned to this engagement leave the firm.
20. Itemize the Work you intend to perform with your own forces and items which you propose to subcontract.
21. Describe your firm’s project management software and indicate whether or not your firm has experience with using Autodesk Constructware®.
22. In the past five 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 each such client’s in-house counsel’s name, address and telephone number.
23. Please 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.

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 professional liability insurance your firm carries. List the insurance carrier(s) or provide an insurance certificate showing your firm's coverage in accordance with the following:
 - i. 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 \$5,000,000 and Automobile Liability limits shall not be less than \$1,000,000. The costs of the insurance shall be included in the Proposal.
 - ii. State whether or not you can provide payment and performance bonds, the amounts thereof (both single and aggregate) and the name of your bonding company. Provide a letter from your surety stating that you are able to provide 100% bonding for this project.

2. References:

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

3. Appendices:

- a. Include resumes for all key management personnel listed in your Proposal.
- 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").
- 2) Labor Rates/ Technical Salary rates in the form attached hereto as Exhibit E ("Labor Rates").
- 3) An itemized cost proposal in the form attached hereto as Exhibit F (Schedule of Values").

VII. THE EVALUATION PROCESS**A. Objectives**

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

- That demonstrates a thorough understanding of the scope of the engagement and the specific responsibilities which it entails;
- Possesses adequate resources to handle assigned responsibilities and to handle unforeseen circumstances that may arise;

- Assigns highly skilled, experienced, diligent, responsible and professional personnel to perform the required services;
- Maintains high ethical standards and has an unblemished reputation;
- Has no conflict of interest between its representation of BPCA and that of other clients.
- Has the capability and resources to complete the Work within the specified time period.

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. Firm Qualification and Experience: **20%**
2. Staff Qualification and Experience: **20%**
3. Approach to providing the Required Services (*see* VI(C)(7)): **25%**
4. Cost Proposal: **25%**
5. Proposed MBE/WBE utilization plan (the "Utilization Plan") and/or Firm MBE/WBE status: **10%**

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**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

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 consultant (“Consultant”) on the Contract must document good faith efforts to provide meaningful participation by MBE/WBEs as sub-consultants or suppliers in the performance of the Contract and Consultant 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 Consultant’s “good faith efforts,” refer to 5 NYCRR §142.8.

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

Consultants 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.

Consultants are required to submit a Consultant's MBE/WBE Consultant 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 Consultant is required to ensure that it 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 Consultant and sub-consultants 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 B - SCOPE OF WORK

The consultant selected under this RFP (referred to herein as the “Design Consultant”) shall provide a full professional team for the performance of the services required by the Agreement. The Design Consultant will employ the services of Consulting Engineers, Landscape Architects and other specialized consultants so as to provide as full professional team as dictated by the disciplines of the design Work. The Design Consultant shall designate a representative to communicate on its behalf with the BPCA and the CM.

Some areas of concern are leaks occurring on the south side, leaks in the underground niche, leaks above the sound system as well as methods of stain removal and existing cracks.

If selected the Design Consultant may be required to collaborate with the Brian Tolle, the designer of the memorial.

The services that are to be provided shall include but is not limited to the following:

1. Phase One: Investigation and Analysis

- a. The inspection of existing water proofing and the documentation of the existing conditions and deficiencies.
- b. The inspection of the existing the concrete slab and the documentation of the existing conditions and deficiencies.
- c. Probe to investigate where concrete deck ends – confirm location.
- d. Conduct probes where necessary to verify/locate deficiencies in the existing concrete slab.
- e. The Design Consultant shall prepare a report documenting observations and define required scope of Work.
- f. The Design Consultant shall make recommendations to address concrete deficiencies
- g. The Design Consultant shall make recommendations for appropriate concrete and waterproofing repairs.
- h. Provide a preliminary estimate for the recommended scope of Work.
- i. The Design Consultant must provide all design – related, approval, and construction administration services from design through contract closeout.
- j. Services for the design pre-construction and the construction phases of the project are required.

2. Phase Two: Design Development

- a. The Design Consultant is to manage the design phase of the project.
- b. Prepare construction drawings and specifications based on the scope of Work defined in the report and accepted by the BPCA.
- c. Perform structural analysis, calculations, and design as necessary to implement the scope of Work.
- d. Submit 75% design drawings, technical specifications, and estimate for review by the Construction Manager and BPCA.

- e. The Design Consultant shall make provisions to attend at least two (2) design review meetings with CM and BPCA; 1 at 50% Design Development and 1 at 100% Construction Drawings.
- f. The Design Consultant shall incorporate landscape architect's drawings in each submission at similar stages 100% Drawings and specifications with 100% estimate.
- g. Prepare final construction documents for bidding.
- h. File aspects of the Work with the Department of Buildings (the "DOB") that require filing (If required)
- i. Design Consultant is responsible for assuring the scope & design component is complete within the contract schedule time. Any and all delays must be avoided.

3. Phase Three: Bidding (Procurement of contractors)

- a. Upon completion of design phase, the Design Consultant shall assist in the RFP and bidding process and all other Work required for the selection of the contractor to perform the Work.
- b. Prepare complete Construction Documents and Specifications and submit three (3) sets to CM.
- c. The Design Consultant shall make a complete set of Construction Documents and Specification available to the CM and BPCA on the Web via and FTP site.
- d. The Design Consultant shall prepare the construction Scope of Work for the RFP packages including for general contracting and landscaping work.
- e. Noble Strategy will Chair the pre-proposal meeting and respond in writing to questions from bidders and prepare addenda as necessary.
- f. The Design Consultant is to assist in the review of proposals and assist in the selection of the Contractor(s).
- g. The Design Consultant will review the contractor submittals and respond to requests for information (RFI's) during the construction phase of the project.
- h. The Authority along with the Construction Manager sets an accepted schedule for Design & Construction. The Design Consultant must be prepared to go over this document in detail at the Design pre-award and kickoff meeting.
- i. The Design Consultant Assist with Pre Bid walk-through with the contractors.
- j. Answer bidders' questions and issue addenda.
Assist CM and BPC with bid analysis.
- k. Assist CM with bid interviews and bidder selections

4. Construction Phase

- a. Attend construction kick off meeting.
- b. Review submittals.
- c. Review on-site mock ups of representative restoration details.
- d. Design Team to be on-site to observe concrete restoration and waterproofing for compliance with contract documents.

- e. Issue field reports with photographs.
- f. Issue clarification sketches and details of conditions unknown prior to bidding.
- g. Attend project progress meetings as requested.
- h. Assist with payment applications as requested by CM.
- i. Assist with change order review as requested by CM.
- j. Consultant shall observe/assist the CM with the water testing of the waterproofing Work.
- k. Consultant must conduct final inspection, along with CM to approve of the Work and issue Work acceptance certificates.
- l. The Design Consultant must determine substantial completion of Work and coordinate a punch list inspection.
- m. Consultant must conduct final inspection, along with the CM and BPCA to approve of the Work and issue Work acceptance certificates.
- n. Assist CM with project close out.
- o. File project completion and sign off documents with DOB (if required).
- p. Consultant must provide all services past the contract completion date at no additional cost to the Authority unless the Authority is at fault for a delay. Consultant must submit all inspection reports and a final project summary to the Authority at project completion.

EXHIBIT C - COST PROPOSAL

(Form of cost proposal attached)

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. Sharon Wade
Contract Administrator

Dear Ms. Wade:

The undersigned (the "Proposer") hereby proposes to provide all specified Work necessary to perform the Work for the **Irish Hunger Memorial – Design Consultant Services request for proposals ("RFP")**. The Proposer agrees to commence the Work immediately upon receipt of the Initial Letter of Intent or contract in accordance with the terms stipulated in the following pages, for the sum written below.

A. Base Proposal

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

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 Exhibit B of the RFP.
2. The Proposer has submitted with its proposal, labor rates for all trades, including all costs except overhead and profit (*see* Appendix A attached). Prices shown include base hourly rate, overtime rate, insurance and benefits.

Name of Proposer:

By: _____

Title: _____

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.

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

[illegible]

(Include titles of all staff designated to work on the project. Once project is awarded additional titles and rates will not be accepted.)

TOTAL TECHNICAL SALARIES (excluding Multiplier & Profit) \$ _____ **PROJECT**
MULTIPLIER = _____
PROFIT MARGIN = _____ %

Proposer:

By: _____ Date _____

Signature

Printed Name

Title

EXHIBIT D - MODEL AGREEMENT

(form attached)

Table of Contents

| | |
|---|-------|
| 1. Scope of Work | iii |
| 2. Time for Performance | iii |
| 3. Compensation..... | iii |
| 4. Increase and Decrease in the Scope of the Consultant's Work..... | iv |
| 5. The Consultant Cooperation | iv |
| 6. Termination..... | iv |
| 7. Suspension | v |
| 8. Assignment | vi |
| 9. The Ownership of Documents | vi |
| 10. Insurance | vi |
| 11. Authority of the Owner..... | viii |
| 12. Entire Agreement | viii |
| 13. Consultant as Independent Contractor | viii |
| 14. Maintenance, Audit and Examination of Accounts | viii |
| 15. Acceptance of Final Payment; Release and Discharge | ix |
| 16. Covenants, Representations and Warranties | ix |
| 17. Indemnity | x |
| 18. Confidentiality | x |
| 19. Modification..... | x |
| 20. Waiver..... | x |
| 21. Severability | x |
| 22. New York Law/Forum Selection/Jurisdiction | xi |
| 23. Provisions Required by Law | xi |
| 24. Notices | xi |
| 25. Approval and Use of Sub-consultants..... | xi |
| 26. Employment and Diversity | xii |
| 26.1. Definitions | xii |
| 26.2. Equal Employment Opportunities for Minority Group Members and Women | xiii |
| 26.3. Workforce Participation..... | xiv |
| 26.4. Minority Business Enterprise (MBE) Participation and Women's Business Enterprise (WBE) Participation .. | xvi |
| 26.5 Failure to Comply | xvii |
| 27. Interest of Others..... | xviii |
| 28. Executory Contract | xviii |
| 29. Participation in International Boycott Prohibited | xviii |

| | |
|---|-------|
| 30. MacBride Fair Employment Principles..... | xviii |
| 31. Termination for Failure to Disclose Under NYS Finance Law §139k | xviii |
| 32. Comptrollers Approval | xviii |
| 33. Form of Agreement not an Offer | xix |

CONSULTANT AGREEMENT

AGREEMENT made as of [INSERT DATE] between HUGH L. CAREY BATTERY PARK CITY AUTHORITY, (“BPCA” or “the Owner”), a body corporate and politic, constituting a public benefit corporation, having a place of business at One World Financial Center, New York, New York 10281, and [INSERTNAME OF COMPANY], incorporated in the State of [INSERT STATE OF INCORPORATION], having an office at [INSERT ADDRESS AND TELEPHONE NUMBER OF COMPANY] (“the Consultant”).

WITNESSETH:

WHEREAS, the 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, the 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, the Owner intends to retain the services of the Consultant to perform design consulting (“the Work” or the “Project”), and the Consultant desires to perform such services for the 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 B (the “Work”) and in accordance with any schedule(s) for the Work set forth therein. The Owner hereby acknowledges that certain portions of the Work may have been performed by the Consultant prior to the date hereof, in anticipation of this Agreement.

2. Time for Performance

The Work shall be performed at such times as may be requested by the Owner during the period commencing as of the date the Agreement is executed by the Authority and the Consultant (the “Effective Date,” which shall be inserted by the Authority at the head of this Agreement) until [INSERT CONTRCAT END DATE] (the “Term”) unless: (1) this Agreement is otherwise terminated as hereinafter provided or (2) the time for performance of the Work is extended by written Agreement of the Consultant and the Owner.

3. Compensation

(a) The Consultant shall be entitled to receive as compensation (“Fee”) for the Work a SUM NOT TO EXCEED? LUMP SUM [INSERT CONTRACT AMOUNT], paid in accordance with Exhibit B, which fee includes any and all reimbursable expenses. The Consultant shall submit one or more written requests for payment on or about the first (1st) day of the calendar month for Work actually performed by that date. All invoices for payment shall include the name, address, and telephone number of the Consultant and a description of services or goods provided, and shall be accompanied by appropriate Time Sheets, Exhibit C.

(b) The Fee includes reimbursement for expenses, in accordance with the Owner's standard policies for reasonable expenses actually incurred by the Consultant in connection with the performance of the Work. The Consultant shall submit copies of receipts or other supporting documentation for any qualifying expenses incurred.

(c) The Owner shall pay the Consultant so much of the amount requested as may be approved by the Owner not later than the 30th day following the 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 the Consultant with respect to such phase of the Work shall be available for payment to the Consultant with respect to subsequent phases of the Work, subject to the provisions of this Article 3 and the approval of the Owner.

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

Office of the Treasurer
Hugh L. Carey Battery Park City Authority
One World Financial Center, 24th Fl.
New York, NY 10281-1097
Attn.: Accounts Payable

A duplicate copy is to be sent to the attention of:

Michelle Arrington
Senior Project Manager
Hugh L. Carey Battery Park City Authority
One World Financial Center, 24th Fl.
New York, NY 10281-1097

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

the 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 the 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 the Consultant or Sub consultant (as hereinafter defined), the Owner will pay the Consultant any additional reimbursable expenses approved pursuant to the Owner's policy for reimbursable expenses, and an additional fee computed in accordance with the hourly rate set forth in paragraph 3(a) *supra*, or if no such rates are set forth, upon terms to be agreed upon.

5. The Consultant Cooperation

The Consultant shall Work with such firms or individuals as the 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 the 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) the Consultant acknowledges that the 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 cancellation or termination upon three (3) days' notice, in which event, except as otherwise provided herein, all of the Owner's liability hereunder shall cease and terminate as of the date specified in such notice.

(b) If the 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, the Consultant shall be entitled to that portion of the

Fee which has not theretofore been paid to the Consultant and which shall compensate the 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) The 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 the Consultant shall prove to be untrue in any material respect;

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

then the Owner may terminate this Agreement as to the Consultant for cause, in accordance with the procedure set forth in Subsection 6(a) hereof. Upon termination pursuant to this Subsection 6(c), the Consultant shall be entitled to amount of the Fee which has not theretofore been paid to the Consultant and which shall compensate the Consultant for all Work actually and satisfactorily performed by it up to the date of termination, provided, however, that the Owner shall deduct from any amount all additional costs and expenses which the Owner may incur over those which the Owner would have incurred in connection with the Work if the 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 the Owner by reason of a default by the Consultant under this Agreement, including, without limitation, the right to seek full reimbursement from the Consultant for all costs and expenses incurred by the Owner by reasons of the Consultant's default hereunder and which the Owner would not have otherwise incurred if the Consultant had not defaulted hereunder.

(d) Upon any termination of this Agreement in accordance with the provisions of this Section 6, the 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) cancel, or if so directed by the Owner, transfer to the Owner all commitments and agreements made by the Consultant relating to the Work, to the extent same are cancelable or transferable by the Consultant;

(iii) transfer to the Owner in the manner, to the extent, and at the time directed by the 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 the Owner may reasonably direct.

7. Suspension

The Owner may, at any time and for any reason, direct the 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. The Consultant shall resume such Work upon the date specified in such direction, or upon such other date as the Owner may thereafter specify in writing upon reasonable notice to the Consultant, provided, however, that if the Owner shall direct a Work stoppage period of more than three (3) months, the 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 the Consultant and which shall compensate the Consultant for the Work actually and satisfactorily performed by it prior to the termination date.

8. Assignment

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

9. The Ownership of Documents

All material specifically prepared for this project and excluding any intellectual property already owned by the Consultant which is furnished by the Consultant or any Sub consultants (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 the Owner. The Consultant shall provide a tangible copy of the Work to the Owner in a form to be specified by the Owner. Such materials may be used by the Owner, in whole or in part, or in modified form, for any and all purposes the Owner may deem desirable without further employment of, or payment of any additional compensation to the Consultant.

The Consultant hereby acknowledges that whatever participation she/he has, or will have, in connection with any copyrightable subject matter which is the subject of this the Work was and shall be deemed Work Made for Hire on behalf of BPCA and that BPCA 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, the Consultant hereby irrevocably transfers and assigns to BPCA all of the Consultant's right, title and interest, throughout the world, in and to the Work, including, without limitation, all of the 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. The Consultant grants to the Owner a royalty free, worldwide perpetual, irrevocable, nonexclusive license to reproduce, modify, and publicly display the Work.

10. Insurance

(a) The Consultant shall carry, and shall require each Sub consultant to carry, the following insurance:

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

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

(iii) Valuable Papers Insurance insuring, for the benefit of the Consultant and the Owner all plans,

designs, drawings, specifications, and documents used under this Agreement by the Consultant or any Sub-consultant in a total amount of not less than Fifty Thousand Dollars (\$50,000). The Consultant may furnish full coverage one policy or may submit separate policies from the Sub-consultants for their proportionate shares of such coverage.

(iv) Commercial General Liability Insurance as follows:

Standard commercial general liability insurance policy with contractual, products and completed operations coverage's issued to and covering the liability of the Consultant for all the Work and operations relating thereto and all obligations assumed by the 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 in the aggregate

-\$1,000,000 per occurrence

The said insurance shall name the Owner, Battery Park City Parks Conservancy Corporation and the State of New York as additional insured 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 the Owner, the Consultant or a Sub-consultant 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 occurrence

(vi) Excess Liability Insurance in an amount of not less than \$10,000,000

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

b) All required insurance shall be maintained with responsible insurance carriers authorized to do business in the State of New York and approved by the Owner. Upon execution of this Agreement and before commencing any performance hereunder, the Consultant shall deposit with the Owner the original policies of insurance, or certificates therefore, bearing notations or accompanied by other evidence satisfactory to the Owner of the payment of all premium payments there under. **Such policies or certificates shall be delivered to Maria Ellison, at the Owners place of business, immediately upon signing this Agreement.** Thereafter, certification of all premium payments shall be deposited with the 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 or terminated, or the coverage thereof materially reduced, until thirty (30) days after receipt of written notice thereof by certified or registered mail, return receipt requested addressed to the Owner; and

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

itself invalidate such policy.

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

(i) Workers' Compensation Insurance and New York State Disability Benefits Insurance shall be kept in force until receipt of final payment by the Consultant hereunder. This Agreement shall be void and of no force or effect unless, in compliance with the Workers' Compensation Law, the Consultant, or Sub-consultants, as the case may be, shall secure Workers' Compensation Insurance for their respective employees engaged in the performance of the Work as are required to be insured under said law.

(ii) Professional liability insurance shall be kept in force for the earlier of three (3) years after the completion of the performance of the Work hereunder or termination of this Agreement, provided such insurance is available until such date at a reasonable cost.

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

11. Authority of the Owner

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

12. Entire Agreement

This Agreement, including Exhibits A, B, C, and D constitutes the entire Agreement between the Owner and the Consultant, and any prior agreements or understandings between the Owner and the 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, the Consultant's status shall be that of an independent contractor and not that of a servant, agent or employee of the Owner. Accordingly, the Consultant shall not hold itself out as, nor claim to be acting in the capacity of, an officer, agent, employee or servant of the Owner.

14. Maintenance, Audit and Examination of Accounts

the 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 Sub-consultant s to maintain, complete and correct books and records relating to all aspects of the 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 the Owner or its authorized representatives for review and audit at all such reasonable times as the Owner from time to time may request. In the event that the Consultant and/or any Sub-consultant s 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, the 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, the

Owner may require the Consultant to refund any such payment made. Any excessive audit costs incurred by the Owner due to the Consultant's or any Sub-consultant's failure to maintain adequate records shall be borne by the Consultant.

15. Acceptance of Final Payment; Release and Discharge

The acceptance by the 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 the Owner from any and all claims, demands and causes of action whatsoever which the Consultant, and/or its successors and assigns have, or may have, against the Owner under the provisions of this Agreement, unless a detailed and verified statement of claim is served upon the Owner not later than the making of the final payment. It is expressly understood and agreed that the Owner's or the Consultant's termination of this Agreement pursuant to Sections 6 or 7 hereof shall not give rise to any claim against the Owner for damages, compensation or otherwise as a result of such termination, and that under such circumstances the Owner's liability to make payments to the 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) the Consultant represents and warrants to the 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, the Consultant has, and shall have, no interest, direct or indirect, in the project to which the Work relates;

(iii) to the best of its knowledge, upon due inquiry, no officer, member, partner or employee of the 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) the Consultant covenants and agrees that:

(i) recognizing that time for completion of the Work is of the essence, the 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 Sub-consultants used by the Consultant in the performance of its obligations hereunder shall be qualified in all respects for such assignment, employment and use;

(iii) the 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) the 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, the Consultant shall diligently render to the Owner any and all assistance which may be required by the Owner as a result thereof; and

(vi) the 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 the Consultant shall provide sufficient numbers of qualified personnel as shall be required to perform the Work in the time requested by the Owner.

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

17. Indemnity

(a) the Consultant shall be liable to, and shall indemnify the Owner, each Member, officer, agent and employee of the 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 and disbursements, arising out of the performance of the Work or the breach of any of the provisions set forth in Section 16 hereof, and the Consultant agrees that it shall defend any suit or action brought against the Owner or any Member, officer, agent or employees of the Owner which is based on any loss or liability or alleged loss or liability indemnified herein.

(b) the Consultant shall be liable to, and shall indemnify the Owner and each of the Members, officers, agents and employees of the 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 the Consultant in the performance of this Agreement.

18. Confidentiality

the Consultant hereby agrees that data, recommendations, reports and other materials developed in the course of the Work are strictly confidential between the Consultant and the Owner and except as specifically provided herein, the 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 the Owner.

19. Modification

No 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 hereof, any party hereto may waive any of its rights hereunder without invalidating this Agreement or waiving any other rights hereunder, provided, however, that no waiver of any provisions of or default under 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 default, 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. 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. The 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 the 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 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 the Owner, Notices shall be sent to the attention of:

Michelle Arrington
Senior Project Manager
Hugh L. Carey Battery Park City Authority
One World Financial Center, 24th Fl.
New York, NY 10281-1097

with a copy to the General Counsel, and if to the Consultant, Notices shall be sent to the attention of [INSERT CONSULTANT CONTACT]. 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 Sub-consultants

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

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

(c) Upon the request of the Owner, the Consultant shall cause any Sub-consultant employed by the Consultant in connection with this Agreement to execute a copy of this Agreement wherein such Sub-consultant 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 Sub-consultants.

26. Employment and Diversity

26.1. Definitions

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

M/WBE Required Participation Plan and (ii) the Utilization Plan.

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

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

(e) “Directory.” The directory of certified businesses prepared by the Director for use by the 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 the Consultant to the 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:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) an enterprise authorized to do business in the State of New York and which is independently owned and operated. (a) “Certified Business.” A business verified as a minority or women-owned business enterprise by the Division or such other New York State agency authorized to make such certification.

(b) “Diversity Program.” The program by which the Owner shall monitor the Consultant’s compliance with the requirements set forth in (i) the MBE

26.2. Equal Employment Opportunities for Minority Group Members and Women

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

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

(2) At the request of the Owner, the 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 the Consultant’s obligations herein.

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

(4) The Consultant and any Sub-consultant shall be required to submit compliance reports in accordance with this Section 26 relating to their operations and the implementation of the Diversity Program in effect as of the date of execution of this Agreement.

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

(6) For purposes of providing meaningful participation by MBE/WBE's for the Work and achieving the goals established herein, the Consultant and its Sub-consultant s should reference the directory of New York State Certified MBE/WBE's found at the following internet address: <http://www.esd.ny.gov/mwbe.html>

Additionally, the Consultant and its Sub-consultant s are encouraged to contact the Division of Minority and Woman Business Development ((518) 2925250; (212) 803-2414; or (716) 846-8200) to discuss additional methods of maximizing participation by MBE/WBE's on the Work.

(7) Where MBE/WBE goals have been established herein, the Consultant must document "good faith efforts", pursuant to 5 NYCRR §142.8, to provide meaningful participation by MBE/WBE's as Sub-consultant s or suppliers in the performance of the Work.

(b) The 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 Sub-consultant as to the Work in connection with this contract's execution.

(c) Miscellaneous

(1) The provisions of this section shall not be binding upon the Consultant or its Sub-consultant s 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.

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

(d) Enforcement

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

26.3. Workforce Participation

(a) The Consultant is required to make good faith efforts to achieve the participation of [INSERT REQUIRED MWBE PARTICIPATION GOAL] Minority Group Members and/or women in the personnel utilized by the Consultant in the Work as set forth in the Utilization Plan.

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

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

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

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

(f) The Consultant shall meet with the Owner, and such other persons as the Owner may invite, on a periodic basis as required by the Owner to discuss issues relating to Minority Group Members and women workforce participation. At such meetings, the Consultant shall report on the names of its Sub-consultant s 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 the Consultant and Sub-consultant s, on the anticipated hiring needs of the Consultant and Sub-consultant s, on the names of the responsible supervisors directly employed by the Consultant, and such information requested by the Owner that will then promote the employment of Minority Group Members and women. The Consultant shall use its best efforts to obtain the above information and shall, upon the Owner's request, direct its Sub-consultant s to attend said meetings and provide the above information.

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

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

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

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

(i) a breakdown of the Sub-consultant s by ethnic background, gender or such other categories as may be required by the Owner;

(ii) the actions the Consultant and Sub-consultant s have taken to meet the components of the Diversity Program;

(iii) how the Consultant and Sub-consultant s intend to utilize participation of Minority Group Members and women in their workforce in connection with the performance of the Work and timetables therefore during the remainder of their performance of the Work.

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

(i) The Consultant shall include the provisions in Section 26.3 in every Subcontract, and such provisions shall be binding upon each Sub-consultant.

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

(a) The Consultant shall make good faith efforts to attain the participation of [INSERT MWBE PERCENTAGES] MBEs and/or WBEs in the total dollar value of the Work.

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

(1) if an MBE and WBE is not the Consultant --the dollar value of the Work subcontracted to MBEs and WBEs; provided, however, that where materials are purchased from an MBE and WBE 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;

(2) if the Consultant is a joint venture including one or more MBEs and WBEs as joint ventures --the Fee multiplied by the percentage of the joint venture's profits (or losses) which are to accrue to the MBE and WBE joint venture(s) under the joint venture agreement; and

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

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

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

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

(ii) actively and affirmatively making a good faith effort to solicit bids for subcontracts from qualified MBEs and WBEs identified in the directory of certified businesses available at the office of the Owner's Diversity Officer, including the circulation of solicitations to minority contractor associations. the 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 sub-subconsultant, the reasons for such decision;

(iii) making plans and specifications for prospective Work available to MBEs and WBEs in sufficient time for review;

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

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

- (vi) ensuring that provision is made to provide progress payments to MBEs and WBEs on a timely basis; and
- (vii) not requiring bonds from and/or providing bonds and insurance for MBEs and WBEs where appropriate, and/or assisting in obtaining bonds and insurance for MBEs and WBEs where feasible.

(2) MBE/WBE Compliance Reports which shall be submitted to the Diversity Department on the monthly basis.

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

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

(d) The Consultant shall provide the Owner with M/WBE and/or Workforce Monthly Utilization Reports, by the last calendar day of each month, in the form of ("Exhibit F") hereto. Failure to provide such reports shall be an event of default of consultant's obligations pursuant to this Section. (IF NO GOALS JUST WRITE, "M/WBE and Workforce Utilization Reports – n/a").

(e) The Consultant shall provide proof of payment to all subconsultants and material men in the form of a waiver of lien or cancelled check, with each request for payment. Failure to provide such proof of payment shall be an event of default of consultant's obligations pursuant to this Section. (IF NO GOALS JUST WRITE, "Consultant Proof of Payment – n/a").

26.5 Failure to Comply

(a) In accordance with 5 NYCRR §142.13, The Consultant acknowledges that if it is found to have willfully and intentionally failed to comply with the M/WBE participation goals set forth herein or any other requirements set forth in this Article 27, such finding constitutes a breach of contract and the Owner may withhold payment from the Consultants as liquidated damages.

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

27. Interest of Others

Nothing in this Agreement shall be construed to give any person other than the Owner and the Consultant any legal or equitable right, remedy or claim. This Agreement shall be held to be for the sole and exclusive benefit of the Owner and the 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 the Owner and no liability on account thereof shall be incurred by the Owner beyond monies available for the purpose thereof. In no event shall any claim be asserted under this Agreement by the Consultant or any Sub-consultant against any member, officer, employee, lessee, consultant or agent of the Owner, or the State of New York. By execution of this Agreement, the Consultant agrees to look solely to the Owner with respect to any claim which may arise.

29. Participation in International Boycott Prohibited

The Consultant agrees, as a material condition of this Agreement, that neither the 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 there under. 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 the Consultant under this Agreement is greater than \$15,000, the 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. Termination for Failure to Disclose Under NYS Finance Law §139k

The Hugh L. Carey Battery Park City Authority reserves the right to terminate this contract in the event it is found that the certification filed by the Consultant pursuant to New York State Finance Law §139-k was intentionally false or intentionally incomplete. Upon such finding, Hugh L. Carey Battery Park City Authority may exercise its termination right by providing written notification to the Consultant in accordance with the written notification terms of this contract. If a contract is terminated in accordance with State Finance Law §139k(5), Hugh L. Carey Battery Park City Authority, its subsidiaries and affiliates, will include a statement in Hugh L. Carey Battery Park City Authority's procurement record describing the basis for any action taken under the termination provision.

32. Comptrollers 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).

33. Form of Agreement not an Offer

Notwithstanding anything herein to the contrary, the submission of this form of Agreement by the Authority to the Consultant shall not constitute an offer, and execution hereof by the Consultant shall not be considered acceptance of an offer. A binding contract between the parties shall exist only if and at such time as both parties have executed this document.

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: _____

[INSERT CONSULTANT’S NAME HERE].

By: _____

Name: _____

Title: _____

FEIN#: _____

EXHIBIT E - PROMPT PAYMENT POLICY

PROMPT PAYMENT POLICY

OF THE

BATTERY PARK CITY AUTHORITY

Section 9002.1. Statement of Policy and Purpose. The Battery Park City Authority is a body corporate and politic, constituting a public benefit corporation, established by Chapter 343 of the Laws of 1968. This Prompt Payment Policy is adopted pursuant to Section 2880 of the Public Authorities Law, requiring each public benefit corporation to promulgate rules and regulations detailing its policy with respect to making prompt payment to contractors.

Section 9002.2. Definitions. For the purpose of this Part, the following terms shall have the following meanings unless the context shall clearly indicate otherwise:

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

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

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

- (i) selling materials, equipment or supplies or leasing property or equipment to the Authority
- (ii) constructing, reconstructing, rehabilitating or repairing buildings, streets or other improvements for or on behalf of the Authority; or
- (iii) rendering or providing services to the Authority.

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

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

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

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

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

- (i) the date on which a Proper Invoice is received by the Designated Payment Office; or
- (ii) the date on which the Authority receives the purchased goods, property or services covered by the Proper Invoice, whichever is later.

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

Section 9002.3. Applicability. This Part shall apply to all Contracts entered into on or after April 29 1988.

Section 9002.4. (a) Payment Request Procedure. Contractors that are owed money by the Authority shall deliver a Proper Invoice to the Designated Payment Office. The Designated Payment Office will log the receipt date of each invoice, and send it to the department unit within the Authority that received the goods, property or services from the Contractor for review and verification of the Contractor's performance in accordance with the Contract. Contractors with Contracts which provide for payment at specific dates or intervals shall also be required to provide a Proper Invoice which certifies that the obligations required under such Contract have been performed prior to such date(s) or during such interval(s) and review and verification of the Work of these Contractors will take place upon receipt of such Proper Invoice; payment shall be made in accordance with the terms of such Contracts.

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

- (i) for invoices received on or before June 30, 1989, payment will be made by the Authority within 45 calendar days after Receipt of a Proper Invoice;
- (ii) for invoices received on or after July 1, 1989, payment will be made by the Authority within 30 calendar days, excluding legal holidays, after Receipt of a Proper Invoice;
- (iii) for contracts which provide for payment at one or more specific dates or intervals, payment will be made in accordance with the terms of such Contracts, but interest shall only be payable if payment is not made within the time provided in (i) and (ii) above; and
- (iv) this schedule will not apply in those instances where payment is being delayed by reason of any of the exceptions listed in Section 9002.4(e) or where the time in which to make payment is being tolled for any of the reasons listed in Section 9002.4(f) herein, in which cases the time for payment shall be as there provided.

(c) Interest Computation. If the Authority fails to make payment in accordance with the prompt payment schedule set forth in Section 9002.4(b) above, the Authority will pay interest to the

affected Contractor at the rate equal to that set by the State Tax Commission for corporate taxes pursuant to Section 1096(e) of the Tax Law.

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

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

- (i) Statutory or Contract provisions requiring an inspection period or an audit prior to payment;
- (ii) the absence of a state appropriation which is necessary to authorize payment; (iii) a requirement for federal government examination of a Proper Invoice prior to payment;
- (iv) Extraordinary delay between the time of the provision of goods, property or services by a Contractor and the receipt of a Proper Invoice by the Authority;
- (v) failure by a Contractor to submit documents required by the Contract or reasonably required by the Authority prior to payment;
- (vi) where time is taken in the processing of an invoice by the State Department of Taxation and Finance, the State Division of the Budget, the Office of the State Comptroller, or any other entity external to the Authority that is or may be required by statute, regulation or Contract to approve or process Authority payments.

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

- (i) a reasonable belief by the Authority in the existence of any defect(s), including any incompleteness or failure of compliance with the terms of the Contract, in or with respect to the goods, property or services delivered;
- (ii) a reasonable belief by the Authority in the existence of any defect(s) in the invoice; or
- (iii) a reasonable belief by the Authority in suspected impropriety of any kind.

In order to toll the prompt payment schedule without penalty, the Authority has fifteen calendar days after receipt of an invoice to send a Contractor notification of such defects or improprieties. Authority notification shall be by letter to the Contractor setting forth any such defect or impropriety in reasonable

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

Section 9002.5. (a) Annual Report. After the completion of each fiscal year ending after January 1, 1989, the Authority shall prepare an annual report on the scope and implementation of this prompt payment policy. The report shall include, but not be limited to, the following:

- (i) A listing of the types or categories of contracts which the Authority entered into during the twelve month fiscal year covered by the report with an indication whether each such type or category of contract was subject to this prompt payment policy, and if it was not, the reason(s) why not;
- (ii) the number and amount of interest payments made for contracts, arranged according to each such type or category;
- (iii) the number of interest chargeable days, and the total number of days taken to process each late contract payment; and
- (iv) a summary of the principal reasons why such late payments occurred.

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

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

Section 9002.6. (a) Amendment. The Authority shall have the power to amend this Part by promulgating amended rules and regulations at any time, and within thirty days of the adoption of any such amendments hereto, the Authority shall file copies with the State Comptroller, the State Director of the Budget, the Chairman of the Senate Finance Committee, and the Chairman of the Assembly Ways and Means Committee.

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

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

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

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

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

EXHIBIT G - SUBMITTALS TO ACCOMPANY PROPOSAL

1. Itemized Proposal (Schedule of Values) from Exhibit C.