

**THE CITY OF NEW YORK
OFFICE OF PAYROLL ADMINISTRATION
REQUEST FOR PROPOSAL**

TITLE: BANKING SERVICES

PIN #: 1312013BANKRFP

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AUTHORIZED OFFICE OF PAYROLL ADMINISTRATION CONTACT PERSON

The authorized OPA contact person for all matters including questions and requests for additional information concerning this Request for Proposal (“RFP”) is:

Aamer Parvez
Agency Chief Contracting Officer
Office of Payroll Administration
One Centre Street, Room 200N
New York, New York 10007
E-mail: opapurchasing@payroll.nyc.gov
Phone: 212-676-8333
Fax: 212-442-3306

NOTE: Proposers are held responsible for ensuring that the RFP response is received at the Office of Payroll Administration no later than the deadline for submissions.

E-mailed or faxed proposals will NOT be accepted by OPA.

Proposers are hereby notified that the 1 Centre Street Office building has access security procedures, and all personnel and/or delivery services should be instructed to allow sufficient time for delivery at or before the above deadline.

Proposals received at 1 Centre Street after the Proposal Due Date and Time will be deemed late and will not be accepted by OPA, except as provided under New York City’s (“NYC” or “City”) Procurement Policy Board Rules. OPA will consider requests made to the authorized OPA contact person to extend the prescribed Proposal Due Date and Time. However, unless OPA issues a written addendum to this RFP that extends the Proposal Due Date and Time for all Proposers, the prescribed Proposal Due Date and Time shall remain in effect.

END OF PAGE

SECTION I — TIMETABLE

A. RELEASE DATE OF THIS REQUEST FOR PROPOSALS:

July 18, 2014

B. PRE-PROPOSAL CONFERENCE:

- Date: **August 19, 2014**
- Time: **10:30 A.M. EST**
- Location: **One Centre Street, 18th floor, DCAS Pre-Bid Room**

Attendance by Proposers is optional but recommended by OPA.

C. PROPOSAL DUE DATE, TIME, AND LOCATION:

- Date: **September 12, 2014**
- Time: **3:00 P.M. EST**
- Proposals shall be submitted to: **Aamer Parvez**
Agency Chief Contracting Officer
Office of Payroll Administration
One Centre Street, Room 200N
New York, New York 10007

The Proposer shall hand deliver, or deliver via an express mail service, the Proposal to the authorized OPA contact person at the above address.

D. ANTICIPATED CONTRACT START DATE:

July 1, 2015

END OF PAGE

GLOSSARY OF TERMS

The following terms shall apply to this RFP.

ABA: American Bankers Association

Account Analysis Statement: The bank's invoice to OPA for services provided on a monthly basis. Information includes balance information, service activity, and cost itemization.

ACH Automated Clearing House: A facility used by financial institutions to distribute electronic debit and credit entries to bank accounts and settle such entries.

ANSI: American National Standards Institute

ARP: Account Reconciliation Program

Award: The acceptance of a Proposal by the City in accordance with this RFP.

ATM: Automated Teller Machine

CCD+: Cash Concentration and Disbursement Plus

CIN: Company Identification Number

City: The City of New York

Contract: The agreement resulting from this RFP and the proposal process.

Contractor: The entity or entities that are selected to provide any one or a combination of Services resulting from this RFP and the proposal process.

Controlled Disbursement Account: Controlled Disbursement Account refers to a disbursement account arrangement where the total dollar amount of all checks that will be cleared on a given day are made available to the corporate treasury manager early enough to allow same day funding.

DDA: Demand Deposit Account

DOF: Department of Finance or successor

ECR Earnings Credit Rate: The rate used by banks to determine the allowable credit they will provide for the use of the balances on deposit with the bank.

Effective Date or Effective Entry Date: The date specified by the originator on which an ACH entry is to be settled to the receiver's account.

EFT: Electronic Funds Transfer

FDIC: Federal Deposit Insurance Corporation—a federal agency that insures deposits in member banks and thrifts up to \$250,000.

FFIEC: Federal Financial Institutions Examination Council

FISA: Financial Information Services Agency

IAT: International ACH Transaction

LODI: Line of Duty Injury

MICR Magnetic Ink Character Recognition: The MICR line encoded at the bottom of the check includes the bank identification number (R/T), account number, auxiliary field and check amount (after encoding).

NACHA: National Automated Clearing House Association or successors.

NOC: Notification of Change, a message sent by the RDFI to the ODFI requesting a change in the content of the ACH entry record.

ODFI: Originating Depository Financial Institution

OPA: Office of Payroll Administration or successor

Originator: The party that delivers an ACH entry, debit or credit, to the ODFI for settlement to the Receiver's account at the RDFI.

OTC: Office of the Comptroller

PA DSS: The Payment Application Data Security Standard

PCI DSS: The Payment Card Industry Data Security Standard

PIN: Personal Identification Number

PGP Encryption: A computer program that provides cryptographic privacy and authentication. PGP is based on the public-key method, which uses two keys -- one is a public key that you disseminate to anyone from whom you want to receive a message. The other is a private key that you use to decrypt messages that you receive.

PNI – Paid/No Issue: A check debiting the City's account but is not a valid check issued by the City or is not a check at all.

PNV: Payee Name Verification

POS: Point of Sale

Positive Pay: Positive Pay is an automated fraud detection tool offered by most banks. In its simplest form, it is a service that matches the account number, check number and dollar amount of each check presented for payment against a list of checks previously authorized and issued by the City. All three components of the check must match exactly or the City will not pay.

PPD: Prearranged Payment and Deposit Standard Entry Class Code of the NACHA Operating Regulations.

Proposer: The entity or entities submitting proposals in response to this RFP.

RCK: Represented Check Entry

RDFI: Receiving Depository Financial Institution

Receiver: The party into whose bank account (checking or savings) the ACH entry (debit or credit) sent by the Originator is settled.

RFP: Request for Proposal—A written statement which sets forth the requirements and specifications of a contract to be awarded by competitive selection.

Services: All services and deliverables to be provided by the Proposer as described in this RFP.

SDU: State Disbursement Unit

Settlement Date: The date that funds transferred through a private network, are deposited in a customer's account and immediately available for use. Automated Clearing House transfers are settled the next day.

Transition Period: The period required to transition the banking operations of the City to the selected Contractor if the successful Contractor is not the City's current provider of banking services.

ZBA: Zero Balance Account

END OF PAGE

SECTION II — SUMMARY OF THE REQUEST FOR PROPOSALS

A. PURPOSE OF RFP

The City of New York Office of Payroll Administration solicits proposals for the provision of banking services to support the City's payroll operations.

The services to be provided as a result of this RFP fall within the two general categories below (collectively referred to in this RFP as "Services"):

- Payroll banking and related services ("Payroll Banking Services")
 - Direct deposit and ACH transactions
 - Paper checks
 - Inquiry and transaction reporting
 - Account management
 - Other related services

- Optional payroll-related services ("Optional Services")
 - Non-payroll electronic payments
 - Printing/ mailing paper checks, forms preparation and replacement checks
 - Payroll card services for City employees to access their net pay ("Payroll Card Services")

Each Proposer must submit an RFP response that describes its abilities to provide the Payroll Banking Services and/or the Optional Services, including all detailed specifications set forth in Section III of the RFP.

Multiple Awards: It is anticipated that this RFP may result in multiple contracts awards for any one, or a combination of the Services described herein. For instance, a financial institution may provide the paper check and Optional Services, and another institution could provide the ACH services and/or the Payroll Card Services.

Note: Check cashing services are *not* covered by this RFP.

B. ANTICIPATED CONTRACT TERM

The term of the Contract arising from this RFP ("Contract") will be initially five (5) years with one (1) five (5) year renewal option at the discretion of the City. The City will reserve the right to terminate the Contract with ninety (90) days written notice with or without cause.

C. ANTICIPATED AVAILABLE (ANNUAL) FUNDING

Increased consideration will be given to Proposers that submit the "best value proposals" which effectively combine competitive pricing with high quality products and services. In addition to the provisions set forth in the attached General Provisions Governing Contracts for Consultants, Professional, Technical, Human and Client Services, funding for any Contract issued as a result of this RFP is dependent upon the City's budget appropriation for the purpose of this Contract during each fiscal year.

D. ANTICIPATED PAYMENT STRUCTURE

- The City elects to pay all or any portion of amounts for services rendered pursuant to this Contract via direct fees after proper issuance of an invoice and supporting documentation to both OPA and DOF in a form approved by OPA. OPA will consider proposals to structure the payments differently but reserves the right to select any structure that is in the City's best interest.
- Proposers must submit the cost proposal based on fees for the initial five (5) year term and the subsequent five (5) year renewal. Proposers must provide at a minimum, the following three categories of pricing, that must be all-inclusive of Services requested herein, as set forth on the Price Proposal form (attached to this RFP):
 - i. for payroll check issuance - three prices based on the following ranges of paper paychecks issued: 50,000-65,000, 35,000-50,000, and 0-35,000, understanding that over time, some or all these employees may choose to participate in the direct deposit or Payroll Card Services,
 - ii. a per transaction cost for ACH, and
 - iii. a per user cost for Payroll Card Services.
- Additionally, OPA will implement liquidated damages provisions that cover key service level misses, the conditions of which are highlighted in this Section III, Part C, 8.

E. GOALS AND OBJECTIVES OF THIS RFP

OPA seeks the services of qualified Contractor(s) to provide payroll banking and other related services. The selected Contractor must provide accurate and timely Services, provide automated, efficient and standardized banking and related processes, and provide secure access to bank information. Proposers are encouraged to describe any innovative services that will accomplish the desired goals of this RFP. Although not required, Proposers may provide information on any other payroll banking-related services that might be beneficial and cost-effective to the City.

This RFP presents the current overall structure of relevant City banking operations, and each of these should be addressed in proposals.

Certain services must be proposed as described; these will be indicated. Where not indicated, proposals may propose alternatives to the current approach.

This RFP also describes potential future services ("Optional Services") which proposals may also address, though the City may elect *not* to implement some or all of these Optional Services. These should be proposed and priced separately.

F. CURRENT CITY PAYROLL AND BANKING BUSINESS STRUCTURE

Payroll Processing

OPA is responsible for coordinating matters of payroll policy and procedure among various City agencies, ensuring City compliance with employment tax laws and regulations, distributing and accounting for the City's payroll, managing the City's payroll and related bank accounts ("Accounts") and ensuring the integrity, accuracy, and operational effectiveness of the City's payroll systems.

The City runs multiple payroll cycles with varying frequencies, i.e., weekly, biweekly and semi-monthly, as well as supplemental payrolls — on average there are 26 payrolls per month totaling approximately \$ 1.3 billion. The City issues multiple payroll file transmissions for ACH as well as Positive Pay during the course of any single day for each Account.

Payroll Volumes

There are approximately 350,000 City employees; 81% are enrolled in direct deposit and 19% receive paper checks. The annual volume of ACH transactions, for direct deposit, is approximately 7.1 million with an average annual dollar value of \$14 billion. Any one transmission file may contain between 1 and 160,000 ACH transactions. The City issues approximately 2.1 million paper payroll checks as well as other payments including Medicare Part B Reimbursements, FICA refunds and other similar payments annually with a total dollar value of approximately \$1.8 billion.

Account Structure

OPA maintains 18 DDAs that are used for the disbursement of payroll and related payments.

All of OPA accounts are funded by wire transfer from the City's Central Treasury Pool account at Citibank, which is under the jurisdiction of DOF. OPA seeks a Contractor that is able to provide this bank account structure. Out of the 18 accounts, 8 are used as funding and disbursement accounts for the pension employee payroll. The imprest fund account is a stand-alone account that is funded by OPA.

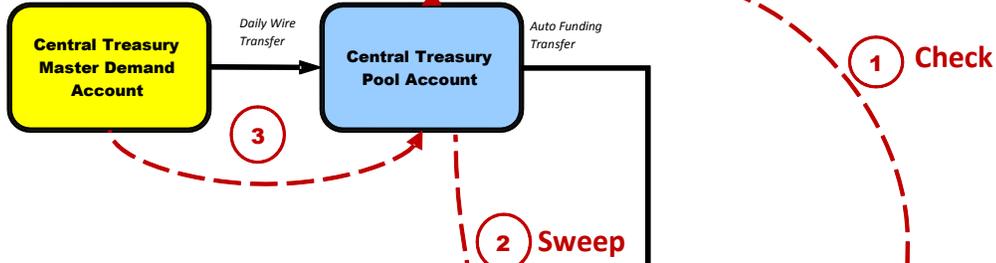
There are also various payroll-related transactions that occur during the course of the year. Some Accounts are used for those purposes, and some are used to process reimbursement of Social Security and Medicare taxes to City employees. For these reimbursements, proposers must include descriptions and pricing which includes the cost of the selected Contractor receiving data from the City to generate and mail paper checks.

The diagrams below illustrate the current structure of accounts that support the City's payroll systems.

OPA EFT and Check Payroll Accounts

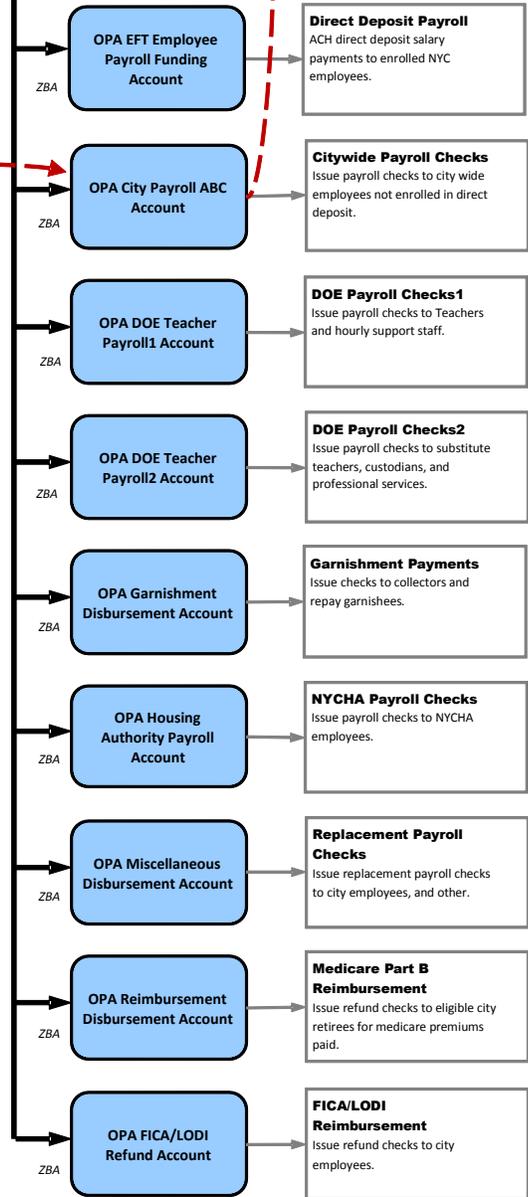
- Current Structure -

Current Funding Structure



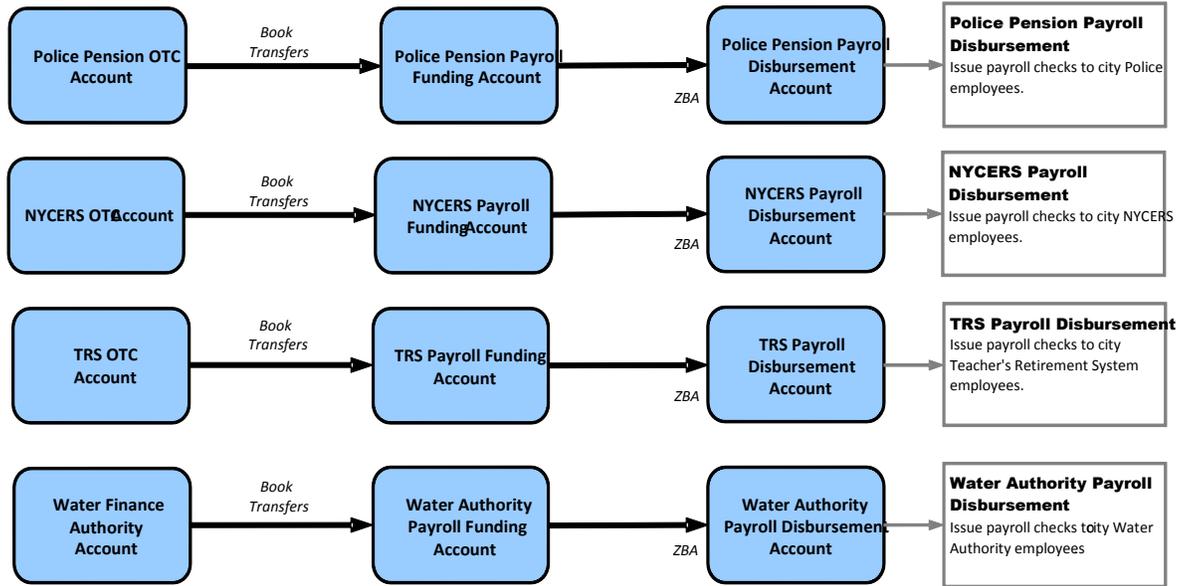
Current OPA Payroll Funding Process:

1. OPA issues a paper check from one of their disbursement accounts and deposits the check into the Chase Central Treasury Pool Account.
2. The Chase Central Treasury Pool Account automatically funds outgoing disbursements for all OPA accounts
3. OPA requests a wire transfer from the Citibank Central Treasury Master Account to the Chase Central Treasury Pool Account.



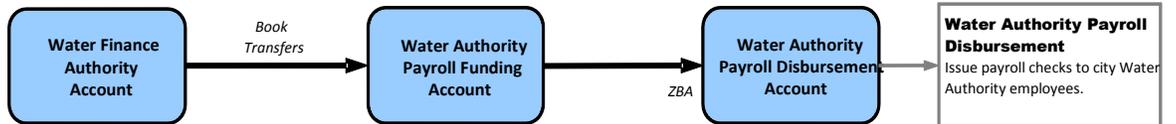
Pension Employee Payroll Accounts

- Current Structure -



Water Finance Employee Payroll Accounts

- Current Structure -



SECTION III - SCOPE OF SERVICES

A. PAYROLL PROCESSING

1. ACH Processing

The selected Contractor will provide the Automated Clearing House (ACH) origination services that will enable the City to do the following:

- Act as the City's Originating Depository Financial Institution (ODFI) for all communications with ACH, and will initiate ACH entries ("Entries") on behalf of the City, as originator, to or from the designated account of a person who has authorized such Entries (a "Receiver") maintained at a Receiving Depository Financial Institution ("RDFI").
- Instruct the selected Contractor to issue or transmit prenotifications, reversals, requests for return, notifications of change or other information pertaining to the Entries.

The origination of the Entries and the transmission and issuance of transactions and information will be pursuant to the Service Terms and the Operating Rules and Guidelines (collectively the "Rules") of NACHA. The selected Contractor must agree to comply with and be bound by the Rules as in effect and modified from time to time. The City will provide Entries and instructions to the selected Contractor with all the necessary information to complete the requested transactions. The City will transmit Entries to the selected Contractor in the manner, at the times and in accordance with approved media, content and format as agreed by the City and the selected Contractor. The selected Contractor must process and validate all ACH transactions in strict compliance and within the time frame established by the Rules. ACH transactions must be distributed by the Effective Date.

If an RDFI is unable to post an ACH entry to the intended account, for any reason, including but not limited to an invalid or closed account, or insufficient funds, the selected Contractor must process the returns or notices regarding such items in accordance with the Rules.

1.1 Child Support Payments via ACH

The City desires to transmit payments and remittance details for child support payments made to the State Child Support Enforcement agencies throughout the 50 States using the Cash Concentration and Disbursement Plus ("CCD+") format, or other mutually agreed upon format.

As specified earlier, the selected Contractor will act as the City's originator for the Entries to transfer payments and related remittance information through the ACH network to the various States' centralized collection sites' (referred to as State Disbursement Unit (SDUs)).

The selected Contractor must conduct end to end testing to ensure data integrity and validate the file format for acceptance. The findings of such testing must be reviewed and accepted by the City prior to a full rollout of this service.

Proposers must describe how their financial institution would handle this service feature.

1.2 ACH Transmission

The City will initiate and produce ACH issuance files and transfer needed files using secure methods such as, but not limited to, HTTPS and FTP, to the selected Contractor. The Rules govern the formats, specifications and exchange of Entries. The selected Contractor must follow and abide by

the requirements defined in the Rules. In addition to the aforesaid transmission methods, the selected Contractor must allow for the following two methods of file transfer that the City currently uses:

- File transmission over a non-internet line using Connect:Direct with Secure Plus.
- An internet based transmission using FTPS plus encryption of the file itself with PGP.

Proposers must provide secure file transfer solutions and may recommend alternative processes if they would be beneficial to the City. Any alternatives must be described in detail and are subject to the City's approval. For all proposed methods of transmission, the Proposers must provide the technical requirements for establishing each method and processing transactions, a detailed description of security and authorization processes and requirements, including forms, delegation options, encryption or authentication requirements, and devices or digital certificates, alternatives available if a standard transmission method should fail, and disclose any software limitations on file sizes or numbers of records in a batch.

The selected Contractor must be able to confirm receipt and subsequent processing of ACH files transmitted by the City, and provide a confirmation or "echo-back" file, consisting of the transmission back to the City of a copy of each file received. The selected Contractor will return an echo-back file confirmation to the City within fifteen (15) minutes of file receipt from the City.

The ACH confirmation file must reflect the transactions released into the ACH Network for the City. This confirmation file can be set up to generate upon presentment of City's file to the selected Contractor (regardless of the Effective Date of the transactions) or upon the Effective Date of the transactions (regardless of when the transactions are presented to the selected Contractor). The selected Contractor must validate the ACH file contents before sending through the NACHA Clearinghouse. The City must be contacted immediately via telephone regarding any differences in file totals or any other edit failures discovered during the confirmation process.

1.3 ACH Debit Blocks

The City uses debit block to prevent unauthorized ACH debits from posting against our accounts, thereby maintaining the security and integrity of our accounts. The selected Contractor must provide full ACH Debit Block services to the City. Please describe how your financial institution would handle this feature, and include any other fraud prevention and security measures that your institution can offer to the City.

1.4 Error Handling

Proposers must describe how they handle general and critical errors, whether data or technical in nature. The City requires the ability to escalate matters, in particular, when critical errors occur since these could have a high risk of impacting payroll or other related City operations covered by the Services set forth in this RFP. Proposers must describe their standard support structure, how issues are prioritized, tracked and resolved and any other services that Proposers offer so that impacts are avoided or minimized when errors do occur. Proposers should include this process as part of their discussion of service level standards and associated compensation addressed elsewhere in this RFP.

1.5 Security and Data Protection

Sound industry practices reflect the understanding that certain financial data should be protected at all times – whether before, during or after transmission, and regardless of the form of the transmission (e.g. internet or otherwise). The selected Contractor must comply with all applicable security procedures including the City's Information Security Policies and Procedures:

http://www.nyc.gov/html/doitt/downloads/pdf/service_provider_policy.pdf. When data is received or transmitted, the selected Contractor must utilize commercially reasonable procedures and systems that provide security and encryption techniques adequate to insure reliable protection of the data during transit and storage. The selected Contractor must have an alternate and secure methods of accommodating these file transmissions in case of an emergency. All instructions received by the selected Contractor in the City's name must be authenticated and/or encrypted using commercially reasonable security technologies meeting standards acceptable to the City and the selected Contractor.

1.6 Settlement and Exposure Limits

On the Settlement Date, the selected Contractor will credit City's account with the Bank that City specifies for the total of:

- City's Debit Entries that selected Contractor processed for settlement that day;
- Drafts issued for deposit to City's account on that day; and
- Any returned or reversed Credit Entries.

The selected Contractor will debit City's account with the Bank that the City specifies for the total of Credit Entries processed in City's name and for any returned Debit Entries and Drafts.

1.7 Reversals and Recalls

The City may transmit reversing Entries, batches or files, in case of an error or change in the recipient's status. Proposer should describe the process required for the City to submit reversals, including communication methods, deadlines, required authorizations, and acknowledgements. Also describe the process the City would use to request the reversal of a specific transaction after the NACHA time frame allowed for reversals has expired (Return per ODFI, for example). Indicate whether the City may request to delete a submitted file, batch or transaction within a published processing deadline. If authorized individuals at the City are allowed to delete a specific transaction(s) from a previously transmitted file before Settlement Date, proposers must describe how this process will work and clearly specify the published deadlines in Eastern Standard Time/Daylight Saving Time.

Proposers should also describe their procedures for recalling a file transfer after it has been sent by the City, and explain the timeframes for when reversals can be received and processed.

1.8 Returns and Notifications of Change (NOC)

An ACH transaction may fail or generate a NOC due to a number of reasons. i.e. account closed or frozen, incorrect account number, incorrect bank ABA number, etc. Information for all returned Entries and NOCs should immediately be made available to the OPA, preferably via web-based system or report process. Proposers should provide a list of the information included in a return or NOC transaction and indicate when the return and NOC information will be available to the City (same day received, time of day, etc.) and how it will be delivered. Proposers must clearly specify when returns of ACH credits will be posted to the City's account(s). ACH debit returns or dishonored ACH credit returns may cause a negative collected balance in the City's account(s). For most ACH origination accounts today, the City has a Zero Balance Account (ZBA) arrangement in place to offset these shortages with general fund deposit balances (refer to Account Structure).

1.9 Standard Entry Class (SEC) Codes

The list of SEC codes that the City currently uses to transmit includes PPD and CCD+. The City reserves the right to use additional SEC codes during the term of the contract. For example, the City is not currently generating any IAT or RCK entries, but a business need could arise in the future. Proposers should describe the SEC codes it can offer and specify any limitations that may exist.

1.10 NACHA Rules

Proposers must be at all times be compliant with the NACHA rules and further describe their process for implementing NACHA rule changes and assisting customers with implementing those changes. The selected Contractor shall notify the City of relevant changes in the NACHA Rules at least three months prior to the Effective Date of the change.

2. Paper Check Processing

2.1 Depositing Funds

- The City funds its Accounts by wire transfer from City's Central Treasury Pool account at Citibank to fund outgoing disbursements for all OPA Accounts (See Current Account Structure). OPA seeks a Contractor that is able to provide this bank account structure.
- The City operates its Accounts as zero-balance accounts, with the exception of two of its Accounts. Funds are transferred from an OPA concentration account to the Accounts in an amount equal to the total dollar amount of funds debited against the Accounts during the day.
- The selected Contractor must establish and maintain demand deposit accounts for certain Accounts in accordance with OPA's written instructions. Additionally, the Accounts must be maintained by the selected Contractor in accordance with applicable legal requirements and industry standards with respect to operations, security, reporting and online access capabilities. The funds in the Accounts must not be comingled with any other funds.
- The selected Contractor shall provide automatic overdraft protection in the event that an overdraft occurs and shall not charge or penalize OPA. OPA will make every effort to assure that funds in the bank are equal to the amount of payroll issued, however, in the event of an overdraft, all valid checks presented for payment and direct deposit transactions shall be paid by the selected Contractor. Proposers should describe their policy on daylight overdrafts for individual accounts if the total balances of the City's account in aggregate are positive.

2.2 Payroll Check Data Transmission

- The City, via FISA and OPA, will initiate and produce payroll check issue ARP files. The Proposers must explain how the commercially reasonable security procedure(s) protect the City's and its employees' private, sensitive data from unauthorized access. These files will be transmitted to the Contractor using mutually agreed upon and commercially reasonable security procedures that may include, but not limited to, HTTPS and FTPS. File layout specifications will be provided during Contract negotiations.
- Proposers will fully explain how the security procedure(s) protect private, sensitive data from unauthorized access. Additionally, the Proposers must include a description of alternate secure methods of accommodating these file transmissions in case of an emergency.

- Proposers must describe how the transmissions will be verified and what quality controls are in place including for example, providing counts and dollar amounts by transmission, to ensure that information OPA/FISA sent is accurately and timely received by the Contractor. Verification must be made for all sub-category types of transmissions including issuances, cancelations and stop payments.
- Proposers must describe their systems for reporting any discrepancies or deviations from the information contained in the payroll issuance file to what is being presented at the selected Contractor's bank and the timeframes for resolution. Describe how the Proposer prevents acceptance and/or processing of duplicate files. The selected Contractor must not accept, and the City will not pay, any check that is presented for payment when the check number and amount have not been submitted by the City to the selected Contractor through payroll issuance files.

2.3 Remote Deposit Services

OPA currently uses the Remote Deposit capabilities to deposit the checks. The selected Contractor must offer OPA the capability to scan checks at OPA location(s) and send digital images of the checks to the selected Contractor's bank for processing. This service must be compatible with OPA's existing Windows-based personal computers, or future mutually agreed upon upgrades. The technology for these services must capture all of the key check information, including MICR line data and allow OPA to make electronic deposits by, for example, using the Internet for processing (with appropriate security features). The remote deposit services must be processed in-house by the selected Contractor. This function cannot be delivered through a third party Contractor.

Proposals must describe available related functionality including the ability to automatically consolidate multiple deposit accounts and sites, and prepare and upload daily receivables into any accounts receivables program. The selected Contractor must also provide an image storage retrieval system for access to receivables information.

2.4 Controlled Disbursement

The City's labor agreements prohibit any arrangement which will delay availability of payroll funds to employees. The selected Contractor must ensure that no aspect of the controlled disbursement process, or any other process, will delay the availability of payroll funds to City employees. The selected Contractor must provide controlled disbursement services and must notify the City of 100% of daily clearings against Accounts, except for the Imprest Fund Account. The selected Contractor must report the amount of disbursements for Accounts Payable Checks that will be charged to the City's account.

2.3 Positive Pay

The City uses positive pay on all of its Accounts to improve internal controls and prevention of check fraud. On a daily basis, the City requires the Bank to provide OPA with information regarding check status (paid, stopped, or canceled). The Bank must provide the ability for the City to upload check issue files that include the check number, issue date, payee name and address, and check amount for validation before the check is redeemed.

Provide a brief description of each positive pay service that your financial institution offers. Please provide sample reports.

2.5 Payee Name Verification

The City uses the payee name verification to help prevent a check with an altered payee name from clearing the City's account. The selected Contractor must not accept, and the City will not pay, any check presented for payment when the payee name on the check does not match the payee name on the payroll issuance file, even if the check number and amount of the check match the issuance file. Proposers must describe how their financial institution would handle this feature.

2.6 Stale-Date Control

City checks that are outstanding for more than 180 days are stale-dated. Proposers must explain how they perform stale-date control on each check presented for payment against OPA's Accounts. The purpose of these measures is to eliminate/reduce the likelihood of a fraudulent check with alterations or a check that has passed the legal stale date timeline under the Uniform Commercial Code from improperly paying against the Accounts.

2.7 Exception Processing

The selected Contractor must have procedures for addressing checks that must be rejected or cannot be negotiated properly including, but not limited to, forged checks, checks bearing forged or fraudulent endorsements, altered checks, counterfeit checks, checks presented more than once, stale-dated checks, misprinted checks and checks that are reported as lost or stolen. Proposers must explain these procedures in detail, and indicate that if selected, the Contractor will comply with the fraud prevention measures discussed below, as well as the following requirements:

- Credit the appropriate Account as soon as possible, but no later than five (5) business days after a claim or demand by OPA.
- Provide notification of credit for stale-dated or forged/altered check claims on the monthly reconciliation reports.
- Provide credit advices for stale-dated or forged/altered check claims with the daily bank statement.
- Credit the City's account pending the resolution of a disputed claim, and/or pay all interest including any back interest once the claim is resolved in the City's favor. Proposers must explain how the interest will tie back to the individual claim in reports that the City receives.
- Pay attorneys' and any other fees incurred, should the City be required to initiate legal action to recover funds paid out by the bank on an improperly negotiated check.

2.8 Check Imaging System Requirements

- The selected Contractor will be responsible for the creation of check images for archival storage and electronic or other technological means of access. The selected Contractor must provide this in a manner that ensures the integrity of image production, storage, and access.
- The selected Contractor must store images of all checks processed and be able to transmit or otherwise make available, reconciliation reports on a schedule (to be provided at Contract negotiation). In the event that the City's check images are not available for viewing through the normal process, the selected Contractor must make images available in a timely manner via an alternate process.

- The selected Contractor must be able to archive and store images for a period of ten (10) years. OPA must be able to retrieve images securely through the selected Contractor's online software or other technological means during the prescribed timeframe. These archiving and storage provisions shall survive the expiration or termination of the Contract.
- In addition, the imaging system must meet the below technical requirements:
 - be capable of processing 175,000 checks monthly
 - have check image resolution that is a minimum of 200 dots per inch in black and white
 - provide City with the ability to search, sort and retrieve check images by check number, dollar amount, account number ABA number, payee and check date
 - allow for viewing the front and back of the check image simultaneously or in two associated frames and magnify portions of the check
 - provide City with the ability to print the front and back image on one page
 - allow for copying and pasting check images into other documents, such as MS Word or Excel
 - capture signatures, rubber stamp endorsements and checks with Lundy strips

3. Online Reporting, Account Reconciliation Statements, and Reports

- The City requires automated full account reconciliation services. As indicated previously, the City may run multiple pay cycles and may electronically transmit to the selected Contractor multiple payroll issuance files during the course of any one day.
- The selected Contractor must compare the issuance information provided by FISA with ACH transactions and checks presented for payment during the reconciliation period. In order to do so, the selected Contractor must have the ability to scan checks with eight digit MICR encoded check numbers.
- The selected Contractor must provide OPA and FISA with an electronic paid file transmission (ACH transactions and checks) on a daily basis, and provide access to OPA and DOF of on-line totals of checks paid. Credit and debit adjustments due to the Accounts must be settled by the next reconciliation.
- The selected Contractor must deliver to OPA and DOF every month, not later than ten (10) business days after the end of each month during the term of the Contract, an electronic account analysis statement (consolidated for the group of Accounts and an individual statement for each Account) in the American National Standards Institute (ANSI) 822 record format or other format acceptable to OPA.
- The account analyses must include at a minimum the following: average daily ledger, collected balance, volume of services rendered, transaction charge, total charges per category of services and total charges for all services rendered. OPA and DOF will use the data to analyze and verify the volumes and charges, and all proposals must include a description of the available data fields and the ability for OPA to use that data to create ad-hoc reports. The unit prices of the items on the account analyses must correspond exactly to the unit prices in the final Contract. The account analyses must conform to the Association of Financial Professionals Service codes.

- The selected Contractor must have the ability to track aggregated account information without identifying information and report back to OPA (e.g., number of accounts opened, number of accounts with zero balance/closed, average balances).
- In addition to online data inquiry systems previously discussed in this RFP, OPA requires the following full reconciliation support reports, and all proposals must include samples of each required report. The selected Contractor is encouraged to recommend additional reports that will be beneficial to OPA.

3.1 Daily Reports

Daily statements must be made available to OPA no later than five (5) business days following each banking day. These statements must be in a report format or any other format that is acceptable to OPA.

- Daily charged versus daily paid checks reconciliation, showing differences in details
- Daily paid check listing
- Daily outstanding check listing
- Daily bank statements (all credits and debits must be reported)
- Detailed report of presented forged checks (dollar amount and check numbers), including credit advices
- Report showing any "attempted and failed" ACH debits
- ACH credit returns

Prior day summary reports that supply:

- Start of day outstanding ledger balance (prior day end of day ledger balance – unpaid checks)
- Total checks issued
- Total checks paid
- Total checks canceled
- Total checks stopped
- End of day balance

3.2 Monthly Reports

Monthly reports must be made available to OPA no later than ten (10) business days following each banking day. These statements must be in a report format or any other format that is acceptable to OPA.

- Consolidated report
- Paid check report
- Outstanding check report
- Stop pay report
- Miscellaneous debit report
- Miscellaneous credit report
- Stale dated voids
- Cancelled check report (all checks cancelled during the month)
- List of forged checks with detailed information, including notification of credit
- Outstanding settlement report (reconciliation of outstanding checks only)
- Bank account reconciliation

- Purged check report/Aged issue purge report

3 INQUIRY, BALANCE, AND TRANSACTION REPORTING

Inquiry System

Proposers must have available for the City's use a secure online inquiry system that can be accessed through the internet. The City should be able to monitor account balances, detail activity, view returns and NOCs, and access stored checks images, monthly bank statements and account analyses. The system used must provide the City the ability to limit a user's access to a designated bank account without impacting the grouping or summarizing of bank accounts on the analysis.

Proposers should describe:

- All ACH reporting features included,
- The number of business days available for inquiry,
- Any intraday report capabilities,
- The hardware and software requirements,
- The system security options available, including delegation options,
- The process for changing users or their security options while keeping each agency independent from the other participating agencies,
- Training and technical assistance provided.

As part of this payment and inquiry system, the selected Contractor must provide OPA with a simple, electronic way to initiate stop payments against outstanding checks that cannot be properly negotiated and timely access to acknowledgment of these stop payments, the ability to make check status inquiries, request copies of checks and receive reports.

Proposers should disclose how long the current system has been in operation, any plans to implement a new system and provide sample reports.

With respect to check status information, OPA requires that the selected Contractor provide 24/7 Online, real time access to this information i.e., paid and outstanding checks issued, stopped and canceled checks, etc.

The selected Contractor must provide OPA with the technical specifications of the software, if applicable, that OPA will use in connection with the electronic access services and imaging system. Please note that the information must be accessible with appropriate security levels (e.g., e-Security) and without the need for the City to use the selected Contractor's hardware.

The selected Contractor must provide user training for OPA personnel responsible for the use and operation of the payment and inquiry system and check imaging system, as well as ongoing technical support during the term of the Contract, and any successor term. Copies of training programs must be included with all proposals.

4 OTHER REQUIREMENTS

4.1 Check Stock

Currently, the City's payroll checks are printed at FISA. The selected Contractor must provide FISA with check stock and check formats according to the specifications to be provided by the City, and in

conformance with industry standards as needed to fulfill the Contract requirements. At a minimum, FISA requires that each check have two payee lines with each line capable of accommodating up to thirty (30) characters per line or a total of sixty (60) characters.

The selected Contractor will be required to periodically conduct MICR and PNV testing, which will be conducted under the guidance of the City. Additionally, the selected Contractor must be able to incorporate such check printing and related equipment as is in use at FISA or OPA, including but not limited to the Formax® FD 680 Continuous Form Industrial Burster and Lasermate® LM-20 Pressure Seal Mailing System.

4.2 Disaster Recovery

The selected Contractor must provide a comprehensive backup and disaster recovery plan that will ensure continuous, uninterrupted Services to the City under a variety of circumstances ranging from routine service interruptions to catastrophic events. The selected Contractor must cooperate with the City during any emergency situations as described more fully herein.

Please describe your formal disaster recovery and business continuity plans in the event of an operational interruption or disaster. Include information such as: when was the plan last reviewed and actually tested, the general location of alternate work sites, recovery time required, the point at which you would notify the City, and the effect moving to a backup site would have on fund availability and processing capacity. Proposers must explain how often the City's data will be backed up. Proposers must describe how much system down time the City can expect to experience.

Proposers must include a primary and secondary set of procedures for operational recovery in the event of any interruption of service whether routine, minor or catastrophic that alters the selected Contractor's and/or the City's ability to meet the Services needs of the City. Proposals must provide a description of how emergencies will be handled where the impact is to the selected Contractor, the City and/or OPA/FISA or all three, and provide solutions such as remote processing that permit continuity of operations under any scenario.

Proposers must also include turn-key disaster recovery options that include printing payroll checks and being able to complete all ACH transactions (please refer to the Optional Services portion of this document that describes the specifics of check printing). The selected Contractor must fully test all disaster recovery options during the transition phase of the Contract and the City must accept and sign off on the results of the testing. Proposals must include detailed descriptions of this testing process along with timeframes for same.

With respect to specific emergent situations, the selected Contractor must comply with the following requirements:

- The selected Contractor must maintain business continuity by utilizing its hot-backup site in the event that it anticipates any delays in processing.
- All deposits must be back-valued to the dates at which they would have been deposited before the switch to hot-backup mode.
- Check payment and ACH operations must be continued without interruption in case of a failure at a selected Contractor's facility.
- All reporting, inquiry system, imaging system and other City end-user requirements must be maintained while the selected Contractor is in hot-backup mode.

- Once the primary processing facility is recovered the selected Contractor shall switch from its hot-backup mode to the primary facility with no interruption of Service.

The selected Contractor must participate with the City in disaster recovery tests or drills that will be conducted to validate successful transmission of communication(s). Disaster recovery tests will take place between the City's recovery site and the facilities of the selected Contractor. The City will need to send and receive transmissions to and from the selected Contractor's recovery site during tests. It is anticipated that both OPA and FISA will be involved with any disaster recovery tests or drills.

All proposals must incorporate and provide copies of a disaster recovery plan covering the areas discussed in this section. In the alternative, proposals must explain in detail what the plan entails such that OPA may evaluate and determine whether the plan meets its and the City's needs.

4.3 Contact Information

The selected Contractor must designate a Client Manager with overall responsibility for management of the Services to be provided under the Contract. The Client Manager will identify specific contacts for particular areas, and will serve as an escalation point for matters that cannot be resolved by the individual contacts, but will also be available for direct contact as the City deems necessary.

The individual contacts must be available for support and problem resolution on a 24/7 basis, and the name, telephone number and email addresses for these individuals must be provided to both OPA and FISA. In addition, a direct toll-free number fax line must be provided to OPA which will serve the operation of the Accounts.

To facilitate daily City payroll and related operations, the selected Contractor must provide direct telephone numbers, fax and e-mail for the officer of the selected Contractor's bank in charge of administering OPA's Accounts and the operations area of the bank in which the Accounts are handled.

The selected Contractor must periodically provide an updated list of the names, email addresses and telephone numbers of the backup personnel in the appropriate department(s) whom the City will be able to contact if the primary officer of the selected Contractor's bank in charge of administering the Accounts is unavailable.

4.4 Transitioning from the Existing Provider to the New Provider

Proposers should provide a detailed implementation and conversion plan. The plan must identify all tasks, estimated timeframes for the tasks, milestones, roles and responsibilities for the City and contractor's personnel. A list of the minimum anticipated deliverables such as, but not limited to:

- Configure Bank Account Structure
- Implement Electronic Banking and Reporting
- Configure and Test File Transmissions and Electronic Communication Channels
- Establish Security and Encryption Protocol
- Implement ACH Debit blocks, where appropriate
- Train Users
- Implement other banking services as determined

Proposers must describe the support provided during conversion and implementation, including training, technical assistance, user manuals and on-site visits. Please describe your experience in managing complicated implementation efforts.

The selected Contractor must possess requisite experience and capability with transitioning functions that must occur at the commencement of the Contract to ensure the changeover is seamless, orderly, and presents no disruptions to the City's Services, temporary or otherwise. The transition strategy work plan that must be provided with all proposals, must include, but not be limited to:

- a detailed, written plan outlining specific transition activities or tasks and timeframes
- setup of Accounts and Payroll Card or alternative accounts, as applicable
- training of OPA and other City staff
- mapping and migration of all legacy data related to payroll and related accounts
- specific reconciliation/closing-out details

All proposals must demonstrate how entities plan, coordinate and ensure that all phases of the transition to the selected Contractor will be conducted and tested. The transition testing structure must include all scenarios that can be conceived of as possible system occurrences, including disaster recovery operations, in addition to simulating a 100 percent participation environment.

Proposers must describe all the necessary processes that will be required of the existing contractor in order to effectuate a seamless transition to the selected Contractor. The selected Contractor must provide a list of any documents, files or information it will need from the current contractor in order to have a successful transition. The selected Contractor will be responsible for bearing all transition costs that may occur as a result of, including but not limited to, the conversion of existing documents, loading of files, etc.

The selected Contractor must provide a dedicated transition manager to handle the entire transition, both logistically and technically. This person will work closely with City personnel and must have sufficient ability within the selected Contractor's organization to marshal any and all resources to ensure the transition is smooth and any issues are resolved in a timely manner.

At the end of the Contract, the selected Contractor must provide outgoing transition services and cooperate fully with any subsequent Contractor so that there is no disruption to any of the Services described herein.

END OF PAGE

B. OPTIONAL SERVICES

1. Optional Services—Printing and Mailing Payroll Checks

The City's payroll checks are currently printed at FISA. The City/OPA plans to outsource the check printing to a Contractor who is able to provide the services set for below:

Proposers must include and demonstrate how their financial institution will deliver these services. The selected Contractor will be required to participate in a test pilot for any Optional Payroll Services and the results of the pilot must be satisfactory to OPA prior to a full roll out of these services. The decision to move past the pilot and whether the testing is satisfactory is solely for OPA to make.

1.1 Check Stock

Information about the quality of the check stock that the Contractor would be required to utilize for printing the City's checks and the current number of pay cycles is provided elsewhere in this document. When there is a transition from FISA to the selected Contractor for check printing the check formats may need to be modified.

1.2 Signatures

There are different and multiple signatures required on the various check stocks. Proposers must advise how they propose to ensure that the correct signatures are affixed to the correct check stock.

1.3 Data

FISA will provide data for the check printing to the selected Contractor via separate electronic transmission to facilitate efficient processing. FISA will provide a file layout or, at FISA's option, use the selected Contractor's layout specifications. Proposers shall explain how payee name verification will be handled based on the data received in the file from FISA.

The transmission of the data for the check must use the transmission protocols as described in the Transmission and Communication section of this document, as they may be updated from time to time by the City.

1.4 Security

i. Physical Security

- Proposers must describe the steps they plan to take to ensure the checks are physically safe throughout the process from the vendor who creates the checks through printing and through distribution to the City and also for mailing.
- Proposals must explain how check pulls will be supported and the controls and processes of the delivery of the checks to the City.

ii. Data Security

Proposers must explain their processes to protect the data sent by the City for purposes of printing the check. Proposers must also explain how they plan to receive the signatures from the City and how they are stored and protected.

1.5 Quality Controls

Proposers must explain their checks and controls for verifying receipt of the data files from the City to be used to print the checks, how they verify that what was on the data file was printed on the right stock with the right signatures and with the correct check counts and dollar amounts, and how they verify the check counts through each step of the process through distribution.

1.6 Inserts

Proposers shall explain their requirements for receiving inserts (hard copy and electronic messaging for paper checks), format/stock specifications, and quality controls to ensure inserts are put in the correct envelopes. Proposers must include the equipment specifications that they use for this process.

1.7 Mailers

Proposers shall explain their capabilities to print checks as part of a pressure –sealed mailer form and then burst and fold and seal the form.

1.8 Liability

Proposers shall explain how lost checks will be handled and replacements issued. The City will not accept liability for checks stolen or fraudulently created / used which are lost or stolen before being distributed to and accepted by City/OPA.

1.9 Disaster Recovery

In addition to requirements elsewhere in this document, Proposers must be able to explain what Disaster Recovery plans and agreements that are in place to ensure no interruption of their ability to receive the check printing information from FISA and that there will be no interruption in their check printing and distribution capabilities if there is a disaster affecting their primary check printing facility.

1.10 Pricing

Proposers shall provide the costs for the services and also explain mail discounts available for various features such as bulk mail, sorting by zip code, etc. that the City can benefit from if the City elects to exercise this printing option.

1.11 Printed Check Distribution

Proposers should provide two proposals for check distribution: one that includes delivery to a OPA-designated location within the five boroughs of the City, and one that includes mailing directly to payees.

2. Optional Services—Electronic Payments, Forms Preparation and Printing

Currently, DOF has contracts for services with financial institution(s) to execute payments for Federal, state and/or local withholding taxes, excise taxes, etc on behalf of the City. These payments may be made by ACH Debit, ACH Credit and/or Fedwire. OPA and OTC file Federal, state and/or local tax forms on behalf of the City. This RFP solicits responses from Proposers as to which of these services they are able to perform and to demonstrate how they would perform these services.

3. Optional Services—Replacement Check Processing

OPA issues approximately 6,000 replacement checks annually. Proposers are asked to include ways to issue replacement checks to individuals who have lost or allowed original checks to become stale-dated. Proposers must describe any tracking or linking of the original check with its replacement, and how that data will be produced to OPA. Replacement check processing must follow the same criteria set forth immediately above in the section entitled “Optional Services—Printing and Mailing Payroll Checks.”

4. Optional Services—Payroll Card Services

The City is considering the implementation of a Payroll Card program that will allow the City employees who are not enrolled in the direct deposit payroll option to receive free access to full net pay on a bank card engraved with a logo that is widely accepted and recognized for purchases. The free access to net pay needs to be made available through multiple sources including financial institution customer service desks, ATM networks, and cash back from debit transactions.

The primary objective of the payroll card is to eliminate the costs of printing and distributing physical checks and simplify the payroll process while minimizing activities that add to the cost of distributing wages and salaries to the City employees. The City also wants to have another option for employees that may be deemed un-bankable and not qualify for a checking account. These activities include: reissuing lost checks, inadvertent double payments, and the labor costs of administering these activities. Simplification also requires a comprehensive ease-of-use and cost-effective element for the City employees that choose to participate in this program.

Proposers shall describe how each aforesaid component would be accomplished or how each desired capability would be met in compliance with the payroll card program objectives stipulated in the Scope of Services. If deemed appropriate, Proposers may include suggestions on possible alternative approaches. The City reserves the right to consider and accept proposed alternatives or proposed program components deemed more favorable to the City and its employees and deemed in the best interests of the City.

OPA expects that the implementation and promotion of the Payroll Card Services may result in a large number of participants in the program. Accordingly, the selected Contractor should have demonstrated ability to service a large customer base, equal to or greater than that of the City. The City does not guarantee that a specific minimum number of City employees will enroll in the Payroll Card Services.

Proposals must describe the selected Contractor’s project plan which must include card design, collection of needed City data, setup of accounts, card production and card delivery to the prospective cardholders.

Below are the minimum requirements that Proposers must address, along with a general description of services:

4.1 Issuance

The selected Contractor shall *not* issue any cards without coordinating the initial distribution with the City/OPA. The selected Contractor must have the ability to send and receive employee information in an electronic file format in order to set up and enroll individuals in the Payroll Card Services. The selected Contractor will indicate the time frame from the receipt of the card request to the issuance (process time) and card delivery (options should be indicated). Options available for card delivery should be indicated.

The selected Contractor must provide a standard card package to the employee including items such as the payroll card, a card carrier, terms & conditions and a cardholder guide. The Payroll Card Services must have a simple online and/or other electronic batch enrollment process. OPA anticipates that, after the initial enrollment, which must be coordinated with the City, subsequent cards will be issued directly to individual City employees.

4.2 Card Replacement

The selected Contractor must describe the procedures when cardholders report non-receipt of their initial or replacement payroll card. In the event of non-receipt (defined as the Payroll Card not being activated within seven (7) business days of mailing or when the cardholder calls the Customer Service/Card Issuer), the selected Contractor's procedures must provide for expedited delivery of a replacement card at no cost to the City employee.

Contractor must describe the procedures for expediting a replacement card at the request of the City employee. Unless Contractor chooses to offer this service for free, expediting a replacement card will be at the expense of the recipient except in the case of non-receipt of an initial or replacement card. Describe any limitations or features for expediting Payroll Cards (e.g. P.O. Boxes, cut-off times, Saturday delivery, etc).

4.3 Payroll Card Services Reports and Data

The selected Contractor must provide activity reports to the City/OPA on an agreed upon basis (e.g., daily, monthly quarterly, annually) including but not limited to the following:

- Funds amount received/daily transfers;
- Record count of daily transmission file;
- Dollar amount and record count of funds applied;
- Funds amount returned and account information/transfer rejections;
- Number of new accounts established;
- Undeliverable/Returned cards

Proposers must provide examples of reports for electronic payment services requested in this RFP that are available to the City and identify other available reports and their frequency (e.g. – Days before Card Expire, Account Creation, Account Activation, ACH Rejects, Lost/stolen Cards, Non-Activated and Re-Issued Accounts, listing of current cardholder accounts, summary of closed, activated, active and inactive cardholder accounts). Proposers should provide a description of the reporting packages they offer and indicate whether the package has exporting or e-mail capabilities. Proposers should describe how the City personnel will access the selected

Contractor's on-line system for management information/reports that will be made available to the City. Please indicate any specific hardware and software requirements.

4.4 Account Functionality

On the Settlement Date specified by OPA, the full amount of the employee's pay will immediately be deposited in the employee's payroll card account and will be owned by these employees. In cases where a reversal may be necessary to correct or adjust pay amount, OPA will need the ability to request a reversal of the transaction in accordance with the Rules.

4.5 Liability

The City and/or OPA shall not be liable for the unauthorized or fraudulent use of payroll account numbers and/or payroll cards, or payroll cards which are lost or stolen. Additionally, the City and/or OPA shall not be responsible for collecting or paying any time there are overdrawn funds connected to a payroll card account. The selected Contractor must provide industry standard fraud prevention and mitigation measures to address these issues, and Proposers must describe these measures.

4.6 Card Termination

The selected Contractor will cancel/terminate payroll cards online in real-time upon request of OPA or its designated agent. This notification may also be in writing or verbal form with written confirmation. Proposers must describe the logistics of card termination.

4.7 Expiration

The selected Contractor must automatically track the payroll card expiration date for all active cardholders and must mail a new payroll card with the same card number to the cardholder prior to the expiration date.

4.8 Implementation

Provide a detailed project plan that may include, but is not limited to the following:

Provide detailed description of the implementation process, including testing and a suggested implementation schedule. The Implementation Schedule must outline the milestone dates to accomplish the deployment of replacing current payroll card, with detailed tasks, dates and resources assigned identified for each milestone.

Describe support provided during implementation, including training, technical assistance, user manuals and on-site visits.

Describe support provided after implementation.

4.9 Training

The selected Contractor must provide training to approximately 100-200 agency payroll officers of the City of New York as described below. Proposers must explain how training will be provided for the initial implementation as well as on an ongoing basis. In addition, proposals must describe and provide examples of written or other training materials that would be used.

Proposers are encouraged to describe any additional training that would provide maximum benefit to OPA and to City employees.

- **Training Materials**

The selected Contractor must be able to provide written materials that may be used by the City / OPA staff to train cardholders on the proper use of the card. Updated versions of these materials must be made available over time as well as ongoing availability of new user training sessions. The selected Contractor will provide additional copies of training materials at no additional cost as needed or requested by the City. The City may copy and distribute Contractor provided materials to staff at no extra cost.

- **Training Plan**

Training plans must incorporate at least the following at the start of the Payroll Card Services:

- On-site training to City staff who will be utilizing the Payroll Card.
- Training must address benefits and features of the card, billing procedures, available reports, and the application process.

4.10 Employee Customer Service

The selected Contractor(s) must provide customer service to the City employees at a minimum through both a website and a toll free customer service phone number. These systems must maintain functionality to log the number of online inquiries or telephone calls received. The employee should be able to access account/program status, address information, transaction history, customer service information, and any service announcements related to the payroll card services. All types of customer service must be accessible, at a minimum, from 8AM through 6PM, Monday through Friday. Extended hours beyond this minimum are preferred.

Proposers should describe their customer service capabilities for a customer the size of the City of New York, including those items which set you apart from your competition. Additionally, Proposers should address the following:

- Will a dedicated customer service representative be assigned to handle this program? How many other accounts is this representative the primary contact for? How do you ensure continuity of service when the primary customer service representative is unavailable?
- How does the Contractor monitor customer satisfaction? Does the Contractor provide customers with the ability to participate in the annual evaluations of their account team, as well as overall product performance?
- Describe the responsibilities of customer service personnel, including the chain of command for problem resolution.
- What are the procedures for processing inquiries related to lost/stolen cards, non-receipt of card as well as research and adjustments?

- Are there established turnaround times for inquiries related to lost/stolen cards, non-receipt of card and research & adjustments? If so, specify. What is your record on meeting established response times?

4.11 Card Format Design

The selected Contractor shall provide a card designated for the City Employees Payroll. The selected Contractor must work with OPA in designing/branding the payroll cards and all designs must be approved by OPA prior to issuance.

4.12 Proximity Locations

The selected Contractor must include charts showing ATM access using the selected network. The selected Contractor must provide a file containing the street address, city, state, and zip code of the ATMs using the selected network. Additionally, the selected Contractor must indicate where cardholders can use their Payroll Card without incurring an additional ATM surcharge and provide a map of the cities located in the City of New York with surcharge free ATMs identified.

Proposers must provide data showing the degree to which the payroll card would be accepted in the 50 states and worldwide; and provide data on the number and location of ATMs in New York that will accept the payroll card.

Proposers must explain how the payroll card works. For example, if it is a re-loadable and reusable payroll card and whether an employee will have the option to add funds from sources other than pay from the City (i.e., using a bank branch to trade cash for value added to the card).

Proposers must provide a detailed list of and describe any free services or fees to employees associated with these Payroll Card Services, including any fees assessed for non-Contractor based withdrawals. Proposers are encouraged to describe a matrix of services that will provide maximum benefit to City employees.

4.13 Data Security (IT) Requirements and Technical Support

OPA maintains a technical infrastructure and highly complex network environment comprised of many security features to protect and safeguard the City's sensitive information assets. The sensitive data is stored and maintained in compliance with the directives and policies promulgated by the New York City Department of Information Technology and Telecommunications (DoITT) Security Division and its predecessor, the New York City Department of Investigation Citywide Information Security Architecture Formulation and Enforcement (CISAFE). Additionally, the DoITT Security Division plays an immense role in OPA's application security by providing directives to ensure that developed applications whether designed in-house or by outside vendors maintain the highest level of security and integrity.

All City and non-City personnel including temporary contract employees, contractors, vendors, consultants and the vendor/consultant Company for which they work are subject to these policies. In addition to Citywide requirements, the selected vendor(s) will be required to adhere to specific OPA security requirements. Vendor staff that will have access to City employee personal data may be required to undergo nationwide background checks (at the vendor's expense) and sign non-disclosure/confidentiality agreements before accessing any such data. These agreements prohibit the vendor's staff from disclosing to any third party any confidential, non-public information concerning the operations of the City.

What type of secure data connection does your financial institution provide? Please describe procedures for using an industry standard electronically secure data connection, using point-to-

point data encryption, which allows the City to transmit account information (i.e. new accounts, updates, payments, etc.). Proposers must provide an electronic confirmation to the City/OPA of the receipt of files. Additionally, the Proposers should specify the security procedures that are in place to minimize the risk of unauthorized transactions (e.g., encryption/authentication)?

Proposers should also describe the controls that are in place to protect against lost files and duplication of transmissions, and how it will establish and maintain security safeguards and procedures to guarantee the confidentiality of all data obtained from the City.

4.14 Payment Card Industry Data Security Standards (PCI DSS)

Any organization processing, storing, or transmitting credit card numbers must be PCI DSS compliant. Proposers shall provide proof of PCI compliance and if selected shall agree to remain compliant throughout the term of the contract. The selected Contractor shall also agree to contract language regarding PCI compliance. For example, service providers and third party providers and OPA represent and warrant to the other party that it is Payment Card Industry Data Security Standard (PCI DSS) compliant and shall remain compliant during the term of the agreement. In the case of a third party application, the application will be listed as PA DSS compliant at the time of implementation and throughout the contract period with OPA. In either situation, should either party become non-compliant during the term, the non-compliant party shall promptly notify the other party of its non-compliance status. Both parties are responsible for the security of the cardholder data that is in such party's control or possession, as mandated by PCI DSS in the performance of their individual and mutual responsibilities under this Agreement. The contractor agrees to a written disclosure of all data breaches. Such disclosure should be addressed to the Executive Director of OPA or designee.

4.15 Sale of Cardholder Information

The selected Contractor must not sell, rent, or otherwise distribute any information pertaining to participating City employees or other cardholders, including but not limited to the fact of their participation, their addresses, or any other information to any person, firm, or other entity for any purpose.

4.16 Disaster Recovery

To safeguard important data from damage, OPA has backup procedures in place according to the City's Information Security Directive: Archiving and Retention. This policy requires the providers of City agency electronic communications services to implement recovery practices adequate to ensure rapid recovery from security intrusions and service interruptions that must be so done in accordance with the City's Information Security Directive: Business Continuity.

Proposers should describe the procedures and provisions that their financial institutions have implemented to be employed in the event of disaster or equipment failure at the primary processing site(s). With whom do you contract? How many other customers do they have?

Provide information about the providers' disaster recovery plan. What disaster recovery plans does your financial institution have in place to avoid interruptions in service?

4.17 Marketing/Promotion

The selected Contractor must be able to increase awareness of OPA's Payroll Card Services by engaging in marketing campaigns and outreach to eligible City employees. All technical proposals must include a description of any proposed marketing/promotion tools that will be used in such efforts. Examples of some marketing tools include periodic posters about the programs, e-mail notifications and other similar outreach programs. OPA must approve all marketing/promotional materials in advance for use in connection with the Payroll Card Services.

Any Contract resulting from this RFP will contain language in substantially the same form as outlined below regarding ownership and copyright of materials. The City may grant the selected Contractor permission to use the City seal, the name of the City and the names of City officials in the marketing and promotional materials of the payroll card, which grant of permission, shall be governed by the terms and conditions that will be set forth in the Contract. The selected Contractor shall grant permission to use the vendor's name and logo in the marketing and promotional materials, which grant of permission, shall be governed by the terms and conditions that will be set forth in the Contract.

4.18 Ownership and Copyright of Materials

Any reports, documents, data, photographs and/or other materials, including software, produced pursuant to this Contract ("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 subsist. To the extent that the Copyrightable Materials do not qualify as "work-made-for-hire," the selected 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 selected Contractor shall retain no copyright or intellectual property interest in the Copyrightable Materials, and they shall be used by the selected Contractor for no other purpose without the prior written permission of the City. The selected Contractor acknowledges that the City may, in its sole discretion, register copyright in the Copyrightable Materials with the U.S. Copyright Office or any other government agency authorized to grant copyright registrations. The selected Contractor shall cooperate in this effort, and agrees to provide any further documentation necessary to accomplish this. To the extent that any artwork for the Payroll Card does not qualify as a "work-made-for-hire," the artist acknowledges the existence, if any, of his or her statutory moral rights as those rights are described in 17 U.S.C. §106A, and any rights arising under federal or state law or under the laws of any other country that conveys rights of the same nature as those conveyed by 17 U.S.C. § 106A, or any other type of moral right or droit moral. The selected Contractor shall defend, indemnify and hold harmless the City, and their officers, employees and agents, from and against any and all claims, suits, damages, judgments, liabilities, costs and expenses, including reasonable attorney's fees, to which they may be subject because of or related to any claim that the Copyrightable Materials infringe or violate the copyright, trademark, trade name or any other proprietary or personal right of any third party. This indemnification provision shall not be limited in any way by the selected Contractor's obligations to obtain insurance as provided under the Contract.

END OF PAGE

C. GENERAL TERMS AND CONDITIONS

All or part of this RFP and its appendices, attachments and exhibits, the selected Contractor's proposal, any formal questions and presentation material distributed during the proposal process and issues covered during the discussions, may be incorporated into and made a part of the Contract. The RFP may result in multiple contract awards, i.e., one for each of the Payroll Banking Services and one for each of the Optional Services. All Proposers must take into account the need for cooperation between the various contractors, especially if multiple contracts are awarded, and must describe in their proposals how this will be accomplished.

1. Applicable Laws, Rules and Regulations

- In addition to any requirements elsewhere in this document or in the attached General Provisions Governing Contracts for Consultants, Professional, Technical, Human and Client Services, the selected Contractor and Services provided must comply with all applicable Federal, state and City laws, rules and regulations, as well as NACHA Rules.
- The selected Contractor must advise OPA of all regulatory changes that are applicable to the Services during the term and any extension(s) of the Contract and assist the City in ascertaining impacts.
- The selected Contractor must provide quarterly updates of the regulatory and/or EFT industry changes relevant to direct deposit.
- The selected Contractor will be responsible for initiating or notifying the City of those procedural/systemic changes required by any regulatory changes within seven business days of the selected Contractor's receipt of notification of the acceptance of such changes by Federal or other regulatory organizations.

2. Compliance with Local Law 34 of 2007

Pursuant to Local Law 34 of 2007, amending the City's Campaign Finance Law, the City is required to establish a computerized database containing the names of any "person" that has "business dealings with the City" as such terms are defined in the Local Law. In order for the City to obtain necessary information to establish the required database, Proposers responding to this solicitation are required to complete the attached Doing Business Data Form and return it with this RFP and should do so in a separate envelope. (If the Proposer is a joint venture, the entities that comprise the joint venture must each complete a Data Form.) If the City determines that a Proposer has failed to submit a Data Form or has submitted a Data Form that is not complete, the Proposer will be notified by OPA and given four (4) calendar days from receipt of notification to cure the specified deficiencies and return a revised Data Form to OPA. Failure to cure any deficiencies will result in a determination that the proposal is non-responsive. Receipt of notification is defined as the day notice is e-mailed or faxed (if the Proposer has provided an e-mail address or fax number), or no later than five (5) days from the date of mailing or upon delivery, if delivered.

3. Whistleblower Protection Expansion Act Rider

Local Law Nos. 30 and 33 of 2012, codified at sections 6-132 and 12-113 of the New York City Administrative Code, the Whistleblower Protection Expansion Act, protect employees of certain City contractors from adverse personnel action based on whistleblower activity relating to a City

contract and require contractors to post a notice informing employees of their rights. Please read Attachment H, the Whistleblower Protection Expansion Act Rider, carefully.

4. Compliance with the Iran Divestment Act

Pursuant to State Finance Law Section 165-a and General Municipal Law Section 103-g, the City is prohibited from entering into contracts with persons engaged in investment activities in the energy sector of Iran. Each proposer is required to complete the attached Bidders Certification of Compliance with the Iran Divestment Act, certifying that it is not on a list of entities engaged in investments activities in Iran created by the Commissioner of the NYS Office of General Services. If a proposer appears on that list, the Agency/Department will be able to award a contract to such proposer only in situations where the proposer is taking steps to cease its investments in Iran or where the proposer is a necessary sole source. Please refer to Attachment for information on the Iran Divestment Act required for this solicitation and instructions on how to complete the required form and to <http://www.ogs.ny.gov/About/regs/ida.asp> for additional information concerning the list of entities.

5. Subcontractor Compliance Notice

The selected vendor will be required to utilize the City's web based system to identify all subcontractors in order to obtain subcontractor approval pursuant to PPB Rule section 4-13, and will also be required to enter all subcontractor payment information and other related information in such system during the contract term. Please read Attachment I, the subcontractor compliance notice as it relates to competitive solicitations.

6. Sub-Contracting

- Subcontracting will be permitted subject to the terms contained here and in the attached General Provisions Governing Contracts for Consultants, Professional, Technical, Human and Client Services.
- The selected Contractor shall be solely responsible for the performance and quality of all Services under this Contract including those being performed by any subcontractor or other entities of the Contractor's, and shall be the City's sole point of contact for all requirements.
- The selected Contractor shall not enter into a contract for any dollar amount with any subcontractor for the performance of any of the Services under this Contract without the prior written consent of OPA, which consent will not be unreasonably withheld.
- All subcontractors must possess at least the same qualifications as the selected Contractor.
- All terms and conditions of this Contract shall apply to any subcontractor retained by the selected Contractor. The selected Contractor shall so provide in its contract with a subcontractor, shall annex to such contract the provisions of this Contract applicable to the work to be performed by the subcontractor, and shall be responsible for enforcing all such provisions.
- The City and OPA reserve any and all other rights and remedies directly against any party including the sub-Contractor for any breach or failure to perform under the Contract.

7. Quality Control

Proposers must include a detailed description outlining the quality control processes that will be in place to identify, prevent, inform and correct problems in the operation of the Services covered by the Contract. The description must enable the City to evaluate and determine whether the quality control processes meets its needs in a satisfactory manner.

8. Service Level Standards and Associated Compensation Adjustments

- Proposers must explain their service level standards covering the requirements set forth in this RFP, including meeting all applicable industry standards for such services, how the Proposer assigns degrees of severity to each service level deliverable, its internal reporting and management of variances against service level categories, and its process(es) for corrective action for frequent and/or recurring variances. Liquidated damages will be incorporated in any Contract award, based on the degrees of severity for each deliverable.
- The selected Contractor must at a minimum:
 - Provide a report monthly to OPA of any service level categories with variances of 10% or more.
 - For any service category with variances of 10% or more in two (2) or more months in a five (5) month period, provide OPA with a detailed explanation of how the selected Contractor will correct the variance and communicate such corrective action to OPA.
 - Supply a proposal for how OPA will be compensated for individual and/or multiple severe incidents and/or recurring service level variances during the term of the Contract.

9. Failure to Perform Contracted Services

- As further described in any Contract awarded, the selected Contractor shall be liable to the City for any and all damages incurred by the City as the result of the Contractor's failure to perform the Services required under the contract(s) including such Services as survive the expiration of the Contract.
- Such damages may include, but are not limited to:
 - Costs for City staff time and resources (including correspondence or technical programming costs) required to address the selected Contractor's performance failures.
 - Any fees, costs, penalties or additional tax liability incurred by the City or its employees based on the selected Contractor's failures to provide all services prescribed in this RFP in full compliance with relevant laws and regulations.

10. Alternate Solutions and Future Improvements

- Proposers are encouraged to suggest alternate solutions to satisfy the requirements contained in this RFP, and to illustrate their advanced technological, innovative product design, and service capabilities. In addition, Proposers should recommend different solutions that will result in lower costs, greater efficiency, and enhanced controls and protections for the City. OPA will evaluate

all recommendations and may select alternate solutions that, in OPA's judgment, will prove to be beneficial to its Services requirements.

- It is anticipated that during the term of the Contract, changes will occur in the Services provided by the selected Contractor that will result in increased automation, enhanced service, greater access to information, and/or reduced costs. Proposers are asked to explain how, during the term of the Contract, such improvements will be communicated to OPA and how cost reductions will be incorporated into the selected Contractor's pricing to the City.

11. Additional Specific Contract Provisions

In addition to the provisions set forth in the attached General Provisions Governing Contracts for Consultants, Professional, Technical, Human and Client Services, the following contract provisions, in substantially the form that they appear in this Section, will be included in any Contract resulting from this RFP.

a. Security and Confidentiality Requirements

- i.** The selected Contractor must maintain, at all times, the data, systems and premises security and confidentiality requirements established by the applicable Federal, state and local tax and banking laws, as well as the Federal Financial Institutions Examination Council ("FFIEC") for each of the Services covered by this RFP. Special attention must be paid to the secrecy provisions contained in the Internal Revenue Code and the New York State Tax Law and the below confidentiality provisions. Proposers must explain its security compliance programs in as much detail as possible and include details of any equipment, software and/or facilities necessary to obtain the full benefit, and what of those will be provided by the selected Contractor.
- ii.** Proposers must explain in as much detail as possible the procedures that are in place to address any security breach.
- iii.** All persons, who may have access to any Confidential Information, as defined below, or City Information Assets (comprised of City computer systems, electronic data stored, processed, transmitted or printed by City computer systems as well as any peripheral equipment), in the course of carrying out their responsibilities or job function as part of this Contract must comply with the City's Information Security Policies and Standards.
- iv.** The selected Contractor agrees that all records, information or data which it may have access to, examine, prepare, maintain or have custody of and deliver hereunder ("Confidential Information") shall be kept strictly confidential. The selected Contractor shall not at any time during the term of the Contract, or thereafter, make any disclosure or statements or release to any third party any Confidential Information without the prior written approval of OPA.
- v.** The selected Contractor must be responsible for and must agree that it will instruct its officers, employees, and agents, to maintain the confidentiality of any and all Confidential Information and that it will ensure their full compliance with all of these provisions.
- vi.** Upon expiration or termination of this Contract, the selected Contractor must return to OPA any and all Confidential Information in the possession of the selected Contractor or its subcontractors, and permanently delete any and all Confidential Information maintained in any form whatsoever by the selected Contractor or its subcontractors. The selected

Contractor must certify in writing that they completed and complied with this section, and outline in detail the steps taken to demonstrate compliance.

- vii.** A breach of this section shall constitute a material breach of this Contract. OPA reserves any and all other rights and remedies in the event of unauthorized disclosure.
- viii.** These provisions shall survive the expiration or termination of this Contract.

b. Examination of Records

The selected Contractor must agree that the City or its duly appointed and authorized representatives will be granted access to and the right to examine pertinent books, documents, papers, and records relating to the Contract until seven (7) years after final payment has been made or expiration or termination of this Contract, or for a period otherwise prescribed by law, whichever is later, and that such records will be retained for such period of time. Further, such provision must be incorporated into any agreements with subcontractors engaged by the selected Contractor. OPA must have access to all records described herein during normal business hours, Monday through Friday.

c. Indemnification

The selected Contractor shall defend, indemnify and hold the City, its officers, employees and agents harmless from any and all claims (even if the allegations of the suit 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, employees and its agents may be subjected or which it may suffer or incur allegedly arising out of or in connection with any operations of the Contractor, its officers, employees, agents and/or its sub-contractors 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 Contract 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 provided by law.

d. Insurance

The selected Contractor will be required to maintain in effect the following insurance as of the date of execution of the Contract:

- i.** Commercial general liability insurance providing coverage of at least \$3 million per occurrence for personal injury (including death) and property damage resulting from the negligence, fault or default of the Contractor or any of its partners, members, employees, subcontractors or volunteers. Contractor represents that it has or will have the City included as an additional insured under the policy and will provide the certificate of insurance or other evidence of such coverage. Such coverage may be provided by the use of an excess or umbrella liability policy.
- ii.** The selected Contractor shall also have professional indemnity insurance providing a minimum of \$25 million per claim for losses resulting from claims by the City for negligence, wrongful acts, malfeasance, errors or omissions of the Contractor or any of its partners, members, employees, subcontractors or volunteers.

e. Workers' Compensation and Disability Benefits

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 individuals providing services under this Contract.

f. Unemployment Insurance

To the extent required by Law, the selected Contractor shall provide and ensure that each subcontractor provide Unemployment Insurance for its employees.

END OF PAGE

SECTION IV — FORMAT AND CONTENT OF THE PROPOSAL

Instructions: Proposers should provide all information required in the format below. The proposal should be typed on both sides of 8 ½" X 11" paper. The City requests that all proposals be submitted on paper with no less than 30% postconsumer material content, i.e., the minimum recovered fiber content level for reprographic papers recommended by the United States Environmental Protection Agency (for any changes to that standard please consult: <http://www.epa.gov/cpg/products/printing.htm>). Pages should be paginated. The proposal will be evaluated on the basis of its content, not length. Failure to comply with any of these instructions will not make the proposal non-responsive.

A. PROPOSAL FORMAT

1. Proposal Cover Letter

The Proposal Cover Letter form (Attachment A) transmits the Proposer's Proposal Package to OPA. It should be completed, signed and dated by an authorized representative of the Proposer.

2. Technical Proposal

The Technical Proposal is a clear, concise narrative which addresses the following:

a) Contractor Experience

The selected Contractor will have the following minimum experiences and capacities:

- Have a minimum of 7 years relevant experience providing the services required by this RFP.
- Assign staff to support the City's operating requirements who have a minimum of 5 years relevant experience delivering the Services required by this RFP.
- Demonstrate that the key persons assigned to the Contract have the relevant experience and qualifications required and that the identified key staff, or similarly qualified persons, would be available for the duration of the Contract. This includes providing resumes of key staff who will be assigned to the Contract. OPA will accept other personnel throughout the term of the Contract so long as the qualifications of those individuals are similar to that of the originally identified key staff.
- Provide a minimum of two references (preferably a substantial City or other government entity) including the name of the reference; a brief statement describing the relationship between the Proposer and the reference; and the name, title and telephone number of a contact person at the reference. Please obtain prior approval for the City to contact the references.

b) Organizational & Financial Capacity

All Proposers must meet the minimum qualification requirements addressed above, and must demonstrate:

- Organizational (technical, management and financial) capability to provide the services described in this RFP
- The capacity to integrate the proposed services into its organization

- Fiscal soundness and capability to manage the proposed Services

Please provide two (2) years' Audited Annual Reports to the Proposer's Shareholders. Printed documents or URLs at which the reports can be retrieved are acceptable.

Any Proposer capable of supporting the required Services and who meets the minimum qualification requirements set forth elsewhere in this document may respond to this RFP.

c) **Proposed Approach**

Describe in detail how the Proposer will meet the requirements described in Section III (Scope of Services) and demonstrate that the Proposer's approach will fulfill OPA's goals and objectives.

This RFP sets forth OPA's assumptions regarding the approach that OPA believes to be most likely to achieve its goals and objectives. However, each Proposer is encouraged to propose a different approach that it believes is most likely to achieve OPA's goals and objectives.

Proposers may also suggest more than one approach. However, if an alternate approach affects other areas of the proposal such as experience, organizational capability or price, that alternate approach should be submitted as a complete and separate proposal providing all the information specified in Section IV of this RFP.

3. **Price Proposal**

The Price Proposal should include price per unit of service and total offering price in the format prescribed in the Price Proposal form attached as Attachment B. Nonetheless, the Proposers are encouraged to propose innovative payment structures. Proposers who wish to submit an innovative payment structure must submit *two* separate price proposals (one proposal on Attachment B and another for innovative payment). OPA reserves the right to select any payment structure that is in the City's best interest.

4. **Acknowledgment of Addenda**

The Acknowledgment of Addenda form (Attachment B) serves as the Proposer's acknowledgment of the receipt of addenda to this RFP which may have been issued by the Agency prior to the Proposal Due Date and Time, as set forth in Section I (D), above. The Proposer should complete this form as instructed on the form. (see Attachment C).

B. **PROPOSAL PACKAGE CONTENTS ("CHECKLIST")**

The Proposal package should contain the following materials. Each Proposer should utilize this section as a "checklist" to assure completeness prior to submitting its proposal to OPA.

1. A sealed inner envelope labeled "Program Proposal," containing one hard copy original set, one copy on write-protected CD, and ten (10) duplicate hard copy sets of the documents listed below in the following order:
 - Proposal Cover Letter Form (Attachment A)
 - Technical Proposal including any sample reports, check stock, etc.
 - Narrative

- References for the Proposer and, if applicable, each Sub-Contractor
 - Resumes and/or Description of Qualifications for Key Staff Positions
 - Organizational Chart
 - Audit Reports or Certified Financial Statements for the two most recent years or a statement as to why no reports or statements are available
 - Acknowledgment of Addenda Form (Attachment C)
2. A separate sealed inner envelope labeled “Price Proposal” containing one hard copy original, one copy on write-protected CD or flash drive, and ten (10) duplicate hard-copy sets of the Price Proposal.
- Price Proposal Form
3. All proposals must contain a third sealed inner envelope labeled “Doing Business Data Form” containing an original, completed Doing Business Data Form (see Attachment F).
4. A sealed outer envelope, enclosing the three sealed inner envelopes. The sealed outer envelope should have two labels containing:
- The Proposer’s name and address, the Title and PIN # of this RFP and the name and telephone number of the Proposer’s Contact Person.
 - The name, title and address of the Authorized OPA Contact Person.

END OF PAGE

SECTION V — PROPOSAL EVALUATION AND CONTRACT AWARD PROCEDURES

A. EVALUATION PROCEDURES

All proposals accepted by OPA will be reviewed to determine whether they are responsive and whether the Proposer is responsible with respect to the requisites of this RFP. Proposals that are determined by OPA to be non-responsive will be rejected, as will proposals of non-responsible vendors. OPA's Evaluation Committee will evaluate and rate all remaining proposals based on the Evaluation Criteria prescribed below. OPA reserves the right to conduct site visits and/or interviews and/or to require that Proposers make presentations and/or demonstrations, as OPA deems applicable and appropriate. Although discussions may be conducted with Proposers submitting acceptable proposals, OPA reserves the right to award contracts on the basis of initial proposals received, without discussions; therefore, the Proposer's initial proposal should contain its best technical and price terms.

B. EVALUATION CRITERIA

Demonstrated quantity and quality of successful relevant experience.	35%
Demonstrated level of organizational capability.	10%
Quality of proposed approach.	55%

C. BASIS FOR CONTRACT AWARD

A Contract will be awarded to the responsible Proposer whose proposal is determined to be the most advantageous to the City, taking into consideration the technical proposal, price and such other factors or criteria that are set forth in this RFP. Contract award shall be subject to the timely completion of Contract negotiations between OPA and the selected Proposer. OPA reserves the right to award multiple contracts that are most advantageous to the City. For example, a separate contract may be issued for each of: payroll processing by paper check, EFT payroll as well as for any of the Optional Services.

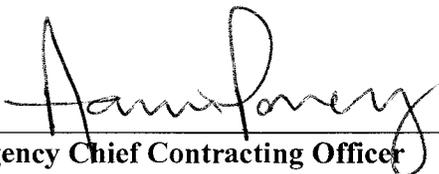
END OF PAGE

SECTION VI—GENERAL INFORMATION TO PROPOSERS

- A. Complaints:** The New York City Comptroller is charged with the audit of contracts in New York City. Any proposer who believes that there has been unfairness, favoritism or impropriety in the proposal process should inform the Comptroller, Office of Contract Administration, 1 Centre Street, Room 1005, New York, NY 10007; contract@comptroller.nyc.gov, or at (212) 669-2323. In addition, the New York City Department of Investigation should be informed of such complaints at its Investigations Division, 80 Maiden Lane, New York, NY 10038; the telephone number is (212) 825-5959.
- B. Applicable Laws:** This Request for Proposals and the resulting contract award(s), if any, unless otherwise stated, are subject to all applicable provisions of New York State Law, the New York City Administrative Code, New York City Charter and New York City Procurement Policy Board (PPB) Rules. A copy of the PPB Rules may be obtained by contacting the PPB at (212) 788-0010 or at: <http://www.nyc.gov/html/mocs/ppb/html/home/home.shtml>.
- C. General Contract Provisions:** Contracts shall be subject to New York City’s general contract provisions, in substantially the form that they appear in “Appendix A—General Provisions Governing Contracts for Consultants, Professional and Technical Services” or, if the Agency utilizes other than the formal Appendix A, in substantially the form that they appear in the Agency’s general contract provisions. A copy of the applicable document is available through the Authorized Agency Contact Person.
- D. Contract Award:** Contract award is subject to each of the following applicable conditions and any others that may apply: New York City Fair Share Criteria; New York City MacBride Principles Law; submission by the proposer of the requisite New York City Department of Business Services/Division of Labor Services Employment Report and certification by that office; submission by the proposer of the requisite VENDEX Questionnaires/Affidavits of No Change and review of the information contained therein by the New York City Department of Investigation; all other required oversight approvals; applicable provisions of federal, state and local laws and executive orders requiring affirmative action and equal employment opportunity; and Section 6-108.1 of the New York City Administrative Code relating to the Local Based Enterprises program and its implementation rules.
- E. Proposer Appeal Rights:** Pursuant to New York City’s Procurement Policy Board Rules, proposers have the right to appeal Agency non-responsiveness determinations and Agency non-responsibility determinations and to protest an Agency’s determination regarding the solicitation or award of a contract.
- F. Multi-Year Contracts:** Multi-year contracts are subject to modification or cancellation if adequate funds are not appropriated to the Agency to support continuation of performance in any City fiscal year succeeding the first fiscal year and/or if the contractor’s performance is not satisfactory. The Agency will notify the contractor as soon as is practicable that the funds are, or are not, available for the continuation of the multi-year contract for each succeeding City fiscal year. In the event of cancellation, the contractor will be reimbursed for those costs, if any, which are so provided for in the contract.
- G. Prompt Payment Policy:** Pursuant to the New York City’s Procurement Policy Board Rules, it is the policy of the City to process contract payments efficiently and expeditiously.
- H. Prices Irrevocable:** Prices proposed by the proposer shall be irrevocable until contract award, unless the proposal is withdrawn. Proposals may only be withdrawn by submitting a written request

to the Agency prior to contract award but after the expiration of 90 days after the opening of proposals. This shall not limit the discretion of the Agency to request proposers to revise proposed prices through the submission of best and final offers and/or the conduct of negotiations.

- I. **Confidential, Proprietary Information or Trade Secrets:** Proposers should give specific attention to the identification of those portions of their proposals that they deem to be confidential, proprietary information or trade secrets and provide any justification of why such materials, upon request, should not be disclosed by the City. Such information must be easily separable from the non-confidential sections of the proposal. All information not so identified may be disclosed by the City.
- J. **RFP Postponement/Cancellation:** The Agency reserves the right to postpone or cancel this RFP, in whole or in part, and to reject all proposals.
- K. **Proposer Costs:** Proposers will not be reimbursed for any costs incurred to prepare proposals.
- L. **Vendex Fees:** Pursuant to PPB Rule 2-08(f)(2), the contractor will be charged a fee for the administration of the Vendex system, including the Vendor Name Check Process, if a Vendor Name Check review is required to be conducted by the Department of Investigation. The contractor shall also be required to pay the applicable fees for any of its subcontractors for which Vendor Name Check reviews are required. The fee(s) will be deducted from payments made to the contractor under the contract. For contracts with an estimated value of less than or equal to \$1,000,000, the fee will be \$175. For contracts with an estimated value of greater than \$1,000,000, the fee will be \$350. The estimated value for each contract resulting from this RFP is estimated to be (less than or equal to \$1million) (above \$1million).
- M. **Charter Section 312(a) Certification.**
OPA has determined that the contract(s) to be awarded through this Request for Proposals will *not* result in the displacement of any New York City employee within this Agency.



Agency Chief Contracting Officer

7/18/2014

Date

END OF PAGE

ATTACHMENT A
PROPOSAL COVER LETTER

RFP TITLE: BANKING SERVICES

PIN #: 1312013BANKRFP

PROPOSER:

NAME: _____

ADDRESS: _____

TAX IDENTIFICATION #: _____

PROPOSER'S CONTACT PERSON:

NAME: _____

TITLE: _____

TELEPHONE #: _____

E-MAIL ADDRESS: _____

PROPOSER'S AUTHORIZED REPRESENTATIVE:

NAME: _____

TITLE: _____

E-MAIL ADDRESS: _____

SIGNATURE: _____

DATE: _____

ATTACHMENT C
ACKNOWLEDGEMENT OF ADDENDA

<u>RFP TITLE</u> BANKING SERVICES	<u>PIN #</u> 1312013BANKRFP
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DIRECTION: COMPLETE PART I, OR PART II, WHICH EVER IS APPLICABLE

PART I: LISTED BELOW ARE THE DATES OF ISSUE FOR EACH ADDENDUM RECEIVED IN CONNECTION WITH THIS RFP.

- ADDENDUM #1, DATED _____, 20_____
- ADDENDUM #2, DATED _____, 20_____
- ADDENDUM #3, DATED _____, 20_____
- ADDENDUM #4, DATED _____, 20_____
- ADDENDUM #5, DATED _____, 20_____
- ADDENDUM #6, DATED _____, 20_____
- ADDENDUM #7, DATED _____, 20_____
- ADDENDUM #8, DATED _____, 20_____
- ADDENDUM #9, DATED _____, 20_____

PART II:

_____ NO ADDENDUM WAS RECEIVED IN CONNECTION WITH THIS RFP

PROPOSER (NAME): _____ **DATE:** _____

PROPOSER (SIGNATURE): _____

ATTACHMENT D
TAX AFFIRMATION FORM
RFP TITLE: BANKING SERVICES
PIN #: 1312013BANKRFP

The undersigned Proposer affirms and declares that said Proposer 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 that relates to the responsibility or qualification of the Proposer to receive public contracts, except:

Full name of Proposer or Bidder: _____

Address: _____

City: _____ **State** _____ **Zip Code** _____

CHECK ONE BOX AND INCLUDE APPROPRIATE NUMBER:

- A - Individual or Sole Proprietorship
SOCIAL SECURITY NUMBER

- B - Partnership, Joint Venture or other unincorporated organization
EMPLOYER IDENTIFICATION NUMBER

- C – Corporation
EMPLOYER IDENTIFICATION NUMBER

BY: _____
Signature

Title

If a corporation place seal here
Must be signed by an officer or duly authorized representative.

ATTACHMENT E

VENDEX INFORMATION

NOTICE TO CITY VENDORS - VENDEX PROCEDURES

VENDEX stands for the Vendor Information Exchange System, a database of information of vendors who do business with the City. This database is maintained by the Mayor's Office of Contract Services (MOCS). Most of the information that is placed on the database comes from the VENDEX forms which vendors must fill out for certain types of contracts or when certain thresholds are reached. This is one of the tools that City agencies use in order to determine a vendor's responsibility.

MOCS occasionally releases updated forms, vendors should verify with MOCS that they are using the most up to date forms and following the most up to date processes.

For more information regarding the VENDEX forms or system, please contact the VENDEX Unit at 212-341-0933, or visit:

<http://www.nyc.gov/html/selltonyc/html/vendor/forms.shtml>.

ATTACHMENT F

COMPLIANCE WITH LOCAL LAW 34 OF 2007

Local Law 34 of 2007 (LL 34) requires the creation of a database containing information about entities that do business with the City as defined by the law, and principal officers, owners and senior managers of these entities. This information will be collected on Doing Business Data Forms that are distributed, collected and reviewed by agencies, and forwarded to the Doing Business Accountability Project (DBAP) at MOCS for processing. Collected data will be used to identify entities and people who are subject to LL 34's limitations on campaign contributions in municipal elections.

If you have any questions or concerns, please contact the DBAP at 212-788-8104 or DoingBusiness@cityhall.nyc.gov.



Doing Business Data Form

To be completed prior to distribution			
Agency: OPA-131		Transaction ID: 1312013BANKRFP	
Check One: <input checked="" type="checkbox"/> Proposal <input type="checkbox"/> Award	Transaction Type (check one): <input type="checkbox"/> Concession <input checked="" type="checkbox"/> Contract <input type="checkbox"/> Economic Development Agreement <input type="checkbox"/> Franchise <input type="checkbox"/> Grant <input type="checkbox"/> Pension Investment Contract		

Any entity receiving, applying for or proposing on an award or agreement must complete a Doing Business Data Form (see Q&A sheet for more information). Please either type responses directly into this fillable form or print answers by hand in black ink, and be sure to fill out the certification box on the last page. **Submission of a complete and accurate form is required for a proposal to be considered responsive or for any entity to receive an award or enter into an agreement.**

This Data Form requires information to be provided on principal officers, owners and senior managers. The name, employer and title of each person identified on the Data Form will be included in a public database of people who do business with the City of New York; no other information reported on this form will be disclosed to the public. **This Data Form is not related to the City's VENDEX requirements.**

Please return the completed Data Form to the City office that supplied it. Please contact the Doing Business Accountability Project at DoingBusiness@cityhall.nyc.gov or 212-788-8104 with any questions regarding this Data Form. Thank you for your cooperation.

Section 1: Entity Information

Entity Name: _____

Entity EIN/TIN: _____

Entity Filing Status (select one):

- Entity has never completed a Doing Business Data Form. *Fill out the entire form.*
- Change from previous Data Form dated _____. *Fill out only those sections that have changed, and indicate the name of the persons who no longer hold positions with the entity.*
- No Change from previous Data Form dated _____. *Skip to the bottom of the last page.*

Entity is a Non-Profit: Yes No

Entity Type: Corporation (any type) Joint Venture LLC Partnership (any type)
 Sole Proprietor Other (specify): _____

Address: _____

City: _____ State: _____ Zip: _____

Phone : _____ Fax : _____

E-mail: _____

Provide your e-mail address and/or fax number in order to receive notices regarding this form by e-mail or fax.

Section 2: Principal Officers

Please fill in the required identification information for each officer listed below. If the entity has no such officer or its equivalent, please check "This position does not exist." If the entity is filing a Change Form and the person listed is replacing someone who was previously disclosed, please check "This person replaced..." and fill in the name of the person being replaced so his/her name can be removed from the *Doing Business Database*, and indicate the date that the change became effective.

Chief Executive Officer (CEO) or equivalent officer This position does not exist

The highest ranking officer or manager, such as the President, Executive Director, Sole Proprietor or Chairperson of the Board.

First Name: _____ MI: _____ Last: _____

Office Title: _____

Employer (if not employed by entity): _____

Birth Date (mm/dd/yy): _____ Home Phone #: _____

Home Address: _____

This person replaced former CEO: _____ on date: _____

Chief Financial Officer (CFO) or equivalent officer This position does not exist

The highest ranking financial officer, such as the Treasurer, Comptroller, Financial Director or VP for Finance.

First Name: _____ MI: _____ Last: _____

Office Title: _____

Employer (if not employed by entity): _____

Birth Date (mm/dd/yy): _____ Home Phone #: _____

Home Address: _____

This person replaced former CFO: _____ on date: _____

Chief Operating Officer (COO) or equivalent officer This position does not exist

The highest ranking operational officer, such as the Chief Planning Officer, Director of Operations or VP for Operations.

First Name: _____ MI: _____ Last: _____

Office Title: _____

Employer (if not employed by entity): _____

Birth Date (mm/dd/yy): _____ Home Phone #: _____

Home Address: _____

This person replaced former COO: _____ on date: _____

Section 3: Principal Owners

Please fill in the required identification information for all individuals who, through stock shares, partnership agreements or other means, **own or control 10% or more of the entity**. If no individual owners exist, please check the appropriate box to indicate why and skip to the next page. If the entity is owned by other companies, those companies do **not** need to be listed. If an owner was identified on the previous page, fill in his/her name and write "See above." If the entity is filing a Change Form, list any individuals who are no longer owners at the bottom of this page. If more space is needed, attach additional pages labeled "Additional Owners."

There are no owners listed because (select one):

- The entity is not-for-profit There are no individual owners No individual owner holds 10% or more shares in the entity
 Other (explain): _____

Principal Owners (who own or control 10% or more of the entity):

First Name: _____ MI: _____ Last: _____
 Office Title: _____
 Employer (if not employed by entity): _____
 Birth Date (mm/dd/yy): _____ Home Phone #: _____
 Home Address: _____

First Name: _____ MI: _____ Last: _____
 Office Title: _____
 Employer (if not employed by entity): _____
 Birth Date (mm/dd/yy): _____ Home Phone #: _____
 Home Address: _____

First Name: _____ MI: _____ Last: _____
 Office Title: _____
 Employer (if not employed by entity): _____
 Birth Date (mm/dd/yy): _____ Home Phone #: _____
 Home Address: _____

Remove the following previously-reported Principal Owners:

Name: _____ Removal Date: _____
 Name: _____ Removal Date: _____
 Name: _____ Removal Date: _____

Section 4: Senior Managers

Please fill in the required identification information for all senior managers who oversee any of the entity's relevant transactions with the City (e.g., contract managers if this form is for a contract award/proposal, grant managers if for a grant, etc.). Senior managers include anyone who, either by title or duties, has substantial discretion and high-level oversight regarding the solicitation, letting or administration of any transaction with the City. **At least one senior manager must be listed, or the Data Form will be considered incomplete.** If a senior manager has been identified on a previous page, fill in his/her name and write "See above." If the entity is filing a Change Form, list individuals who are no longer senior managers at the bottom of this section. If more space is needed, attach additional pages labeled "Additional Senior Managers."

Senior Managers:

First Name: _____ MI: _____ Last: _____

Office Title: _____

Employer (if not employed by entity): _____

Birth Date (mm/dd/yy): _____ Home Phone #: _____

Home Address: _____

First Name: _____ MI: _____ Last: _____

Office Title: _____

Employer (if not employed by entity): _____

Birth Date (mm/dd/yy): _____ Home Phone #: _____

Home Address: _____

First Name: _____ MI: _____ Last: _____

Office Title: _____

Employer (if not employed by entity): _____

Birth Date (mm/dd/yy): _____ Home Phone #:

_____ Home Address: _____

Remove the following previously-reported Senior Managers:

Name: _____ Removal Date: _____

Name: _____ Removal Date: _____

Certification

I certify that the information submitted on these four pages and _____ additional pages is accurate and complete. I understand that willful or fraudulent submission of a materially false statement may result in the entity being found non-responsible and therefore denied future City awards.

Name: _____

Signature: _____ Date: _____

Entity Name: _____

Title: _____ Work Phone #: _____

Return the completed Data Form to the agency that supplied it.

For information or assistance, call the Doing Business Accountability Project at 212-788-8104.



ATTACHMENT G

IRAN DIVESTMENT ACT COMPLIANCE RIDER FOR NEW YORK CITY CONTRACTORS

The Iran Divestment Act of 2012, effective as of April 12, 2012, is codified at State Finance Law ("SFL") §165-a and General Municipal Law ("GML") §103-9. The Iran Divestment Act, with certain exceptions, prohibits municipalities, including the City' from entering into contracts with persons engaged in investment activities in the energy sector of Iran. Pursuant to the terms set forth in SFL §165-a and GML §103-g, a person engages in investment activities in the energy sector of Iran if:

- a) the person provides goods or services of twenty million dollars or more in the energy sector of Iran, including a person that provides oil or liquefied natural gas tankers, or products used to construct or maintain pipelines used to transport oil or liquefied natural gas, for the energy sector of Iran; or
- b) The person is a financial institution that extends twenty million dollars or more in credit to another person' for forty-five days or more, if that person will use the credit to provide goods or services in the energy sector in Iran and is identified on a list created pursuant to paragraph (b) of subdivision three of Section 165-a of the State Finance Law and maintained by the Commissioner of the Office of General Services.

A bid or proposal shall not be considered for award nor shall any award be made where the bidder or proposer fails to submit a signed and verified bidder's certification.

Each bidder or proposer must certify that it is not on the list of entities engaged in investment activities in Iran created pursuant to paragraph (b) of subdivision 3 of Section 165-a of the State Finance Law. In any case where the bidder or proposer cannot certify that they are not on such list, the bidder or proposer shall so state and shall furnish with the bid or proposal a signed statement which sets forth in detail the reasons why such statement cannot be made. The City of New York may award a bid to a bidder who cannot make the certification on a case by case basis if:

(1) The investment activities in Iran were made before the effective date of this section (i.e., April 12, 2012), the investment activities in Iran have not been expanded or renewed after the effective date of this section and the person has adopted, publicized and is implementing a formal plan to cease the investment activities in Iran and to refrain from engaging in any new investments in Iran: or

(2) The City makes a determination that the goods or services are necessary for the City to perform its functions and that, absent such an exemption, the City would be unable to obtain the goods or services for which the contract is offered. Such determination shall be made in writing and shall be a public document.

ATTACHMENT G
BIDDER'S CERTIFICATION OF COMPLIANCE WITH
IRAN DIVESTMENT ACT

Pursuant to General Municipal Law §103-9, which generally prohibits the City from entering into contracts with persons engaged in investment activities in the energy sector of Iran, the bidder/proposer submits the following certification:

[Please Check One]

BIDDER'S CERTIFICATION

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

- I am unable to certify that my name and the name of the bidder/proposer does not appear on the list created pursuant to paragraph (b) of subdivision 3 of Section 165-a of the State Finance Law. I have attached a signed statement setting forth in detail why I cannot so certify.

Dated: _____, New York
_____, 20____

SIGNATURE

PRINTED NAME

TITLE

Sworn to before me this

_____ day of _____, 2014

Notary Public

Dated:

ATTACHMENT H

WHISTLEBLOWER PROTECTION EXPANSION ACT RIDER

1. In accordance with Local Law Nos. 30-2012 and 33-2012, codified at sections 6-132 and 12-113 of the New York City Administrative Code, respectively,
 - (a) Contractor shall not take an adverse personnel action with respect to an officer or employee in retaliation for such officer or employee making a report of information concerning conduct which such officer or employee knows or reasonably believes to involve corruption, criminal activity, conflict of interest, gross mismanagement or abuse of authority by any officer or employee relating to this Contract to (i) the Commissioner of the Department of Investigation, (ii) a member of the New York City Council, the Public Advocate, or the Comptroller, or (iii) the City Chief Procurement Officer, ACCO, Agency head, or Commissioner.
 - (b) If any of Contractor's officers or employees believes that he or she has been the subject of an adverse personnel action in violation of subparagraph (a) of paragraph 1 of this rider, he or she shall be entitled to bring a cause of action against Contractor to recover all relief necessary to make him or her whole. Such relief may include but is not limited to: (i) an injunction to restrain continued retaliation, (ii) reinstatement to the position such employee would have had but for the retaliation or to an equivalent position, (iii) reinstatement of full fringe benefits and seniority rights, (iv) payment of two times back pay, plus interest, and (v) compensation for any special damages sustained as a result of the retaliation, including litigation costs and reasonable attorney's fees.
 - (c) Contractor shall post a notice provided by the City in a prominent and accessible place on any site where work pursuant to the Contract is performed that contains information about:
 - (i) how its employees can report to the New York City Department of Investigation allegations of fraud, false claims, criminality or corruption arising out of or in connection with the Contract; and
 - (ii) the rights and remedies afforded to its employees under New York City Administrative Code sections 7-805 (the New York City False Claims Act) and 12-113 (the Whistleblower Protection Expansion Act) for lawful acts taken in connection with the reporting of allegations of fraud, false claims, criminality or corruption in connection with the Contract.

(d) For the purposes of this rider, “adverse personnel action” includes dismissal, demotion, suspension, disciplinary action, negative performance evaluation, any action resulting in loss of staff, office space, equipment or other benefit, failure to appoint, failure to promote, or any transfer or assignment or failure to transfer or assign against the wishes of the affected officer or employee.

(e) This rider is applicable to all of Contractor’s subcontractors having subcontracts with a value in excess of \$100,000; accordingly, Contractor shall include this rider in all subcontracts with a value a value in excess of \$100,000.

1. Paragraph 1 is *not* applicable to this Contract if it is valued at \$100,000 or less. Subparagraphs (a), (b), (d), and (e) of paragraph 1 are not applicable to this Contract if it was solicited pursuant to a finding of an emergency. Subparagraph (c) of paragraph 1 is neither applicable to this Contract if it was solicited prior to October 18, 2012 nor if it is a renewal of a contract executed prior to October 18, 2012.

NOTICE TO BIDDERS, PROPOSERS, CONTRACTORS, AND RENEWAL CONTRACTORS

This contract includes a provision concerning the protection of employees for whistleblowing activity, pursuant to New York City Local Law Nos. 30-2012 and 33-2012, effective October 18, 2012 and September 18, 2012, respectively. The provisions apply to contracts with a value in excess of \$100,000.

Local Law No. 33-2012, the Whistleblower Protection Expansion Act (“WPEA”), prohibits a contractor or its subcontractor from taking an adverse personnel action against an employee or officer for whistleblower activity in connection with a City contract; requires that certain City contracts include a provision to that effect; and provides that a contractor or subcontractor may be subject to penalties and injunctive relief if a court finds that it retaliated in violation of the WPEA. The WPEA is codified at Section 12-113 of the New York City Administrative Code.

Local Law No. 30-2012 requires a contractor to prominently post information explaining how its employees can report allegations of fraud, false claims, criminality, or corruption in connection with a City contract to City officials and the rights and remedies afforded to employees for whistleblowing activity. Local Law No. 30-2012 is codified at Section 6-132 of the New York City Administrative Code.

ATTACHMENT I

SUBCONTRACTING COMPLIANCE NOTICE

As of March 2013 the City has implemented a new web based subcontractor reporting system through the City's Payee Information Portal (PIP), available at www.nyc.gov/pip. In order to use the new system, a PIP account will be required. Detailed instructions on creating a PIP account and using the new system are also available at that site. Additional assistance with PIP may be received by emailing the Financial Information Services Agency Help Desk at pip@fisa.nyc.gov.

In order to obtain subcontractor approval under section 3.02 of Appendix A or Article 17 of the Standard Construction Contract and PPB Rule § 4-13 Contractor is required to list the subcontractor in the system. For each subcontractor listed, Contractor is required to provide the following information: maximum contract value, description of subcontractor work, start and end date of the subcontract and identification of the subcontractor's industry. Thereafter, Contractor will be required to report in the system the payments made to each subcontractor within 30 days of making the payment. If any of the required information changes throughout the term of the contract, Contractor will be required to revise the information in the system.

Failure of the Contractor to list a subcontractor and/or to report subcontractor payments in a timely fashion may result in the Agency declaring the Contractor in default of the Contract and will subject Contractor to liquidated damages in the amount of \$100 per day for each day that the Contractor fails to identify a subcontractor along with the required information about the subcontractor and/or fails to report payments to a subcontractor, beyond the time frames set forth herein or in the notice from the City. For construction contracts, the provisions of Article 15 of the Standard Construction Contract shall govern the issue of liquidated damages.

Contractor hereby agrees to these provisions.

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.

[PARAGRAPHS D-H ARE APPLICABLE ONLY TO HUMAN OR CLIENT SERVICE CONTRACTS.]

D. Except as provided in Paragraph E below, the Contractor's employees and members of their immediate families, as defined in Paragraph F below, may not serve on the Board of Directors of the Contractor ("Board"), or any committee with authority to order personnel actions affecting his or her job, or which, either by rule or by practice, regularly nominates, recommends or screens candidates for employment in the program to be operated pursuant to this Agreement.

E. If the Board has more than five (5) members, then Contractor's employees and members of their immediate families may serve on the Board, or any committee with authority to order personnel actions affecting his or her job, or which, either by rule or by practice, regularly nominates, recommends or screens candidates for employment in the program to be operated pursuant to this Agreement, provided that (i) Contractor's employees and members of their immediate families are prohibited from voting on any such personnel matters, including but not limited to any matters directly affecting their own salary or other compensation, and shall fully disclose all conflicts and potential conflicts to the Board, and (ii) Contractor's employees and members of their immediate families may not serve in the capacity either of Chairperson or Treasurer of the Board (or equivalent titles), nor constitute more than one-third of either the Board or any such committee.

F. Without the prior written consent of the Commissioner, no person may hold a job or position with the Contractor over which a member of his or her immediate family exercises any supervisory, managerial or other authority whatsoever whether such authority is reflected in a job title or otherwise, unless such job or position is wholly voluntary and unpaid. A member of an immediate family includes: husband, wife, domestic partner, father, father-in-law, mother, mother-in-law, brother, brother-in-law, sister, sister-in-law, son, son-in-law, daughter, daughter-in-law, niece, nephew, aunt, uncle, first cousin, and separated spouse. Where a member of an immediate family has that status because of that person's relationship to a spouse (e.g., father-in-law), that status shall also apply to a relative of a domestic partner. For purposes of this Section, a member of the Board is deemed to exercise authority over all employees of the Contractor.

G. If the Contractor has contracts with the City that in the aggregate during any twelve-month period have a value of more than One Million Dollars (\$1,000,000) and such amount constitutes more than fifty percent (50%) of the Contractor's total revenues, then the Contractor must have a minimum of five (5) persons on its Board.

H. Paragraphs D-H of this Section 2.02 apply only if Contractor is a not-for-profit corporation.

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

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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, 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.

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 for which Professional Liability Insurance is reasonably commercially available 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 the most recently issued ISO Form CA0001.

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.

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;

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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 [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.

Section 7.09 Miscellaneous

A. Whenever notice of loss, damage, occurrence, accident, claim or suit is required under a general liability policy maintained in accordance with this Article, the Contractor shall

provide the insurer with timely notice thereof on behalf of the City. Such notice shall be given even where the Contractor may not have coverage under such policy (for example, where one of Contractor's employees was injured). Such notice shall expressly specify that "this notice is being given on behalf of the City of New York as Additional Insured" and 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; the identity of the persons or things injured, damaged, or lost; and the title of the claim or suit, if applicable. 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. If the Contractor fails to comply with the requirements of this paragraph, the Contractor shall indemnify the City for all losses, judgments, settlements and expenses, including reasonable attorneys' fees, arising from an insurer's disclaimer of coverage citing late notice by or on behalf of the City.

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 the most recently issued 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 Voter Registration

A. Participating Agencies. Pursuant to Charter § 1057-a, if this Agreement is with a participating City agency and the Contractor has regular contact with the public in the daily administration of its business, the Contractor must comply with the requirements of this Section. The participating City agencies are: the Administration for Children's Services; the City Clerk; the Civilian Complaint Review Board; the Commission on Human Rights; Community Boards; the Department of Small Business Services; the Department of Citywide Administrative Services; the Department of Consumer Affairs; the Department of Correction; the Department of Environmental Protection; the Department of Finance; the Department of Health and Mental Health; the Department of Homeless Services; the Department of Housing Preservation and Development; the Department of Parks and Recreation; the Department of Probation; the Taxi and Limousine Commission; the Department of Transportation; and the Department of Youth and Community Development.

B. Distribution of Voter Registration Forms. In accordance with Charter § 1057-a, the Contractor, if it has regular contact with the public in the daily administration of its business under this Agreement, hereby agrees as follows:

1. The Contractor shall provide and distribute voter registration forms to all persons together with written applications for services, renewal, or recertification for services and change of address relating to such services. Such voter registration forms shall be provided to the Contractor by the City. The Contractor should be prepared to provide forms written in Spanish or Chinese, and shall obtain a sufficient supply of such forms from the City.

2. The Contractor shall also include a voter registration form with any Contractor communication sent through the United States mail for the purpose of supplying clients with materials for application, renewal, or recertification for services and change of address relating to such services. If forms written in Spanish or Chinese are not provided in such mailing, the Contractor shall provide such forms upon the Department's request.

3. The Contractor shall, subject to approval by the Department, incorporate an opportunity to request a voter registration application into any application for services, renewal, or recertification for services and change of address relating to such services provided on computer terminals, the World Wide Web or the Internet. Any person indicating that they wish to be sent a voter registration form via computer terminals, the World Wide Web or the Internet shall be sent such a form by the Contractor or be directed, in a manner subject to approval by the Department, to a link on that system where such a form may be downloaded.

4. The Contractor shall, at the earliest practicable or next regularly scheduled printing of its own forms, subject to approval by the Department, physically incorporate the voter registration forms with its own application forms in a manner that permits the voter registration portion to be detached therefrom. Until such time when the Contractor amends its form, the Contractor should affix or include a postage-paid City Board of Elections voter registration form to or with its application, renewal, recertification, and change of address forms.

5. The Contractor shall prominently display in its public office, subject to approval by the Department, promotional materials designed and approved by the City or State Board of Elections.

6. For the purposes of Paragraph A of this Section, the word "Contractor" shall be deemed to include subcontractors having regular contact with the public in the daily administration of their business.

7. The provisions of Paragraph A of this Section shall not apply to services that must be provided to prevent actual or potential danger to life, health, or safety of any individual or of the public.

C. Assistance in Completing Voter Registration Forms. In accordance with Charter § 1057-a, the Contractor hereby agrees as follows:

1. In the event the Department provides assistance in completing distributed voter registration forms, the Contractor shall also provide such assistance, in the manner and to the extent specified by the Department.

2. In the event the Department receives and transmits completed registration forms from applicants who wish to have the forms transmitted to the City Board of Elections, the Contractor shall similarly provide such service, in the manner and to the extent specified by the Department.

3. If, in connection with the provision of services under this Agreement, the Contractor intends to provide assistance in completing distributed voter registration forms or to receive and transmit completed registration forms from applicants who wish to have the forms transmitted to the City Board of Elections, the Contractor shall do so only by prior arrangement with the Department.

4. The provision of Paragraph B services by the Contractor may be subject to Department protocols, including protocols regarding confidentiality.

D. Required Statements. In accordance with Charter § 1057-a, the Contractor hereby agrees as follows:

1. The Contractor shall advise all persons seeking voter registration forms and information, in writing together with other written materials provided by the Contractor or by appropriate publicity, that the Contractor's or government services are not conditioned on being registered to vote.

2. No statement shall be made and no action shall be taken by the Contractor or an employee of the Contractor to discourage an applicant from registering to vote or to encourage or discourage an applicant from enrolling in any particular political party.

3. The Contractor shall communicate to applicants that the completion of voter registration forms is voluntary.

4. The Contractor and the Contractor's employees shall not:

a. seek to influence an applicant's political preference or party designation;

b. display any political preference or party allegiance;

c. make any statement to an applicant or take any action the purpose or effect of which is to discourage the applicant from registering to vote; or

d. make any statement to an applicant or take any action the purpose or effect of which is to lead the applicant to believe that a decision to register or not to register has any bearing on the availability of services or benefits.

E. The Contractor, as defined above and in this Agreement, agrees that the covenants and representations in this Section are material conditions of this Agreement.

F. The provisions of this Section do not apply where the services under this Agreement are supported by a federal or State grant of funds and the source of funds prohibits the use of federal or State funds for the purposes of this Section.

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 Access to Public Health Insurance Coverage Information

A. Participating Agencies. Pursuant to Charter § 1069, if this Agreement is with a participating City agency and the Contractor is one to whom this Section applies as provided in Paragraph B of this Section, the Contractor hereby agrees to fulfill the obligations in Paragraph C of this Section. The participating City agencies are: the Administration for Children's Services; the City Clerk; the Commission on Human Rights; the Department for the Aging; the Department of Corrections; the Department of Homeless Services; the Department of Housing Preservation and Development; the Department of Juvenile Justice; the Department of Health and Mental Hygiene; the Department of Probation; the Department of Social Services/Human Resources Administration; the Taxi and Limousine Commission; the Department of Youth and Community Development; the Office to Combat Domestic Violence; and the Office of Immigrant Affairs.

B. Applicability to Certain Contractors. This Section shall be applicable to a Contractor operating pursuant to an Agreement which (i) is in excess of \$250,000 and (ii) requires such Contractor to supply individuals with a written application for, or written renewal or recertification of services, or request for change of address form in the daily administration of its contractual obligation to such participating City agency. "Contractors" to whom this Section applies shall be deemed to include subcontractors if the subcontract requires the subcontractor to supply individuals with a written application for, or written renewal or recertification of services,

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or request for change of address form in the daily administration of the subcontractor's contractual obligation.

C. Distribution of Public Health Insurance Pamphlet. In accordance with Charter § 1069, when the participating City agency supplies the Contractor with the public health insurance program options pamphlet published by the Department of Health and Mental Hygiene pursuant to Section 17-183 of the Admin. Code (hereinafter "pamphlet"), the Contractor hereby agrees as follows:

1. The Contractor will distribute the pamphlet to all persons requesting a written application for services, renewal or recertification of services or request for a change of address relating to the provision of services.

2. The Contractor will include a pamphlet with any Contractor communication sent through the United States mail for the purpose of supplying an individual with a written application for services, renewal or recertification of services or with a request for a change of address form relating to the provision of services.

3. The Contractor will provide an opportunity for an individual requesting a written application for services, renewal or recertification for services or change of address form relating to the provision of services via the Internet to request a pamphlet, and will provide such pamphlet by United States mail or an Internet address where such pamphlet may be viewed or downloaded, to any person who indicates via the Internet that they wish to be sent a pamphlet.

4. The Contractor will ensure that its employees do not make any statement to an applicant for services or client or take any action the purpose or effect of which is to lead the applicant or client to believe that a decision to request public health insurance or a pamphlet has any bearing on their eligibility to receive or the availability of services or benefits.

5. The Contractor will comply with: (i) any procedures established by the participating City agency to implement Charter §1069; (ii) any determination of the commissioner or head of the participating City agency (which is concurred in by the commissioner of the Department of Health and Mental Hygiene) to exclude a program, in whole or in part, from the requirements of Charter § 1069; and (iii) any determination of the commissioner or head of the participating City agency (which is concurred in by the commissioner of the Department of Health and Mental Hygiene) as to which Workforce Investment Act of 1998 offices providing workforce development services shall be required to fulfill the obligations under Charter § 1069.

D. Non-applicability to Certain Services. The provisions of this Section shall not apply to services that must be provided to prevent actual or potential danger to the life, health or safety of any individual or to the public.

Section 13.10 Distribution of Personal Identification Materials

A. Participating Agencies. Pursuant to City Executive Order No. 150 of 2011 ("E.O. 150"), if this Agreement is with a participating City agency and the Contractor has regular

contact with the public in the daily administration of its business, the Contractor must comply with the requirements of this Section. The participating City agencies are: Administration for Children's Services, Department of Consumer Affairs, Department of Correction, Department of Health and Mental Hygiene, Department of Homeless Services, Department of Housing Preservation and Development, Human Resources Administration, Department of Parks and Recreation, Department of Probation, and Department of Youth and Community Development.

B. Policy. As expressed in E.O. 150, it is the policy of the City to provide information to individuals about how they can obtain the various forms of City, State, and Federal government-issued identification and, where appropriate, to assist them with the process for applying for such identification.

C. Distribution of Materials. If the Contractor has regular contact with the public in the daily administration of its business, the Contractor hereby agrees to provide and distribute materials and information related to whether and how to obtain various forms of City, State, and Federal government-issued identification as the Agency directs in accordance with the Agency's plans developed pursuant to E.O. 150.

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.

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

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