



**PROJECT NO. PW335AS19**

**THE CITY OF NEW YORK  
DEPARTMENT OF DESIGN AND CONSTRUCTION  
DIVISION OF TECHNICAL SUPPORT  
30-30 THOMSON AVENUE  
LONG ISLAND CITY, NEW YORK 11101-3045  
TELEPHONE NUMBER (718) 391-1000  
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# **INFORMATION FOR BIDDERS AND AGREEMENT**

**FOR FURNISHING ALL LABOR AND MATERIALS NECESSARY  
AND REQUIRED FOR:**

**AIR SAMPLING, DUST WIPE SAMPLING  
AND LABORATORY TESTING SERVICES IN  
CONJUNCTION WITH ASBESTOS AND  
LEAD ABATEMENT PROJECTS WITHIN THE  
FIVE BOROUGHES OF THE CITY OF NEW  
YORK**

**VOLUME 2 OF 2**

**PREPARED BY: THE DIVISION OF TECHNICAL SUPPORT  
BUREAU OF ENVIRONMENTAL AND  
GEOTECHNICAL SERVICES**



**JUNE 2011**

**CITY OF NEW YORK**  
**DEPARTMENT OF**  
**DESIGN AND CONSTRUCTION**

**INFORMATION FOR BIDDERS**

**MARCH 2011**

## INFORMATION FOR BIDDERS

1. **Description and Location of Work:** The description and location of the work for which bids are requested are specified in Attachment 1, "Bid Information". Attachment 1 is included in the Bid Booklet.
2. **Time and Place for Receipt of Bids:** Sealed bids shall be received on or before the date and hour specified in Attachment 1, at which time they will be publicly opened and read aloud in the presence of the Commissioner or his/her representative, and any bidders who may desire to be present.
3. **Definitions:** The definitions set forth in the Procurement Policy Board Rules shall apply to this Invitation For Bids.
4. **Invitation For Bids and Contract Documents**
  - (A) Except for titles, sub-titles, headings, running headlines, tables of contents and indices (all of which are printed herein merely for convenience) the following, except for such portions thereof as may be specifically excluded, shall be deemed to be part of the Contract and the Invitation for Bids. The items listed below shall be deemed to be part of the Contract:
    - (1) Notice of Solicitation and Proposal for Bids
    - (2) Information for Bidders
    - (3) Bid or Proposal
    - (4) Contract, including the Exhibits set forth in Article 1.1 of the Contract
    - (5) All Addenda issued by the Commissioner prior to the receipt of bids
    - (6) All provisions required by law to be inserted in this Contract, whether actually inserted or not
    - (7) Notice of Award
  - (B) For particulars as to this procurement, including quantity and quality of the purchase, extent of the work or labor to be performed, delivery and performance schedule, and any other special instructions, prospective bidders are referred to the Invitation For Bids Documents. A copy of such documents can be obtained at the location set forth in Attachment 1.
  - (C) **Deposit for Copy of Invitation For Bids Documents:** Prospective bidders may obtain a copy of the Invitation For Bids Documents by complying with the conditions set forth in the Notice of Solicitation. The deposit must be in the form of a check or money order made payable to the City of New York and drawn upon a state or national bank or trust company, or a check of such bank or trust company signed by a duly authorized officer thereof.
  - (D) **Return of Invitation For Bids Documents:** All Invitation For Bids Documents must be returned to the Department upon request. If the bidder elects not to submit a bid thereunder, the Invitation For Bids Documents shall be returned to the Department, along with a statement that no bid will be submitted.
  - (E) **Return of Deposit:** Such deposit will be returned within 30 days after the award of the contract or the rejection of all bids as set forth in the advertisement, provided the Invitation For Bids Documents are returned to the location specified in Attachment 1, in physical condition satisfactory to the Commissioner.
  - (F) **Additional Copies:** Additional copies of the Invitation For Bids Documents may be obtained, subject to the conditions set forth in the advertisement for bids.
5. **Pre-Bid Conference:** A pre-bid conference shall be held as set forth in Attachment 1. Nothing stated at the pre-bid conference shall change the terms or conditions of the Invitation For Bids Documents, unless a change is made by written amendment as provided in Section 9 below. Failure to attend a mandatory pre-bid conference shall constitute grounds for the rejection of the bid.
6. **Agency Contact:** Any questions or correspondence relating to this bid solicitation shall be addressed to the Agency Contact person specified in Attachment 1.

7. Bidder's Oath

(A) The bid shall be properly signed by an authorized representative of the bidder and the bid shall be verified by the written oath of the authorized representative who signed the bid, that the several matters stated and information furnished therein are in all aspects true.

(B) A materially false statement willfully or fraudulently made in connection with the bid or any of the forms completed and submitted with the bid may result in the termination of any Contract between the City and the Bidder. As a result, the Bidder may be barred from participating in future City contracts as well as be subject to possible criminal prosecution.

8. Section Not Used

9. Examination of Proposed Contract

(A) Request for Interpretation or Correction: Prospective bidders must examine the Contract Documents carefully and before bidding must request the Commissioner in writing for an interpretation or correction of every patent ambiguity, inconsistency or error therein which should have been discovered by a reasonably prudent bidder. Such interpretation or correction, as well as any additional contract provisions the Commissioner may decide to include, will be issued in writing by the Commissioner as an addendum to the Contract, which will be transmitted to each person recorded as having received a copy of the Contract Documents from the Department. Transmission of such addendum will be by mail, e-mail, facsimile or hand delivery. Such addendum will also be posted at the place where the Contract Documents are available for the inspection of prospective bidders. Upon transmission as provided for herein, such addendum shall become a part of the Contract Documents, and binding on all bidders, whether or not actual notice of such addendum is shown.

(B) Only Commissioner's Interpretation or Correction Binding: Only the written interpretation or correction so given by the Commissioner shall be binding, and prospective bidders are warned that no other officer, agent or employee of the City is authorized to give information concerning, or to explain or interpret, the Contract.

(C) Documents given to a subcontractor for the purpose of soliciting the subcontractor's bid shall include either a copy of the bid cover sheet or a separate information sheet setting forth the project name, the Contract number (if available), the contracting agency and the Project's location.

10. Form of Bid: Each bid must be submitted upon the prescribed form and must contain: a) the name, residence and place of business of the person or persons making the same; b) the names of all persons interested therein, and if no other person is so interested, such fact must be distinctly stated; c) a statement to the effect that it is made without any connection with any other person making a bid for the same purpose and that it is in all respects fair and without collusion or fraud; d) a statement that no Council member or other officer or employee or person whose salary is payable in whole or part from the City Treasury is directly or indirectly interested therein or in the supplies, materials or equipment and work or labor to which it relates, or in any portion of the profits thereof; e) a statement that the bidder is not in arrears to the City or to any agency upon a debt or contract or taxes, and is not a defaulter as surety or otherwise upon any obligation to the City to any agency thereof, except as set forth in the bid.

THE BID SHALL BE TYPEWRITTEN OR WRITTEN LEGIBLY IN INK. THE BID SHALL BE SIGNED IN INK. ERASURES OR ALTERATIONS SHALL BE INITIALED BY THE SIGNER IN INK. FAILURE TO CONFORM TO THE REQUIREMENTS OF THIS SECTION 10 SHALL RESULT IN THE REJECTION OF THE BID.

11. Irrevocability of Bid: The prices set forth in the bid cannot be revoked and shall be effective until the award of the Contract, unless the bid is withdrawn as provided for in Sections 15 and 18 below.

12. Acknowledgment of Amendments: The receipt of any amendment to the Contract Documents shall be acknowledged by the bidder in its bid submission.

13. Bid Samples and Descriptive Literature: Bid samples and descriptive literature shall not be submitted by the bidder, unless expressly requested elsewhere in the Contract or Contract Documents. Any unsolicited bid samples or descriptive literature which are submitted shall not be examined or tested and shall not be deemed to vary any of the provisions of this Contract.

14. Proprietary Information/Trade Secrets

(A) The bidder shall identify those portions of the bid which it deems to be confidential, proprietary information or trade secrets, and provide justification why such materials shall not be disclosed by the City. All such materials shall be clearly indicated by stamping the pages on which such information appears, at the top and bottom thereof with the word "Confidential". Such materials stamped "Confidential" must be easily separable from the non-confidential sections of the bid.

(B) All such materials so indicated shall be reviewed by the Agency and any decision not to honor a request for confidentiality shall be communicated in writing to the bidder. For those bids which are unsuccessful, all such confidential materials shall be returned to the bidder. Prices, makes and model or catalog numbers of the items offered, deliveries, and terms of payment shall be publicly available after bid opening, regardless of any designation of confidentiality made by the bidder.

15. Pre-Opening Modification or Withdrawal of Bids: Bids may be modified or withdrawn by written notice received in the office designated in Attachment 1, before the time and date set for the bid opening. If a bid is withdrawn in accordance with this Section, the bid security, if any, shall be returned to the bidder.

16. Bid Evaluation and Award: In accordance with the New York City Charter, the Procurement Policy Board Rules and the terms and conditions of this Invitation For Bids, this Contract shall be awarded, if at all, to the responsible bidder whose bid meets the requirements and evaluation criteria set forth in the Invitation For Bids, and whose bid price is either the most favorable bid price or, if the Invitation For Bids so states, the most favorable evaluated bid price. A bid may not be evaluated for any requirement or criterion that is not disclosed in the Invitation For Bids.

Restriction: No negotiations with any bidder shall be allowed to take place except under the circumstances and in the manner set forth in Section 21. Nothing in this Section shall be deemed to permit a contract award to a bidder submitting a higher quality item than that designated in the Invitation For Bids, if that bid is not also the most favorable bid.

17. Late Bids, Late Withdrawals and Late Modifications: Any bid received at the place designated in the solicitation after the time and date set for receipt of bids is late and shall not be considered. Any request for withdrawal or modification received at the place designated in the solicitation after the time and date set for receipt of bids is late and shall not be considered. The exception to this provision is that a late modification of a successful bid that makes the bid terms more favorable to the City shall be considered at any time it is received.

18. Withdrawal of Bids: Except as provided for in Section 15, above, a bidder may not withdraw its bid before the expiration of forty-five (45) days after the date of the opening of bids; thereafter, a bidder may withdraw its bid only in writing and in advance of an actual award. If within sixty (60) days after the execution of the Contract, the Commissioner fails to fix the date for commencement of work by written notice to the bidder, the bidder, at his option, may ask to be relieved of his obligation to perform the work called for by written notice to the Commissioner. If such notice is given to the Commissioner, and the request to withdraw is granted, the bidder waives all claims in connection with this Contract.

19. Mistake in Bids

(A) Mistake Discovered Before Bid Opening: A bidder may correct mistakes discovered before the time and date set for bid opening by withdrawing or correcting the bid as provided in Section 15 above.

(B) Mistakes Discovered Before Award

(1) In accordance with General Municipal Law (Section 103, subdivision 11), where a unilateral error or mistake is discovered in a bid, such bid may be withdrawn upon written approval of the Agency Chief Contracting Officer if the following conditions are met:

- (a) The mistake is known or made known to the agency prior to the awarding of the Contract or within 3 days after the opening of the bid, whichever period is shorter; and
- (b) The price bid was based upon an error of such magnitude that enforcement would be unconscionable; and
- (c) The bid was submitted in good faith and the bidder submits credible evidence that the mistake was a clerical error as opposed to a judgment error; and
- (d) The error in the bid is actually due to an unintentional and substantial arithmetic error or an unintentional omission of a substantial quantity of work, labor, material or services made directly in the compilation of the bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of the original work paper, documents, or materials used in the preparation of the bid sought to be withdrawn; and
- (e) It is possible to place the agency in the same position as existed prior to the bid.

(2) Unless otherwise required by law, the sole remedy for a bid mistake in accordance with this Article shall be withdrawal of the bid, and the return of the bid bond or other security, if any, to the bidder. Thereafter, the agency may, in its discretion, award the Contract to the next lowest bidder or rebid the Contract. Any amendment to or reformation of a bid or a Contract to rectify such an error or mistake therein is strictly prohibited.

(3) If the mistake and the intended correct bid are clearly evident on the face of the bid document, the bid shall be corrected to the intended correct bid and may not be withdrawn. Examples of mistakes that may be corrected are typographical errors, errors in extending unit prices, transposition errors and arithmetical errors.

#### 20. Low Tie Bids

(A) When two or more low responsive bids from responsible bidders are identical in price, meeting all the requirements and criteria set forth in the Invitation For Bids, the Agency Chief Contracting Officer will break the tie in the following manner and order of priority:

- (1) Award to a certified New York City small, minority or woman-owned business entity bidder;
- (2) Award to a New York City bidder;
- (3) Award to a certified New York State small, minority or woman-owned business bidder;
- (4) Award to a New York State bidder.

(B) If two or more bidders still remain equally eligible after application of paragraph (A) above, award shall be made by a drawing by lot limited to those bidders. The bidders involved shall be invited to attend the drawing. A witness shall be present to verify the drawing and shall certify the results on the bid tabulation sheet.

#### 21. Rejection of Bids

(A) Rejection of Individual Bids: The Agency may reject a bid if:

- (1) The bidder fails to furnish any of the information required pursuant to Section 24 or 28 hereof; or if
- (2) The bidder is determined to be not responsible pursuant to the Procurement Policy Board Rules; or if
- (3) The bid is determined to be non-responsive pursuant to the Procurement Policy Board Rules; or if
- (4) The bid, in the opinion of the Agency Chief Contracting Officer, contains unbalanced bid prices and is thus non-responsive, unless the bidder can show that the prices are not unbalanced for the probable required quantity of items, or if the imbalance is corrected pursuant to Section 15.

(B) Rejection of All Bids: The Agency, upon written approval by the Agency Chief Contracting Officer, may reject all bids and may elect to resolicit bids if in its sole opinion it shall deem it in the best interest of the City so to do.

(C) Rejection of All Bids and Negotiation With All Responsible Bidders: The Agency Head may determine that it is appropriate to cancel the Invitation For Bids after bid opening and before award and to complete the acquisition by negotiation. This determination shall be based on one of the following reasons:

- (1) All otherwise acceptable bids received are at unreasonable prices, or only one bid is received and the Agency Chief Contracting Officer cannot determine the reasonableness of the bid price, or no responsive bid has been received from a responsible bidder; or
- (2) In the judgment of the Agency Chief Contracting Officer, the bids were not independently arrived at in open competition, were collusive, or were submitted in bad faith.

(D) When the Agency has determined that the Invitation for Bids is to be canceled and that use of negotiation is appropriate to complete the acquisition, the contracting officer may negotiate and award the Contract without issuing a new solicitation, subject to the following conditions:

- (1) Prior notice of the intention to negotiate and a reasonable opportunity to negotiate have been given by the contracting officer to each responsible bidder that submitted a bid in response to the Invitation for Bids;
- (2) The negotiated price is the lowest negotiated price offered by a responsible bidder; and
- (3) The negotiated price is lower than the lowest rejected bid price of a responsible bidder that submitted a bid in response to the Invitation for Bids.

22. Right to Appeal Determinations of Non-Responsiveness or Non-Responsibility and Right to Protest Solicitations and Award: The bidder has the right to appeal a determination of non-responsiveness or non-responsibility and has the right to protest a solicitation and award. For further information concerning these rights, the bidder is directed to the Procurement Policy Board Rules.

23. Affirmative Action and Equal Employment Opportunity: This Invitation For Bids is subject to applicable provisions of Federal, State and Local Laws and executive orders requiring affirmative action and equal employment opportunity.

24. VENDEX Questionnaires

(A) Requirement: Pursuant to Administrative Code Section 6-116.2 and the PPB Rules, bidders may be obligated to complete and submit VENDEX Questionnaires. Generally, if this bid is \$100,000 or more, or if this bid when added to the sum total of all contracts, concessions and franchises the bidder has received from the City and any subcontracts received from City contractors over the past twelve months, equals or exceeds \$100,000, Vendex Questionnaires must be completed. If required, Vendex Questionnaires must be completed and submitted before any award of contract may be made or before approval is given for a proposed subcontractor. Non-compliance with these submission requirements may result in the disqualification of the bid, disapproval of a subcontractor, subsequent withdrawal of approval for the use of an approved subcontractor, or the cancellation of the contract after its award.

(B) Submission: Vendex Questionnaires must be submitted directly to the Mayor's Office of Contract Services, ATTN: Vendex, 253 Broadway, 9<sup>th</sup> Floor, New York, New York 10007. In addition, the bidder must submit a Confirmation of Vendex Compliance to the agency. A form for this confirmation is set forth in the Bid Booklet.

(C) Obtaining Forms: Vendex Questionnaires, as well as detailed instructions, may be obtained at [www.nyc.gov/vendex](http://www.nyc.gov/vendex). The bidder may also obtain Vendex forms and instructions by contacting the Agency Chief Contracting Officer or the contact person for this contract.

25. Complaints About the Bid Process: The New York City Comptroller is charged with the audit of contracts in New York City. Any vendor who believes that there has been unfairness, favoritism or impropriety in the bid process should inform the Comptroller, Office of Contract Administration, One Centre Street, Room 835, New York, New York; telephone number (212)669-2797.

26. **Bid Security:** Each bid must be accompanied by bid security in an amount and type specified in Attachment 1 (included in the Bid Booklet). If required, bid security shall assure the City of New York of the adherence of the bidder to its proposal, as well as execution of the Contract by the bidder. Bid security shall be returned to the bidder as follows:

- (1) Within ten (10) days after the bid opening, the Comptroller will be notified to return the deposits of all but the three (3) lowest bidders. Within five (5) days after the award, the Comptroller will be notified to return the deposits of the remaining two unsuccessful bidders.
- (2) Within five (5) days after the execution of the Contract and acceptance of the Contractor's bonds, the Comptroller will be notified to return the bid security of the successful bidder or, if performance and payment bonds are not required, only after the sum retained under the Contract equals the amount of the bid security.
- (3) Where all bids are rejected, the Comptroller will be notified to return the deposit of the three (3) lowest bidders at the time of rejection.

27. **Failure to Execute Contract:** In the event of failure of the successful bidder to execute the Contract and furnish the required security within ten (10) days after notice of the award of the Contract, the deposit of the successful bidder or so much thereof as shall be applicable to the amount of the award made shall be retained by the City, and the successful bidder shall be liable for and hereby agrees to pay on demand the difference between the price bid and the price for which such Contract shall be subsequently awarded, including the cost of any required reletting and less the amount of such deposit. No plea of mistake in such accepted bid shall be available to the bidder for the recovery of the deposit or as a defense to any action based upon such accepted bid. Further, should the bidder's failure to comply with this Section cause any funding agency, body or group (Federal, State, City, Public, Private, etc.) to terminate, cancel or reduce the funding on this project, the bidder in such event shall be liable also to the City for the amount of actual funding withdrawn by such agency on this project, less the amount of the forfeited deposit.

28. **Bidder Responsibilities and Qualifications**

(A) Bidders must include with their bids all information necessary for a determination of bidder responsibility, as set forth in the Specifications.

(B) The Agency may require any bidder or prospective bidder to furnish all books of account, records, vouchers, statements or other information concerning the bidder's financial status for examination as may be required by the Agency to ascertain the bidder's responsibility and capability to perform the Contract. If required, a bidder must also submit a sworn statement setting forth such information as the Agency may require concerning present and proposed plant and equipment, the personnel and qualifications of his working organizations, prior experience and performance record.

(C) **Oral Examination on Qualifications:** In addition thereto, and when directed by the Agency, the bidder, or a responsible officer, agent or employee of the bidder, must submit to an oral examination to be conducted by the Agency in relation to his proposed tentative plan and schedule of operations, and such other matters as the Agency may deem necessary in order to determine the bidder's ability and responsibility to perform the work in accordance with the Contract. Each person so examined must sign and verify a stenographic transcript of such examination noting thereon such corrections as such person may desire to make.

(D) If the bidder fails or refuses to supply any of the documents or information set forth in paragraph (B) hereof or fails to comply with any of the requirements thereof, the Agency may reject the bid.

29. **Supply and Service Employment Report:** The filing of a completed Supply and Service Employment Report is a requirement of doing business with the City of New York. The required forms and information are included in the Bid Booklet.

30. Section Not Used

31. Insurance Requirements: General Provisions governing the Contract, including insurance coverage the Contractor and its subcontractors are required to provide, are set forth in Appendix A. Appendix A is included as an Exhibit to the Contract. Insurance Requirements are set forth in Article 7 of Appendix A.

32. Section Not Used

33. Unit Price Contracts

(A) Comparison of Bids: Bids on Unit Price Contracts will be compared on the basis of a total estimated price, arrived at by taking the sum of the estimated quantities of such items, in accordance with the Engineer's Estimate of Quantities set forth in the Bid Form, multiplied by the corresponding unit prices, and including any lump sum bids on individual items.

(B) Variations from Engineer's Estimate: Bidders are warned that the Engineer's Estimate of Quantities on the various items of work and materials is approximate only, given solely to be used as a uniform basis for the comparison of bids, and is not to be considered part of this contract. The quantities actually required to complete the contract work may be less or more than so estimated, and if so, no action for damages or for loss of profits shall accrue to the contractor by reason thereof.

(C) Overruns: Section not used.

34. Section Not Used

35. Licenses and Permits: The successful bidder will be required to obtain all necessary licenses and permits necessary to perform the work.

36. Section Not Used

37. Section Not Used

38. Section Not Used

39. Comptroller's Certificate: This Contract shall not be binding or of any force unless it is registered by the Comptroller in accordance with Section 328 of the City Charter and the Procurement Policy Board Rules. This Contract shall continue in force only after annual appropriation of funds by the City of New York and certification as hereinabove set forth.

40. Procurement Policy Board Rules: This Invitation For Bids is subject to the Rules of the Procurement Policy Board of the City of New York. In the event of a conflict between said Rules and a provision of this Invitation For Bids, the Rules shall take precedence.

**CITY OF NEW YORK**  
**DEPARTMENT OF DESIGN AND CONSTRUCTION**

**STANDARD**  
**PROFESSIONAL SERVICE CONTRACT**

**MARCH 2011**

THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between the City of New York (the "City") acting by and through the Commissioner of the Department of Design and Construction (the "Commissioner") and \_\_\_\_\_ (the "Consultant"), located at \_\_\_\_\_

WITNESSETH:

WHEREAS, the City desires to have the services set forth herein performed on a requirements basis for various Projects, as specified by the Commissioner on a Work Order basis, and

WHEREAS, the Consultant submitted the lowest responsive and responsible bid for the Contract,

NOW, THEREFORE, in consideration of the mutual covenants and conditions herein contained, the parties hereto agree as follows:

ARTICLE 1 Definitions

1.1 "Agreement" shall mean the various documents that constitute the contract between the Consultant and the City, including (1) Notice of Solicitation, (2) Bid Documents, (3) all Addenda issued by the Commissioner prior to the receipt of bids, (4) Bid submitted by the Consultant, and (5) Contract issued with the Bid Documents, including the Exhibits set forth below. Exhibits C and D were submitted by the Consultant as its bid for the Contract.

Exhibit A: Contract Information  
Exhibit B: Budget Director's Certificate  
Exhibit C: All Inclusive Hourly Rates  
Exhibit D: Testing Services and Unit Prices  
Exhibit E: Appendix A: General Provisions Governing Contracts for Consultants, Professional, Technical, Human and Client Services

1.2 "Agency" shall mean a city, county, borough or other office, position, department, division, bureau, board or commission, or a corporation, institution or agency of government, the expenses of which are paid in whole or in part from the City treasury.

1.3 "Agency Chief Contracting Officer" or "ACCO" shall mean the position delegated authority by the Agency Head to organize and supervise the procurement activity of subordinate Agency staff in conjunction with the City Chief Procurement Officer.

1.4 "City" shall mean the City of New York.

1.5 "City Chief Procurement Officer" or "CCPO" shall mean the position delegated authority by the Mayor to coordinate and oversee the procurement activity of Mayoral agency staff, including the ACCOs.

1.6 "Commissioner" or "Agency Head" shall mean the head of the Department or his or her duly authorized representative. The term "duly authorized representative" shall include any person or persons acting within the limits of his or her authority.

1.7 "Commissioner's Representative" shall mean the Assistant Commissioner designated by the Commissioner or any successor or alternate representative designated by the Commissioner.

1.8 "Comptroller" shall mean the Comptroller of the City of New York, his/her successors, or duly authorized representatives.

1.9 "Consultant" or "Contractor" shall mean the entity entering into this Agreement with the Department.

1.10 "Contract" or "Contract Documents" shall mean the Agreement referred to in Paragraph 1.1 of this Article.

- 1.11 "Days" shall mean calendar days unless otherwise specifically noted to mean business days.
- 1.12 "DDC BEGS" shall mean the DDC Bureau of Environmental and Geotechnical Services.
- 1.13 "Department" or "DDC" shall mean the Department of Design and Construction of the City of New York acting by and through the Commissioner thereof, or his/her duly authorized representative.
- 1.14 "Director" shall mean the Director of the DDC Bureau of Environmental and Geotechnical Services. For the purpose of this Contract, the Director is the duly authorized representative of the Commissioner.
- 1.15 "Drawings" shall mean all graphic or written illustrations, descriptions, explanations, directions, requirements and standards of performance applied to the construction work.
- 1.16 "Government Entity" shall mean the United States, the State and City of New York, and any and every agency, department, court, commission, or other instrumentality or political subdivision of government of any kind whatsoever, now existing or hereafter created.
- 1.17 "Law" or "Laws" shall mean the New York City Charter ("Charter"), the New York City Administrative Code ("Admin. Code"), a local rule of the City of New York, the Constitutions of the United States and the State of New York, a statute of the United States or of the State of New York and any ordinance, rule or regulation having the force of law and adopted pursuant thereto, as amended, and common law.
- 1.18 "Mayor" shall mean the Mayor of the City of New York, his/her successors or duly authorized representatives.
- 1.19 "Modification" shall mean any written amendment of this Agreement signed by both the Department and the Consultant.
- 1.20 "Procurement Policy Board" or "PPB" shall mean the board established pursuant to Charter § 311 whose function is to establish comprehensive and consistent procurement policies and rules which have broad application throughout the City.
- 1.21 "PPB Rules" shall mean the rules of the Procurement Policy Board as set forth in Title 9 of the Rules of the City of New York ("RCNY"), § 1-01 et seq.
- 1.22 "Project" shall mean the Project for which the services set forth in Exhibit A are required, as specified by the Commissioner on a Work Order basis.
- 1.23 "Safety Standards" shall mean all laws, union rules and trade or industry custom or codes of any kind whatsoever, in effect from the date of this Agreement through Final Acceptance of the construction work, pertaining to worker safety and accident prevention applicable to the Project and/or the construction work (including, but not limited to, rules, regulations and standards adopted pursuant to the Occupational Safety and Health Act of 1970, as amended from time to time).
- 1.24 "Shop Drawing" shall mean any and all drawings, diagrams, layouts, explanations, illustrations, manufacturer's drawings or other written or graphic materials which illustrate any portion of the construction work.
- 1.25 "Site(s)" shall mean the area(s) upon or in which the construction work for the Project is carried on, and such other areas adjacent thereto as may be designated by the Commissioner.
- 1.26 "Specifications" shall mean all of the directions, requirements and standards of performance applied to the construction work.
- 1.27 "State" shall mean the State of New York.
- 1.28 "Subconsultant" or "Subcontractor" shall mean any person, firm, or corporation, other than employees of the

Consultant, who or which contracts with the Consultant or his subconsultants to furnish, or actually furnishes services, labor, or labor and materials, or labor and equipment hereunder. All Subconsultants and/or subcontractors are subject to the prior written approval of the Commissioner.

1.29 "Work Order" or "Work Order Letter" shall mean an order issued pursuant to this Contract to the Consultant by DDC with a "not to exceed" amount and a specified scope of work to be completed within a definite time period.

## ARTICLE 2 General Provisions

2.1 Appendix A: General Provisions governing the Contract, including insurance coverage the Consultant and its subconsultants are required to provide, are set forth in Appendix A. Appendix A is included as an Exhibit to the Contract.

2.2 Director: For the purpose of this Contract, the Director of the DDC Bureau of Environmental and Geotechnical Services (BEGS) is the duly authorized representative of the Commissioner.

2.3 Abbreviations: The following abbreviations are used throughout the Contract.

- American Industrial Hygiene Association (AIHA)
- American Society of Testing Materials (ASTM)
- Environmental Laboratory Accreditation Program (ELAP)
- Environmental Lead Proficiency Analytical Testing (ELPAT)
- Fire Department of New York (FDNY)
- Flame Atomic Absorption Spectrophotometry (FAAS)
- National Lead Laboratory Accreditation Program (NLLAP)
- National Voluntary Laboratory Accreditation Program (NVLAP)
- National Institute of Standards and Technology (NIST)
- New York City Department of Environmental Protection (DEP)
- New York State Department of Environmental Conservation (NYS-DEC)
- New York State Department of Health (NYS-DOH)
- New York State Department of Labor (NYS-DOL)
- National Institute of Occupational Health and Safety (NIOSH)
- Occupational Safety and Health Administration (OSHA)
- Phase Contrast Microscopy (PCM)
- Proficiency Analytical Testing (PAT)
- Transmission Electron Microscopy (TEM)
- United States Environmental Protection Agency (USEPA or EPA)

## ARTICLE 3 Agreement to Serve

3.1 The City hereby retains the Consultant to perform the services hereinafter described, on the terms and conditions set forth herein, and the Consultant agrees to so serve. The Consultant agrees to provide, to the satisfaction of the Commissioner, the services set forth in this Contract for various Projects, as specified by the Commissioner on a Work Order basis. The Consultant hereby certifies that it has the necessary experience, expertise, staff and resources to fulfill its obligations under this Contract competently and efficiently.

## ARTICLE 4 Work Order Process

4.1 General: The Consultant shall provide, to the satisfaction of the Commissioner, sampling and testing services in accordance with Work Orders issued hereunder. The Consultant's services shall be provided with respect to the Project(s) specified in the Work Order. The Consultant shall not perform services until the Commissioner has issued a written Work Order. In the event the Consultant performs services without a written Work Order, he/she does so at his/her own risk. DDC will not consider any request for payment for services not authorized in writing by a Work Order. The requirement for a written Work Order shall not apply in the event the Consultant is directed to provide services to address an urgent condition, as described in Article 4.4 ("Commissioner Designated Priority").

4.1.1 Notice: Notice to the Consultant regarding all matters in connection with this Contract shall be given by electronic mail or facsimile. In the event the Consultant is given verbal notice of a contractual requirement, such notice will be promptly confirmed by email or facsimile.

4.1.2 Telephone: The Consultant shall, for the duration of the contract, provide and maintain in good operating condition an "Emergency Contact Number" for notification by telephone during non-regular business hours, i.e., before 7:00 AM and after 5:00 PM Monday through Friday, and on weekends and holidays.

4.2 Process for Finalizing Work Order: The process for finalizing a regular Work Order is described below. The process for finalizing a Work Order involving an urgent condition is described in Article 4.4 ("Commissioner Designated Priority").

4.2.1 Request for Proposal: Within three (3) business days prior to the pre-abatement meeting, DDC shall send the Consultant a Request for a Proposal. Such request shall include the project specifications and regulatory filings.

4.2.2 Pre-Abatement Meeting: The Consultant's Project Manager shall attend a pre-abatement meeting at the site. Notice of such meeting shall be given to the Consultant at least three (3) business days in advance. The pre-abatement meeting shall take place five to ten business days prior to the date on which the Consultant must commence services. At the meeting, DDC will establish the required titles of personnel for sampling services, as well as the estimated hours per title.

4.2.3 Proposal: Within two (2) business days after receipt of a request from DDC, the Consultant shall submit a proposal for the Project. Such proposal shall include: (1) proposed Staffing Plan for sampling services, and (2) proposed testing services. The items that must be included in the Staffing Plan are set forth in Article 5.

4.2.4 Review of Proposal: The Commissioner shall review the Consultant's proposal and shall direct revisions to the same if necessary prior to issuing the final Work Order.

4.2.5 Start Date: The final Work Order shall include the date on which the Consultant must commence the required services. DDC will endeavor to issue the Work Order as soon as possible; however, the Consultant is advised that the start date may be as soon as within twenty-four (24) hours of its receipt of the Work Order. Such start date is subject to revision in the event of problems with scheduling or access to the facility.

4.3 Final Work Order: Following the process set forth above, the Commissioner shall issue a Work Order to the Consultant. The Work Order shall specify the items set forth below. Upon receipt of the Work Order, the Consultant shall contact the designated DDC representative, via telephone or email, to confirm the start date.

- 4.3.1 Project(s) for which services are required.
- 4.3.2 Sampling services to be performed by the Consultant.
- 4.3.3 Testing services to be performed by the Consultant
- 4.3.4 Documents provided by the Commissioner
- 4.3.5 Time Provisions: Start date and completion date for required services.
- 4.3.6 Overall Not to Exceed amount for the services to be performed. Such overall Not to Exceed Amount shall be further broken down into various allowances, depending on the required services. Such allowances may include the following: (1) Allowance Sampling Services, (2) Allowance for Testing Services, and, if applicable, (3) Allowance for Reimbursable Services.
- 4.3.7 Maximum Price: As indicated in Article 7, the amount of the Allowance for Sampling Services and the amount of the Allowance for Testing Services set forth in the Work Order shall constitute the maximum price to be paid to the Consultant for providing the required services.

4.4 Commissioner Designated Priority: The Consultant may be required to provide services to address an urgent condition. A Work Order involving an urgent condition shall be identified as a "Commissioner Designated Priority". In such case, the Consultant shall be required to commence services at the site within two (2) hours of notification by email. The email notification shall specify the required titles and estimated hours per title. The Work Order to address the urgent condition shall be finalized within seventy-two (72) hours of the initial notification by email.

4.5 Miscellaneous Provisions: The provision set forth below shall apply to Work Orders issued hereunder.

4.5.1 Supplementary Work Orders: In the event of any changes to the Work Order, the Commissioner shall issue a Supplementary Work Order to the Consultant. The Consultant shall be bound by the terms and conditions of any such Supplementary Work Order issued by the Commissioner.

4.5.2 Reallocation of Allowance Amounts: Notwithstanding the specific amounts allocated for allowances, as set forth in Work Orders issued hereunder, the Commissioner may, by issuance of a Supplementary Work Order to the Consultant, reallocate such specific allowance amounts.

4.5.3 Conflicts: In the event of any conflict between a Work Order issued hereunder and any provision of this Contract, the Contract shall take precedence; except that with respect to the scope of services to be performed, the provisions of the Work Order shall take precedence over the Contract.

4.5.4 No Right to Reject: The Consultant shall have no right to reject or decline to perform any Work Order issued under the Contract. Accordingly, any rejection of a Work Order by the Consultant, either expressly made or implied by conduct, shall constitute a material breach of this Contract.

4.5.5 Work by Others: In the event there is a need for sampling and testing services, the Commissioner reserves the right not to issue a Work Order to the Consultant and to have the services performed by another Consultant(s), or by City employees, if the Commissioner, in his sole opinion, determines that the Consultant may be unable to satisfactorily provide the required services in a timely fashion.

## ARTICLE 5 Qualifications and Personnel

5.1 Qualification Requirements: Qualification requirements are set forth below.

5.1.1 Consultant: The Consultant, in its Bid for the Contract, demonstrated that it is in compliance with the qualification requirements set forth below. The Consultant shall maintain the licenses and accreditations set forth below for the duration of the contract. All required licenses and accreditations must be valid and in effect throughout the contract term.

- (a) Licensed by NYS DOL as an Asbestos Handler "Restricted Class"
- (b) Accredited by the US EPA under 40 CFR 745.226 for the performance of lead based paint activities
- (c) Accredited by ELAP for Fiber Analysis (PCM-NIOSH 7400 Method) and Asbestos Analysis (TEM- 40 CFR 763 App. A No. III) (ELAP is administered by the NYS-DOH)
- (d) Accredited by AIHA for Fiber Analysis (PCM- Asbestos) and Environmental Lead
- (e) Accredited by NVLAP for Airborne Asbestos Fiber Analysis (PCM-Asbestos) (NVLAP is administered by NIST)
- (f) Accredited by ELAP for Lead Air and Dust Wipe Analysis (ELAP is administered by the NYSDOH)

5.1.2 Personnel: Individuals provided by the Consultant for required titles of personnel must satisfy the qualification requirements for the title in question, as set forth in Article 6. The Consultant shall provide resumes or other documentation acceptable to the Commissioner to demonstrate that each individual provided complies with the qualification requirements per title. In exceptional circumstances, the Commissioner, in his/her sole and absolute discretion, may modify the requirements per title.

5.2 Subcontracting: Subcontracting is only permitted as set forth in Exhibit A. Provisions regarding subcontracting are set forth in Article 5.5.

5.3 Provision of Personnel: Staffing requirements for personnel have been established by the Commissioner and are set forth in Article 6. The Consultant agrees, throughout the term of the Contract, to provide all personnel necessary and required for performance of required services for various Projects, in accordance with Work Orders issued by the Commissioner. The Consultant shall provide such personnel through its own employees, unless otherwise approved by the Commissioner. Individuals provided by the Consultant for required titles of personnel must satisfy the qualification requirements for the title in question, as set forth in Article 6.

5.4 Staffing Plan: A Staffing Plan shall be established on a Work Order basis for the Project(s) specified therein.

Such Staffing Plan must be established and approved by the Commissioner prior to commencement of the Consultant's services pursuant to the Work Order.

5.4.1 Contents of Staffing Plan: Such Staffing Plan shall include the items set forth below. Such Staffing Plan shall include only those titles of personnel necessary for the provision of the required services. Such Staffing Plan must be numbered, dated and signed by the Project Manager.

- (a) List of required titles and specific individual for each title
- (b) All Inclusive Hourly Rate for each specified individual. The individual's All Inclusive Hourly Rate shall be the rate set forth in Exhibit C for the title for which the Commissioner determines the individual meets the qualification requirements.
- (c) Total estimated hours and total estimated amount for each title
- (d) Total estimated amount for all titles

5.4.2 Payment Limitation: The specific individuals identified in the approved Staffing Plan shall be considered Assigned Employees for the purpose of the Consultant's entitlement to payment for services performed by such individuals hereunder. The Consultant shall not be entitled to payment for any individual not included in the approved Staffing Plan.

5.4.3 No Payment for Principals: The Consultant shall not be entitled to payment for a principal's time performing oversight or management duties. This prohibition on payment for a principal's time shall not apply if the following criteria are met: (1) such principal is qualified to perform services in accordance with one of the titles set forth in Article 6, and (2) such principal is included in the approved Staffing Plan for such title.

5.4.4 Proposed Staffing Plan: Within the time frame set forth in Article 4, the Consultant shall submit a proposed Staffing Plan for the Project for which services are required. Such proposed Staffing Plan shall include the items set forth above. With respect to each proposed individual, the Consultant shall provide: (1) the individual's resume, as well as any other information detailing his/her technical qualifications and expertise, and (2) the title for which the individual meets the qualification requirements set forth in Article 6.

5.4.5 Review and Approval of Staffing Plan: The Commissioner shall review the Consultant's proposed Staffing Plan and shall direct revisions to the same if necessary prior to final approval thereof. As part of such review, the Commissioner shall determine: (1) whether each proposed individual meets the qualification requirements for the applicable title, and (2) whether the All Inclusive Hourly Rate for each proposed individual is in accordance with the rate for the title for which the individual meets the qualification requirements. The Consultant shall revise the proposed Staffing Plan as directed, until such plan is approved in writing by the Commissioner.

5.4.6 Replacement of Personnel: No substitutions for approved personnel shall be permitted unless approved by the Commissioner. Any proposed replacement for approved personnel must possess qualifications substantially similar to those of the personnel being replaced and are subject to the prior written approval of the Commissioner. In addition, at the Commissioner's request at any time, the Consultant shall remove any personnel and substitute another employee of the Consultant reasonably satisfactory to the Commissioner. The Commissioner may request such substitution at any time, in his/her sole discretion.

5.4.7 Revisions to Staffing Plan: The Commissioner may, at any time, direct revisions to the Staffing Plan, including without limitation, increasing or decreasing the specified personnel, based upon the scope of the required services. The Consultant shall increase or decrease the specified personnel, as directed by the Commissioner.

5.5 Subconsultants: Subcontracting is only permitted as set forth in Exhibit A. If Exhibit A permits the Consultant to subcontract certain services, the provision set forth below shall apply. If not, the provisions set forth below shall have no application.

5.5.1 Subconsultants Identified in Bid: Not Used

5.5.2 Approval: Provisions regarding subcontracting, including the requirements for approval, are set forth in Appendix A. Appendix A is included as an Exhibit to the Contract.

5.5.3 Replacement Subconsultants: No substitution for any Subconsultant shall be permitted unless approved in advance in writing by the Commissioner. Such approval will only be granted in the case of extenuating circumstances. Any proposed replacement Subconsultant must possess qualifications and experience substantially similar to those of the Subconsultant being replaced. In addition, at the Commissioner's request at any time, the Consultant shall remove any Subconsultant and substitute another Subconsultant reasonably satisfactory to the Commissioner. The Commissioner may request such substitution at any time, if, in his sole opinion, he determines that any Subconsultant may be unable to satisfactorily provide the required services in a timely fashion.

5.5.4 Payment: Expenses incurred by the Consultant in connection with furnishing Subconsultants for the performance of required services hereunder are deemed included in the payments by the City to the Consultant, as set forth in Article 7. The Consultant shall pay its Subconsultants the full amount due them from their proportionate share of the requisition, as paid by the City. The Consultant shall make such payment not later than seven (7) calendar days after receipt of payment by the City.

## ARTICLE 6     Scope of Services

6.1 General: The Consultant shall provide, to the satisfaction of the Commissioner, sampling and testing services for various capital Projects, as specified by the Commissioner on a Work Order basis. Sampling services shall include air sampling and/or dust wipe sampling. The Consultant's services shall be provided in accordance with the following: (1) all terms and conditions set forth in this Contract, and (2) all Local, State and Federal Laws, Rules and Regulations applicable to the work.

6.1.1 Conflicts of Interest: The Consultant shall fully and fairly represent the interest of DDC in the performance of services under this Contract without conflict of interest or breach of confidentiality. Prior to the commencement of services hereunder, the Consultant shall take all reasonable actions to identify and notify DDC in writing of those cases in which it has performed, or is currently performing work for any contractor, subcontractor, or material supplier which has performed or is performing work on any New York City project. Throughout this Contract, the Consultant shall notify DDC in writing of its intent to perform work on any City project(s) which are not part of this contract. The Consultant shall include these provisions in all subcontracts for services performed by subcontractors or subconsultants.

6.1.2 Various Locations: The Consultant shall perform sampling services at various locations throughout the five boroughs of the City of New York, where abatement work is being performed, either by another entity under a separate contract with the City or by certified workers, employed by the City of New York.

6.2 Personnel: Qualification Requirements and Responsibilities: The Consultant shall be required, throughout the term of the Contract, to provide qualified personnel for performance of all required services. The following are set forth below: (1) titles of required personnel, (2) number of individuals per title the Consultant must have in its employ, (3) qualification requirements per title, and (4) responsibilities per title.

6.2.1 Environmental Technicians (Asbestos)

(a) Number of Individuals: Minimum of six (6)

(b) Qualifications: Individuals providing services as Environmental Technicians must comply with the following criteria: (1) each individual must have an Asbestos Project Air Sampling Technician Certificate issued by the NYS DOL, and (2) each individual must have at least three (3) years of experience performing air sampling services on asbestos projects within NYC. The Environmental Technician shall have such certificate in his/her possession at all times while working on the project. The Technician's certificate shall be posted at all times while working on the project.

(c) Responsibilities: The Environmental Technician will (1) perform air sampling services in accordance with applicable NIOSH methods and in accordance with all applicable federal, state and local laws, rules and regulations, and (2) evaluate testing data to determine regulatory compliance.

(d) Multiple Projects: Multiple abatement projects may occur at the same site or in separate areas of a site.

Unless otherwise directed in writing, the Consultant shall provide only one (1) technician for a maximum of three (3) projects at a single site or three (3) separate areas of a single project.

6.2.2 Environmental Technicians (Lead)

- (a) Number of Individuals: Minimum of Two (2)
- (b) Qualifications: Individuals providing services as Environmental Technicians performing Lead air sampling and dust wipe sampling must comply with the following criteria: (1) each individual must have an Asbestos Project Air Sampling Technician Certificate issued by the NYS DOL, and a Lead Risk Assessor Certificate issued by the USEPA (2) each individual must have at least three (3) years of experience performing air sampling and /or dust wipe sampling services on lead projects within NYC. The Environmental Technician shall have such certificate in his/her possession at all times while working on the project. The Technician's certificate shall be posted at all times while working on the project.
- (c) Responsibilities: The Environmental Technician will (1) perform air sampling services in accordance with applicable NIOSH methods and in accordance with all applicable federal, state and local laws, rules and regulations, and (2) evaluate testing data to determine regulatory compliance.
- (d) Multiple Projects: Multiple abatement projects may occur at the same site or in separate areas of a site. Unless otherwise directed in writing, the Consultant shall provide only one (1) technician for a maximum of three (3) projects at a single site or three (3) separate areas of a single project.

6.2.3 Environmental Project Monitors

- (a) Number of Individuals: Minimum of six (6)
- (b) Qualifications: Individuals providing services as Environmental Project Monitors must comply with the following criteria: (1) each individual must have as Asbestos Project Monitor Certificate and an Asbestos Project Air Sampling Technician Certificate issued by the NYS DOL, and (2) each individual must have at least five (5) years of experience performing project monitoring services on asbestos projects, including two (2) years of experience performing project monitoring services on asbestos projects within NYC.
- (c) Responsibilities: The Project Monitor shall perform the following services: (1) participate in project meetings, (2) supervise the abatement contractor to ensure that the work is performed in accordance with all regulatory filings, approved variances, asbestos work permits and plans, (3) review and record asbestos handler licenses and certificates, (4) perform air sampling services in accordance with applicable NIOSH methods and in accordance with all applicable federal, state and local laws, rules and regulations, (5) evaluate testing data to determine regulatory compliance (6) review asbestos abatement specifications, (7) implement proper work procedures, (8) complete daily/weekly reports, (9) maintain the project schedule, and (10) conduct required regulatory inspections and complete and submit the NYCDEP Project Monitor Report (ACP-15 form) to the NYCDEP within three (3) days after the required project inspection. The Project Monitor is responsible for notifying the DDC BEGS representative immediately of any regulatory inspections, any violations issued or any issues which may result in a violation of any federal, state or local laws, rules and regulations. The Project Monitor shall be present at the site while work is being performed. In no case shall the Project Monitor leave the site without prior approval from the DDC BEGS Representative.
- (d) Multiple Projects: Multiple abatement projects may occur at the same site or in separate areas of a site. Unless otherwise directed in writing, the Consultant shall provide only one (1) project monitor for a maximum of three (3) projects at a single site or three (3) separate areas of a single project.

6.2.4 Project Managers (Asbestos)

- (a) Number of Individuals: Minimum of two (2)

- (b) Qualifications: Individuals providing services as Project Managers (Asbestos) must comply with the following criteria: (1) each individual must have an Asbestos Project Monitor Certificate issued by the NYS DOL, and (2) each individual must have at least seven (7) years of experience performing project management services on asbestos projects, including four (4) years of experience performing project management services on asbestos projects within NYC.
- (c) Responsibilities: The Project Manager shall perform the following services: (1) oversee the progress of the work for all assigned projects, (2) supervise project monitors and environmental technicians, (3) provide daily updates on the project, (4) review and transmit daily air monitoring data to DDC, (5) prepare and submit weekly project oversight submissions and Final Closeout Reports, (6) attend pre-abatement meetings, (7) review abatement contractor submittals, including regulatory filings, plans, protocols and procedures, (8) review air and dust wipe sampling data to ensure compliance with all applicable federal, state and local laws, rules and regulations, and (9) perform a quality control review of all correspondence, data and reports to ensure the accuracy, quality and delivery of all required project documents prior to submission to DDC. The Project Manager shall provide immediate notification to the Director of any situation that requires prompt action to reduce potential hazards to workers and/or members of the public.

#### 6.2.5 Project Managers (Lead)

- (a) Number of Individuals: Minimum of two (2)
- (b) Qualifications: Individuals providing services as Project Managers (Asbestos) must comply with the following criteria: (1) each individual must have a Lead Risk Assessor Certificate issued by the US EPA, and (2) each individual must have at least three (3) years of experience overseeing lead hazard inspections and/or lead hazard assessments.
- (c) Responsibilities: Same as set forth above for Project Manager (Asbestos).

6.3 Provisions Applicable to Services: The Consultant shall provide, to the satisfaction of the Commissioner, air sampling, dust wipe sampling and laboratory testing services for various capital Projects, as specified by the Commissioner on a Work Order basis. The Consultant's services shall be provided in accordance with the following: (1) all terms and conditions set forth in this Contract, and (2) all Local, State and Federal Laws, Rules and Regulations applicable to the work. The provisions set forth below shall apply to such services.

6.3.1 The Consultant shall only consult with and take direction from the DDC BEGS Representative at the site.

6.3.2 The Consultant shall notify the DDC BEGS Representative of any violation discovered during a regulatory inspection. Such notification shall be within one (1) hour of the regulatory inspection.

6.3.3 Through the Work order process set forth in Article 4, the Consultant will be advised of the location of individual work sites in advance of the performance of the work. The Consultant shall confirm all scheduling requirements with the DDC BEGS Representative.

6.3.4 The Consultant shall be responsible for establishing an air sampling and testing protocol for each project site in compliance with all Local, State and Federal Laws, Rules or Regulations applicable to the work.

6.3.5 The Consultant shall further coordinate its performance of services on site with the abatement contractor's Supervisor to assure that all area air testing is performed in accordance with all Local, State and Federal Laws, Rules and Regulations applicable to the work.

6.3.6 The Consultant shall establish, maintain and document to the City a clear Chain of Custody for all air samples. All daily timesheets and sample log sheets must be verified by the DDC BEGS Representative.

6.3.7 The Consultant shall review all survey reports, abatement specifications, notifications, amendments, variance applications and work plans associated with the project. These documents shall be posted at the work site.

6.4 Deliverables: The Consultant shall prepare and submit the deliverables described below.

6.4.1 The Consultant's Project Monitor shall complete, execute and submit the Project Monitor's Report (ACP-15 Form) to the NYCDEP within three (3) business days from the date of successful final clearance air monitoring for asbestos projects. Any delay in submitting the ACP-15 Form that may result from the failure of the abatement contractor to provide such form shall be immediately reported to the DDC BEGS Representative.

6.4.2 The Consultant's Project Manager shall, by close of business each Friday, submit a weekly project status spreadsheet to the Director or his/her duly authorized representative.

6.4.3 Deliverables shall be prepared utilizing the applicable template provided by DDC to the Consultant. As a general rule, the DDC template is to be used for all Final Closeout Reports unless otherwise directed. The Consultant shall submit a hard copy Draft Project Closeout Report to the Director within five (5) days from the date on which the NYCDEP issues the Project Completion Form (ACP-21 form). Within five (5) days of submission, the DDC BEGS representative will provide a letter of correction to the Draft Report to the Consultant. Within three (3) days thereafter, the Consultant shall submit the Final Project Closeout Report, revised in accordance with the letter of correction.

6.4.4 The Consultant shall provide a Final Project Closeout Report, one original and three (3) hard copies and one electronic (PDF) version on compact disk not more than fifteen (15) business days after the NYCDEP Asbestos Project Completion Form (ACP-21 form) is issued. The Consultant shall make every reasonable attempt to secure the abatement contractor's documentation prior to final clearance air monitoring. The Consultant shall document in writing all efforts to secure this documentation, including use of e-mail and U.S. Mail correspondence to the abatement contractor. In the event the abatement contractor fails to provide the requested documentation, the Consultant shall so note in the report. The Consultant shall include copies of all correspondence documenting its efforts to obtain the contractor's documents. The failure of the abatement contractor to supply documents to the Consultant shall not be justification for failing to meet the fifteen (15) business day reporting requirement.

The Final Project Closeout Report shall chronicle, in sufficient detail, all activities that were conducted at the project site. This report shall follow the template provided by DDC, and shall, at a minimum, include the following:

- (a) Copies of all NYCDEP, NYSDOL and USEPA regulatory notifications
- (b) Copies of all required regulatory filings (variances, permits, plans, amendments and approvals)
- (c) Copies of all Project Monitor's daily log reports,
- (d) Copies of the air sample "chain of custody" forms,
- (e) Copies of the laboratory air sample analyses,
- (f) Copies of NYSDOH ELAP, AIHA and NVLAP laboratory accreditations
- (g) Copies of NYSDOL Project Monitors and Air Sampling Technician certifications
- (h) Copies of NYCDEP Project Monitor's Report (ACP-15 Form)
- (i) Copies of the facility re-occupancy letter,
- (j) Copies of all NYCDEP regulatory closeout forms, Asbestos Project Conditional Close-out Form (ACP-20 Form) (when applicable) and/or the Asbestos Project Completion Form (ACP-21 Form)
- (k) Copies of the abatement contractor's project log
- (l) Clear and legible copies of the valid NYSDOL and NYCDEP supervisor and handlers certificates specific to the project.\*
- (m) Copies of the waste manifests for the project

\* Arrangements to acquire documentation from the abatement contractor shall be the Consultant's responsibility and confirmed at the mandatory pre-abatement meeting. Only clear legible copies will be accepted.

## 6.5 Testing Services

6.5.1 The Consultant shall provide laboratory testing services for the Project, as specified by the Commissioner on a Work Order basis.

6.5.2 Testing services provided by the Consultant shall be in accordance with Exhibit D. Exhibit D sets forth

the following: (1) Testing Services and (2) Unit Prices for Tests.

6.5.3 For each test performed, the Consultant shall provide a Laboratory Report summarizing the results of the test. The Laboratory Report shall be sent to the Director by facsimile within one (1) business day after performance of the test. The Laboratory Report shall be on the Laboratory's letterhead and shall, at a minimum, include the items set forth below. The Laboratory Report shall be signed by the director of the laboratory.

- (a) Sample ID Number
- (b) Type of Sample & Work Activity
- (c) Location
- (d) Time In
- (e) Time Out
- (f) Flow rate (before & after in liter per minute (lpm))
- (g) Total volume of air collected (liters)
- (h) Fibers per field
- (i) Fibers per cubic centimeter (cc)
- (j) Fibers per millimeter squared (mm<sup>2</sup>)
- (k) Cassette type
- (l) Test Method
- (m) Turnaround Time
- (n) Analyst Name
- (o) Date of Analysis
- (p) Air Sampling Technician Name & Signature
- (q) Relinquished by Name & Signature
- (r) Relinquished Date & Time
- (s) Received at Lab by Name & Signature
- (t) Sample condition
- (u) Received Date & Time
- (v) Client Name
- (w) Project Name
- (x) Project Address
- (y) Sampling Date

6.5.4 The Consultant may be directed to perform other types of tests or to provide other types of testing equipment. If so directed in writing, the Consultant shall provide such services or equipment as a Reimbursable Service.

6.5.5 The Consultant's laboratory testing services shall conform to the following standards:

- (a) Asbestos air samples analyzed using Phase Contrast Microscopy (PCM) shall be analyzed and reported in accordance with the NIOSH 7400 method using "A" counting rules.
- (b) Asbestos air samples analyzed by Transmission Electron Microscopy shall be analyzed and reported in accordance with the mandatory and non-mandatory Electron Microscopy Methods set forth at 40 CFR Part 763, Subpart E, Appendix A.
- (c) Lead air samples using Flame Atomic Absorption Spectrophotometry shall be analyzed and reported in accordance with NIOSH 7082
- (d) Lead in dust wipe samples using Flame Atomic Absorption Spectrophotometry, Direct Aspiration shall be analyzed and reported in accordance with EPA Method 7000B.

6.5.6 Test Results and Laboratory Reports: Test results and Laboratory reports shall be submitted within the time frames set forth below. All laboratory reports are subject to review and approval by the Director.

- (a) The results of air tests analyzed by Phase Contrast Microscopy shall be reported verbally and by facsimile or email to the DDC BEGS Representative within two (2) or twelve (12) hours of sampling, with the written laboratory report to follow within one (1) business day after performance of the test.
- (b) The results of air samples analyzed by Transmission Electron Microscopy shall be reported verbally and by

facsimile or email to the DDC BEGS Representative within two (2) or twelve (12) hours of sampling, with the written laboratory report to follow within one (1) business day after performance of the test.

- (c) The results of lead in air or lead in dust wipe samples analyzed by Atomic Absorption Spectrophotometry shall be reported verbally and by facsimile or email to the DDC BEGS Representative within two (2) or twelve (12) hours of sampling; with the written laboratory report to follow within one (1) business day after performance of the test.

6.6 **Liquidated Damages:** In the event the Consultant fails to commence the required services within the time fixed for the same, or if the Consultant, in the sole determination of the Commissioner, has abandoned the work, the Consultant shall pay to the City the amount set forth below, for each and every hour that the Consultant has failed to commence the required services, which said amount, in view of the difficulty of accurately ascertaining the loss which the City will suffer by reason of delay in commencing the work, is hereby fixed and agreed as liquidated damages that the City will suffer by reason of such delay, and not as a penalty.

	START TIME	LIQUIDATED DAMAGES
Regular Work Order	Date and Time Set forth in Work Order (As revised)	\$100.00
Work Order Designated as A Commissioner Priority	2 Hours	\$200.00

Liquidated Damages received hereunder are not intended to be nor shall they be treated as either a partial of full waiver or discharge of the City's right to indemnification under the agreement, or the Consultant's obligation to indemnify the City, or to any other remedy provided for in this Contract or by law. The Commissioner may deduct and retain out of the monies which may become due hereunder, the amount of any such liquidated damages; and in case the amount which may become due hereunder shall be less than the amount of liquidated damages suffered by the City, the Consultant shall be liable to pay the difference upon demand by the Commissioner.

6.7 **Reimbursable Services:** The Consultant may be directed by the Commissioner to provide Reimbursable Services for the Project. If so directed, the Consultant shall provide such Reimbursable Services through entities approved by the Commissioner. Payment for Reimbursable Services shall be in accordance with the terms set forth in Article 7.

6.7.1 No Reimbursable Services shall be provided by the Consultant, or reimbursed hereunder, unless expressly authorized in a written directive from the Commissioner. For Reimbursable Services in excess of \$150, such written authorization must be provided in advance of the expenditure.

6.7.2 Reimbursable Services shall be such services determined by the Commissioner to be necessary for the Project, and may include, without limitation, the services set forth below.

- (a) Long distance travel. In the event the Consultant is directed in advance in writing by the Commissioner to provide services which require long distance travel, the Consultant shall be reimbursed for expenses incurred in connection with such long distance travel. Long distance travel shall mean travel which is in excess of 75 miles from whichever of the following is closer to the destination: (1) Columbus Circle, or (2) the Consultant's home office. Consultants and/or Subconsultants that are not located in New York City or its vicinity shall not be entitled to reimbursement for transportation expenses.
- (b) Special equipment for inspection and/or testing required for the Project
- (c) Reproduction and/or printing of deliverables and/or records, except for printing performed in the office of the Consultant or its subconsultant
- (d) Any other services, determined by the Commissioner to be necessary for the Project

6.7.3 The Consultant shall utilize the method of procurement directed by the Commissioner. If so directed, the Consultant shall conduct a competitive bid and/or proposal process for the specified Reimbursable Service. In general, such competitive process will be required if the cost of the specified Reimbursable Service exceeds \$5,000.

6.7.4 The Consultant shall utilize the form of payment directed by the Commissioner. Payment for Reimbursable Services shall be in accordance with one of the following methods: (a) lump sum; (b) unit price, or (c) actual cost; except for long distance travel, as set forth in Article 7.

6.7.5 In the event the Consultant is directed, as a Reimbursable Service, to purchase any items and/or equipment, such items and/or equipment shall, unless otherwise directed by the Commissioner, be the sole property of the City upon delivery to the designated location. The Consultant shall prepare and maintain an accurate inventory of all items and/or equipment which it is directed to purchase pursuant to the Allowance for Reimbursable Services. Such inventory shall be provided to the City upon request. Upon completion of the required work, as directed by the Commissioner, the Consultant shall turn such items and/or equipment over to the City.

6.8 Non-Reimbursable Services: Throughout the Contract and regardless of whether specified in any Work Order issued hereunder, the Consultant shall be responsible for providing the non-reimbursable services set forth below. All costs for such services are deemed included in payments to the Consultant, as set forth in Article 7.

6.8.1 Transportation: The Consultant shall provide transportation for all personnel performing services, including without limitation: (a) expenses for ordinary transportation (i.e., other than long distance travel, as set forth in Article 6.7), (b) expenses for time spent by personnel commuting or traveling, and (c) expenses for parking and tolls.

6.8.2 Printing: The Consultant shall provide printing of documents, deliverables and/or reports in accordance with the requirements set forth in this Article.

6.8.3 Office: The Consultant shall provide all necessary office supplies and/or tools, including computers

6.8.4 Equipment: The Consultant shall provide the equipment set forth below. Such equipment is required for all personnel performing services.

- (a) Communications equipment and service, including without limitation cellular telephones. Cellular telephones shall have the ability to take photographs and transmit images to the Project Manager and DDC Representative. The telephone numbers of all such personnel shall be submitted to the Commissioner.
- (b) Hand tools, sample media, containers, and other supplies for collecting samples.
- (c) Digital camera capable of recording images in indoor/outdoor applications.
- (d) Air sampling instruments, tripods and ancillary equipment to perform sampling in accordance with City, State and Federal regulations.
- (e) Safety and/or Personal Protective Equipment required under City, State and/or Federal laws. Personal Protective Equipment shall include without limitation, respirators, gloves, hard hats, safety vests, foot protection, hearing protection and eye protection.
- (f) Health and Safety plans or other documents required under City, State and/or Federal law for the Consultant's performance of sampling services hereunder.
- (g) Fees for any and all permits and/ or licenses required by Federal, State, and/or local regulatory agencies.

6.9 Ownership of Documents: As set forth in the General Provisions (Appendix A), any reports, documents, data, photographs, deliverables, and/or other materials produced pursuant to this Agreement, and any and all drafts and/or other preliminary materials in any format related to such items produced pursuant to this Agreement, shall upon their creation become the exclusive property of the City.

During the term of this Contract and at any time within the retention period set forth in the General Provisions, the Consultant shall, upon demand, promptly deliver such material, records or documents to the Commissioner, or make such records available to the Commissioner or his/her authorized representative for review and reproduction at such place as may be designated by the Commissioner. Thereafter, the City may utilize such material, records or documents in whole or in part or in modified form and in such manner or for such purposes or as many times as it may deem advisable without employment of or additional compensation to the Consultant. Should such documents prepared under this Contract be re-used by the City for other than the Project originally created, it is understood that the Consultant bears no responsibility whatsoever for such re-use except in those instances where he is re-employed for re-use of the documents.

## ARTICLE 7 Payment Terms and Conditions

### 7.1 General

7.1.1 Total Payments: Total payments for all services performed and all expenses incurred pursuant to this Contract shall not exceed the amount set forth in Exhibit A.

7.1.2 Guaranteed Minimum: In the event the Consultant is not issued any Work Orders hereunder and the Consultant has, throughout the term of the Contract, submitted reasonable Proposals for specific Projects, the City agrees to pay, and the Consultant agrees to accept, a minimum fee of \$2,500.00. The Consultant further agrees that under such circumstances, it has no action for damages or for loss of profits against the City.

7.1.3 Executory Only: This Agreement shall be deemed executory only to the extent of the moneys appropriated and available for the purpose of the Agreement and no liability or account thereof shall be incurred beyond the amount of such moneys. It is therefore understood that neither this Agreement nor any representation by any public employee or officer creates any legal or moral obligation to request, appropriate or make available moneys for the purpose of this Agreement.

7.1.4 Work Orders: Each Work Order shall specify an overall Not to Exceed amount for the services to be performed. Such overall Not to Exceed Amount shall be further broken down into various allowances, depending on the required services. Such allowances may include the following: (1) Allowance Sampling Services, (2) Allowance for Testing Services, and, if applicable, (3) Allowance for Reimbursable Services.

7.1.5 Maximum Price: The amount each respective allowance set forth in the Work Order (the Allowance for Sampling Services and the Allowance for Testing Services), shall constitute the maximum price to be paid to the Consultant for providing the services specified in the Work Order. The Consultant shall not be entitled to payment in excess of such allowance amounts, unless the Commissioner, in his/her sole and absolute discretion, determines that exceptional circumstances exist which were not foreseeable by the parties and which were not attributable to any fault on the part of the Consultant.

7.1.6 Allowance Amounts: In the event the allowance amounts set forth in the Work Order are not sufficient, as determined by the Commissioner to cover the cost of required services for which allowance amounts are specified, the Commissioner will increase the amounts of such allowances. Notwithstanding the specific amounts allocated for allowances, as set forth in Work Orders issued hereunder, the Commissioner may, by issuance of a "Supplementary Work Order" to the Consultant, reallocate such specific allowance amounts.

7.2 Payment for Sampling Services: Each Work Order issued hereunder shall specify an Allowance for Sampling Services performed by the Consultant. The Consultant shall be entitled to payment for those individuals who have been assigned to the Project and are identified in the Staffing Plan approved by the Commissioner. The Consultant shall not be entitled to payment for the services of: (1) any individual not included in the approved Staffing Plan, or (2) any principal(s), unless such principal meets the criteria set forth below.

7.2.1 Staffing Plan: A Staffing Plan must be established and approved by the Commissioner prior to commencement of the Consultant's services. Such Staffing Plan must specify the specific individuals for the performance of services and an All Inclusive Hourly Rate for each specified individual. The specific individuals set forth in the Staffing Plan shall be considered Assigned Employees for the purpose of payment hereunder.

7.2.2 All Inclusive Hourly Rates: An All Inclusive Hourly Rate for each Assigned Employee is set forth in the Staffing Plan. Such All Inclusive Hourly Rate shall be the rate set forth in Exhibit C for the title for which the Commissioner determines the Assigned Employee meets the qualification requirements. Such All Inclusive Hourly Rate shall apply to all hours during which an Assigned Employee performs services for the Project, including non-regular business hours. No increase in such rate shall be provided for services performed during non-regular business hours. Such All Inclusive Hourly Rates shall be deemed to include the items set forth below.

- (a) All expenses incurred by the Consultant in the performance of all required services for the Project
- (b) All expenses related to management and oversight, including, without limitation, any time spent by

- (c) principals performing such duties
- (c) All expenses related to overhead and any anticipated profit
- (d) All expenses in connection with non-reimbursable services, as set forth in Article 6.

7.2.3 No Payment for Principals: The Consultant shall not be entitled to payment for a principal's time performing oversight or management duties. This prohibition on payment for a principal's time shall not apply if the following criteria are met: (1) such principal is qualified to perform services in accordance with one of the titles set forth in Article 6, and (2) such principal is included in the approved Staffing Plan for such title.

7.2.4 Amount of Payment: For any week during which an Assigned Employee performs services, payment to the Consultant for such employee's services for that week shall be calculated as follows: Multiply the amount set forth in subparagraph (a) by the number set forth in subparagraph (b).

- (a) Assigned Employee's All Inclusive Hourly Rate. The All Inclusive Hourly Rate for an Assigned Employee shall be the rate set forth in Exhibit C for the title for which the Commissioner determines the employee meets the qualification requirements.
- (b) Total number of hours set forth on time sheets completed by the Assigned Employee for the week(s) in question during which the Assigned Employee actually performed services hereunder. This total number of hours shall NOT include the following: (1) any hours the Assigned Employee spent commuting and/or traveling; (2) any non-billable hours, as defined below; (3) any hours during which the Assigned Employee performed services for any other project, (4) any hours the Assigned Employee spent performing services for the Project for which the Consultant is not entitled to compensation, and (5) any hours other than regular business hours, unless otherwise authorized in advance, in writing by the Commissioner.
- (c) Non-billable hours shall be defined as any hours set forth on time sheets completed by the Assigned Employee which have been allocated to any category or function other than services performed hereunder. Non-billable hours shall include without limitation: (1) compensated absence time, including without limitation vacation time, sick time, personal time and holidays; (2) performance of administrative tasks, or (3) any other time keeping category consistent with standard accounting practices.

7.2.5 Minimum Hours: In the event the Consultant is directed to provide personnel for required services and is unable to proceed with such services at the site due to circumstances, which in the Commissioner's determination are not attributable to any fault on the part of the Consultant, the Consultant shall be entitled to payment for a minimum of four (4) hours for all personnel provided for the required services.

7.2.6 Non-Regular Business Hours: The Commissioner may authorize the Consultant in advance in writing to have an Assigned Employee(s) perform services during non-regular business hours. Non-regular business hours shall be defined as any hours in excess of eight (8) hours per day, Monday through Friday (i.e., evenings, weekends and holidays). Payment for services performed during non-regular business hours shall be in accordance with the All Inclusive Hourly Rates set forth in Exhibit C. The Consultant shall not be entitled to any increase in such rates for services performed during non-regular business hours.

7.2.7 Requisitions: For any week(s) for which the Consultant is requesting payment for services performed by an Assigned Employee, it shall submit the documentation set forth in this Article 7.

7.2.8 Increases in All Inclusive Hourly Rates: The All Inclusive Hourly Rates set forth in Exhibit C shall apply to the three year base term of the Contract. The All Inclusive Hourly Rates shall be subject to increases at the beginning of each of the following periods: the extended term and each additional year the Contract remains in effect in accordance with Article 8. Any increase in the All Inclusive Hourly Rates shall be subject to the limitations set forth below.

- (a) Any increase in the All Inclusive Hourly Rates shall be based on the Employment Cost Index for Professional, Scientific, and Technical Services, published by the U.S. Dept. of Labor, Bureau of Labor Statistics (the "Index"), as determined by the Engineering Audit Office (EAO).
- (b) Any increase in the All Inclusive Hourly Rates shall be based on whatever increase may have occurred in the Index for the PRIOR YEAR ONLY, as determined by EAO. If, for the prior year, the Index showed an increase, the All Inclusive Hourly Rates shall be increased. If, for the prior year, the Index declined or

showed no increase, the All Inclusive Hourly Rates shall remain unchanged.

- (c) Any increase in the All Inclusive Hourly Rates shall be applied on a prospective basis only and shall have no impact on rates paid to date.
- (d) Any increase in the All Inclusive Hourly Rates shall only apply to the portion of the work which the Consultant has not yet performed, as determined by the Commissioner. Any increase in the All Inclusive Hourly Rates shall not apply to any work performed by the Consultant during the base term of the Contract, even if payment for the same is made during the renewal or extended term.

7.3 Payment for Testing Services: Each Work Order issued hereunder shall specify an Allowance for Testing Services. Payment to the Consultant for the laboratory testing services set forth in Exhibit D shall be on a unit price basis.

7.3.1 Unit Prices: Unit prices for testing services are set forth in Exhibit D. Such unit prices shall be deemed to include the expenses set forth below.

- (a) All expenses incurred by the Consultant in connection with the performance of the test, including without limitation, expenses for the following: gathering the sample, transportation, equipment, handling, calibration, set up, consumable material, operator labor, maintenance and cleaning.
- (b) All expenses related to providing test results and laboratory reports
- (c) All expenses related to management, oversight and quality control procedures
- (d) All expenses in connection with non-reimbursable services, as set forth in Article 6.
- (e) All expenses related to overhead, including insurance
- (f) Any anticipated profit

7.3.2 No Mark-up: The Consultant shall not be entitled to any mark-up with respect to laboratory testing services.

7.3.3 Requisitions: For payment for laboratory testing services, the Consultant shall submit the documentation set forth in this Article 7.

7.3.4 Increases in Unit Prices: The Unit Prices set forth in Exhibit D shall apply to the three year base term of the Contract. The Unit Prices shall be subject to increases at the beginning of each of the following periods: the extended term and each additional year the Contract remains in effect in accordance with Article 8. Any increase in the Unit Prices shall be subject to the limitations set forth below.

- (a) Any increase in the Unit Prices shall be based on the Employment Cost Index for Professional, Scientific, and Technical Services, published by the U.S. Dept. of Labor, Bureau of Labor Statistics (the "Index"), as determined by the Engineering Audit Office ("EAO").
- (b) Any increase in the Unit Prices shall be based on whatever increase may have occurred in the Index for the **PRIOR YEAR ONLY**, as determined by EAO. If, for the prior year, the Index showed an increase, the Unit Prices shall be increased. If, for the prior year, the Index declined or showed no increase, the Unit Prices shall remain unchanged.
- (c) Any increase in the Unit Prices shall be applied on a prospective basis only and shall have no impact on rates paid to date.
- (d) Any increase in the Unit Prices shall only apply to the portion of the work which the Consultant has not yet performed, as determined by the Commissioner. Any increase in the Unit Prices shall not apply to any work performed by the Consultant during the base term of the Contract, even if payment for such work is made during the extended term or thereafter.

7.4 Payment for Reimbursable Services: In the event the Commissioner directs the Consultant to provide Reimbursable Services, the provisions set forth below shall apply. In such case, the Work Order shall specify an Allowance for Reimbursable Services. In providing Reimbursable Services, the Consultant shall comply with all terms and conditions set forth in Article 6, including utilization of the method of procurement and form of payment directed by the Commissioner. If so directed, the Consultant shall conduct a competitive bid and/or proposal process for the specified Reimbursable Service. In general, such competitive process will be required if the cost of the specified Reimbursable Service exceeds \$5,000.

7.4.1 Payment: Payment for Reimbursable Services (except for long distance travel) shall be as set forth below.

- (a) If payment is on a lump sum basis, payment shall be based upon the percentage of completion.
- (b) If payment is on a unit price basis, payment shall be based upon the number of completed units.
- (c) If payment is based on actual cost, payment shall be the actual and reasonable cost, as indicated by receipts or any other data required by the Commissioner.

7.4.2 Long Distance Travel: Payment for long distance travel, as set forth in Article 6, shall be in accordance with the normal travel allowances of the City of New York for its own employees as provided in Comptroller's "Directive #6, Travel, Meals, Lodging and Miscellaneous Agency Expenses."

7.4.3 Mark Up: The Consultant shall be entitled to a mark-up of 5% for overhead and profit on payments for Reimbursable Services hereunder; provided, however, the Consultant shall NOT be entitled to any mark-up with respect to long distance travel expenses.

7.4.4 Requisitions: For payment for Reimbursable Services, the Consultant shall submit the documentation set forth in this Article 7.

7.5 Requisitions for Payment: Requisitions for payment may be submitted upon completion of the services set forth in the Work Order and written acceptance by the Commissioner of the Project Closeout Report. The Consultant shall submit a separate requisition for each completed Work Order. Requisitions shall be in the authorized form and shall set forth the services performed by the Consultant and the total amount of payment requested. The total amount of payment requested shall be broken down into various categories, depending on the required services. Such payment categories may include the following: (1) Payment for Sampling Services, (2) Payment for Testing Services, and (3) Payment for Reimbursable Services. The Consultant shall submit one original and two (2) copies of each requisition for payment. The requisition shall be submitted in a binder or bound booklet.

7.5.1 Requisitions for payment shall be accompanied by the documentation set forth below.

(a) Work Order: The Consultant shall submit (1) a copy of the Work Order and/or Supplemental Work Order for which payment is requested, and (2) a copy of the Commissioner's written acceptance of the Project Closeout Report.

(b) Payment for Sampling Services: For any period for which the Consultant is requesting payment for sampling services, the Consultant shall submit the documentation set forth below.

- (1) Assigned Employee's name and title
- (2) Commissioner approval of the Assigned Employee, either approved Staffing Plan or documentation approving the Assigned Employee as a replacement
- (3) All Inclusive Hourly Rate applicable to the Assigned Employee. The All Inclusive Hourly Rate for an Assigned Employee shall be the rate set forth in Exhibit C for the title for which the Commissioner determines the employee meets the qualification requirements.
- (4) Number of hours per day during which the Assigned Employee actually performed services for the Project.
- (5) Detailed time sheets completed by the Assigned Employee for the week(s) in question. Such detailed time sheets shall reflect all hours of service by the Assigned Employee, including without limitation: (1) actual hours during which the employee performed services for the Project, (2) actual hours during which the employee performed services for other projects, (3) non-billable hours, as defined above, (4) actual hours, if any, during which the Assigned Employee performed services for the Project for which the Consultant is not entitled to compensation, and (5) any non-regular business hours.
- (6) Commissioner authorization for services during non-regular business hours, if applicable

- (c) Payment for Testing Services: For payment for testing services, the Consultant shall submit the documentation set forth below. Payment for testing services shall be in accordance with the unit prices set forth in Exhibit D.
- (1) Laboratory testing services provided
  - (2) Applicable unit price for the laboratory testing services provided
  - (3) Total amount for all completed laboratory testing services
  - (4) Laboratory analysis reports
  - (5) Copy of the Commissioner's written acceptance of the laboratory testing services provided
  - (6) A cover sheet summarizing the test, with the results attached as backup
- (d) Payment for Reimbursable Services: For any period for which the Consultant is requesting payment for Reimbursable Services, the Consultant shall submit the documentation set forth below:
- (1) Description of the Reimbursable Service the Consultant was directed to provide.
  - (2) If payment is on a lump sum basis, a report on the progress of the work, indicating the percentage of completion of all required services.
  - (3) If payment is on a unit price basis, a report indicating the number of completed units.
  - (4) If payment is based on actual cost, receipts, bills or any other data required by the Commissioner.

7.5.2 Satisfactory Progress: All payments hereunder are contingent upon the Consultant's satisfactory performance of the required services. The Director is authorized to make deductions for any services performed hereunder which he/she determines to be unsatisfactory.

7.5.3 Monthly Tabulation: The Consultant shall, on a monthly basis, submit a tabulation of the total value of all services provided since commencement of the contract, summarized by the type of services.

#### ARTICLE 8 Time Provisions

8.1 Term of the Contract: The Contract shall commence on the date specified in the written Notice of Commencement and shall remain in effect for the period set forth in Exhibit A. The Commissioner may, for good and sufficient cause, extend the term of this Contract for a cumulative period not to exceed one year from the date of expiration.

8.2 Continuation of the Contract: In the event (1) services are required for a Project, (2) a Work Order for the Project is issued by the Commissioner during the term of the Contract, including the last day thereof, and (3) the time frame for completion of the Project extends beyond the term of the Contract, the Contract shall remain in effect for purposes of such Work Order through the time frame for completion of the Project, as set forth in the Work Order or any Supplementary Work Order required to complete the Project. For the purpose of this provision, the term of the Contract shall mean whichever of the following is the latest and actual final period of the Contract: (1) the term of the Contract, or (2) the extended term of the Contract.

8.3 Delay: The Consultant agrees to make no claim for damages for delay in the performance of this Contract occasioned by any act or omission to act of the City or any of its representatives, and agrees that any such claim has been fully compensated for and is reflected in the All Inclusive Hourly Rates submitted by the Consultant as its bid for the contract.

#### ARTICLE 9 Participation by Minority-Owned and Women-Owned Business Enterprises in City Procurement

##### NOTICE TO ALL PROSPECTIVE CONTRACTORS

#### ARTICLE 1. M/WBE PROGRAM

Local Law No. 129 of 2005 added Section 6-129 to the Administrative Code of the City of New York. The local law creates a program for participation by minority-owned and women-owned business enterprises (MBEs and WBEs) in City procurement. As stated in the Section 6-129, the intent of the program is to address the impact of discrimination on the City's procurement process, and to promote the public interest in avoiding fraud and favoritism in the procurement process.

increasing competition for City business, and lowering contract costs. The contract provisions contained herein are made pursuant to Local Law 129, and the rules of the Department of Small Business Services ("DSBS") promulgated thereunder.

If this Contract is subject to the Minority-Owned and Women-Owned Business Enterprise ("M/WBE") program created by Local Law 129, the specific requirements of M/WBE participation for this Contract are set forth in Schedule B of the Contract (entitled the "Subcontractor Utilization Plan"), and are detailed below. The Contractor must comply with all applicable M/WBE requirements for this Contract. Schedule B of the Contract ("Subcontractor Utilization Plan") is included in the Bid Booklet.

Article I, Part A, below, sets forth provisions related to the participation goals for construction and professional services contracts. Article I, Part B, below, sets forth miscellaneous provisions related to the M/WBE program.

#### PART A: PARTICIPATION GOALS FOR CONSTRUCTION AND PROFESSIONAL SERVICES CONTRACTS

1. The Target Subcontracting Percentage applicable to this Contract is set forth on Schedule B, Part I to this Contract (see Page 1, line (1)). The "Target Subcontracting Percentage" is the percentage of the total Contract which Agency anticipates that the prime contractor for this Contract would in the normal course of business award to one or more subcontractors for amounts under \$1 million for construction and professional services.

A prospective contractor may seek a full or partial pre-award waiver of the Target Subcontracting Percentage in accordance with Local Law 129 and Part A, Section 10 below. To apply for the a full or partial waiver of the Target Subcontracting Percentage, a prospective contractor must complete Part III (Page 4) of Schedule B, and must submit such request no later than seven (7) days prior to the date and time the bids or proposals are due, in writing to the Agency by e-mail at [poped@ddc.nyc.gov](mailto:poped@ddc.nyc.gov) or via facsimile at (718) 391-1885. Bidders/proposers who have submitted requests will receive a response by no later than two (2) calendar days prior to the date bids or proposals are due, provided, however, that if that date would fall on a weekend or holiday, a response will be provided by close-of-business on the business day before such weekend or holiday date.

2. The Subcontractor Participation Goals established for this Contract are set forth on Schedule B, Part I to this Contract (see Page 1, line (2) and/or line (3)). The Subcontractor Participation Goals represent a percentage of the total dollar value of all construction and/or professional services subcontracts under this Agreement for amounts under \$1 million.

3. If Subcontractor Participation Goals have been established for this Contract, Contractor agrees or shall agree as a material term of the Agreement that, with respect to the total amount of the Agreement to be awarded to one or more subcontractors pursuant to subcontracts for amounts under \$1 million, Contractor shall be subject to the Subcontractor Participation Goals, unless the goals are modified by Agency in accordance with Local Law 129 and Part A, Section 11 below.

4. If Subcontractor Participation Goals have been established for this Contract, a prospective contractor shall be required to submit with its bid or proposal, as applicable, a completed Schedule B, Part II Subcontractor Utilization Plan (see Page 2-3) indicating: (a) the percentage of work it intends to subcontract; (b) the percentage of work it intends to award to subcontractors for amounts under \$1 million; (c) in cases where the prospective contractor intends to award subcontracts for amounts under \$1 million, a description of the type and dollar value of work designated for participation by MBEs and/or WBEs; and (d) the general time frames in which such work by MBEs and/or WBEs is scheduled to occur. In the event that this Subcontractor Utilization Plan indicates that the bidder or proposer, as applicable, does not intend to award the Target Subcontracting Percentage, the bid or proposal, as applicable, shall be deemed non-responsive, unless Agency has granted the bidder or proposer, as applicable, a pre-award waiver of the Target Subcontracting Percentage in accordance with Local Law 129 and Part A, Section 10 below.

THE BIDDER/PROPOSER MUST COMPLETE THE SUBCONTRACTOR UTILIZATION PLAN INCLUDED HEREIN (SCHEDULE B, PART II). SUBCONTRACTOR UTILIZATION PLANS WHICH DO NOT INCLUDE THE REQUIRED AFFIRMATIONS WILL BE DEEMED TO BE NON-RESPONSIVE, UNLESS A FULL WAIVER OF THE TARGET SUBCONTRACTING PERCENTAGE IS GRANTED (SCHEDULE B PART III). IN THE EVENT THAT THE CITY DETERMINES THAT VENDOR HAS SUBMITTED A SUBCONTRACTOR UTILIZATION PLAN WHERE THE REQUIRED AFFIRMATIONS ARE COMPLETED BUT OTHER ASPECTS OF THE PLAN ARE NOT COMPLETE, OR CONTAIN A COPY OR COMPUTATION ERROR THAT IS AT ODDS WITH THE AFFIRMATION, THE VENDOR WILL BE NOTIFIED BY THE AGENCY AND WILL BE GIVEN FOUR (4) CALENDAR DAYS FROM RECEIPT OF NOTIFICATION TO CURE THE SPECIFIED DEFICIENCIES AND RETURN A COMPLETED PLAN TO THE AGENCY. FAILURE TO DO SO WILL RESULT IN A DETERMINATION

THAT THE BID/PROPOSAL IS NON-RESPONSIVE. RECEIPT OF NOTIFICATION IS DEFINED AS THE DATE NOTICE IS EMAILED OR FAXED (IF THE VENDOR HAS PROVIDED AN EMAIL ADDRESS OR FAX NUMBER), OR NO LATER THAN FIVE (5) DAYS FROM THE DATE OF MAILING OR UPON DELIVERY, IF DELIVERED.

5. Where a Subcontractor Utilization Plan has been submitted, the Contractor shall, within 30 days of issuance by Agency of a notice to proceed, submit a list of proposed persons or entities to which it intends to award subcontracts within the subsequent 12 months. In the case of multi-year contracts, such list shall also be submitted every year thereafter. **PLEASE NOTE: If this Contract is a public works project subject to GML §101(5) (i.e., a contract valued at or below \$3M for projects in New York City) or if the Contract is subject to a project labor agreement in accordance with Labor Law §222, and the bidder is required to identify at the time of bid submission its intended subcontractors for the Wicks trades (plumbing and gas fitting; steam heating, hot water heating, ventilating and air conditioning (HVAC); and electric wiring), the Contractor must identify all those to which it intends to award construction subcontracts for any portion of the Wicks trade work at the time of bid submission, regardless of what point in the life of the contract such subcontracts will occur. In identifying intended subcontractors in the bid submission, bidders may satisfy any Subcontractor Participation Goals established for this Contract by proposing one or more subcontractors that are M/WBEs for any portion of the Wicks trade work if the amount to be awarded to such M/WBE subcontractor is under \$1 million. In the event that the Contractor's selection of a subcontractor is disapproved, the Contractor shall have a reasonable time to propose alternate subcontractors.**
6. M/WBE firms must be certified by DSBS in order for the Contractor to credit such firms' participation toward the attainment of the M/WBE participation goals. Such certification must occur prior to the firms' commencement of work as subcontractors. A list of M/WBE firms may be obtained from the DSBS website at [www.nyc.gov/buycertified](http://www.nyc.gov/buycertified), by emailing DSBS at [buyer@sbs.nyc.gov](mailto:buyer@sbs.nyc.gov), by calling (212) 513-6356, or by visiting or writing DSBS at 110 William St., New York, New York, 10038, 7<sup>th</sup> floor. Eligible firms that have not yet been certified may contact DSBS in order to seek certification by visiting [www.nyc.gov/getcertified](http://www.nyc.gov/getcertified), emailing [MWBE@sbs.nyc.gov](mailto:MWBE@sbs.nyc.gov), or calling the DSBS certification helpline at (212) 513-6311.
7. Where a Subcontractor Utilization Plan has been submitted, the Contractor shall, with each voucher for payment, and/or periodically as Agency may require, submit statements, certified under penalty of perjury, which shall include, but not be limited to, the total amount paid to subcontractors (including subcontractors that are not MBEs or WBEs); the names, addresses and contact numbers of each MBE or WBE hired as a subcontractor pursuant to such plan as well as the dates and amounts paid to each MBE or WBE. The Contractor shall also submit, along with its voucher for final payment, the total amount paid to subcontractors (including subcontractors that are not MBEs or WBEs); and a final list, certified under penalty of perjury, which shall include the name, address and contact information of each subcontractor that is an MBE or WBE hired pursuant to such plan, the work performed by, and the dates and amounts paid to each.
8. If payments made to, or work performed by, MBEs or WBEs are less than the amount specified in the Contractor's Subcontractor Utilization Plan, Agency shall take appropriate action, in accordance with Local Law 129 and Article II below, unless the Contractor has obtained a modification of its Subcontractor Utilization Plan in accordance with Local Law 129 and Part A, Section II below.
9. Where a Subcontractor Utilization Plan has been submitted, and the Contractor requests a change order the value of which exceeds 10 percent of the Agreement, Agency shall establish participation goals for the work to be performed pursuant to the change order.
10. **Pre-award waiver of Target Subcontracting Percentage.** Agency may grant a full or partial waiver of the **Target Subcontracting Percentage** to a bidder or proposer, as applicable, who demonstrates—before submission of the bid or proposal—that it has legitimate business reasons for proposing the level of subcontracting in its Subcontractor Utilization Plan. In making its determination, Agency shall consider factors that shall include, but not be limited to, whether the bidder or proposer, as applicable, has the capacity and the bona fide intention to perform the Contract without any subcontracting, or to perform the Contract without awarding the amount of subcontracts for under one million dollars represented by the **Target Subcontracting Percentage**. In making such determination, Agency may consider whether the Subcontractor Utilization Plan is consistent with past subcontracting practices of the bidder or proposer, as applicable, and whether the bidder or proposer, as applicable, has made good faith efforts to identify portions of the Contract that it intends to subcontract.
11. **Modification of Subcontractor Utilization Plan.** A Contractor may request a modification of its Subcontractor

Utilization Plan (Subcontractor Participation Goals) after award of this Contract. PLEASE NOTE: If this Contract is a public works project subject to GML §101(5) (i.e., a contract valued at or below \$3M for projects in New York City) or if the Contract is subject to a project labor agreement in accordance with Labor Law §222, and the bidder is required to identify at the time of bid submission its intended subcontractors for the Wicks trades (plumbing and gas fitting; steam heating, hot water heating, ventilating and air conditioning (HVAC); and electric wiring), the Contractor may request a Modification of its Subcontractor Utilization Plan as part of its bid submission. The Agency may grant a request for Modification of a Contractor's Subcontractor Utilization Plan if it determines that the Contractor has established, with appropriate documentary and other evidence, that it made reasonable, good faith efforts to meet the Subcontractor Participation Goals. In making such determination, Agency shall consider evidence of the following efforts, as applicable, along with any other relevant factors:

- (a) The Contractor advertised opportunities to participate in the Contract, where appropriate, in general circulation media, trade and professional association publications and small business media, and publications of minority and women's business organizations;
- (b) The Contractor provided notice of specific opportunities to participate in the Contract, in a timely manner, to minority and women's business organizations;
- (c) The Contractor sent written notices, by certified mail or facsimile, in a timely manner, to advise MBEs and WBEs that their interest in the Contract was solicited;
- (d) The Contractor made efforts to identify portions of the work that could be substituted for portions originally designated for participation by MBEs and/or WBEs in the Subcontractor Utilization Plan, and for which the Contractor claims an inability to retain MBEs or WBEs;
- (e) The Contractor held meetings with MBEs and/or WBEs prior to the date their bids or proposals were due, for the purpose of explaining in detail the scope and requirements of the work for which their bids or proposals were solicited;
- (f) The Contractor made efforts to negotiate with MBEs and/or WBEs as relevant to perform specific subcontracts;
- (g) Timely written requests for assistance made by the Contractor to Agency's M/WBE liaison officer and to DSBS;
- (h) Description of how recommendations made by DSBS and Agency were acted upon and an explanation of why action upon such recommendations did not lead to the desired level of participation of MBEs and/or WBEs.

Agency's M/WBE officer shall provide written notice to the Contractor of the determination.

12. If this Contract is for an indefinite quantity of construction or professional services or is a requirements type contract and the Contractor has submitted a Subcontractor Utilization Plan and has committed to subcontract work to MBEs and/or WBEs in order to meet the Subcontractor Participation Goals, the Contractor will not be deemed in violation of the M/WBE requirements for this Contract with regard to any work which was intended to be subcontracted to an MBE and/or WBE to the extent that the Agency has determined that such work is not needed.

13. If Subcontractor Participation Goals have been established for this Contract, Agency shall evaluate and assess the Contractor's performance in meeting those goals, and such evaluation and assessment shall become part of the Contractor's overall contract performance evaluation.

#### PART B: MISCELLANEOUS

1. The Contractor shall take notice that, if this solicitation requires the establishment of a Subcontractor Utilization Plan, the resulting contract may be audited by DSBS to determine compliance with Section 6-129. See 6-129(e)(10). Furthermore, such resulting contract may also be examined by the City's Comptroller to assess compliance with the Subcontractor Utilization Plan.

2. Pursuant to DSBS rules, construction contracts that include a requirement for a Subcontractor Utilization Plan shall not be subject to the law governing Locally Based Enterprises set forth in Administrative Code Section 6-108.1.

3. DSBS is available to assist contractors and potential contractors in determining the availability of MBEs and WBEs to participate as subcontractors, and in identifying opportunities that are appropriate for participation by MBEs and WBEs in contracts.

4. Prospective contractors are encouraged to enter into joint ventures with MBEs and WBEs.

5. By submitting a bid or proposal the Contractor hereby acknowledges its understanding of the M/WBE requirements set forth herein and the pertinent provisions of Local Law 129 of 2005, and any rules promulgated thereunder, and if awarded this Contract, the Contractor hereby agrees to comply with the M/WBE requirements of this Contract and pertinent provisions of Local Law 129 of 2005, and any rules promulgated thereunder, all of which shall be deemed to be material terms of this Contract. The Contractor hereby agrees to make all reasonable, good faith efforts to solicit and obtain the participation of M/WBE's to meet the required **Subcontractor Participation Goals**.

## ARTICLE II. ENFORCEMENT

1. If Agency determines that a bidder or proposer, as applicable, has, in relation to this procurement, violated Section 6-129 or the DSBS rules promulgated pursuant to Section 6-129, Agency may disqualify such bidder or proposer, as applicable, from competing for this Contract and the Agency may revoke such bidder's or proposer's prequalification status, if applicable.

2. Whenever Agency believes that the Contractor or a subcontractor is not in compliance with Section 6-129 or the DSBS rules promulgated pursuant to Section 6-129, or any provision of this Contract that implements Section 6-129, including, but not limited to any Subcontractor Utilization Plan, Agency shall send a written notice to the Contractor describing the alleged noncompliance and offering an opportunity to be heard. Agency shall then conduct an investigation to determine whether such Contractor or subcontractor is in compliance.

3. In the event that the Contractor has been found to have violated Section 6-129, the DSBS rules promulgated pursuant to Section 6-129, or any provision of this Contract that implements this Section 6-129, including, but not limited any Subcontractor Utilization Plan, Agency may determine that one of the following actions should be taken:

- (a) entering into an agreement with the Contractor allowing the Contractor to cure the violation;
- (b) revoking the Contractor's pre-qualification to bid or make proposals for future contracts;
- (c) making a finding that the Contractor is in default of the Contract;
- (d) terminating the Contract;
- (e) declaring the Contractor to be in breach of Contract;
- (f) withholding payment or reimbursement;
- (g) determining not to renew the Contract;
- (h) assessing actual and consequential damages;
- (i) assess liquidated damages or reduction of fees, provided that liquidated damages may be based on amounts representing costs of delays in carrying out the purposes of the program established by Section 6-129, or in meeting the purposes of the Contract, the costs of meeting utilization goals through additional procurements, the administrative costs of investigation and enforcement, or other factors set forth in the Contract;
- (j) exercise rights under the Contract to procure goods, services or construction from another contractor and charge the cost of such contract to the Contractor that has been found to be in noncompliance; or
- (k) take any other appropriate remedy.

4. If a Subcontractor Utilization Plan has been submitted, and pursuant to this Article II, Section 3, the Contractor has been found to have failed to award subcontracts to MBEs and/or WBEs sufficient to meet the Subcontractor Participation Goals contained in its Subcontractor Utilization Plan or the Subcontractor Participation Goals as modified by Agency pursuant to Article I, Part A, Section 11, Agency may assess liquidated damages in the amount of ten percent (10%) of the difference between the dollar amount of subcontracts required to be awarded to MBE and/or WBE subcontractors to meet the Subcontractor Participation Goals and the dollar amount the Contractor actually awarded and paid to MBE and/or WBE subcontractors. In view of the difficulty of accurately ascertaining the loss which the City will suffer by reason of Contractor's failure to meet the Subcontractor Participation Goals, the foregoing amount is hereby fixed and agreed as the liquidated damages that the City will suffer by reason of such failure, and not as a penalty. Agency may deduct and retain out of any monies which may become due under this Contract the amount of any such liquidated damages; and in case the amount which may become due under this Contract shall be less than the amount of liquidated damages suffered by the City, the Contractor shall be liable to pay the difference.

5. Whenever Agency has reason to believe that an MBE or WBE is not qualified for certification, or is participating in a contract in a manner that does not serve a commercially useful function (as defined in Section 6-129), or has violated any provision of Section 6-129, Agency shall notify the commissioner of DSBS who shall determine whether the certification

of such business enterprise should be revoked.

6. Statements made in any instrument submitted to Agency pursuant to Section 6-129 shall be submitted under penalty of perjury and any false or misleading statement or omission shall be grounds for the application of any applicable criminal and/or civil penalties for perjury. The making of a false or fraudulent statement by an MBE or WBE in any instrument submitted pursuant to Section 6-129 shall, in addition, be grounds for revocation of its certification.

7. The Contractor's record in implementing its Subcontractor Utilization Plan shall be a factor in the evaluation of its performance. Whenever a contracting agency determines that a contractor's compliance with a Subcontractor Utilization Plan has been unsatisfactory, the agency shall, after consultation with the city chief procurement officer, file an advice of caution form for inclusion in VENDEX as caution data.

IN WITNESS WHEREOF, the Commissioner, on behalf of the City of New York, and the Consultant, have executed this agreement in quadruplicate, two parts of which are to remain with the Commissioner, another to be filed with the Comptroller of the City, and the fourth to be delivered to the Consultant.

THE CITY OF NEW YORK

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

CONSULTANT:

By: \_\_\_\_\_  
Member of Firm or Officer of Corporation

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

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

EIN: \_\_\_\_\_

ACKNOWLEDGMENT BY CORPORATION

State of \_\_\_\_\_ County of \_\_\_\_\_ ss:

On this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ before me personally came \_\_\_\_\_, who being by me duly sworn, did depose and say that he/she resides in the City of \_\_\_\_\_ that he/she is the \_\_\_\_\_ of \_\_\_\_\_, the corporation described in and which executed the foregoing instrument; that he/she knows the seal of said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that he/she signed his name thereto by like order.

\_\_\_\_\_  
Notary Public or Commissioner of Deeds

ACKNOWLEDGMENT BY COMMISSIONER

State of \_\_\_\_\_ County of \_\_\_\_\_ ss:

On this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ before me personally came \_\_\_\_\_ to me known and known to me to be the Deputy Commissioner of the Department of Design and Construction of The City of New York, the person described as such in and who as such executed the foregoing instrument and he acknowledged to me that he executed the same as Deputy Commissioner for the purposes therein mentioned.

\_\_\_\_\_  
Notary Public or Commissioner of Deeds

**EXHIBIT A**

**CONTRACT INFORMATION**

- **Type of Services:** Air Sampling, Dust Wipe Sampling and Laboratory Testing Services for various capital projects, as specified by the Commissioner on a Work Order basis
  
- **Maximum Amount of Contract:** Not to Exceed \$1,500,000  
(Addition of items below)
  - **Estimated Amount for Sampling and Testing Services:** Not to Exceed \$1,490,000
  - **Allowance for Reimbursable Services:** Not to Exceed \$10,000
  
- **Contract Time Frame:**
  - **Contract Term:** 1095 consecutive calendar days ("ccds")
  - **Extension of Contract Term:** 365 consecutive calendar days
  
- **Insurance Requirements:** General Provisions governing the Contract, including insurance coverage the Consultant and its Subconsultants are required to provide, are set forth in Appendix A. Appendix A is included as an Exhibit to the Contract. Insurance Requirements are set forth in Article 7 of Appendix A.
  
- **Subcontracts:** The Contractor is not permitted to enter into any subcontract(s) for services hereunder, except for Reimbursable Services, as set forth in Article 6. Provisions regarding subcontracting, including the requirements for approval, are set forth in Appendix A. Appendix A is included as an Exhibit to the Contract.
  
- **M/WBEs:** To the extent practicable, the Consultant is encouraged to subcontract services to firms that have been certified by the Department of Small Business Services (DSBS) as minority-owned and women-owned business enterprises (MBEs and WBEs). A list of M/WBE firms may be obtained from the DSBS website at [www.nyc.gov/getcertified](http://www.nyc.gov/getcertified), by emailing DSBS at [MWBE@sbs.nyc.gov](mailto:MWBE@sbs.nyc.gov), by calling the DSBS certification hotline at (212) 513-6311, or by visiting or writing DSBS at 110 William St., New York, New York, 10038, 7<sup>th</sup> floor. Eligible firms that have not yet been certified may contact DSBS (as indicated above) in order to seek certification.

**EXHIBIT B**

**AUTHORITY**

MAYOR'S CERTIFICATE NO. CBX  
BUDGET DIRECTOR'S CERTIFICATE NO.

DATED  
DATED

**APPROPRIATION  
COMMISSIONER'S CERTIFICATE**

In conformity with the provisions of Section 6-101 of the Administrative Code of the City of New York, it is hereby certified that the estimated cost of the work, materials and supplies required by the within Contract, amounting to

\_\_\_\_\_  
\_\_\_\_\_

Dollars (\$ \_\_\_\_\_ )

is chargeable to the fund of the Department of Design and Construction entitled Code

\_\_\_\_\_  
\_\_\_\_\_

Department of Design and Construction

I hereby certify that the specifications contained herein comply with the terms and conditions of the BUDGET.

\_\_\_\_\_  
Commissioner

**COMPTROLLER'S CERTIFICATE**

The City of New York \_\_\_\_\_

Pursuant to the provisions of Section 6-101 of the Administrative Code of the City of New York, I hereby certify that there remains unapplied and unexpended a balance of the above mentioned fund applicable to this Contract sufficient to pay the estimated expense of executing the same viz:

\$ \_\_\_\_\_

\_\_\_\_\_  
Comptroller

**EXHIBIT C**

**ALL INCLUSIVE HOURLY RATES**

**TITLES:** Staffing requirements are set forth below. Such staffing requirements specify the titles of personnel which the Consultant will be required to provide through its own employees.

**ALL INCLUSIVE HOURLY RATES:** All Inclusive Hourly Rates for required titles of personnel are set forth below. Such All Inclusive Hourly Rates were submitted by the Consultant as its bid for the Contract. Such All Inclusive Hourly Rates are deemed to include all expenses incurred by the Consultant in the performance of all required services for the Project. The expenses deemed included in such All Inclusive Hourly Rates are set forth in Article 7. No increase in such rates shall be provided for services performed during non-regular business hours.

**INCREASES IN ALL INCLUSIVE HOURLY RATES:** The All Inclusive Hourly Rates set forth in this Exhibit C shall be subject to increases after the three year base term of the contract, as set forth in Article 7.

TITLE	ALL INCLUSIVE HOURLY RATE
Project Manager	_____
Project Monitor	_____
Environmental Technician	_____

**EXHIBIT D**

**TESTING SERVICES AND UNIT PRICES**

**Testing Services and Unit Prices:** The Consultant shall provide the testing services set forth in this Exhibit. Payment for Testing Services shall be in accordance with the unit prices set forth on the following page. Such unit prices were submitted by the Consultant as its bid for the Contract. The Consultant shall not be entitled to any mark-up on unit prices for testing services.

**Expenses Included:** The expenses that are deemed included in the Unit Prices for Testing Services are set forth in Article 7.

**Test Results and Laboratory Reports:** Requirements for the submission of test results and Laboratory Reports are set forth in Article 6.

**Other Testing Services:** The Consultant may be directed to perform other types of tests or to provide other types of testing equipment. When so directed in writing, the Consultant shall provide such services or equipment as a Reimbursable Service.

**Increases in Unit Prices:** The Unit Prices set forth in this Exhibit shall be subject to increases after the three year base term of the Contract, as set forth in Article 7.

## TESTING SERVICES

Item #	Description of Item	Analytical Method	Unit	Unit Price
	(See Article 6)			
Item # 1 (Article 6.5.5a)	Air Sample Analysis for Asbestos by Phase Contrast Microscopy 12 hour Turn Around Time (TAT)*	NIOSH 7400	Per test	
Item # 2 (Article 6.5.5a)	Air Sample Analysis for Asbestos by Phase Contrast Microscopy 2 hour TAT	NIOSH 7400	Per test	
Item # 3 (Article 6.5.5b)	Air Sample Analysis for Asbestos by Transmission Electron Microscopy 12 hour TAT	40 CFR Part 763, Subpart E, Appendix A	Per test	
Item # 4 (Article 6.5.5b)	Air Sample Analysis for Asbestos by Transmission Electron Microscopy 2 hour TAT	40 CFR Part 763, Subpart E, Appendix A	Per test	
Item # 5 (Article 6.5.5c)	Air Sample Analysis for Lead by Flame Atomic Absorption Spectrophotometry 12 hour TAT	NIOSH 7082	Per test	
Item # 6 (Article 6.5.5c)	Air Sample Analysis for Lead by Flame Atomic Absorption Spectrophotometry 2 hour TAT	NIOSH 7082	Per test	
Item # 7 (Article 6.5.5d)	Lead Dust Wipe Analysis by Flame Atomic Absorption Spectrophotometry, Direct Aspiration 12 hour TAT	EPA METHOD 7000B	Per test	
Item # 8 (Article 6.5.5d)	Lead Dust Wipe Analysis by Flame Atomic Absorption Spectrophotometry, Direct Aspiration 2 hour TAT	EPA METHOD 7000B	Per test	

\* **Turn Around Time (TAT):** TAT means the period of time within which the Consultant must report the results of a test by telephone, as well as by facsimile or email, to the DDC BEGS Representative. Such period of time shall commence when the sample is clocked in at the laboratory.

**EXHIBIT E**

**APPENDIX A**

**GENERAL PROVISIONS GOVERNING CONTRACTS FOR  
CONSULTANTS, PROFESSIONAL, TECHNICAL, HUMAN AND CLIENT SERVICES**

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APPENDIX A

**GENERAL PROVISIONS GOVERNING CONTRACTS FOR  
CONSULTANTS, PROFESSIONAL, TECHNICAL, HUMAN AND CLIENT SERVICES**

**ARTICLE 1 - DEFINITIONS**

**Section 1.01 Definitions**

The following words and expressions, or pronouns used in their stead, shall, wherever they appear in this Agreement, be construed as follows, unless a different meaning is clear from the context:

- A. "Agency Chief Contracting Officer" or "ACCO" shall mean the position delegated authority by the Agency Head to organize and supervise the procurement activity of subordinate Agency staff in conjunction with the City Chief Procurement Officer.
- B. "Agreement" shall mean the various documents, including this Appendix A, that constitute the contract between the Contractor and the City.
- C. "City" shall mean The City of New York.
- D. "City Chief Procurement Officer" or "CCPO" shall mean the position delegated authority by the Mayor to coordinate and oversee the procurement activity of Mayoral agency staff, including the ACCOs.
- E. "Commissioner" or "Agency Head" shall mean the head of the Department or his or her duly authorized representative. The term "duly authorized representative" shall include any person or persons acting within the limits of his or her authority.
- F. "Comptroller" shall mean the Comptroller of the City of New York.
- G. "Contractor" shall mean the entity entering into this Agreement with the Department.
- H. "Days" shall mean calendar days unless otherwise specifically noted to mean business days.
- I. "Department" or "Agency" shall mean the City agency that has entered into this Agreement.
- J. "Law" or "Laws" shall mean the New York City Charter ("Charter"), the New York City Administrative Code ("Admin. Code"), a local rule of the City of New York, the Constitutions of the United States and the State of New York, a statute of the United States or of the State of New York and any ordinance, rule or regulation having the force of law and adopted pursuant thereto, as amended, and common law.
- K. "Procurement Policy Board" or "PPB" shall mean the board established pursuant to Charter § 311 whose function is to establish comprehensive and consistent procurement policies and rules which have broad application throughout the City.
- L. "PPB Rules" shall mean the rules of the Procurement Policy Board as set forth in Title 9 of the Rules of the City of New York ("RCNY"), § 1-01 et seq.
- M. "State" shall mean the State of New York.

**ARTICLE 2 - REPRESENTATIONS  
AND WARRANTIES**

**Section 2.01 Procurement of Agreement**

A. The Contractor represents and warrants that no person or entity (other than an officer, partner, or employee working solely for the Contractor) has been employed or retained to solicit or secure this Agreement upon any agreement or understanding for a commission, percentage, brokerage fee, contingent fee or any other direct or indirect compensation. Notwithstanding the preceding sentence, the Contractor may retain consultants to draft proposals, negotiate contracts, and perform other similar services. The Contractor further represents and warrants that no payment, gift, or thing of value has been made, given, or promised to obtain this or any other agreement.

between the parties. The Contractor makes such representations and warranties to induce the City to enter into this Agreement and the City relies upon such representations and warranties in the execution of this Agreement.

B. For any breach or violation of the representations and warranties set forth in Paragraph A above, the Commissioner shall have the right to annul this Agreement without liability, entitling the City to recover all monies paid to the Contractor; and the Contractor shall not make claim for, or be entitled to recover, any sum or sums due under this Agreement. The rights and remedies of the City provided in this Section are not exclusive and are in addition to all other rights and remedies allowed by Law or under this Agreement.

#### **Section 2.02 Conflicts of Interest**

A. The Contractor represents and warrants that neither it nor any of its directors, officers, members, partners or employees, has any interest nor shall they acquire any interest, directly or indirectly, which conflicts in any manner or degree with the performance of this Agreement. The Contractor further represents and warrants that no person having such interest or possible interest shall be employed by or connected with the Contractor in the performance of this Agreement.

B. Consistent with Charter § 2604 and other related provisions of the Charter, the Admin. Code and the New York State Penal Law, no elected official or other officer or employee of the City, nor any person whose salary is payable, in whole or in part, from the City Treasury, shall participate in any decision relating to this Agreement which affects his or her personal interest or the interest of any corporation, partnership or other entity in which he or she is, directly or indirectly, interested; nor shall any such official, officer, employee, or person have any interest in, or in the proceeds of, this Agreement. This Paragraph B shall not prevent directors, officers, members, partners, or employees of the Contractor from participating in decisions relating to this Agreement where their sole personal interest is in the Contractor.

C. The Contractor shall not employ a person or permit a person to serve as a member of the Board of Directors or as an officer of the Contractor if such employment or service would violate Chapter 68 of the Charter.

D. through H. Not Used

#### **Section 2.03 Fair Practices**

A. The Contractor and each person signing on its behalf certifies, under penalties of perjury, that to the best of its, his or her knowledge and belief:

1. The prices and other material terms set forth in this Agreement have been arrived at independently, without collusion, consultation, communication, or agreement with any other bidder or proposer or with any competitor as to any matter relating to such prices or terms for the purpose of restricting competition;

2. Unless otherwise required by Law or where a schedule of rates or prices is uniformly established by a government agency through regulation, policy or directive, the prices and other material terms set forth in this Agreement which have been quoted in this Agreement and on the bid or proposal submitted by the Contractor have not been knowingly disclosed by the Contractor, directly or indirectly, to any other bidder or proposer or to any competitor prior to the bid or proposal opening; and

3. No attempt has been made or will be made by the Contractor to induce any other person or entity to submit or not to submit a bid or proposal for the purpose of restricting competition.

B. The fact that the Contractor (i) has published price lists, rates, or tariffs covering items being procured, (ii) has informed prospective customers of proposed or pending publication of new or revised price lists for such items, or (iii) has sold the same items to other customers at the same prices and/or terms being bid or proposed, does not constitute, without more, a disclosure within the meaning of this Section.

#### **Section 2.04 VENDEX**

The Contractor represents and warrants that it and its principals have duly executed and filed all required VENDEX Questionnaires and, if applicable, Certificates of No Change, pursuant to PPB Rule § 2-08 and in

accordance with the policies and procedures of the Mayor's Office of Contract Services. The Contractor understands that the Department's reliance upon the completeness and veracity of the information stated therein is a material condition to the execution of this Agreement, and represents and warrants that the information it and its principals have provided is accurate and complete.

**Section 2.05 Political Activity**

The Contractor's provision of services under this Agreement shall not include any partisan political activity or any activity to further the election or defeat of any candidate for public, political, or party office, nor shall any of the funds provided under this Agreement be used for such purposes.

**Section 2.06 Religious Activity**

There shall be no religious worship, instruction or proselytizing as part of or in connection with the Contractor's provision of services under this Agreement, nor shall any of the funds provided under this Agreement be used for such purposes.

**Section 2.07 Unlawful Discriminatory Practices: Admin. Code § 6-123**

As required by Admin. Code § 6-123, the Contractor will not engage in any unlawful discriminatory practice as defined in and pursuant to the terms of Title 8 of the City Administrative Code. The Contractor shall include a provision in any agreement with a first-level subcontractor performing services under this Agreement for an amount in excess of Fifty Thousand Dollars (\$50,000) that such subcontractor shall not engage in any such unlawful discriminatory practice.

**Section 2.08 Bankruptcy and Reorganization**

In the event that the Contractor files for bankruptcy or reorganization under Chapter Seven or Chapter Eleven of the United States Bankruptcy Code, the Contractor shall disclose such action to the Department within seven (7) days of filing.

**ARTICLE 3 - ASSIGNMENT AND SUBCONTRACTING**

**Section 3.01 Assignment**

A. The Contractor shall not assign, transfer, convey or otherwise dispose of this Agreement, or the right to execute it, or the right, title or interest in or to it or any part of it, or assign, by power of attorney or otherwise, any of the monies due or to become due under this Agreement, without the prior written consent of the Commissioner. The giving of any such consent to a particular assignment shall not dispense with the necessity of such consent to any further or other assignments. Any such assignment, transfer, conveyance or other disposition without such written consent shall be void.

B. Before entering into any such assignment, transfer, conveyance or other disposal of this Agreement, the Contractor shall submit a written request for approval to the Department giving the name and address of the proposed assignee. The proposed assignee's VENDEX questionnaire must be submitted within thirty (30) Days after the ACCO has granted preliminary written approval of the proposed assignee, if required. Upon the request of the Department, the Contractor shall provide any other information demonstrating that the proposed assignee has the necessary facilities, skill, integrity, past experience and financial resources to perform the specified services in accordance with the terms and conditions of this Agreement. The Agency shall make a final determination in writing approving or disapproving the assignee after receiving all requested information.

C. Failure to obtain the prior written consent to such an assignment, transfer, conveyance, or other disposition may result in the revocation and annulment of this Agreement, at the option of the Commissioner. The City shall thereupon be relieved and discharged from any further liability and obligation to the Contractor, its assignees, or transferees, who shall forfeit all monies earned under this Agreement, except so much as may be necessary to pay the Contractor's employees.

D. The provisions of this Section shall not hinder, prevent, or affect an assignment by the Contractor for the benefit of its creditors made pursuant to the Laws of the State.

E. This Agreement may be assigned, in whole or in part, by the City to any corporation, agency, or instrumentality having authority to accept such assignment. The City shall provide the Contractor with written notice of any such assignment.

**Section 3.02 Subcontracting**

A. The Contractor shall not enter into any subcontract for an amount greater than Five Thousand Dollars (\$5,000) for the performance of its obligations, in whole or in part, under this Agreement without the prior approval by the Department of the subcontractor. The Department hereby grants approval for all subcontracts for an amount that does not exceed Five Thousand Dollars (\$5,000). The Contractor must submit monthly reports to the Department indicating all such subcontractors. All subcontracts must be in writing.

B. Prior to entering into any subcontract for an amount greater than Five Thousand Dollars (\$5,000), the Contractor shall submit a written request for the approval of the proposed subcontractor to the Department giving the name and address of the proposed subcontractor and the portion of the services that it is to perform and furnish. At the request of the Department, a copy of the proposed subcontract shall be submitted to the Department. The proposed subcontractor's VENDEX Questionnaire must be submitted, if required, within thirty (30) Days after the ACCO has granted preliminary approval of the proposed subcontractor. Upon the request of the Department, the Contractor shall provide any other information demonstrating that the proposed subcontractor has the necessary facilities, skill, integrity, past experience and financial resources to perform the specified services in accordance with the terms and conditions of this Agreement. The Agency shall make a final determination in writing approving or disapproving the subcontractor after receiving all requested information. For proposed subcontracts that do not exceed Twenty-five Thousand Dollars (\$25,000), the Department's approval shall be deemed granted if the Department does not issue a written approval or disapproval within forty-five (45) Days of the Department's receipt of the written request for approval or, if applicable, within forty-five (45) Days of the Department's acknowledged receipt of fully completed VENDEX Questionnaires for the subcontractor.

C. All subcontracts shall contain provisions specifying that:

1. The work performed by the subcontractor must be in accordance with the terms of the agreement between the City and the Contractor;

2. Nothing contained in the agreement between the Contractor and the subcontractor shall impair the rights of the City;

3. Nothing contained in the agreement between the Contractor and the subcontractor, or under the agreement between the City and the Contractor, shall create any contractual relation between the subcontractor and the City; and

4. The subcontractor specifically agrees to be bound by Section 4.07 and Article 5 of this Appendix A and specifically agrees that the City may enforce such provisions directly against the subcontractor as if the City were a party to the subcontract.

D. The Contractor agrees that it is as fully responsible to the Department for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by such subcontractors as it is for the acts and omissions of any person directly employed by it.

E. For determining the value of a subcontract, all subcontracts with the same subcontractor shall be aggregated.

F. The Department may revoke the approval of a subcontractor granted or deemed granted pursuant to Paragraphs (A) and (B) of this section if revocation is deemed to be in the interest of the City in writing on no less than ten (10) Days notice unless a shorter period is warranted by considerations of health, safety, integrity issues or other similar factors. Upon the effective date of such revocation, the Contractor shall cause the subcontractor to cease all work under the Agreement. The City shall not incur any further obligation for services performed by such subcontractor pursuant to this Agreement beyond the effective date of the revocation. The City shall pay for services provided by the subcontractor in accordance with this Agreement prior to the effective date of revocation.

G. The Department's approval of a subcontractor shall not relieve the Contractor of any of its responsibilities, duties and liabilities under this Agreement. At the request of the Department, the Contractor shall provide the Department a copy of any subcontract.

H. Individual employer-employee contracts are not subcontracts subject to the requirements of this Section.

#### **ARTICLE 4 - LABOR PROVISIONS**

##### **Section 4.01 Independent Contractor Status**

The Contractor and the Department agree that the Contractor is an independent contractor and not an employee of the Department or the City. Accordingly, neither the Contractor nor its employees or agents will hold themselves out as, or claim to be, officers or employees of the City, or of any department, agency or unit of the City, by reason of this Agreement, and they will not, by reason of this Agreement, make any claim, demand or application to or for any right or benefit applicable to an officer or employee of the City, including, but not limited to, Workers' Compensation coverage, Disability Benefits coverage, Unemployment Insurance benefits, Social Security coverage or employee retirement membership or credit.

##### **Section 4.02 Employees**

All persons who are employed by the Contractor and all consultants or independent contractors who are retained by the Contractor to perform services under this Agreement are neither employees of the City nor under contract with the City. The Contractor, and not the City, is responsible for their work, direction, compensation, and personal conduct while engaged under this Agreement. Nothing in the Agreement shall impose any liability or duty on the City for the acts, omissions, liabilities or obligations of the Contractor, or any officer, employee, or agent of the Contractor, or for taxes of any nature, or for any right or benefit applicable to an officer or employee of the City, including, but not limited to, Workers' Compensation coverage, Disability Benefits coverage, Unemployment Insurance benefits, Social Security coverage or employee retirement membership or credit. Except as specifically stated in this Agreement, nothing in this Agreement shall impose any liability or duty on the City to any person or entity.

##### **Section 4.03 Removal of Individuals Performing Work**

The Contractor shall not have anyone perform work under this Agreement who is not competent, faithful and skilled in the work for which he or she shall be employed. Whenever the Commissioner shall inform the Contractor, in writing, that any individual is, in his or her opinion, incompetent, unfaithful, or unskilled, such individual shall no longer perform work under this Agreement. Prior to making a determination to direct a Contractor that an individual shall no longer perform work under this Agreement, the Commissioner shall provide the Contractor an opportunity to be heard on no less than five (5) Days' written notice. The Commissioner may direct the Contractor not to allow the individual from performing work under the Agreement pending the opportunity to be heard and the Commissioner's determination.

##### **Section 4.04 Minimum Wage**

Except for those employees whose minimum wage is required to be fixed pursuant to Sections 220 or 230 of the New York State Labor Law or by City Administrative Code § 6-109, all persons employed by the Contractor in the performance of this Agreement shall be paid, without subsequent deduction or rebate, unless expressly authorized by Law, not less than the minimum wage as prescribed by Law. Any breach of this Section shall be deemed a material breach of this Agreement.

**Section 4.05 Non-Discrimination: New York State Labor Law § 220-e**

A. If this Agreement is for the construction, alteration or repair of any public building or public work or for the manufacture, sale, or distribution of materials, equipment, or supplies, the Contractor agrees, as required by New York State Labor Law § 220-e, that:

1. In the hiring of employees for the performance of work under this Agreement or any subcontract hereunder, neither the Contractor, subcontractor, nor any person acting on behalf of such Contractor or subcontractor, shall by reason of race, creed, color, disability, sex or national origin discriminate against any citizen of the State of New York who is qualified and available to perform the work to which the employment relates;

2. Neither the Contractor, subcontractor, nor any person on his or her behalf shall, in any manner, discriminate against or intimidate any employee hired for the performance of work under this Agreement on account of race, creed, color, disability, sex or national origin;

3. There may be deducted from the amount payable to the Contractor by the City under this Agreement a penalty of Fifty Dollars (\$50) for each person for each calendar day during which such person was discriminated against or intimidated in violation of the provisions of this Agreement; and

4. This Agreement may be terminated by the City, and all monies due or to become due hereunder may be forfeited, for a second or any subsequent violation of the terms or conditions of this Section.

B. The provisions of this Section shall be limited to operations performed within the territorial limits of the State of New York.

**Section 4.06 Non-Discrimination: Admin. Code § 6-108**

If this Agreement is for the construction, alteration or repair of buildings or the construction or repair of streets or highways, or for the manufacture, sale, or distribution of materials, equipment or supplies, the Contractor agrees, as required by New York City Administrative Code § 6-108, that:

A. It shall be unlawful for any person engaged in the construction, alteration or repair of buildings or engaged in the construction or repair of streets or highways pursuant to a contract with the City or engaged in the manufacture, sale or distribution of materials, equipment or supplies pursuant to a contract with the City to refuse to employ or to refuse to continue in any employment any person on account of the race, color or creed of such person.

B. It shall be unlawful for any person or any servant, agent or employee of any person, described in Paragraph A above, to ask, indicate or transmit, orally or in writing, directly or indirectly, the race, color, creed or religious affiliation of any person employed or seeking employment from such person, firm or corporation.

C. Breach of the foregoing provisions shall be deemed a breach of a material provision of this Agreement.

D. Any person, or the employee, manager or owner of or officer of such firm or corporation who shall violate any of the provisions of this Section shall, upon conviction thereof, be punished by a fine of not more than One Hundred Dollars (\$100) or by imprisonment for not more than thirty (30) Days, or both.

**Section 4.07 Non-Discrimination: E.O. 50 – Equal Employment Opportunity**

A. This Agreement is subject to the requirements of City Executive Order No. 50 (1980) ("E.O. 50"), as revised, and the rules set forth at 66 RCNY § 10-01 et seq. No agreement will be awarded unless and until these requirements have been complied with in their entirety. The Contractor agrees that it:

1. Will not discriminate unlawfully against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability, marital status, sexual orientation or citizenship status with respect to all employment decisions including, but not limited to, recruitment, hiring, upgrading, demotion, downgrading, transfer, training, rates of pay or other forms of compensation, layoff, termination, and all other terms and conditions of employment;

2. Will not discriminate unlawfully in the selection of subcontractors on the basis of the owners', partners' or shareholders' race, color, creed, national origin, sex, age, disability, marital status, sexual orientation, or citizenship status;

3. Will state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that all qualified applicants will receive consideration for employment without unlawful discrimination based on race, color, creed, national origin, sex, age, disability, marital status, sexual orientation or citizenship status, and that it is an equal employment opportunity employer;

4. Will send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or memorandum of understanding, written notification of its equal employment opportunity commitments under E.O. 50 and the rules and regulations promulgated thereunder;

5. Will furnish before this Agreement is awarded all information and reports including an Employment Report which are required by E.O. 50, the rules and regulations promulgated thereunder, and orders of the City Department of Small Business Services, Division of Labor Services ("DLS"); and

6. Will permit DLS to have access to all relevant books, records, and accounts for the purposes of investigation to ascertain compliance with such rules, regulations, and orders.

B. The Contractor understands that in the event of its noncompliance with the nondiscrimination clauses of this Agreement or with any of such rules, regulations, or orders, such noncompliance shall constitute a material breach of this Agreement and noncompliance with E.O. 50 and the rules and regulations promulgated thereunder. After a hearing held pursuant to the rules of DLS, the Director of DLS may direct the Commissioner to impose any or all of the following sanctions:

1. Disapproval of the Contractor; and/or
2. Suspension or termination of the Agreement; and/or
3. Declaring the Contractor in default; and/or
4. In lieu of any of the foregoing sanctions, imposition of an employment program.

C. Failure to comply with E.O. 50 and the rules and regulations promulgated thereunder in one or more instances may result in the Department declaring the Contractor to be non-responsible.

D. The Contractor agrees to include the provisions of the foregoing Paragraphs in every subcontract or purchase order in excess of One Hundred Thousand Dollars (\$100,000) to which it becomes a party unless exempted by E.O. 50 and the rules and regulations promulgated thereunder, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as may be directed by the Director of DLS as a means of enforcing such provisions including sanctions for noncompliance. A supplier of unfinished products to the Contractor needed to produce the item contracted for shall not be considered a subcontractor or vendor for purposes of this Paragraph.

E. The Contractor further agrees that it will refrain from entering into any subcontract or modification thereof subject to E.O. 50 and the rules and regulations promulgated thereunder with a subcontractor who is not in compliance with the requirements of E.O. 50 and the rules and regulations promulgated thereunder. A supplier of unfinished products to the Contractor needed to produce the item contracted for shall not be considered a subcontractor for purposes of this Paragraph.

F. Nothing contained in this Section shall be construed to bar any religious or denominational institution or organization, or any organization operated for charitable or educational purposes, that is operated, supervised or controlled by or in connection with a religious organization, from lawfully limiting employment or lawfully giving preference to persons of the same religion or denomination or from lawfully making such selection as is calculated by such organization to promote the religious principles for which it is established or maintained.

**ARTICLE 5 - RECORDS,  
AUDITS, REPORTS, AND INVESTIGATIONS**

**Section 5.01 Books and Records**

The Contractor agrees to maintain separate and accurate books, records, documents and other evidence, and to utilize appropriate accounting procedures and practices, which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Agreement.

**Section 5.02 Retention of Records**

The Contractor agrees to retain all books, records, and other documents relevant to this Agreement, including those required pursuant to Section 5.01, for six years after the final payment or expiration or termination of this Agreement, or for a period otherwise prescribed by Law, whichever is later. In addition, if any litigation, claim, or audit concerning this Agreement has commenced before the expiration of the six-year period, the records must be retained until the completion of such litigation, claim, or audit. Any books, records and other documents that are created in an electronic format in the regular course of business may be retained in an electronic format. Any books, records, and other documents that are created in the regular course of business as a paper copy may be retained in an electronic format provided that the records satisfy the requirements of New York Civil Practice Law and Rules ("CPLR") 4539(b), including the requirement that the reproduction is created in a manner "which does not permit additions, deletions, or changes without leaving a record of such additions, deletions, or changes." Furthermore, the Contractor agrees to waive any objection to the admissibility of any such books, records or other documents on the grounds that such documents do not satisfy CPLR 4539(b).

**Section 5.03 Inspection**

A. At any time during the Agreement or during the record retention period set forth in section 5.02, the City, including the Department and the Department's Office of the Inspector General, as well as City, State and federal auditors and any other persons duly authorized by the City shall, upon reasonable notice, have full access to and the right to examine and copy all books, records, and other documents maintained or retained by or on behalf of the Contractor pursuant to this Article. Notwithstanding any provision herein regarding notice of inspection, all books, records and other documents of the Contractor kept pursuant to this Agreement shall be subject to immediate inspection, review, and copying by the Department's Office of the Inspector General and/or the Comptroller without prior notice and at no additional cost to the City. The Contractor shall make such books, records and other documents available for inspection in the City of New York or shall reimburse the City for expenses associated with the out-of-City inspection.

B. The Department shall have the right to have representatives of the Department or of the City, State or federal government present to observe the services being performed.

C. The Contractor shall not be entitled to final payment until the Contractor has complied with any request for inspection or access given under this Section.

**Section 5.04 Audit**

A. This Agreement and all books, records, documents, and other evidence required to be maintained or retained pursuant to this Agreement, including all vouchers or invoices presented for payment and the books, records, and other documents upon which such vouchers or invoices are based (e.g., reports, cancelled checks, accounts, and all other similar material), are subject to audit by (i) the City, including the Comptroller, the Department, and the Department's Office of the Inspector General, (ii) the State, (iii) the federal government, and (iv) other persons duly authorized by the City. Such audits may include examination and review of the source and application of all funds whether from the City, the State, the federal government, private sources or otherwise.

B. Audits by the City, including the Comptroller, the Department, and the Department's Office of the Inspector General, are performed pursuant to the powers and responsibilities conferred by the Charter and the Admin. Code, as well as all orders, rules, and regulations promulgated pursuant to the Charter and Admin. Code.

C. The Contractor shall submit any and all documentation and justification in support of expenditures or fees under this Agreement as may be required by the Department and by the Comptroller in the exercise of his/her powers under Law.

D. The Contractor shall not be entitled to final payment until the Contractor has complied with the requirements of this Section.

**Section 5.05 No Removal of Records from Premises**

Where performance of this Agreement involves use by the Contractor of any City books, records, documents, or data (in hard copy, or electronic or other format now known or developed in the future) at City facilities or offices, the Contractor shall not remove any such data (in the format in which it originally existed, or in any other converted or derived format) from such facility or office without the prior written approval of the Department's designated official. Upon the request by the Department at any time during the Agreement or after the Agreement has expired or terminated, the Contractor shall return to the Department any City books, records, documents, or data that has been removed from City premises.

**Section 5.06 Electronic Records**

As used in this Appendix A, the terms books, records, documents, and other data refer to electronic versions as well as hard copy versions.

**Section 5.07 Investigations Clause**

A. The Contractor agrees to cooperate fully and faithfully with any investigation, audit or inquiry conducted by a State or City agency or authority that is empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath, or conducted by the Inspector General of a governmental agency that is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license that is the subject of the investigation, audit or inquiry.

B. 1. If any person who has been advised that his or her statement, and any information from such statement, will not be used against him or her in any subsequent criminal proceeding refuses to testify before a grand jury or other governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath concerning the award of or performance under any transaction, agreement, lease, permit, contract, or license entered into with the City, or State, or any political subdivision or public authority thereof, or the Port Authority of New York and New Jersey, or any local development corporation within the City, or any public benefit corporation organized under the Laws of the State, or;

2. If any person refuses to testify for a reason other than the assertion of his or her privilege against self-incrimination in an investigation, audit or inquiry conducted by a City or State governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to take testimony under oath, or by the Inspector General of the governmental agency that is a party in interest in, and is seeking testimony concerning the award of, or performance under, any transaction, agreement, lease, permit, contract, or license entered into with the City, the State, or any political subdivision thereof or any local development corporation within the City, then;

C. 1. The Commissioner or Agency Head whose agency is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license shall convene a hearing, upon not less than five (5) Days written notice to the parties involved to determine if any penalties should attach for the failure of a person to testify.

2. If any non-governmental party to the hearing requests an adjournment, the Commissioner or Agency Head who convened the hearing may, upon granting the adjournment, suspend any contract, lease, permit, or license pending the final determination pursuant to Paragraph E below without the City incurring any penalty or damages for delay or otherwise.

D. The penalties that may attach after a final determination by the Commissioner or Agency Head may include but shall not exceed:

1. The disqualification for a period not to exceed five (5) years from the date of an adverse determination for any person, or any entity of which such person was a member at the time the testimony was sought, from submitting bids for, or transacting business with, or entering into or obtaining any contract, lease, permit or license with or from the City; and/or

2. The cancellation or termination of any and all such existing City contracts, leases, permits or licenses that the refusal to testify concerns and that have not been assigned as permitted under this Agreement, nor the proceeds of which pledged, to an unaffiliated and unrelated institutional lender for fair value prior to the issuance of the notice scheduling the hearing, without the City incurring any penalty or damages on account of such cancellation or termination; monies lawfully due for goods delivered, work done, rentals, or fees accrued prior to the cancellation or termination shall be paid by the City.

E. The Commissioner or Agency Head shall consider and address in reaching his or her determination and in assessing an appropriate penalty the factors in Paragraphs (1) and (2) below. He or she may also consider, if relevant and appropriate, the criteria established in Paragraphs (3) and (4) below, in addition to any other information that may be relevant and appropriate:

1. The party's good faith endeavors or lack thereof to cooperate fully and faithfully with any governmental investigation or audit, including but not limited to the discipline, discharge, or disassociation of any person failing to testify, the production of accurate and complete books and records, and the forthcoming testimony of all other members, agents, assignees or fiduciaries whose testimony is sought.

2. The relationship of the person who refused to testify to any entity that is a party to the hearing, including, but not limited to, whether the person whose testimony is sought has an ownership interest in the entity and/or the degree of authority and responsibility the person has within the entity.

3. The nexus of the testimony sought to the subject entity and its contracts, leases, permits or licenses with the City.

4. The effect a penalty may have on an unaffiliated and unrelated party or entity that has a significant interest in an entity subject to penalties under Paragraph D above, provided that the party or entity has given actual notice to the Commissioner or Agency Head upon the acquisition of the interest, or at the hearing called for in Paragraph (C)(1) above gives notice and proves that such interest was previously acquired. Under either circumstance, the party or entity must present evidence at the hearing demonstrating the potential adverse impact a penalty will have on such person or entity.

F. Definitions

1. The term "license" or "permit" as used in this Section shall be defined as a license, permit, franchise, or concession not granted as a matter of right.

2. The term "person" as used in this Section shall be defined as any natural person doing business alone or associated with another person or entity as a partner, director, officer, principal or employee.

3. The term "entity" as used in this Section shall be defined as any firm, partnership, corporation, association, or person that receives monies, benefits, licenses, leases, or permits from or through the City, or otherwise transacts business with the City.

4. The term "member" as used in this Section shall be defined as any person associated with another person or entity as a partner, director, officer, principal, or employee.

G. In addition to and notwithstanding any other provision of this Agreement, the Commissioner or Agency Head may in his or her sole discretion terminate this Agreement upon not less than three (3) Days written notice in the event the Contractor fails to promptly report in writing to the City Commissioner of Investigation any solicitation of money, goods, requests for future employment or other benefits or thing of value, by or on behalf of any employee of the City or other person or entity for any purpose that may be related to the procurement or obtaining of this Agreement by the Contractor, or affecting the performance of this Agreement.

**Section 5.08 Confidentiality**

A. The Contractor agrees to hold confidential, both during and after the completion or termination of this Agreement, all of the reports, information, or data, furnished to, or prepared, assembled or used by, the Contractor under this Agreement. The Contractor agrees that such reports, information, or data shall not be made available to any person or entity without the prior written approval of the Department. The Contractor agrees to maintain the confidentiality of such reports, information, or data by using a reasonable degree of care, and using at least the same degree of care that the Contractor uses to preserve the confidentiality of its own confidential information. In the event that the data contains social security numbers or other Personal Identifying Information, as such term is defined in Paragraph B of this Section, the Contractor shall utilize best practice methods (e.g., encryption of electronic records) to protect the confidentiality of such data. The obligation under this Section to hold reports, information or data confidential shall not apply where the City would be required to disclose such reports, information or data pursuant to the State Freedom of Information Law ("FOIL"), provided that the Contractor provides advance notice to the City, in writing or by e-mail, that it intends to disclose such reports, information or data and the City does not inform the contractor, in writing or by e-mail, that such reports, information, or data are not subject to disclosure under FOIL.

B. The Contractor shall provide notice to the Department within three (3) days of the discovery by the Contractor of any breach of security, as defined in Admin. Code § 10-501(b), of any data, encrypted or otherwise, in use by the Contractor that contains social security numbers or other personal identifying information as defined in Admin. Code § 10-501 ("Personal Identifying Information"), where such breach of security arises out of the acts or omissions of the Contractor or its employees, subcontractors, or agents. Upon the discovery of such security breach, the Contractor shall take reasonable steps to remediate the cause or causes of such breach, and shall provide notice to the Department of such steps. In the event of such breach of security, without limiting any other right of the City, the City shall have the right to withhold further payments under this Agreement for the purpose of set-off in sufficient sums to cover the costs of notifications and/or other actions mandated by any Law, or administrative or judicial order, to address the breach, and including any fines or disallowances imposed by the State or federal government as a result of the disclosure. The City shall also have the right to withhold further payments hereunder for the purpose of set-off in sufficient sums to cover the costs of credit monitoring services for the victims of such a breach of security by a national credit reporting agency, and/or any other commercially reasonable preventive measure. The Department shall provide the Contractor with written notice and an opportunity to comment on such measures prior to implementation. Alternatively, at the City's discretion, or if monies remaining to be earned or paid under this Agreement are insufficient to cover the costs detailed above, the Contractor shall pay directly for the costs, detailed above, if any.

C. The Contractor shall restrict access to confidential information to persons who have a legitimate work related purpose to access such information. The Contractor agrees that it will instruct its officers, employees, and agents to maintain the confidentiality of any and all information required to be kept confidential by this Agreement.

D. The Contractor, and its officers, employees, and agents shall notify the Department, at any time either during or after completion or termination of this Agreement, of any intended statement to the press or any intended issuing of any material for publication in any media of communication (print, news, television, radio, Internet, etc.) regarding the services provided or the data collected pursuant to this Agreement at least twenty-four (24) hours prior to any statement to the press or at least five (5) business Days prior to the submission of the material for publication, or such shorter periods as are reasonable under the circumstances. The Contractor may not issue any statement or submit any material for publication that includes confidential information as prohibited by this Section 5.08.

E. At the request of the Department, the Contractor shall return to the Department any and all confidential information in the possession of the Contractor or its subcontractors. If the Contractor or its subcontractors are legally required to retain any confidential information, the Contractor shall notify the Department in writing and set forth the confidential information that it intends to retain and the reasons why it is legally required to retain such information. The Contractor shall confer with the Department, in good faith, regarding any issues that arise from the Contractor retaining such confidential information. If the Department does not request such information, or the Law does not require otherwise, such information shall be maintained in accordance with the requirements set forth in Section 5.02.

F. A breach of this Section shall constitute a material breach of this Agreement for which the Department may terminate this Agreement pursuant to Article 10. The Department reserves any and all other rights and remedies in the event of unauthorized disclosure.

**ARTICLE 6 - COPYRIGHTS,  
PATENTS, INVENTIONS, AND ANTITRUST**

**Section 6.01 Copyrights**

A. Any reports, documents, data, photographs, deliverables, and/or other materials produced pursuant to this Agreement, and any and all drafts and/or other preliminary materials in any format related to such items produced pursuant to this Agreement, shall upon their creation become the exclusive property of the City.

B. Any reports, documents, data, photographs, deliverables, and/or other materials provided pursuant to this Agreement ("Copyrightable Materials") shall be considered "work-made-for-hire" within the meaning and purview of Section 101 of the United States Copyright Act, 17 U.S.C. § 101, and the City shall be the copyright owner thereof and of all aspects, elements and components thereof in which copyright protection might exist. To the extent that the Copyrightable Materials do not qualify as "work-made-for-hire," the Contractor hereby irrevocably transfers, assigns and conveys exclusive copyright ownership in and to the Copyrightable Materials to the City, free and clear of any liens, claims, or other encumbrances. The Contractor shall retain no copyright or intellectual property interest in the Copyrightable Materials. The Copyrightable Materials shall be used by the Contractor for no purpose other than in the performance of this Agreement without the prior written permission of the City. The Department may grant the Contractor a license to use the Copyrightable Materials on such terms as determined by the Department and set forth in the license.

C. The Contractor acknowledges that the City may, in its sole discretion, register copyright in the Copyrightable Materials with the United States Copyright Office or any other government agency authorized to grant copyright registrations. The Contractor shall fully cooperate in this effort, and agrees to provide any and all documentation necessary to accomplish this.

D. The Contractor represents and warrants that the Copyrightable Materials: (i) are wholly original material not published elsewhere (except for material that is in the public domain); (ii) do not violate any copyright Law; (iii) do not constitute defamation or invasion of the right of privacy or publicity; and (iv) are not an infringement, of any kind, of the rights of any third party. To the extent that the Copyrightable Materials incorporate any non-original material, the Contractor has obtained all necessary permissions and clearances, in writing, for the use of such non-original material under this Agreement, copies of which shall be provided to the City upon execution of this Agreement.

E. If the services under this Agreement are supported by a federal grant of funds, the federal and State government reserves a royalty-free, non-exclusive irrevocable license to reproduce, publish, or otherwise use and to authorize others to use, for federal or State government purposes, the copyright in any Copyrightable Materials developed under this Agreement.

F. If the Contractor publishes a work dealing with any aspect of performance under this Agreement, or with the results of such performance, the City shall have a royalty-free, non-exclusive irrevocable license to reproduce, publish, or otherwise use such work for City governmental purposes.

**Section 6.02 Patents and Inventions**

The Contractor shall promptly and fully report to the Department any discovery or invention arising out of or developed in the course of performance of this Agreement. If the services under this Agreement are supported by a federal grant of funds, the Contractor shall promptly and fully report to the federal government for the federal government to make a determination as to whether patent protection on such invention shall be sought and how the rights in the invention or discovery, including rights under any patent issued thereon, shall be disposed of and administered in order to protect the public interest.

**Section 6.03 Pre-existing Rights**

In no case shall Sections 6.01 and 6.02 apply to, or prevent the Contractor from asserting or protecting its rights in any discovery, invention, report, document, data, photograph, deliverable, or other material in connection with or produced pursuant to this Agreement that existed prior to or was developed or discovered independently from the activities directly related to this Agreement.

**Section 6.04 Antitrust**

The Contractor hereby assigns, sells, and transfers to the City all right, title and interest in and to any claims and causes of action arising under the antitrust laws of the State or of the United States relating to the particular goods or services procured by the City under this Agreement.

**ARTICLE 7 - INSURANCE**

**Section 7.01 Agreement to Insure**

The Contractor shall not commence performing services under this Agreement unless and until all insurance required by this Article is in effect, and shall ensure continuous insurance coverage in the manner, form, and limits required by this Article throughout the term of the Agreement.

**Section 7.02 Commercial General Liability Insurance**

A. The Contractor shall maintain Commercial General Liability Insurance covering the Contractor as Named Insured and the City as an Additional Insured in the amount of at least One Million Dollars (\$1,000,000) per occurrence. Such insurance shall protect the City and the Contractor from claims for property damage and/or bodily injury, including death that may arise from any of the operations under this Agreement. Coverage under this insurance shall be at least as broad as that provided by the most recently issued Insurance Services Office ("ISO") Form CG 0001, shall contain no exclusions other than as required by law or as approved by the Department, and shall be "occurrence" based rather than "claims-made."

B. Such Commercial General Liability Insurance shall name the City, together with its officials and employees, as an Additional Insured with coverage at least as broad as the most recently issued ISO Form CG 20 10.

C. The Contractor shall ensure that each subcontractor adds the City, together with its officials and employees, as an Additional Insured under all Commercial General Liability Insurance policies obtained by a subcontractor covering work performed by such subcontractor under this Agreement with coverage at least as broad as the most recently issued ISO Form CG 20 26.

**Section 7.03 Professional Liability Insurance**

A. At the Department's direction, if professional services are provided pursuant to this Agreement, the Contractor shall maintain and submit evidence of Professional Liability Insurance appropriate to the type(s) of such services to be provided under this Agreement in the amount of at least One Million Dollars (\$1,000,000) per claim. The policy or policies shall include an endorsement to cover the liability assumed by the Contractor under this Agreement arising out of the negligent performance of professional services or caused by an error, omission or negligent act of the Contractor or anyone employed by the Contractor.

B. All subcontractors of the Contractor providing professional services under this Agreement shall also maintain such insurance in the amount of at least One Million Dollars (\$1,000,000) per claim, and the Contractor shall provide to the Department, at the time of the request for subcontractor approval, evidence of such Professional Liability Insurance on forms acceptable to the Department.

C. Claims-made policies will be accepted for Professional Liability Insurance. All such policies shall have an extended reporting period option or automatic coverage of not less than two (2) years. If available as an option, the Contractor shall purchase extended reporting period coverage effective on cancellation or termination of such insurance unless a new policy is secured with a retroactive date, including at least the last policy year.

**Section 7.04 Workers' Compensation, Disability Benefits, and Employer's Liability Insurance**

The Contractor shall maintain, and ensure that each subcontractor maintains, Workers' Compensation Insurance, Disability Benefits Insurance, and Employer's Liability Insurance in accordance with the Laws of the State on behalf of, or with regard to, all employees providing services under this Agreement.

**Section 7.05 Unemployment Insurance**

To the extent required by Law, the Contractor shall provide Unemployment Insurance for its employees.

**Section 7.06 Business Automobile Liability Insurance**

A. If vehicles are used in the provision of services under this Agreement, then the Contractor shall maintain Business Automobile Liability insurance in the amount of at least One Million Dollars (\$1,000,000) each accident combined single limit for liability arising out of ownership, maintenance or use of any owned, non-owned, or hired vehicles to be used in connection with this Agreement. Coverage shall be at least as broad as ISO Form CA0001, ed. 10/01.

B. If vehicles are used for transporting hazardous materials, the Business Automobile Liability Insurance shall be endorsed to provide pollution liability broadened coverage for covered vehicles (endorsement CA 99 48) as well as proof of MCS-90.

**Section 7.07 General Requirements for Insurance Coverage and Policies**

A. All required insurance policies shall be maintained with companies that may lawfully issue the required policy and have an A.M. Best rating of at least A- / "VII" or a Standard and Poor's rating of at least A, unless prior written approval is obtained from the City Law Department.

B. All insurance policies shall be primary (and non-contributing) to any insurance or self-insurance maintained by the City.

C. The Contractor shall be solely responsible for the payment of all premiums for all required insurance policies and all deductibles or self-insured retentions to which such policies are subject, whether or not the City is an insured under the policy.

D. There shall be no self-insurance program with regard to any insurance required under this Article unless approved in writing by the Commissioner. Any such self-insurance program shall provide the City with all rights that would be provided by traditional insurance required under this Article, including but not limited to the defense obligations that insurers are required to undertake in liability policies.

E. The City's limits of coverage for all types of insurance required under this Article shall be the greater of (i) the minimum limits set forth in this Article or (ii) the limits provided to the Contractor as Named Insured under all primary, excess, and umbrella policies of that type of coverage.

F. All insurance policies required pursuant to Sections 7.02 and 7.03 shall contain an endorsement requiring that the issuing insurance company endeavor to provide the City with advance written notice in the event such policy is to expire or be cancelled or terminated for any reason, and to mail such notice to both the Commissioner [insert Agency name and appropriate address], and the New York City Comptroller, Attn: Office of Contract Administration, Municipal Building, One Centre Street, Room 1005, New York, New York 10007. Such notice is to be sent at least (30) days before the expiration, cancellation or termination date, except in cases of non-payment, where at least ten (10) days written notice would be provided.

**Section 7.08 Proof of Insurance**

A. For Workers' Compensation Insurance, Disability Benefits Insurance, and Employer's Liability Insurance, the Contractor shall file one of the following within ten (10) Days of award of this Agreement. ACORD forms are not acceptable proof of workers' compensation coverage.

1. C-105.2 Certificate of Workers' Compensation Insurance;
2. U-26.3 - State Insurance Fund Certificate of Workers' Compensation Insurance;

3. Request for WC/DB Exemption (Form CE-200);
4. Equivalent or successor forms used by the New York State Workers' Compensation Board; or
5. Other proof of insurance in a form acceptable to the City.

B. For each policy required under this Agreement, except for Workers' Compensation Insurance, Disability Benefits Insurance, Employer's Liability Insurance, and Unemployment Insurance, the Contractor shall file a Certificate of Insurance with the Department within ten (10) Days of award of this Agreement. All Certificates of Insurance shall be (a) in a form acceptable to the City and certify the issuance and effectiveness of such policies of insurance, each with the specified minimum limits; and (b) accompanied by the endorsement in the Contractor's general liability policy by which the City has been made an additional insured pursuant to Section 7.02(B). All Certificate(s) of Insurance shall be accompanied by either a duly executed "Certification by Broker" in the form attached to this Appendix A or copies of all policies referenced in the Certificate of Insurance. If complete policies have not yet been issued, binders are acceptable, until such time as the complete policies have been issued, at which time such policies shall be submitted.

C. Certificates of Insurance confirming renewals of insurance shall be submitted to the Commissioner prior to the expiration date of coverage of policies required under this Article. Such Certificates of Insurance shall comply with the requirements of Section 7.08 (A) and Section 7.08(B), as applicable.

D. The Contractor shall provide the City with a copy of any policy required under this Article upon the demand for such policy by the Commissioner or the New York City Law Department.

E. Acceptance by the Commissioner of a certificate or a policy does not excuse the Contractor from maintaining policies consistent with all provisions of this Article (and ensuring that subcontractors maintain such policies) or from any liability arising from its failure to do so.

F. In the event the Contractor receives notice, from an insurance company or other person, that any insurance policy required under this Article shall expire or be cancelled or terminated for any reason, the Contractor shall immediately forward a copy of such notice to both the Commissioner of DDC, 30-30 Thomson Avenue, Long Island City, New York 11101, and the New York City Comptroller, Attn: Office of Contract Administration, Municipal Building, One Centre Street, Room 1005, New York, New York 10007.

#### **Section 7.09 Miscellaneous**

A. Where notice of loss, damage, occurrence, accident, claim or suit is required under a policy maintained in accordance with this Article, the Contractor shall notify in writing all insurance carriers that issued potentially responsive policies of any such event relating to any operations under this Agreement (including notice to Commercial General Liability Insurance carriers for events relating to the Contractor's own employees) no later than twenty (20) Days after such event. Such notice shall expressly specify that "this notice is being given on behalf of the City of New York as Additional Insured as well as the Named Insured." Such notice shall also contain the following information: the number of the insurance policy, the name of the named insured, the date and location of the damage, occurrence, or accident, and the identity of the persons or things injured, damaged, or lost. The Contractor shall simultaneously send a copy of such notice to the City of New York c/o Insurance Claims Specialist, Affirmative Litigation Division, New York City Law Department, 100 Church Street, New York, New York 10007.

B. The Contractor's failure to maintain any of the insurance required by this Article shall constitute a material breach of this Agreement. Such breach shall not be waived or otherwise excused by any action or inaction by the City at any time.

C. Insurance coverage in the minimum amounts required in this Article shall not relieve the Contractor or its subcontractors of any liability under this Agreement, nor shall it preclude the City from exercising any rights or taking such other actions as are available to it under any other provisions of this Agreement or Law.

D. The Contractor waives all rights against the City, including its officials and employees for any damages or losses that are covered under any insurance required under this Article (whether or not such insurance is actually procured or claims are paid thereunder) or any other insurance applicable to the operations of the Contractor and/or its subcontractors in the performance of this Agreement.

E. In the event the Contractor requires any subcontractor to procure insurance with regard to any operations under this Agreement and requires such subcontractor to name the Contractor as an additional insured under such insurance, the Contractor shall ensure that such entity also name the City, including its officials and employees, as an additional insured with coverage at least as broad as ISO form CG 20 26.

**ARTICLE 8 - PROTECTION OF PERSONS AND PROPERTY  
AND INDEMNIFICATION**

**Section 8.01 Reasonable Precautions**

The Contractor shall take all reasonable precautions to protect all persons and the property of the City and of others from damage, loss or injury resulting from the Contractor's and/or its subcontractors' operations under this Agreement.

**Section 8.02 Protection of City Property**

The Contractor assumes the risk of, and shall be responsible for, any loss or damage to City property, including property and equipment leased by the City, used in the performance of this Agreement, where such loss or damage is caused by any tortious act, or failure to comply with the provisions of this Agreement or of Law by the Contractor, its officers, employees, agents or subcontractors.

**Section 8.03 Indemnification**

The Contractor shall defend, indemnify and hold the City, its officers and employees harmless from any and all claims (even if the allegations of the lawsuit are without merit) or judgments for damages on account of any injuries or death to any person or damage to any property and from costs and expenses to which the City, its officers and employees may be subjected or which it may suffer or incur allegedly arising out of or in connection with any operations of the Contractor and/or its subcontractors to the extent resulting from any negligent act of commission or omission, any intentional tortious act, or failure to comply with the provisions of this Agreement or of the Laws. Insofar as the facts or Law relating to any claim would preclude the City from being completely indemnified by the Contractor, the City shall be partially indemnified by the Contractor to the fullest extent permitted by Law.

**Section 8.04 Infringement Indemnification**

The Contractor shall defend, indemnify and hold the City harmless from any and all claims (even if the allegations of the lawsuit are without merit) or judgments for damages and from costs and expenses to which the City may be subject to or which it may suffer or incur allegedly arising out of or in connection with any infringement by the Contractor of any copyright, trade secrets, trademark or patent rights or any other property or personal right of any third party by the Contractor and/or its subcontractors in the performance of this Agreement. The Contractor shall defend, indemnify, and hold the City harmless regardless of whether or not the alleged infringement arises out of compliance with the Agreement's scope of services/scope of work. Insofar as the facts or Law relating to any claim would preclude the City from being completely indemnified by the Contractor, the City shall be partially indemnified by the Contractor to the fullest extent permitted by Law.

**Section 8.05 Indemnification Obligations Not Limited By Insurance Obligation**

The indemnification provisions set forth in this Article shall not be limited in any way by the Contractor's obligations to obtain and maintain insurance as provided in this Agreement.

**Section 8.06 Actions By or Against Third Parties**

A. In the event any claim is made or any action brought in any way relating to Agreement, other than an action between the City and the Contractor, the Contractor shall diligently render to the City without additional compensation all assistance which the City may reasonably require of the Contractor.

B. The Contractor shall report to the Department in writing within five (5) business Days of the initiation by or against the Contractor of any legal action or proceeding in connection with or relating to this Agreement.

**Section 8.07 Withholding of Payments**

A. In the event that any claim is made or any action is brought against the City for which the Contractor may be required to indemnify the City pursuant to this Agreement, the City shall have the right to withhold further payments under this Agreement for the purpose of set-off in sufficient sums to cover the said claim or action.

B. In the event that any City property is lost or damaged as set forth in Section 8.02, except for normal wear and tear, the City shall have the right to withhold further payments under this Agreement for the purpose of set-off in sufficient sums to cover such loss or damage.

C. The City shall not, however, impose a setoff in the event that an insurance company that provided liability insurance pursuant to Article 7 above has accepted the City's tender of the claim or action without a reservation of rights.

D. The Department may, at its option, withhold for purposes of set-off any monies due to the Contractor under this Agreement up to the amount of any disallowances or questioned costs resulting from any audits of the Contractor or to the amount of any overpayment to the Contractor with regard to this Agreement.

E. The rights and remedies of the City provided for in this Section shall not be exclusive and are in addition to any other rights and remedies provided by Law or this Agreement.

**Section 8.08 No Third Party Rights**

The provisions of this Agreement shall not be deemed to create any right of action in favor of third parties against the Contractor or the City or their respective officers and employees.

**ARTICLE 9 - CONTRACT CHANGES**

**Section 9.01 Contract Changes**

Changes to this Agreement may be made only as duly authorized by the ACCO or his or her designee and in accordance with the PPB Rules. Any amendment or change to this Agreement shall not be valid unless made in writing and signed by authorized representatives of both parties. Contractors deviating from the requirements of this Agreement without a duly approved and executed change order document, or written contract modification or amendment, do so at their own risk.

**Section 9.02 Changes Through Fault of Contractor**

In the event that any change is required in the data, documents, deliverables, or other services to be provided under this Agreement because of negligence or error of the Contractor, no additional compensation shall be paid to the Contractor for making such change, and the Contractor is obligated to make such change without additional compensation.

**ARTICLE 10 - TERMINATION, DEFAULT, AND REDUCTIONS IN FUNDING**

**Section 10.01 Termination by the City Without Cause**

A. The City shall have the right to terminate this Agreement, in whole or in part, without cause, in accordance with the provisions of Section 10.05.

B. If the City terminates this Agreement pursuant to this Section, the following provisions apply. The City shall not incur or pay any further obligation pursuant to this Agreement beyond the termination date set by the City pursuant to Section 10.05. The City shall pay for services provided in accordance with this Agreement

prior to the termination date. In addition, any obligation necessarily incurred by the Contractor on account of this Agreement prior to receipt of notice of termination and falling due after the termination date shall be paid by the City in accordance with the terms of this Agreement. In no event shall such obligation be construed as including any lease or other occupancy agreement, oral or written, entered into between the Contractor and its landlord.

**Section 10.02 Reductions in Federal, State and/or City Funding**

A. This Agreement is funded in whole or in part by funds secured from the federal, State and/or City governments. Should there be a reduction or discontinuance of such funds by action of the federal, State and/or City governments, the City shall have, in its sole discretion, the right to terminate this Agreement in whole or in part, or to reduce the funding and/or level of services of this Agreement caused by such action by the federal, State and/or City governments, including, in the case of the reduction option, but not limited to, the reduction or elimination of programs, services or service components; the reduction or elimination of contract-reimbursable staff or staff-hours, and corresponding reductions in the budget of this Agreement and in the total amount payable under this Agreement. Any reduction in funds pursuant to this Section shall be accompanied by an appropriate reduction in the services performed under this Agreement.

B. In the case of the reduction option referred to in Paragraph A, above, any such reduction shall be effective as of the date set forth in a written notice thereof to the Contractor, which shall be not less than thirty (30) Days from the date of such notice. Prior to sending such notice of reduction, the Department shall advise the Contractor that such option is being exercised and afford the Contractor an opportunity to make within seven (7) Days any suggestion(s) it may have as to which program(s), service(s), service component(s), staff or staff-hours might be reduced or eliminated, provided, however, that the Department shall not be bound to utilize any of the Contractor's suggestions and that the Department shall have sole discretion as to how to effectuate the reductions.

C. If the City reduces funding pursuant to this Section, the following provisions apply. The City shall pay for services provided in accordance with this Agreement prior to the reduction date. In addition, any obligation necessarily incurred by the Contractor on account of this Agreement prior to receipt of notice of reduction and falling due after the reduction date shall be paid by the City in accordance with the terms of this Agreement. In no event shall such obligation be construed as including any lease or other occupancy agreement, oral or written, entered into between the Contractor and its landlord.

D. To the extent that the reduction in public funds is a result of the State determining that the Contractor may receive medical assistance funds pursuant to title eleven of article five of the Social Services Law to fund the services contained within the scope of a program under this Agreement, then the notice and effective date provisions of this section shall not apply, and the Department may reduce such public funds authorized under this Agreement by informing the Contractor of the amount of the reduction and revising attachments to this agreement as appropriate.

**Section 10.03 Contractor Default**

A. The City shall have the right to declare the Contractor in default:

1. Upon a breach by the Contractor of a material term or condition of this Agreement, including unsatisfactory performance of the services;

2. Upon insolvency or the commencement of any proceeding by or against the Contractor, either voluntarily or involuntarily, under the Bankruptcy Code or relating to the insolvency, receivership, liquidation, or composition of the Contractor for the benefit of creditors;

3. If the Contractor refuses or fails to proceed with the services under the Agreement when and as directed by the Commissioner;

4. If the Contractor or any of its officers, directors, partners, five percent (5%) or greater shareholders, principals, or other employee or person substantially involved in its activities are indicted or convicted after execution of the Agreement under any state or federal law of any of the following:

a. a criminal offense incident to obtaining or attempting to obtain or performing a public or private contract;

- b. fraud, embezzlement, theft, bribery, forgery, falsification, or destruction of records, or receiving stolen property;
- c. a criminal violation of any state or federal antitrust law;
- d. violation of the Racketeer Influence and Corrupt Organization Act, 18 U.S.C. § 1961 et seq., or the Mail Fraud Act, 18 U.S.C. § 1341 et seq., for acts in connection with the submission of bids or proposals for a public or private contract;
- e. conspiracy to commit any act or omission that would constitute grounds for conviction or liability under any statute described in subparagraph (d) above; or
- f. an offense indicating a lack of business integrity that seriously and directly affects responsibility as a City vendor.

5. If the Contractor or any of its officers, directors, partners, five percent (5%) or greater shareholders, principals, or other employee or person substantially involved in its activities are subject to a judgment of civil liability under any state or federal antitrust law for acts or omissions in connection with the submission of bids or proposals for a public or private contract; or

6. If the Contractor or any of its officers, directors, partners, five percent (5%) or greater shareholders, principals, or other employee or person substantially involved in its activities makes or causes to be made any false, deceptive, or fraudulent material statement, or fail to make a required material statement in any bid, proposal, or application for City or other government work.

B. The right to declare the Contractor in default shall be exercised by sending the Contractor a written notice of the conditions of default, signed by the Commissioner, setting forth the ground or grounds upon which such default is declared ("Notice to Cure"). The Contractor shall have ten (10) Days from receipt of the Notice to Cure or any longer period that is set forth in the Notice to Cure to cure the default. The Commissioner may temporarily suspend services under the Agreement pending the outcome of the default proceedings pursuant to this Section.

C. If the conditions set forth in the Notice to Cure are not cured within the period set forth in the Notice to Cure, the Commissioner may declare the Contractor in default pursuant to this Section. Before the Commissioner may exercise his or her right to declare the Contractor in default, the Commissioner shall give the Contractor an opportunity to be heard upon not less than five (5) business days notice. The Commissioner may, in his or her discretion, provide for such opportunity to be in writing or in person. Such opportunity to be heard shall not occur prior to the end of the cure period but notice of such opportunity to be heard may be given prior to the end of the cure period and may be given contemporaneously with the Notice to Cure.

D. After the opportunity to be heard, the Commissioner may terminate the Agreement, in whole or in part, upon finding the Contractor in default pursuant to this Section, in accordance with the provisions of Section 10.05.

E. The Commissioner, after declaring the Contractor in default, may have the services under the Agreement completed by such means and in such manner, by contract with or without public letting, or otherwise, as he or she may deem advisable in accordance with applicable PPB Rules. After such completion, the Commissioner shall certify the expense incurred in such completion, which shall include the cost of re-letting. Should the expense of such completion, as certified by the Commissioner, exceed the total sum which would have been payable under the Agreement if it had been completed by the Contractor, any excess shall be promptly paid by the Contractor upon demand by the City. The excess expense of such completion, including any and all related and incidental costs, as so certified by the Commissioner, and any liquidated damages assessed against the Contractor, may be charged against and deducted out of monies earned by the Contractor.

#### **Section 10.04 Force Majeure**

A. For purposes of this Agreement, a force majeure event is an act or event beyond the control and without any fault or negligence of the Contractor ("Force Majeure Event"). Such events may include, but are not limited to, fire, flood, earthquake, storm or other natural disaster, civil commotion, war, terrorism, riot, and labor disputes not brought about by any act or omission of the Contractor.

B. In the event the Contractor cannot comply with the terms of the Agreement (including any failure by the Contractor to make progress in the performance of the services) because of a Force Majeure Event, then the Contractor may ask the Commissioner to excuse the nonperformance and/or terminate the Agreement. If the Commissioner, in his or her reasonable discretion, determines that the Contractor cannot comply with the terms of the Agreement because of a Force Majeure Event, then the Commissioner shall excuse the nonperformance and may terminate the Agreement. Such a termination shall be deemed to be without cause.

C. If the City terminates the Agreement pursuant to this Section, the following provisions apply. The City shall not incur or pay any further obligation pursuant to this Agreement beyond the termination date. The City shall pay for services provided in accordance with this Agreement prior to the termination date. Any obligation necessarily incurred by the Contractor on account of this Agreement prior to receipt of notice of termination and falling due after the termination date shall be paid by the City in accordance with the terms of this Agreement. In no event shall such obligation be construed as including any lease or other occupancy agreement, oral or written, entered into between the Contractor and its landlord.

#### **Section 10.05 Procedures for Termination**

A. The Department and/or the City shall give the Contractor written notice of any termination of this Agreement. Such notice shall specify the applicable provision(s) under which the Agreement is terminated and the effective date of the termination. Except as otherwise provided in this Agreement, the notice shall comply with the provisions of this Section. For termination without cause, the effective date of the termination shall not be less than ten (10) Days from the date the notice is personally delivered, or fifteen (15) Days from the date the notice is either sent by certified mail, return receipt requested, or sent by fax and deposited in a post office box regularly maintained by the United States Postal Service in a postage pre-paid envelope. In the case of termination for default, the effective date of the termination shall be as set forth above for a termination without cause or such earlier date as the Commissioner may determine. If the City terminates the Agreement in part, the Contractor shall continue the performance of the Agreement to the extent not terminated.

B. Upon termination or expiration of this Agreement, the Contractor shall comply with the City close-out procedures, including but not limited to:

1. Accounting for and refunding to the Department, within forty-five (45) Days, any unexpended funds which have been advanced to the Contractor pursuant to this Agreement;
2. Furnishing within forty-five (45) Days an inventory to the Department of all equipment, appurtenances and property purchased through or provided under this Agreement and carrying out any Department or City directive concerning the disposition of such equipment, appurtenances and property;
3. Turning over to the Department or its designees all books, records, documents and material specifically relating to this Agreement that the Department has requested be turned over;
4. Submitting to the Department, within ninety (90) Days, a final statement and report relating to the Agreement. The report shall be made by a certified public accountant or a licensed public accountant; and
5. Providing reasonable assistance to the Department in the transition, if any, to a new contractor.

#### **Section 10.06 Miscellaneous Provisions**

A. The Commissioner, in addition to any other powers set forth in this Agreement or by operation of Law, may suspend, in whole or in part, any part of the services to be provided under this Agreement whenever in his or her judgment such suspension is required in the best interest of the City. If the Commissioner suspends this Agreement pursuant to this Section, the City shall not incur or pay any further obligation pursuant to this Agreement beyond the suspension date until such suspension is lifted. The City shall pay for services provided in accordance with this Agreement prior to the suspension date. In addition, any obligation necessarily incurred by the Contractor on account of this Agreement prior to receipt of notice of suspension and falling due during the suspension period shall be paid by the City in accordance with the terms of this Agreement.

B. Notwithstanding any other provisions of this Agreement, the Contractor shall not be relieved of liability to the City for damages sustained by the City by virtue of the Contractor's breach of the Agreement, and the City may withhold payments to the Contractor for the purpose of set-off in the amount of damages due to the City from the Contractor.

C. The rights and remedies of the City provided in this Article shall not be exclusive and are in addition to all other rights and remedies provided by Law or under this Agreement.

## **ARTICLE 11 - PROMPT PAYMENT AND ELECTRONIC FUNDS TRANSFER**

### **Section 11.01 Prompt Payment**

A. The prompt payment provisions of PPB Rule § 4-06 are applicable to payments made under this Agreement. The provisions generally require the payment to the Contractor of interest on payments made after the required payment date, as set forth in the PPB Rules.

B. The Contractor shall submit a proper invoice to receive payment, except where the Agreement provides that the Contractor will be paid at predetermined intervals without having to submit an invoice for each scheduled payment.

C. Determination of interest due will be made in accordance with the PPB Rules and the applicable rate of interest shall be the rate in effect at the time of payment.

### **Section 11.02 Electronic Funds Transfer**

A. In accordance with Admin. Code § 6-107.1, the Contractor agrees to accept payments under this Agreement from the City by electronic funds transfer. An electronic funds transfer is any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument or computer or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Prior to the first payment made under this Agreement, the Contractor shall designate one financial institution or other authorized payment agent and shall complete the "EFT Vendor Payment Enrollment Form" available from the Agency or at <http://www.nyc.gov/dof> in order to provide the commissioner of the Department of Finance with information necessary for the Contractor to receive electronic funds transfer payments through the designated financial institution or authorized payment agent. The crediting of the amount of a payment to the appropriate account on the books of a financial institution or other authorized payment agent designated by the Contractor shall constitute full satisfaction by the City for the amount of the payment under this Agreement. The account information supplied by the Contractor to facilitate the electronic funds transfer shall remain confidential to the fullest extent provided by Law.

B. The Agency Head may waive the application of the requirements of this Section to payments on contracts entered into pursuant to Charter § 315. In addition, the commissioner of the Department of Finance and the Comptroller may jointly issue standards pursuant to which the Agency may waive the requirements of this Section for payments in the following circumstances: (i) for individuals or classes of individuals for whom compliance imposes a hardship; (ii) for classifications or types of checks; or (iii) in other circumstances as may be necessary in the best interest of the City.

C. This Section is applicable to contracts valued at Twenty-Five Thousand Dollars (\$25,000) and above.

## **ARTICLE 12 - CLAIMS**

### **Section 12.01 Choice of Law**

This Agreement shall be deemed to be executed in the City and State of New York, regardless of the domicile of the Contractor, and shall be governed by and construed in accordance with the Laws of the State of New York (notwithstanding New York choice of law or conflict of law principles) and the Laws of the United States, where applicable.

**Section 12.02 Jurisdiction and Venue**

The parties agree that any and all claims asserted by or against the City arising under or related to this Agreement shall solely be heard and determined either in the courts of the United States located in the City or in the courts of the State located in the City and County of New York. The parties shall consent to the dismissal and/or transfer of any claims asserted in any other venue or forum to the proper venue or forum. If the Contractor initiates any action in breach of this Section, the Contractor shall be responsible for and shall promptly reimburse the City for any attorneys' fees incurred by the City in removing the action to a proper court consistent with this Section.

**Section 12.03 Resolution of Disputes**

A. Except as provided in Subparagraphs (A)(1) and (A)(2) below, all disputes between the City and the Contractor that arise under, or by virtue of, this Agreement shall be finally resolved in accordance with the provisions of this Section and PPB Rule § 4-09. This procedure shall be the exclusive means of resolving any such disputes.

1. This Section shall not apply to disputes concerning matters dealt with in other sections of the PPB Rules or to disputes involving patents, copyrights, trademarks, or trade secrets (as interpreted by the courts of New York State) relating to proprietary rights in computer software, or to termination other than for cause.

2. For construction and construction-related services this Section shall apply only to disputes about the scope of work delineated by the Agreement, the interpretation of Agreement documents, the amount to be paid for extra work or disputed work performed in connection with the Agreement, the conformity of the Contractor's work to the Agreement, and the acceptability and quality of the Contractor's work; such disputes arise when the City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head makes a determination with which the Contractor disagrees. For construction, this Section shall not apply to termination of the Agreement for cause or other than for cause.

B. All determinations required by this Section shall be clearly stated, with a reasoned explanation for the determination based on the information and evidence presented to the party making the determination. Failure to make such determination within the time required by this Section shall be deemed a non-determination without prejudice that will allow application to the next level.

C. During such time as any dispute is being presented, heard, and considered pursuant to this Section, the Agreement terms shall remain in full force and effect and, unless otherwise directed by the ACCO or Engineer, the Contractor shall continue to perform work in accordance with the Agreement and as directed by the ACCO or City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head. Failure of the Contractor to continue the work as directed shall constitute a waiver by the Contractor of any and all claims being presented pursuant to this Section and a material breach of contract.

D. Presentation of Dispute to Agency Head.

1. Notice of Dispute and Agency Response. The Contractor shall present its dispute in writing ("Notice of Dispute") to the Agency Head within the time specified herein, or, if no time is specified, within thirty (30) Days of receiving written notice of the determination or action that is the subject of the dispute. This notice requirement shall not be read to replace any other notice requirements contained in the Agreement. The Notice of Dispute shall include all the facts, evidence, documents, or other basis upon which the Contractor relies in support of its position, as well as a detailed computation demonstrating how any amount of money claimed by the Contractor in the dispute was arrived at. Within thirty (30) Days after receipt of the complete Notice of Dispute, the ACCO or, in the case of construction or construction-related services, the City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head, shall submit to the Agency Head all materials he or she deems pertinent to the dispute. Following initial submissions to the Agency Head, either party may demand of the other the production of any document or other material the demanding party believes may be relevant to the dispute. The requested party shall produce all relevant materials that are not otherwise protected by a legal privilege recognized by the courts of New York State. Any question of relevancy shall be determined by the Agency Head whose decision shall be final. Willful failure of the Contractor to produce any requested

material whose relevancy the Contractor has not disputed, or whose relevancy has been affirmatively determined, shall constitute a waiver by the Contractor of its claim.

2. **Agency Head Inquiry.** The Agency Head shall examine the material and may, in his or her discretion, convene an informal conference with the Contractor and the ACCO and, in the case of construction or construction-related services, the City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head, to resolve the issue by mutual consent prior to reaching a determination. The Agency Head may seek such technical or other expertise as he or she shall deem appropriate, including the use of neutral mediators, and require any such additional material from either or both parties as he or she deems fit. The Agency Head's ability to render, and the effect of, a decision hereunder shall not be impaired by any negotiations in connection with the dispute presented, whether or not the Agency Head participated therein. The Agency Head may or, at the request of any party to the dispute, shall compel the participation of any other contractor with a contract related to the work of this Agreement and that contractor shall be bound by the decision of the Agency Head. Any contractor thus brought into the dispute resolution proceeding shall have the same rights and obligations under this Section as the Contractor initiating the dispute.

3. **Agency Head Determination.** Within thirty (30) Days after the receipt of all materials and information, or such longer time as may be agreed to by the parties, the Agency Head shall make his or her determination and shall deliver or send a copy of such determination to the Contractor and ACCO and, in the case of construction or construction-related services, the City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head, together with a statement concerning how the decision may be appealed.

4. **Finality of Agency Head Decision.** The Agency Head's decision shall be final and binding on all parties, unless presented to the Contract Dispute Resolution Board ("CDRB") pursuant to this Section. The City may not take a petition to the CDRB. However, should the Contractor take such a petition, the City may seek, and the CDRB may render, a determination less favorable to the Contractor and more favorable to the City than the decision of the Agency Head.

E. **Presentation of Dispute to the Comptroller.** Before any dispute may be brought by the Contractor to the CDRB, the Contractor must first present its claim to the Comptroller for his or her review, investigation, and possible adjustment.

1. **Time, Form, and Content of Notice.** Within thirty (30) Days of receipt of a decision by the Agency Head, the Contractor shall submit to the Comptroller and to the Agency Head a Notice of Claim regarding its dispute with the Agency. The Notice of Claim shall consist of (i) a brief statement of the substance of the dispute, the amount of money, if any, claimed and the reason(s) the Contractor contends the dispute was wrongly decided by the Agency Head; (ii) a copy of the decision of the Agency Head; and (iii) a copy of all materials submitted by the Contractor to the Agency, including the Notice of Dispute. The Contractor may not present to the Comptroller any material not presented to the Agency Head, except at the request of the Comptroller.

2. **Agency Response.** Within thirty (30) Days of receipt of the Notice of Claim, the Agency shall make available to the Comptroller a copy of all material submitted by the Agency to the Agency Head in connection with the dispute. The Agency may not present to the Comptroller any material not presented to the Agency Head, except at the request of the Comptroller.

3. **Comptroller Investigation.** The Comptroller may investigate the claim in dispute and, in the course of such investigation, may exercise all powers provided in Admin. Code §§ 7-201 and 7-203. In addition, the Comptroller may demand of either party, and such party shall provide, whatever additional material the Comptroller deems pertinent to the claim, including original business records of the Contractor. Willful failure of the Contractor to produce within fifteen (15) Days any material requested by the Comptroller shall constitute a waiver by the Contractor of its claim. The Comptroller may also schedule an informal conference to be attended by the Contractor, Agency representatives, and any other personnel desired by the Comptroller.

4. **Opportunity of Comptroller to Compromise or Adjust Claim.** The Comptroller shall have forty-five (45) Days from his or her receipt of all materials referred to in Paragraph (E)(3) above to investigate the disputed claim. The period for investigation and compromise may be further extended by

agreement between the Contractor and the Comptroller, to a maximum of ninety (90) Days from the Comptroller's receipt of all the materials. The Contractor may not present its petition to the CDRB until the period for investigation and compromise delineated in this Paragraph has expired. In compromising or adjusting any claim hereunder, the Comptroller may not revise or disregard the terms of the Agreement.

F. Contract Dispute Resolution Board. There shall be a Contract Dispute Resolution Board composed of:

1. the chief administrative law judge of the Office of Administrative Trials and Hearings ("OATH") or his or her designated OATH administrative law judge, who shall act as chairperson, and may adopt operational procedures and issue such orders consistent with this Section as may be necessary in the execution of the CDRB's functions, including, but not limited to, granting extensions of time to present or respond to submissions;

2. the City Chief Procurement Officer ("CCPO") or his or her designee; any designee shall have the requisite background to consider and resolve the merits of the dispute and shall not have participated personally and substantially in the particular matter that is the subject of the dispute or report to anyone who so participated; and

3. a person with appropriate expertise who is not an employee of the City. This person shall be selected by the presiding administrative law judge from a prequalified panel of individuals, established, and administered by OATH, with appropriate background to act as decision-makers in a dispute. Such individuals may not have a contract or dispute with the City or be an officer or employee of any company or organization that does, or regularly represent persons, companies, or organizations having disputes with the City.

G. Petition to CDRB. In the event the claim has not been settled or adjusted by the Comptroller within the period provided in this Section, the Contractor, within thirty (30) Days thereafter, may petition the CDRB to review the Agency Head determination.

1. Form and Content of Petition by the Contractor. The Contractor shall present its dispute to the CDRB in the form of a petition, which shall include (i) a brief statement of the substance of the dispute, the amount of money, if any, claimed, and the reason(s) the Contractor contends that the dispute was wrongly decided by the Agency Head; (ii) a copy of the decision of the Agency Head; (iii) copies of all materials submitted by the Contractor to the Agency; (iv) a copy of the decision of the Comptroller, if any, and (v) copies of all correspondence with, and material submitted by the Contractor to, the Comptroller's Office. The Contractor shall concurrently submit four complete sets of the petition: one to the Corporation Counsel (Attn: Commercial and Real Estate Litigation Division), and three to the CDRB at OATH's offices, with proof of service on the Corporation Counsel. In addition, the Contractor shall submit a copy of the statement of the substance of the dispute, cited in (i) above, to both the Agency Head and the Comptroller.

2. Agency Response. Within thirty (30) Days of receipt of the petition by the Corporation Counsel, the Agency shall respond to the statement of the Contractor and make available to the CDRB all material it submitted to the Agency Head and Comptroller. Three complete copies of the Agency response shall be submitted to the CDRB at OATH's offices and one to the Contractor. Extensions of time for submittal of the Agency response shall be given as necessary upon a showing of good cause or, upon the consent of the parties, for an initial period of up to thirty (30) Days.

3. Further Proceedings. The CDRB shall permit the Contractor to present its case by submission of memoranda, briefs, and oral argument. The CDRB shall also permit the Agency to present its case in response to the Contractor by submission of memoranda, briefs, and oral argument. If requested by the Corporation Counsel, the Comptroller shall provide reasonable assistance in the preparation of the Agency's case. Neither the Contractor nor the Agency may support its case with any documentation or other material that was not considered by the Comptroller, unless requested by the CDRB. The CDRB, in its discretion, may seek such technical or other expert advice as it shall deem appropriate and may seek, on its own or upon application of a party, any such additional material from any party as it deems fit. The CDRB, in its discretion, may combine more than one dispute between the parties for concurrent resolution.

4. **CDRB Determination.** Within forty-five (45) Days of the conclusion of all submissions and oral arguments, the CDRB shall render a decision resolving the dispute. In an unusually complex case, the CDRB may render its decision in a longer period of time, not to exceed ninety (90) Days, and shall so advise the parties at the commencement of this period. The CDRB's decision must be consistent with the terms of this Agreement. Decisions of the CDRB shall only resolve matters before the CDRB and shall not have precedential effect with respect to matters not before the CDRB.

5. **Notification of CDRB Decision.** The CDRB shall send a copy of its decision to the Contractor, the ACCO, the Corporation Counsel, the Comptroller, the CCPO, and, in the case of construction or construction-related services, the City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head. A decision in favor of the Contractor shall be subject to the prompt payment provisions of the PPB Rules. The required payment date shall be thirty (30) Days after the date the parties are formally notified of the CDRB's decision.

6. **Finality of CDRB Decision.** The CDRB's decision shall be final and binding on all parties. Any party may seek review of the CDRB's decision solely in the form of a challenge, filed within four months of the date of the CDRB's decision, in a court of competent jurisdiction of the State of New York, County of New York pursuant to Article 78 of the Civil Practice Law and Rules. Such review by the court shall be limited to the question of whether or not the CDRB's decision was made in violation of lawful procedure, was affected by an error of Law, or was arbitrary and capricious or an abuse of discretion. No evidence or information shall be introduced or relied upon in such proceeding that was not presented to the CDRB in accordance with PPB Rules § 4-09.

H. Any termination, cancellation, or alleged breach of the Agreement prior to or during the pendency of any proceedings pursuant to this Section shall not affect or impair the ability of the Agency Head or CDRB to make a binding and final decision pursuant to this Section.

#### **Section 12.04 Claims and Actions**

A. Any claim against the City or Department based on this Agreement or arising out of this Agreement that is not subject to dispute resolution under the PPB Rules or this Agreement shall not be made or asserted in any legal proceeding, unless the Contractor shall have strictly complied with all requirements relating to the giving of notice and of information with respect to such claims as provided in this Agreement.

B. No action shall be instituted or maintained on any such claims unless such action shall be commenced within six (6) months after the date of filing with the Comptroller of the certificate for the final payment under this Agreement, or within six (6) months of the termination or expiration of this Agreement, or within six (6) months after the accrual of the cause of action, whichever first occurs.

#### **Section 12.05 No Claim Against Officers, Agents or Employees**

No claim shall be made by the Contractor against any officer, agent, or employee of the City in their personal capacity for, or on account of, anything done or omitted in connection with this Agreement.

#### **Section 12.06 General Release**

The acceptance by the Contractor or its assignees of the final payment under this Agreement, whether by check, wire transfer, or other means, and whether pursuant to invoice, voucher, judgment of any court of competent jurisdiction or any other administrative means, shall constitute and operate as a release of the City from any and all claims of and liability to the Contractor, of which the Contractor was aware or should reasonably have been aware, arising out of the performance of this Agreement based on actions of the City prior to such acceptance of final payment, excepting any disputes that are the subject of pending dispute resolution procedures.

#### **Section 12.07 No Waiver**

Waiver by either the Department or the Contractor of a breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the

terms of the Agreement unless and until the same shall be agreed to in writing by the parties as set forth in Section 9.01.

**ARTICLE 13 - APPLICABLE LAWS**

**Section 13.01 PPB Rules**

This Agreement is subject to the PPB Rules. In the event of a conflict between the PPB Rules and a provision of this Agreement, the PPB Rules shall take precedence.

**Section 13.02 All Legal Provisions Deemed Included**

Each and every provision required by Law to be inserted in this Agreement is hereby deemed to be a part of this Agreement, whether actually inserted or not.

**Section 13.03 Severability / Unlawful Provisions Deemed Stricken**

If this Agreement contains any unlawful provision not an essential part of the Agreement and which shall not appear to have been a controlling or material inducement to the making of this Agreement, the unlawful provision shall be deemed of no effect and shall, upon notice by either party, be deemed stricken from the Agreement without affecting the binding force of the remainder.

**Section 13.04 Compliance With Laws**

The Contractor shall perform all services under this Agreement in accordance with all applicable Laws as are in effect at the time such services are performed.

**Section 13.05 Americans with Disabilities Act (ADA)**

A. This Agreement is subject to the provisions of Subtitle A of Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12131 et seq. ("ADA") and regulations promulgated pursuant thereto, see 28 CFR Part 35. The Contractor shall not discriminate against an individual with a disability, as defined in the ADA, in providing services, programs, or activities pursuant to this Agreement. If directed to do so by the Department to ensure the Contractor's compliance with the ADA during the term of this Agreement, the Contractor shall prepare a plan ("Compliance Plan") which lists its program site(s) and describes in detail, how it intends to make the services, programs and activities set forth in the scope of services herein readily accessible and usable by individuals with disabilities at such site(s). In the event that the program site is not readily accessible and usable by individuals with disabilities, contractor shall also include in the Compliance Plan, a description of reasonable alternative means and methods that result in making the services, programs or activities provided under this Agreement, readily accessible to and usable by individuals with disabilities, including but not limited to people with visual, auditory or mobility disabilities. The Contractor shall submit the Compliance Plan to the ACCO for review within ten (10) Days after being directed to do so and shall abide by the Compliance Plan and implement any action detailed in the Compliance Plan to make the services, programs, or activities accessible and usable by the disabled.

B. The Contractor's failure to either submit a Compliance Plan as required herein or implement an approved Compliance Plan may be deemed a material breach of this Agreement and result in the City terminating this Agreement.

**Section 13.06 Not Used**

**Section 13.07 Participation in an International Boycott**

A. The Contractor agrees that neither the Contractor nor any substantially-owned affiliated company is participating or shall participate in an international boycott in violation of the provisions of the federal Export Administration Act of 1979, as amended, 50 U.S.C. Appendix. §§ 2401 et seq., or the regulations of the United States Department of Commerce promulgated thereunder.

B. Upon the final determination by the Commerce Department or any other agency of the United States as to, or conviction of, the Contractor or a substantially-owned affiliated company thereof, of participation in an international boycott in violation of the provisions of the Export Administration Act of 1979, as amended, or the regulations promulgated thereunder, the Comptroller may, at his or her option, render forfeit and void this Agreement.

C. The Contractor shall comply in all respects, with the provisions of Admin. Code § 6-114 and the rules issued by the Comptroller thereunder.

**Section 13.08 MacBride Principles**

A. In accordance with and to the extent required by Admin. Code § 6-115.1, the Contractor stipulates that the Contractor and any individual or legal entity in which the Contractor holds a ten percent (10%) or greater ownership interest and any individual or legal entity that holds a ten percent (10%) or greater ownership interest in the Contractor either (a) have no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations they have in Northern Ireland in accordance with the MacBride Principles, and shall permit independent monitoring of their compliance with such principles.

B. The Contractor agrees that the covenants and representations in Paragraph A above are material conditions to this Agreement.

C. This Section does not apply if the Contractor is a not-for-profit corporation.

**Section 13.09 Not Used**

**ARTICLE 14 - MISCELLANEOUS PROVISIONS**

**Section 14.01 Conditions Precedent**

A. This Agreement shall be neither binding nor effective unless and until it is registered pursuant to Charter § 328.

B. The requirements of this Section shall be in addition to, and not in lieu of, any approval or authorization otherwise required for this Agreement to be effective and for the expenditure of City funds.

**Section 14.02 Merger**

This written Agreement contains all the terms and conditions agreed upon by the parties, and no other agreement, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind either of the parties, or to vary any of the terms contained in this Agreement, other than a written change, amendment or modification duly executed by both parties pursuant to Article 9 of this Appendix A.

**Section 14.03 Headings**

Headings are inserted only as a matter of convenience and therefore are not a part of and do not affect the substance of this Agreement.

**Section 14.04 Notice**

A. The Contractor and the Department hereby designate the business addresses specified at the beginning of this Agreement as the places where all notices, directions, or communications from one such party to the other party shall be delivered, or to which they shall be mailed. Either party may change its notice address at any time by an instrument in writing executed and acknowledged by the party making such change and delivered to the other party in the manner as specified below.

B. Any notice, direction, or communication from either party to the other shall be in writing and shall be deemed to have been given when (i) delivered personally; (ii) sent by certified mail, return receipt requested; (iii) delivered by overnight or same day courier service in a properly addressed envelope with confirmation; or (iv) sent by fax or email and, unless receipt of the fax or e-mail is acknowledged by the recipient by fax or e-mail, deposited in a post office box regularly maintained by the United States Postal Service in a properly addressed, postage pre-paid envelope.

C. Nothing in this Section shall be deemed to serve as a waiver of any requirements for the service of notice or process in the institution of an action or proceeding as provided by Law, including the New York Civil Practice Law and Rules.

**Section 14.05 Monies Withheld**

When the Commissioner shall have reasonable grounds for believing that: (1) the Contractor will be unable to perform this Contract fully and satisfactorily within the time fixed for performance; or (2) a meritorious claim exists or will exist against the Contractor or the City arising out of the negligence of the Contractor or the Contractor's breach of any provision of this contract; then the Commissioner or the Comptroller may withhold payment of any amount otherwise due and payable to the Contractor hereunder. Any amount so withheld may be retained by the City for such period as it may deem advisable to protect the City against any loss and may, after written notice to the Contractor, be applied in satisfaction of any claim herein described. This provision is intended solely for the benefit of the City, and no person shall have any right against the Commissioner or claim against the City by reason of the Commissioner's failure or refusal to withhold monies. No interest shall be payable by the City on any amounts withheld under this provision. This provision is not intended to limit or in any way prejudice any other right of the City.

**Section 14.06 Noise Control**

The Contractor shall comply with Section 24-216(b) of the Administrative Code of the City of New York and with the New York City Noise Control Code and with all regulations issued pursuant to Section 24-216(b) of the Administrative Code or the Noise Control Code.

**Section 14.07 Ultra Low Sulfur Diesel Fuel (Administrative Code)**

Ultra Low Sulfur Diesel Fuel: In accordance with the provision of Section 24-163.3 of the New York City Administrative Code, the Contractor specifically agrees as follows:

I. Definitions: For the purpose of this Article, the following definitions apply:

A. "Contractor" means any person or entity that enters into a Public Works Contract with a City agency, or any person or entity that enters into an agreement with such person or entity, to perform work or provide labor or services related to such Public Works Contract.

B. "Lower Manhattan" means the area of New York County consisting of the area to the south of and within Fourteenth Street.

C. "Motor Vehicle" means any self-propelled vehicle designed for transporting persons or property on a street or highway.

D. "Nonroad Engine" means an internal combustion engine (including the fuel system) that is not used in a Motor Vehicle or a vehicle used solely for competition, or that is not subject to standards promulgated under section 7411 or section 7521 of title 42 of the United States Code, except that this term shall apply to internal combustion engines used to power generators, compressors or similar equipment used in any construction program or project.

E. "Nonroad Vehicle" means a vehicle that is powered by a Nonroad Engine, fifty horsepower and greater, and that is not a Motor Vehicle or a vehicle used solely for competition, which shall include, but not be limited to, excavators, backhoes, cranes, compressors, generators, bulldozers and similar equipment, except that this term shall

not apply to horticultural maintenance vehicles used for landscaping purposes that are powered by a Nonroad Engine of sixty-five horsepower or less and that are not used in any construction program or project.

F. "Public Works Contract" means a contract with a City agency for a construction program or project involving the construction, demolition, restoration, rehabilitation, repair, renovation, or abatement of any building, structure, tunnel, excavation, roadway, park or bridge; a contract with a City agency for the preparation for any construction program or project involving the construction, demolition, restoration, rehabilitation, repair, renovation, or abatement of any building, structure, tunnel, excavation, roadway, park or bridge; or a contract with a City agency for any final work involved in the completion of any construction program or project involving the construction, demolition, restoration, rehabilitation, repair, renovation, or abatement of any building, structure, tunnel, excavation, roadway, park or bridge.

G. "Ultra Low Sulfur Diesel Fuel" means diesel fuel that has a sulfur content of no more than fifteen parts per million.

## II. Ultra Low Sulfur Diesel Fuel

A. All Contractors shall use Ultra Low Sulfur Diesel Fuel in diesel-powered Nonroad Vehicles in the performance of this contract.

B. Notwithstanding the requirements of paragraph A, Contractors may use diesel fuel that has a sulfur content of no more than thirty parts per million to fulfill the requirements of this Part II, where the Commissioner of the New York City Department of Environmental Protection ("DEP Commissioner") has issued a determination that a sufficient quantity of Ultra Low Sulfur Diesel Fuel is not available to meet the needs of City agencies and Contractors. Any determination made pursuant to this subdivision shall expire after six months unless renewed.

C. Contractors shall not be required to comply with this Part II where the agency letting this contract makes a written finding, which is approved, in writing, by the DEP Commissioner, that a sufficient quantity of Ultra Low Sulfur Diesel Fuel, or diesel fuel that has a sulfur content of no more than thirty parts per million is not available to meet the requirements of Section 24-163.3 of the Administrative Code, provided that such Contractor in its fulfillment of the requirements of this contract, to the extent practicable, shall use whatever quantity of Ultra Low Sulfur Diesel Fuel or diesel fuel that has a sulfur content of no more than thirty parts per million is available. Any finding made pursuant to this subdivision shall expire after sixty days, at which time the requirements of this Part II shall be in full force and effect unless the agency renews the finding in writing and such renewal is approved by the DEP Commissioner.

D. Contractors may check on determinations and approvals issued by the DEP Commissioner pursuant to Section 24-163.3 of the Administrative Code, if any, at [www.nyc.gov/dep](http://www.nyc.gov/dep) or by contacting the Department issuing this solicitation.

E. The requirements of this Part II do not apply where they are precluded by federal or State funding requirements or where the contract is an emergency procurement.

F. The requirements of this Part II do not apply to Public Works Contracts entered into or renewed prior to June 19, 2004.

## III. BEST AVAILABLE TECHNOLOGY

A. All Contractors shall utilize the best available technology for reducing the emission of pollutants for diesel-powered Nonroad Vehicles in the performance of this contract. For determinations of best available technology for each type of diesel-powered Nonroad Vehicle, Contractors shall comply with the regulations of the City Department of Environmental Protection, as and when adopted, Chapter 14 of Title 15 of the Rules of the City of New York (RCNY). The Contractor shall fully document all steps in the best available technology selection process and shall furnish such documentation to the Department or the DEP Commissioner upon request. The

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Contractor shall retain all documentation generated in the best available technology selection process for as long as the selected best available technology is in use.

B. No Contractor shall be required to replace best available technology for reducing the emission of pollutants or other authorized technology utilized for a diesel-powered Nonroad Vehicle in accordance with the provisions of this Part III within three years of having first utilized such technology for such vehicle.

C. This Part III shall not apply to any vehicle used to satisfy the requirements of a specific Public Works Contract for fewer than twenty calendar days.

D. The Contractor shall not be required to comply with this Part III with respect to a diesel-powered Nonroad Vehicle under the following circumstances:

1. Where the agency makes a written finding, which is approved, in writing, by the DEP Commissioner, that the best available technology for reducing the emission of pollutants as required by those paragraphs is unavailable for such vehicle, Contractor shall use whatever technology for reducing the emission of pollutants, if any, is available and appropriate for such vehicle.
2. Where the DEP Commissioner has issued a written waiver based upon the Contractor having demonstrated to the DEP Commissioner that the use of the best available technology for reducing the emission of pollutants might endanger the operator of such vehicle or those working near such vehicle, due to engine malfunction, Contractor shall use whatever technology for reducing the emission of pollutants, if any, is available and appropriate for such vehicle, which would not endanger the operator of such vehicle or those working near such vehicle.
3. In determining which technology to use for the purposes of subsections (D)(1) and (D)(2) above, Contractor shall primarily consider the reduction in emissions of particulate matter and secondarily consider the reduction in emissions of nitrogen oxides associated with the use of such technology, which shall in no event result in an increase in the emissions of either such pollutant.
4. Contractors shall submit requests for a finding or a waiver pursuant to this subsection (D) in writing to the DEP Commissioner, with a copy to the ACCO of the Department issuing the solicitation. Any finding or waiver made or issued pursuant to subsections (D)(1) and (D)(2) above shall expire after one hundred eighty days, at which time the requirements of subsection A shall be in full force and effect unless the agency renews the finding, in writing, and the DEP Commissioner approves such finding, in writing, or the DEP Commissioner renews the waiver, in writing.

E. The requirements of this Part III do not apply where they are precluded by federal or State funding requirements or where the contract is an emergency procurement.

IV. Section 24-163 of the Administrative Code. Contractors shall comply with Section 24-163 of the New York City Administrative Code related to the idling of the engines of motor vehicles while parking.

### V. COMPLIANCE

A. Contractor's compliance with these provisions may be independently monitored. If it is determined that the Contractor has failed to comply with any provision of this rider, any costs associated with any independent monitoring incurred by the City shall be reimbursed by the Contractor.

B. Any Contractor who violates any provision of this Article, except as provided in subsection (C) below, shall be liable for a civil penalty between the amounts of one thousand and ten thousand dollars, in addition to twice the amount of money saved by such Contractor for failure to comply with this Article.

C. No Contractor shall make a false claim with respect to the provisions of this Article to a City agency. Where a Contractor has been found to have done so, such Contractor shall be liable for a civil penalty of twenty thousand dollars, in addition to twice the amount of money saved by such Contractor in association with having made such false claim.

### VI. REPORTING

A. For all Public Works Contracts covered by this Article, the Contractor shall report to the Department the following information:

1. The total number of diesel-powered Nonroad Vehicles used to fulfill the requirements of this Public Works Contract;
2. The number of such Nonroad Vehicles that were powered by Ultra Low Sulfur Diesel Fuel;
3. The number of such Nonroad Vehicles that utilized the best available technology for reducing the emission of pollutants, including a breakdown by vehicle model and the type of technology;
4. The number of such Nonroad Vehicles that utilized such other authorized technology in accordance with Part III, including a breakdown by vehicle model and the type of technology used for each such vehicle;
5. The locations where such Nonroad Vehicles were used; and
6. Where a determination is in effect pursuant to Part II.B or II.C, detailed information concerning the Contractor's efforts to obtain Ultra Low Sulfur Diesel Fuel or diesel fuel that has a sulfur content of no more than thirty parts per million.

B. The Contractor shall submit the information required by Paragraph A at the completion of work under the Public Works Contract and on a yearly basis no later than August 1 throughout the term of the Public Works Contract. The yearly report shall cover work performed the preceding fiscal year (July 1- June 30).

**AFFIRMATION**

The undersigned proposer or bidder affirms and declares that said proposer or bidder is not in arrears to the City of New York upon debt, contract or taxes and is not a defaulter, as surety or otherwise, upon obligation to the City of New York, and has not been declared not responsible, or disqualified, by any agency of the City of New York, nor is there any proceeding pending relating to the responsibility or qualification of the proposer or bidder to receive public contract except \_\_\_\_\_

Full name of Proposer or Bidder *[below]* \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_

State \_\_\_\_\_

Zip Code \_\_\_\_\_

**CHECK ONE BOX AND INCLUDE APPROPRIATE NUMBER:**

A - Individual or Sole Proprietorships

SOCIAL SECURITY NUMBER \_\_\_\_\_

B - Partnership, Joint Venture or other unincorporated organization

EMPLOYER IDENTIFICATION NUMBER \_\_\_\_\_

C - Corporation

EMPLOYER IDENTIFICATION NUMBER \_\_\_\_\_

By:

Signature \_\_\_\_\_

Print Name \_\_\_\_\_

Title \_\_\_\_\_

If a corporation place seal here

Must be signed by an officer or duly authorized representative.

\* Under the Federal Privacy Act, the furnishing of Social Security numbers by bidders or proposers on City contracts is voluntary. Failure to provide a Social Security number will not result in a bidder's/proposer's disqualification. Social Security numbers will be used to identify bidders, proposers or vendors to ensure their compliance with laws, to assist the City in enforcement of laws, as well as to provide the City a means of identifying businesses seeking City contracts.

**CERTIFICATION BY BROKER**

[Pursuant to Article Seven of Appendix A, every Certificate of Insurance must be accompanied by either the following certification by the broker setting forth the following text and required information and signatures or complete copies of all policies referenced in the Certificate of Insurance. In the absence of completed policies, binders are acceptable.]

**CERTIFICATION BY BROKER**

The undersigned insurance broker represents to the City of New York that the attached Certificate of Insurance is accurate in all material respects, and that the described insurance is effective as of the date of this Certification.

\_\_\_\_\_  
[Name of broker (typewritten)]

\_\_\_\_\_  
[Address of broker (typewritten)]

\_\_\_\_\_  
[Signature of authorized officer of broker]

\_\_\_\_\_  
[Name of authorized officer (typewritten)]

\_\_\_\_\_  
[Title of authorized officer (typewritten)]

\_\_\_\_\_  
[Contact Phone Number for Broker (typewritten)]

\_\_\_\_\_  
[Email Address of Broker (typewritten)]

Sworn to before me this

\_\_\_\_ day of \_\_\_\_\_, 201\_\_

\_\_\_\_\_  
NOTARY PUBLIC

PROJECT No. PW335AS19

THE CITY OF NEW YORK  
DEPARTMENT OF DESIGN AND CONSTRUCTION  
DIVISION OF TECHNICAL SUPPORT

30-30 THOMSON AVENUE, LONG ISLAND CITY, NEW YORK 111013045  
TELEPHONE NUMBER (718) 391-1000

WEBSITE [www.nyc.gov/buildnyc](http://www.nyc.gov/buildnyc)

CONTRACT FOR FURNISHING ALL LABOR AND MATERIAL NECESSARY AND REQUIRED FOR:

**AIR SAMPLING, DUST WIPE SAMPLING AND LABORATORY TESTING  
SERVICES IN CONJUNCTION WITH ASBESTOS AND LEAD ABATEMENT  
PROJECTS WITHIN THE FIVE BOROUGHES OF THE CITY OF NEW YORK**

LOCATED AT *VARIOUS ADDRESSES*  
IN ALL BOROUGHES OF  
THE CITY OF NEW YORK

Contractor

Dated

, 20

Assigned to

Approved as to Form  
Certified as to Legal Authority

Acting Corporation Counsel

Dated

, 20

Examined and Found Correct

Contract Clerk  
Comptroller

Entered in the Comptroller's Office

Dated

, 20

First Assistant Bookkeeper

