

BATTERY PARK CITY AUTHORITY

REQUEST FOR PROPOSALS

FOR

PIER A PLAZA DESIGN SERVICES

August 6, 2012

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I. SUMMARY

Battery Park City Authority d/b/a Hugh L. Carey Battery Park City Authority (“BPCA”) requests proposals (each individually, a “Proposal” or collectively, the “Proposals”) from firms with expertise in architecture, landscape architecture and engineering services (each individually, a “Proposer” or collectively, the “Proposers”) to provide architecture, landscape architecture and engineering services to BPCA for the plaza adjacent to Pier A, the promenade surrounding the Pier A building and their adjacent waterfront areas (the “Pier A Plaza Design Services”). The Pier A Plaza Design Services shall include, but shall not be limited to: (1) completion and production of construction documents; (2) public approvals support and (3) construction phase architecture, landscape architecture and engineering services.

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

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

II. DESCRIPTION OF BPCA

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

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

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

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

owns and has built out a commercial condominium unit in a residential building in Battery Park City, which serves as the BPCPC headquarters.

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.bpcparks.org.

III. SERVICES REQUIRED

A. If selected, Proposer will be responsible for the services delineated in Exhibit A (the "General Work Description"), attached hereto.

B. All work to be performed by the selected Proposer shall be performed under the supervision of a Partner / Principal / Owner of the firm in charge of this engagement (the "Lead Individual"), who must ensure that the work completed for BPCA is performed competently and in a timely manner. A Partner / Principal / Owner must be available throughout the project for meetings, presentations and consultations.

C. If selected, Proposer shall provide BPCA with all deliverables (e.g., construction documents) and actions (e.g., submittal reviews of shop drawings, samples, etc.) necessary to provide the services delineated in the General Work Description of this RFP.

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: Monday, August 6, 2012
- Deadline to submit questions to BPCA: Monday, August 13, 2012 by 4:00 p.m. (by email only)
All questions regarding this RFP should be submitted in writing via email to the "Designated Contact": Venus Callender, Battery Park City Authority, at venus.callender@batteryparkcity.org.
- Deadline for BPCA's response to substantive questions: Thursday, August 16, 2012 (by email)
- **DUE DATE FOR RESPONSES TO RFP: Tuesday, August 28, 2012 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 approximately 12-15 months, through three (3) months after Substantial Completion of the Pier A Plaza, as determined by BPCA. 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 Individual 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 Proposer must have an office in New York State (a New York City office is preferred); and
- 2) The Proposer must be licensed in the State of New York to perform the Services Required.

V. GENERAL REQUIREMENTS

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

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

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

B. Restricted Period

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

C. Submission of Proposals

Proposals are due no later than 3:00 p.m. on August 28, 2012

Proposers must submit ten (10) paper copies of their Proposals and one (1) electronic CD-Rom copy in a sealed package clearly marked “**Proposal Enclosed – Pier A Plaza Design Services**” to the Designated Contact **by messenger, overnight courier or certified mail** to the following address:

Venus Callender
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 - Pier A Plaza Design 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, with their Proposal 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” paper. Pages should be numbered. 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) Transmittal Letter, as follows:

The Proposal must include a signed Transmittal Letter from a person within the firm who is authorized to bind the firm, preferably the Lead Individual. **Transmittal Letters must be signed. Proposals with unsigned Transmittal Letters will be rejected.**

The Transmittal 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 Services Required (see Section III).

- 4) Firm's Responses to the RFP Questions and RFP Additional Information Request, set forth below.
- 5) Firm's Cost Proposal, as described below.

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 New York City plaza/waterfront architecture, landscape architecture and engineering projects requiring approvals by the New York City Public Design Commission ("PDC") and/or the New York City Department of City Planning ("DCP").
- 2) If your offices are located in more than one city? Indicate which office will provide the Services Required.
- 3) Describe your experience and proposed methodology for performing the types of Services Required by this RFP, as more clearly delineated in the General Work Description, including obtaining public approvals from all authorities having jurisdiction over Pier A, such as the PDC and DCP.
- 4) Describe the relevant special services your firm provides, particularly those that may not be offered by other firms.
- 5) 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.
- 6) Describe the on-line services, publications, training/seminars and other resources maintained by your firm that would be available to BPCA.
- 7) 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.
- 8) 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 professional services? If so, please provide an explanation and the current status or disposition of the matter.
- 9) List any professional or personal relationships your firm's employees (and those of any proposed subconsultants) may have with BPCA's Board and/or staff members of BPCA.
- 10) List all the key employees you intend to assign to this engagement and the area(s) of specialization for each discipline. Describe the role of each key employee who will be assigned to this engagement.
- 11) Identify the Lead Individual from the Proposer's firm who will be the primary contact and lead the Proposer's team in providing services to BPCA, and who will be listed as a "key person" in any contract with BPCA.
- 12) 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.
- 13) Describe your firm's "backup plan" in the event one or more of the key personnel assigned to this engagement leave the firm prior to completion of the contract.
- 14) 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.
- 15) 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.
- 16) Proposers shall identify any and all exceptions taken to BPCA's standard form of contract, attached as Exhibit C, 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.

D. RFP Additional Information Request

- 1) Insurance:

- a. Describe the levels of coverage for any professional liability, worker's compensation, general liability, commercial general liability insurance your firm carries. List the insurance carrier(s), coverage amounts, and current expiration dates of each policy.
- b. Are there any limitations on any current liability insurance policy or current claims against same?

2) Appendices:

- a. Include professional biographies for all professional employees listed in your Proposal.
- b. Provide an organizational chart and firm credentials.

3) 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, address and telephone number for the client's primary contact person for the work performed.

E. Cost Proposal

1) **Fee Proposal:** All proposals must include a not-to-exceed fee proposal, with a breakdown per phase, in accordance with the General Work Description. Provide a separate, additional cost for a site model, should one be required, as described in the General Work Description.

2) **Hourly Rates:** Should additional services be required, BPCA and Consultant shall negotiate a lump sum proposal for same or BPCA may elect to proceed on the basis of the hourly rates for the following personnel categories: Principal/Partner, Associate, Architect/Landscape Architect, Sr. Designer, and Jr. Designer or suitable equivalents for each discipline. *Provide a schedule of applicable hourly rates for each listed personnel category in your Proposal.*

3) **Reimbursable Expenses:** Expenses for items such as printing, messengers, telephone, fax, or other expenses directly relating to the Services Required shall be billed at cost as reimbursable expenses. Records of reimbursable expenses shall be available to BPCA upon request. *Provide an estimate of reimbursable expenses in your Proposal.*

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;

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 Individual as well as 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) Qualifications and experience in architecture, landscape architecture and engineering of urban spaces and plazas: 25%
- 2) Experience with design approvals and implementation of New York City plaza projects and waterfront spaces and the approval processes associated with NYC's Waterfront Zoning Ordinance and PDC: 25%
- 3) Cost Proposal: 25%
- 4) Staffing: 15%
- 5) Diversity (i.e., proposed MBE/WBE utilization plan (the "Utilization Plan") and/or Firm MBE/WBE status): 10%

BPCA retains the right to reject any and all proposals based on its sole discretion. No fees or costs shall be reimbursed to the responders to this RFP.

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

(General Work Description attached)

GENERAL WORK DESCRIPTION

BACKGROUND:

Battery Park City Authority (BPCA) is seeking proposals for architecture, landscape architecture and engineering and related consulting services necessary to implement the improvements to the plaza adjacent to Pier A, the promenade surrounding the Pier A building, and adjacent waterfront areas, based on the preliminary design dated August 6, 2012 (the Preliminary Design) (which can be accessed as follows: URL: <ftp.bpacftp.org>; Username: bpcaftpstrategic; Password: W3lln3\$\$) that has been submitted to the New York City (NYC) Public Design Commission (PDC). All proposers must submit proposals in accordance with the RFP.

BPCA is in the process of restoring and renovating Pier A for use as a year-round, restaurant and event facility. Pier A is a designated NYC Landmark on the Hudson River. The historic pier building is situated just south of Battery Park City and Wagner Park, and just north and west of Historic Battery Park and the Battery Park departure area for Ellis Island and the Statue of Liberty.

The NYC Waterfront Zoning text was adopted in 1993 as a result of NYC's Comprehensive Waterfront Plan issued in 1992, establishing requirements for public access to the waterfront in private developments and creating design standards for waterfront public access areas. The goals for the public access components include providing visual and physical connectivity (such that the space "reads as public"), complementing site conditions, establishing design quality, providing access to water, and providing a diversity of experiences.

In accordance with NYC Department of City Planning (DCP) requirements, the Pier A Project currently underway must conform to the NYC Waterfront Zoning requirements. In addition, because the Pier A site is owned by NYC (BPCA holds a long-term ground lease on the property), the design of the upland plaza (Pier A Plaza) is within the purview of and must be approved by the PDC. To these ends, BPCA is seeking proposals from qualified design firms to provide architecture, landscape architecture and engineering services necessary for the completion of the design of the Pier A Plaza and promenade surrounding Pier A, and to complete the application process to obtain required approvals from the DCP, PDC and all other agencies related to the successful approval and construction of the mandated waterfront access at Pier A. BPCA has begun the design approval process under a separate contract, with initial submissions to both DCP and PDC. BPCA anticipates that the design will be refined to or near the design development level at the time that the services outlined in this RFP commence.

The Pier A renovation project is being completed in two stages: base building improvements, including the restoration of the building on Pier A, are being implemented by BPCA (Base Building Work); and tenant improvements to complete the fit-out the building as a restaurant and event facility (Tenant Improvement Work). Both stages of the project are pursuing LEED Silver Certification. The tenant's fit-out of the building will be implemented concurrently with BPCA's construction of the Pier A Plaza. The improvements (the "Project" for which this RFP is being released) are being implemented by BPCA and will include both the pier promenade and the Pier A Plaza.

It is to be assumed by all respondents to this RFP that there will be meetings with both the Base Building Work and Tenant Improvement Work teams to achieve the collective goal of a highly successful waterfront area at this important site at the southern tip of Manhattan. The tenant will be interested in a wide range of issues, especially public and service circulation.

The design of the plaza and promenade improvements shall bridge between Wagner Park and Battery Park, taking into account the special location and significance of Pier A, as well as its year-round use. The budget for these improvements is limited, so it is imperative that the designers deal with the design of the improvements with great sensitivity to cost and value, as well as the experiential qualities of the site.

PROJECT DESCRIPTION:

The project will encompass the Construction Document Phase through the Construction Phase (as detailed below) for the plaza space, promenade, and adjacent waterfront areas, including services necessary to advance the existing submission documents to DCP and PDC to obtain all necessary approvals, including responding to comments from agencies on documents already submitted and any other required approvals.

Approximate project areas and general scope are as follows:

1. **Plaza Area:** 35,000 sf. Redesign the plaza to comply with waterfront zoning requirements and programmatic use required to obtain both temporary and final certificates of occupancy for the change of use of Pier A.
2. **Promenade Surrounding the Pier A Building:** 10,000 sf. The existing finished surface and surrounding railing to remain, with lighting/seating/other modifications/repairs. Building accessibility is being address as part of ongoing work at the building. Limited design interventions and treatments will be completed at this area as a part of the scope of work of this RFP.
3. **Pier A Building:** 14,000 sf footprint. No work required upon or within the building envelope.

GREEN DESIGN REQUIREMENTS:

BPCA upholds environmentally sustainable building and design criteria, and expects this project will conform to the extent feasible with “green” (environmentally friendly) criteria at all levels.

As part of this project, proposers shall include the use of non-toxic, sustainably-produced or recycled materials. In addition, all recyclable materials removed from the project site shall be disposed of at a recycling facility.

All construction materials shall be selected and/or designed to comply with the above requirements. Concrete and asphalt batch design submitted for approval shall highlight compliance with the green design requirements of the contract. Likewise, other materials such as paint for roadway striping submitted for approval shall be selected based on low toxicity and VOC levels.

SCOPE OF SERVICES:

All work provided by the selected proposer (the Consultant) shall be prepared in coordination with BPCA, and BPCA’s other consultants (e.g., legal counsel).

Construction Documents Phase

1. Prepare architecture, landscape architecture and engineering plans and specifications for bidding including site plan, paving and layout plan, landscape plan and schedule, and key architectural and landscape details, refining the Preliminary Design and submittals to the PDC, as required.
2. Prepare bid alternates to maintain the project budget.
3. Public documents, submissions and reviews:
 - A. With the assistance of BPCA and their consultants, identify all key agency submissions, reviews and approvals required during the Construction Documents Phase (including all required public documents, submissions and reviews and all services required to assist BPCA to obtain the necessary approvals).
 - B. Attend all meetings to support BPCA in obtaining approvals from the authorities having jurisdiction.
 - C. Coordinate with other documents produced by BPCA and other consultants necessary to complete the document approval packages. Coordinate Waterfront Zoning criteria with owner’s land use attorney for zoning application approval by DCP.
 - D. Prepare illustrative plans and renderings as necessary for presentation to DCP, the PDC, and other agencies or stakeholders.
 - E. Participate in discussions with the DPC, PDC, and Department of Transportation as required.
 - F. Select final materials for review and approval by BPCA and the entities with jurisdiction.
 - G. Submit final review documentation to the PDC for approval, based on the Preliminary Design documents, as follows:
 - i. Two copies of the application form.
 - ii. A comprehensive list of any design revisions made since Preliminary Design approval.
 - iii. Construction drawings at 90% completion (*for all projects that require a permit from the Department of Buildings, please note that all construction drawings must conform to the Department of Building’s requirements for its B-SCAN system.*) and 100% completion.
 - iv. A complete list of materials, colors and finishes.
 - v. Material samples, including specified type, color and finish.
 - vi. If required, a model will be provided by the Consultant as an additional service.
 - vii. Written confirmation of community board review of any design revisions since preliminary approval, as needed.
4. The deadline for submission of the 90% CD package noted above to NYC Economic Development Corporation is October 9, 2012, with the incorporation of any changes for the submission to PDC by October 23, 2012.

Bidding and Negotiation Phase

1. Assist with review of contractor's bids.
2. Prepare conformed documents to reflect the procured scope, if necessary, due to the incorporation of any proposed bid alternates.

Construction Phase

1. Review shop drawings, product data, samples and similar submittal materials of the contractors.
2. Visit the site periodically over the construction duration to determine whether the work is in accordance with the requirements of the contract documents.
3. Participate in construction meetings during the Construction Phase, with BPCA and others.
4. Provide observations of the work to determine recommendations as to the dates of substantial completion and final completion. Prepare and update punch lists as required to inform BPCA and the contractors of deficiencies in the Work.
5. Provide services in support of the closeout of the project with the contractors and all authorities having jurisdiction.

SUBCONSULTANTS:

The Consultant shall retain any and all subconsultants necessary to provide the scope of services outlined herein, including but not limited to architectural, landscape, engineering, lighting and signage/graphics.

PHASES AND SCHEDULE:

Construction Documents (CDs) Phase:	90% CDs by October 9, 2012; 100% CDs two weeks after approval by PDC.
Public Documents, Submissions and Reviews:	Concurrent with CDs.
Bidding and Negotiation Phase:	4 weeks.
Construction Administration Phase:	approximately 26 weeks, not including contractor mobilization.

EXHIBIT B

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

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

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

Business Participation Opportunities for MBE/WBEs

For purposes of this solicitation, BPCA hereby establishes an overall goal of **30%** for MBE/WBE participation, **15%** for MBE participation and **15%** for WBE participation (based on the current availability of qualified MBEs and WBEs). A contractor (“Contractor”) on the Contract must document good faith efforts to provide meaningful participation by MBE/WBEs as subcontractors or suppliers in the performance of the Contract and Contractor agrees that BPCA may withhold payment pending receipt of the required MBE/WBE documentation. The directory of New York State Certified MBE/WBEs can be viewed at: <http://www.esd.ny.gov/mwbe.html>.

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

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

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

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

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

B. BPCA will review the submitted Utilization Plan and advise the Proposer of BPCA’s acceptance or issue a notice of deficiency within 30 days of receipt.

C. If a notice of deficiency is issued, Proposer agrees that it shall respond to the notice of deficiency within seven (7) business days of receipt by submitting to BPCA, at the address specified in this RFP, or by facsimile at 212-417-2279 a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by BPCA to be inadequate, BPCA shall notify the Proposer and direct the Proposer to submit, within five (5) business days, a request for a partial or total waiver of MBE/WBE participation goals. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or Proposal.

D. BPCA may disqualify a Proposer as being non-responsive under the following circumstances:

- 1) If a Proposer fails to submit a Utilization Plan;
- 2) If a Proposer fails to submit a written remedy to a notice of deficiency;
- 3) If a Proposer fails to submit a request for waiver; or
- 4) If BPCA determines that the Proposer has failed to document good faith efforts.

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

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

Equal Employment Opportunity Requirements

The Contractor is required to ensure that it 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, where applicable, 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, upon request, submit to BPCA a workforce utilization report identifying the workforce actually utilized on the Contract, if known.

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

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

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

EXHIBIT C

(standard contract attached)

CONSULTANT AGREEMENT

between

HUGH L. CAREY BATTERY PARK CITY AUTHORITY

and

NAME OF COMPANY, INC. CORP, CO.

Dated as of DATE

Contract No. ????

(PROJECT NAME)

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CONSULTANT AGREEMENT

AGREEMENT made as of **DATE** between HUGH L. CAREY BATTERY PARK CITY AUTHORITY, (“BPCA” or “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 **NAME OF COMPANY**, incorporated in the State of **????**, having an office at **Street, City, State Address & Phone Number** (“Consultant”).

W I T N E S S E T H:

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

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

WHEREAS, Owner intends to retain the services of Consultant to perform **????????????????** (“the Work” or the “Project”), and Consultant desires to perform such services for Owner;

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

1. Scope of Work

Consultant shall perform the services described in the Scope of Work attached hereto as **Exhibit A????** (the “Work”) and in accordance with any schedule(s) for the Work set forth therein. Owner hereby acknowledges that certain portions of the Work may have been performed by Consultant prior to the date hereof, in anticipation of this Agreement.

2. Time for Performance

The Work shall be performed at such times as may be requested by Owner during the period commencing as of the date the Agreement is executed by the Authority and Consultant (the “Effective Date,” which shall be inserted by the Authority at the head of this Agreement) until **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 Consultant and Owner.

3. Compensation

(a) Consultant shall be entitled to receive as compensation (“Fee”) for the Work **A SUM NOT TO EXCEED? LUMP SUM? \$\$\$\$\$**, paid in accordance with **Exhibit B????**, which fee includes any and all reimbursable expenses???? 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 be accompanied by appropriate Time Sheets, Exhibit E.**

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

(c) Owner shall pay Consultant so much of the amount requested as may be approved by Owner not later than the 30th day following Owner's receipt of each written request. Any amounts indicated in any exhibit hereto as attributable to any phase of the Work which do not in fact become payable to Consultant with respect to such phase of the Work shall be available for payment to Consultant with respect to subsequent phases of the Work, subject to the provisions of this Article 3 and the approval of Owner.

(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 NAME OF BPCA CONTACT, TITLE.

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

Owner shall have the right to make changes or to increase or reduce the scope of the Work or to extend the period set forth in the time schedule in Section 2, at any time and for any reason, upon written notice to Consultant specifying the nature and extent of such changes. In the event any such changes as contemplated herein results in an additional expenditure of time by Consultant or Subconsultant (as hereinafter defined), Owner will pay Consultant any additional reimbursable expenses approved pursuant to 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. Consultant Cooperation

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

6. Termination

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

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

(c) Anything herein contained to the contrary notwithstanding, if:

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

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

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

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

(v) Consultant otherwise shall be in default hereunder;

then Owner may terminate this Agreement as to Consultant for cause, in accordance with the procedure set forth in Subsection 6(a) hereof. Upon termination pursuant to this Subsection 6(c), Consultant shall be entitled to amount of the Fee which has not theretofore been paid to Consultant and which shall compensate Consultant for all Work actually and satisfactorily performed by it up to the date of termination, provided, however, that Owner shall deduct from any amount all additional costs and expenses which Owner may incur over those which Owner would have incurred in connection with the Work if Owner had not so terminated this Agreement for cause. Nothing contained in this Agreement shall limit in any manner any and all rights or remedies otherwise available to Owner by reason of a default by Consultant under this Agreement, including, without limitation, the right to seek full reimbursement from Consultant for all costs and expenses incurred by Owner by reasons of Consultant's default hereunder and which Owner would not have otherwise incurred if Consultant had not defaulted hereunder.

(d) Upon any termination of this Agreement in accordance with the provisions of this

Section 6, Consultant shall, with respect to the Work which is the subject of such termination:

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

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

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

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

7. Suspension

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

8. Assignment

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

9. Ownership of Documents

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

10. Insurance

(a) Required Coverages Consultant shall provide, or cause to be provided, and thereafter shall keep or cause to be kept in full force and effect, until receipt of final payment by Consultant hereunder (unless a longer period is expressly required) the following insurance:

(i) Worker's compensation insurance in statutory amounts and disability and employer's liability insurance in the amount of **\$500,000, covering all persons employed by Consultant, and by any Subconsultants.**

(ii) **Professional Liability Insurance – Professional Liability Insurance with limits of liability in amounts not less than five Million Dollars (\$5,000,000) for Consultant, insuring Consultant, each Subconsultant and any of their respective officers, directors, stockholders, employees, consultants and partners, for liability arising out of the carrying out of Consultant's or Subconsultant's professional responsibilities for the Work. All such professional liability policies shall include coverage for contractual liability, including the matters set forth in Section 17 hereof. Consultant agrees to maintain such coverage (and to cause its Subconsultants, if applicable, to maintain such coverage) until the earlier of six (6) years after the completion of the performance of the Work hereunder or six (6) years after termination of this Agreement.**

(iii) **Commercial general liability insurance written on coverage form ISO CG0001 or its equivalent, covering the liability of Consultant for all the Work and operations relating thereto and all obligations assumed by Consultant under this Agreement in an amount which shall not be less than the following limits:**

**Combined Single Limits, Bodily Injury, Death
Property Damage and Personal Injury Liability
\$20,000,000 Aggregate
\$10,000,000 Each Occurrence**

Excess Coverage – n/a.

The aforesaid said insurance shall (A) be written on an occurrence basis, with a deductible of not more than \$25,000 per loss, (B) contain no exclusions beyond those provided in Form ISO CG 0001 unless specifically approved in each instance by Owner, which approval shall not be

unreasonably withheld or delayed, (C) include a contractual liability endorsement to insure Consultant's obligations under this Agreement, (D) conform to independent contractors coverage, and (E) may be written through a combination of primary and umbrella coverage. The certificate of insurance must indicate that the insurance afforded by this Section is on a "Per Project" aggregate basis.

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

(b) Other Insurance Requirements

(i) All policies of insurance, except worker's compensation/employer's liability, required by this Article shall contain a written waiver of the right of subrogation with respect to all of the named insureds and Additional Insureds (as hereinafter defined). Should other or additional types of insurance or clauses thereafter become available, Consultant agrees to furnish such new policies to Owner. Consultant further agrees to execute and deliver any additional instruments and to do or cause to be done all acts and things that may be requested by Owner to insure Owner and the Additional Insureds properly and fully against all damage and loss as herein provided for and to effectuate and carry out the intents and purposes of this Agreement.

(ii) Policies providing for applicable insurance shall be issued only by insurance companies that are licensed or authorized to do business in the State of New York and that have a rating in the latest edition of "Bests Key Rating Guide" of "A:VII" or better, or another comparable rating reasonably acceptable to Administrator and Licensor. **Certificates of Insurance evidencing the issuance of all insurance required by this Article, and guaranteeing at least thirty (30) days' prior notice to Owner of cancellation or non-renewal, shall be delivered to Michelle Burgos, Paralegal, at Owner's place of business, prior to execution of this Agreement,** or, in the case of new or renewal policies replacing any policies expiring during the Period, no later than thirty (30) days before the expiration dates of such policies. At Owner's request, Consultant shall submit the entire original policy.

(iii) Each policy of insurance required to be carried pursuant to the provisions of this Article 10, except worker's compensation/employer's liability, shall contain a provision that no error or omission of Consultant shall affect or limit the obligation of the insurance company to pay the amount of any loss sustained by any of the Additional Insureds (as hereinafter defined).

(iv) The insurance policies required by Sections 10 (a) (iv) and (vii) above shall be primary protection and none of the Additional Insureds (as hereinafter defined) will be called upon to contribute to a loss that would otherwise be paid by Licensee's insurer.

(v) The certificates of insurance for the commercial liability and marine protection and indemnity insurance shall name **Owner, Battery Park City Parks Conservancy Corporation, the State of New York, the City of New York, the New York City**

Economic Development Corporation and Apple Industrial Development Corp. as additional insureds (collectively, the “Additional Insureds”), as their interests may appear.

11. Authority of Owner

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

12. Entire Agreement

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

13. Consultant as Independent Contractor

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

14. Maintenance, Audit and Examination of Accounts

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

15. Acceptance of Final Payment; Release and Discharge

The acceptance by Consultant of the final payment under this Agreement, or any final payment due on earlier termination of this Agreement under Section 6 hereof, shall constitute a

full and complete waiver and release of Owner from any and all claims, demands and causes of action whatsoever which Consultant, and/or its successors and assigns have, or may have, against Owner under the provisions of this Agreement, unless a detailed and verified statement of claim is served upon Owner not later than the making of the final payment. It is expressly understood and agreed that Owner's or Consultant's termination of this Agreement pursuant to Sections 6 or 7 hereof shall not give rise to any claim against Owner for damages, compensation or otherwise as a result of such termination, and that under such circumstances Owner's liability to make payments to Consultant on account of any and all Work shall be limited to the payments set forth in Section 6 or Section 7, as the case may be.

16. Covenants, Representations and Warranties

(a) Consultant represents and warrants to Owner that:

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

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

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

(b) Consultant covenants and agrees that:

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

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

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

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

Agreement;

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

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

(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) To the fullest extent permitted by law, Consultant shall indemnify and save Owner, Battery Park City Parks Conservancy, the State of New York, City of New York, New York City Economic Development Corporation, and Apple Industrial Development Corp, and each member, director officer, agent and employee of each of the aforesaid parties (said parties and their members, etc., being referred to herein, individually and collectively as the "Indemnitees") harmless from and against any and all liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses, including, without limitation, reasonable architects' and attorneys' fees and disbursements, that may be imposed upon or incurred by or asserted against any of the Indemnitees by reason of, the performance of the Work or the breach of any of the provisions set forth in Section 16 hereof, except that no Indemnatee shall be so indemnified and saved harmless to the extent of the proportion by which such liabilities, etc., are caused by the negligent or intentional tortuous acts or omissions of such Indemnatee:

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

(c) The obligations of Consultant under this Section 17 shall not be affected in any way by the absence of insurance coverage, or by the failure or refusal of any insurance carrier to perform an obligation on its part under insurance policies affecting the Premises.

(d) If any claim, action or proceeding is made or brought against any of the Indemnitees by reason of any event to which reference is made in this Section 17, then upon demand by Owner, Consultant shall either resist, defend or satisfy such claim, action or proceeding in such Indemnitee's name, by the attorneys for, or approved by, Owner's insurance

carrier (if such claim, action or proceeding is covered by insurance) or by such other attorneys as Owner shall reasonably approve. The foregoing notwithstanding, such Indemnatee or another Indemnatee may engage its own attorneys to defend such Indemnatee, or to assist such Indemnatee in such Indemnatee's defense of such claim, action or proceeding, as the case may be, and Consultant shall pay the reasonable fees and disbursements of such attorneys of such Indemnatee if it is determined that Owner is not at fault in any way.

(e) Each Indemnatee shall notify Consultant of the incurrence by or assertion against such Indemnatee, or the imposition of any cost or expense as to which Consultant has agreed to indemnify such Indemnatee pursuant to any of the provisions of this Section 17. Consultant agrees to pay such Indemnatee all amounts due under this Section 17 within five (5) days after such payment is determined to be Indemnatee's obligation, and any non-payment thereof by Consultant shall constitute a default for which Owner may terminate this Agreement in accordance with Section 6 (c) hereof.

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

(g) The provisions of this Section 17 shall survive the expiration or other termination of this Agreement.

18. Confidentiality

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

19. Modification

No 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. Consultant, any guarantor of the performance of its obligations hereunder (“Guarantor”) and their successors and assigns hereby subject themselves to the jurisdiction of any state or federal court located within such county, waive the personal service of any process upon them in any action or proceeding therein and consent that such process be served by certified or registered mail, return receipt requested, directed to the Consultant and any successor at Consultant’s address hereinabove set forth, to Guarantor and any successor at the address set forth in the instrument of guaranty and to any assignee at the address set forth in the instrument of assignment. Such service shall be deemed made two days after such process is so mailed.

23. Provisions Required by Law

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

24. Notices

Any notice, approval, consent, acceptance, request, bill, demand or statement required or permitted to be given hereunder (a “Notice”) from either party to the other shall be in writing and shall be deemed given when received by overnight mail or when deposited with the United States Postal Service in a postage prepaid envelope, certified or registered mail, addressed to the other party at the addresses set forth above. If to Owner, Notices shall be sent to the attention of **BPCA PERSON, TITLE**, with a copy to the General Counsel, and if to Consultant, Notices shall be sent to the attention of **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 Subconsultants

(a) Except as specifically provided herein, Consultant shall not employ, contract with or use the services of any consultants, contractors or other third parties (collectively, “Subconsultants”) in connection with the performance of its obligations hereunder without the prior written consent of Owner to the use of each such Subconsultant, and to the agreement to be

entered into between Consultant and any such Subconsultant. Consultant shall inform Owner in writing of any interest it may have in a proposed Subconsultant. No such consent by Owner, or employment, contract, or use by Consultant, shall relieve Consultant of any of its obligations hereunder.

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

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

26. Employment and Diversity

26.1. Definitions

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

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

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

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

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

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

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

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

- (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 Consultant and any individual or business enterprise, including a sole proprietorship, partnership, corporation, or not-for-profit corporation, in which a portion of a contractor’s obligation is undertaken or assumed.

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

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

- (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.

26.2. Equal Employment Opportunities for Minority Group Members and Women

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

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

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

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

(6) For purposes of providing meaningful participation by MBE/WBE's for the Work and achieving the goals established herein, Consultant and its Subconsultants 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, Consultant and its Subconsultants are encouraged to contact the Division of Minority and Woman Business Development ((518) 292-5250; (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, Consultant must document "good faith efforts", pursuant to 5 NYCRR §142.8, to provide meaningful participation by MBE/WBE's as Subconsultants or suppliers in the performance of the Work.

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

(c) Miscellaneous

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

(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 thereunder.

26.3. Workforce Participation

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

(b) To ensure compliance with this Section, Consultant shall submit a staffing plan to document the composition of the proposed workforce to be utilized in the performance of this

contract by the specified categories listed, including ethnic background, gender, and Federal occupational categories. 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) 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, Consultant is required to make good faith efforts to find and employ qualified Minority Group Members and women supervisory personnel and staff.

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

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

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

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

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

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

(ii) the actions the Consultant and Subconsultants have taken to meet the components of the Diversity Program;

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

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

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

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

(a) Consultant shall make good faith efforts to attain the participation of ????% MBEs and/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 Consultant is a joint venture including one or more MBEs and WBEs as joint venturers -- the Fee multiplied by the percentage of the joint venture's profits (or losses) which are to accrue to the MBE and WBE joint venturer(s) under the joint venture agreement; and

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

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

(1) MBE/WBE Compliance Reports shall be submitted to 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. Consultant shall maintain records detailing the efforts made to provide for meaningful MBE and WBE participation in the Work, including the names and addresses of all MBEs and WBEs contacted and, if any such MBE or WBE is not selected as a joint venture or subcontractor, the reasons for such decision;

(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 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 subcontractors 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 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 Consultant has a written agreement with each certified MBE and WBE which Consultant is using or intends to use, and if requested, copies of such agreements;

(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 Consultant to each certified MBE and WBE as of the date the MBE/WBE Compliance Report was submitted.

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

(e) Consultant shall provide proof of payment to all subcontractors and materialmen in the form of a waiver of lien or cancelled check, with each request for payment. Failure to provide such proof of payment shall be an event of default of contractor’s obligations pursuant to this Section. (IF NO GOALS JUST WRITE, “Contractor Proof of Payment – n/a”).

26.5 Failure to Comply

(a) In accordance with 5 NYCRR §142.13, Contractor acknowledges that if it is found to have willfully and intentionally failed to comply with the 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 Owner may withhold payment from the Contractor as liquidated damages.

(b) Such liquidated damages shall be calculated based on the actual cost incurred by Owner related to Owner’s expenses for personnel, supplies and overhead related to establishing, monitoring, and reviewing certified 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 Owner and Consultant any legal or equitable right, remedy or claim. This Agreement shall be held to be for the sole and exclusive benefit of Owner and Consultant.

28. Executory Contract

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

29. Participation in International Boycott Prohibited

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

30. MacBride Fair Employment Principles

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

31. 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 Contractor/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 Contractor/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 Consultant shall not constitute an offer, and execution hereof by 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: _____

SAME NAME AS ON COVER PAGE, INC. CORP. CO.

By: _____

Name: _____

Title: _____

FEIN# ??????????????????????????

EXHIBIT C

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

Section 9002.1

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

Section 9002.2

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

- (a) "Authority" shall mean the Hugh L. Carey Battery Park City Authority.
- (b) "Contract" shall mean an enforceable agreement entered into by the Authority and a Contractor, including purchase orders. Bond resolutions and any leases to which the Authority is a party, including any leases between the Authority and any of its tenants or subtenants, as well as any related agreements which are an integral part of such leases or subleases, are not Contracts within the meaning of this Section.
- (c) "Contractor" shall mean any person, partnership, private corporation or association providing or performing any of the following pursuant to a Contract:
 - (i) selling materials, equipment or supplies or leasing property or equipment to the Authority;
 - (ii) constructing, reconstructing, rehabilitating or repairing buildings, streets or other improvements for or on behalf of the Authority; or
 - (iii) rendering or providing services to the Authority.
- (d) "Designated Payment Office" shall mean that department within the Authority to which a proper invoice is to be submitted by a Contractor; unless otherwise, specified, the Designated Payment Office shall be:

Office of the Chief Financial Officer
Hugh L. Carey Battery Park City Authority
One World Financial Center, 24th Floor
New York, New York 10281-1097

Attention: Accounts Payable

- (e) "Prompt Payment" shall mean payment of a debt due and owing by the Authority pursuant to a Contract before interest accrues thereon pursuant to the provisions of this Part.
- (f) "Proper Invoice" shall mean a written request or invoice for contract payment setting forth the description, price and quantity of goods, property or services provided by a Contractor, such request or invoice being both in accordance with the terms of the Contract and in such form, and supported by such other substantiating documentation, as the Authority may reasonably require.
- (g) "Receipt of a Proper Invoice" shall mean either:
 - (i) The date on which a Proper Invoice is received by the Designated Payment Office or
 - (ii) The date on which the Authority receives the purchased goods, property or services covered by the Proper Invoice, whichever is later.
- (h) "Set-off" shall mean the reduction by the Authority of a payment due to a Contractor by an amount equal to the amount of an unpaid legally enforceable debt owed by the Contractor to the Authority.

Section 9002.3

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

Section 9002.4

- (a) Payment Request Procedure. Contractors owed money by the Authority shall deliver a Proper Invoice to the Designated Payment Office. The Designated Payment Office will log the receipt date of each invoice, and send it to the department unit within the Authority that received the goods, property or services from the Contractor for review and verification of the Contractor's performance in accordance with the Contract. Contractors with Contracts which provide for payment at specific dates or intervals shall also be required to provide a Proper Invoice which certifies that the obligations required under such Contract have been performed prior to such date(s) or during such interval(s) and review and verification of the work of these Contractors will take place upon receipt of such Proper Invoice; payment shall be made in accordance with the terms of such Contracts.
- (b) Prompt Payment Schedule. The schedule of the time in which the Authority will make prompt payment under a Contract is as follows:
 - (i) For invoices received on or after July 1, 1989, payment will be made by the Authority within 30 calendar days, excluding legal holidays, after Receipt of a Proper Invoice.

- (ii) For Contracts which provide for payment at one or more specific dates or intervals, payment will be made in accordance with the terms of such Contracts, but interest shall only be payable if payment is not made within the time provided as in (i) above.
 - (iii) This schedule will not apply in those instances where payment is being delayed by reason of any of the exceptions listed in Section 9002.4(e) or where the time in which to make payment is being tolled for any of the reasons listed in Section 9002.4(f) herein, in which cases the time for payment shall be there provided.
- (c) Interest Computation. If the Authority fails to make payment in accordance with the prompt payment schedule set forth in Section 9002.4(b) above, the Authority will pay interest to the affected Contractor at the rate equal to that set by the State Tax Commission for corporate taxes pursuant to Section 1096(e) of the Tax Law.
- (d) Funds Available to Pay Interest Penalties. The Authority will pay interest as provided herein with monies available to the Authority for operating and administrative expenses pursuant to its approved budget.
- (e) Extension of Payment Time. Any of the following facts, conditions or situations are determined by the Authority to be exceptions to the prompt payment schedule set forth in Section 9002.4(b) and to justify extensions of the time by which payment must be made (the amount of time of such extension being as established by the Authority's Treasurer consistent with this Part, with notice provided to the Contractor):
 - (i) Statutory or Contract provisions requiring an inspection period or an audit prior to payment;
 - (ii) The absence of a state appropriation which is necessary to authorize payment;
 - (iii) A requirement for federal government examination of a Proper Invoice prior to payment;
 - (iv) Extraordinary delay between the time of the provision of goods, property or services by a Contractor and the receipt of a Proper Invoice by the Authority;
 - (v) Failure by a Contractor to submit documents required by the Contract or reasonably required by the Authority prior to payment;
 - (vi) Where time is taken in the processing of an invoice by the State Department of Taxation and Finance, the State Division of the Budget, the Office of the State Comptroller, or any other entity external to the Authority that is or may be required by statute, regulation or Contract to approve or process Authority payments.
- (f) Defects or Improprieties. The following facts or conditions toll the prompt payment schedule set forth in Section 9002.4(b):

- (i) A reasonable belief by the Authority in the existence of any defects(s), including any incompleteness or failure of compliance with the terms of the Contract, in or with respect to the goods, property or services delivered;
- (ii) A reasonable belief by the Authority in the existence of any defect(s) in the invoice; or
- (iii) A reasonable belief by the Authority in suspected impropriety of any kind. In order to toll the prompt payment schedule without penalty, the Authority has fifteen calendar days after receipt of an invoice to send a Contractor notification of such defects or improprieties. Authority notification shall be by letter to the Contractor, setting forth any such defect or impropriety in reasonable detail, sent to the address indicated for notices under the Contract or, if no such address is provided, sent to the address set forth in the invoice provided that, in the event that the Authority fails to so notify the Contractor within such fifteen days, the sole effect of such failure to so notify the Contractor shall be that the number of days allowed for payment shall be reduced by the number of days between such fifteenth day and the date of the Authority's transmitting such notifications. In the event that the Authority fails to provide reasonable grounds for its contention that any such defect or impropriety exists, the date by which Contract payment shall be made shall be calculated from the date of receipt of an invoice.

Section 9002.5

- (a) Annual Report. The Authority shall prepare an annual report on the scope and implementation of this prompt payment policy. The report shall include, but not be limited to, the following:
 - (i) A listing of the types or categories of contracts which the Authority entered into during the twelve-month fiscal year covered by the report with an indication whether each such type or category of contract was subject to this prompt payment policy, and if it was not, the reason(s) why not;
 - (ii) The number and amount of interest payments made for contracts, arranged according to each such type or category;
 - (iii) The number of interest chargeable days, and the total number of days taken to process each late contract payment; and
 - (iv) A summary of the principal reasons why such late payments occurred.
- (b) Within ninety (90) days after the completion of each such fiscal year, copies of this annual report shall be filed with the State Comptroller, the State Director of the Budget, the Chairman of the Senate Finance Committee and the Chairman of the Assembly Ways and Means Committee.

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

Section 9002.6

- (a) Amendment. The Authority shall have the power to amend this Part by promulgating amended rules and regulations at any time, and within thirty days of the adoption of any such amendments hereto, the Authority shall file copies with the State Comptroller, the State Director of the Budget, the Chairman of the Senate Finance Committee and the Chairman of the Assembly Ways and Means Committee.
- (b) Contract Incorporation. The policy statement in effect at the time that a Contract is entered into is hereby incorporated into and made a part of that Contract.
- (c) Public Access. The Authority shall make copies of this policy statement available to the public upon reasonable request at the Authority's main office. The Authority shall also provide a copy of this policy statement to each Contractor at or prior to the time a Contract is entered into.
- (d) Inapplicability. This policy is not applicable to payments due and owing by the Authority to any other governmental entity, agency, public benefit corporation or the employees thereof when acting in or incidental to their public employment capacity, to interest on judgments rendered by a court against the Authority pursuant to any other provision of law, or to situations where the Authority exercises a legally authorized Set-off against all or part of a payment due a Contractor.
- (e) Legal Processes. The Authority is under no liability to pay interest pursuant to this policy for any period after a Contractor has filed a claim, given notice of an intention to file a claim or commenced legal action seeking any payment of interest; interest during such period shall only be paid as directed by the court in accordance with such other provisions of law as may be applicable.
- (f) Interpretation. This Part shall be interpreted consistent with and to fulfill the purposes of Section 2880 of the Public Authority Law.