NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION
ARCHITECTURAL SERVICES RELATED TO HURRICANE SANDY RELIEF PROGRAMS
CONSULTANT CONTRACT
FOR THE PROVISION OF ARCHITECTURAL SCOPING SERVICES
NYCEDC CONTRACT NO. 55670001
PROJECT CODE NO. 5567

CONSULTANT CONTRACT

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PART I **SPECIFIC TERMS AND CONDITIONS**

PART II **GENERAL TERMS AND CONDITIONS**

PART III **APPENDICES**

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PART I
SPECIFIC TERMS AND CONDITIONS

New York City Economic Development Corporation (the "Corporation" or "NYCEDC") and the Consultant identified below, in consideration of the mutual covenants contained in this Contract (as defined below) and other valuable and good consideration, do hereby agree to all of the terms and conditions set forth in (i) these Specific Terms and Conditions (Part I) set forth immediately below, (ii) the General Terms and Conditions (Part II) annexed hereto and made a part hereof and (iii) the Appendices (Part III) annexed hereto and made a part hereof. Capitalized terms shall have the meaning set forth in Appendix A (Definitions) unless otherwise defined in this Contract or the context otherwise requires.

1. The Contract

1.1 **Contract**: These Specific Terms and Conditions (Part I), the General Terms and Conditions (Part II) and the Appendices (Part III)
1.2 **NYCEDC Contract No.** 55670001
1.3 **Contract Date:** The date of the Contract is as of 8/1/2013
1.4 **Commencement Date:** 8/1/2013
1.5 **Term:** Two (2) Years, with two one year renewals, exercisable at NYCEDC's sole discretion
1.6 **Maximum Contract Price:** $15,555,787.00
1.7 **Project:** Architectural Services Related to Hurricane Sandy Relief Programs
1.8 **Project Site:** New York City
1.9 **Allowable Additional Costs:** The Allowable Additional Costs, if any, are set forth in Appendix C (Payments). NOT APPLICABLE
1.10 **Retainage:** NOT APPLICABLE
1.11 **Retainage Payment Date:** NOT APPLICABLE
1.12 **M/WBE Plan:** See Appendix H

2. Parties

2.1 **The Corporation**: New York City Economic Development Corporation, a not-for-profit corporation, organized under the laws of the State of New York.
2.2 **Director**: Dmitri Konon

2.3 **The Consultant**: Institute for Building Technology and Safety, a Virginia Corporation, having an office at:

45207 Research Place
Ashburn, VA 20147

FEDERAL TAX ID# 541963889

2.4 **Principal**: Shyam Choudhary, COO/CFO
2.5 **Person in Charge:** Steve W. Traina, Senior Contracts Manager

3. **Notice Parties and Addresses**

3.1 **Notices to the Corporation:**

New York City Economic Development Corporation
110 William Street
New York, NY 10038
Attn: General Counsel

with a copy to:

New York City Economic Development Corporation
110 William Street
New York, NY 10038
Attn: Philip Strom

3.2 **Notices to the Consultant:**

Institute for Building Technology and Safety
45207 Research Place
Ashburn, VA 20147
Attn: Shyam Choudhary

4. **Funding Source** The payments to be made to the Consultant by the Corporation pursuant to this Contract will be made from funds identified below and in accordance with the provisions of Appendices I, J and K. The Consultant agrees to comply with the provisions of each of such Appendices.

4.1 **Type of Funds:** Disaster Relief Appropriations Act of 2013 (Public Law 113-2), Community Development Block Grant Disaster Recovery ("CDBG-DR") program
4.2 **Funding Agencies**: U.S. Department of Housing and Urban Development ("HUD")
4.3 **Applicable Certifications and Section 3 Clause**: *See* Appendix J
4.4 **Applicable Agreements**: *See* Appendix K

5. **Special Provisions** The provisions set forth below are hereby added to and made part of this Contract. In the event any conflict exists between any of the General Terms and Conditions (Part II) of this Contract and these special provisions, these special provisions shall govern.

5.1 If the City determines, in accordance with this Contract, that the Consultant has submitted a Job Order or set of Engineering Drawings for a particular home that is incomplete, insufficient, unsatisfactory, or does not comply with the professional standards of skill and care ordinarily exercised by design professionals providing similar services in New York City, then the City shall give written notice to Consultant of such determination and the specific details to be corrected therein. The Consultant shall then have three full business days in the case of a Job Order and ten full business days in the case of an Engineering Drawing, after its receipt of such notice to correct such Job Order or Engineering Drawings and resubmit them to the City. Should the Consultant fail to correct and resubmit such documents within this time period, the Consultant shall pay the liquidated damages set forth in the table below, commencing on the fourth day for a Job Order and the eleventh day for an Engineering Drawing after Consultant's receipt of the above notice and continuing until the date such documents are corrected in accordance with the Standard of Care and resubmitted by the Consultant. Liquidated damages shall not be assessed 180 days after a Job Order or Engineering Drawings are submitted to the City. In view of the difficulty of accurately ascertaining the loss that the City, will suffer due to the Consultant's delay or additional reviews of the Consultant's submissions, the sums set forth in the table below are hereby fixed and agreed as liquidated damages.

Notwithstanding the foregoing or anything to the contrary in this Contract, Consultant shall not be responsible for liquidated damages for any delays caused by NYCEDC, the City, the homeowner or tenants and beyond the reasonable control of including but not limited to governmental preemption in connection with a national emergency, war or act of war, insurrection, riot, act of public enemy, terrorist acts, labor disputes, accidents, mechanical failure and acts of God (including fire, flood or abnormal adverse weather conditions). The Consultant shall give the City written notice of any such delay that may result in Consultant becoming liable for liquidated damages under this Section with reasonable promptness after becoming aware of same.

Liquidated damages received hereunder are not intended to be nor shall they be treated as either a partial or full waiver or discharge of the NYCEDC and the City's right to indemnification, or the Consultant's obligation to indemnify NYCEDC or the City, or to any other remedy provided for in this Contract or by Law.

The NYCEDC, on behalf of the City, may deduct and retain out of the monies which may become due hereunder, the amount of any such liquidated damages; and in case the amount which may become due hereunder shall be less than the amount of liquidated damages suffered by the NYCEDC or the City, the Consultant shall be liable to pay the difference.

Liquidated Damages for Task 3 or 6 Deliverables	
Failure to timely correct and resubmit non-compliant Job Order	$50 per day until the date such Job Order is corrected in accordance with the Standard of Care and resubmitted pursuant to this Contract. Amount of liquidated damages for failure to timely correct and resubmit non-compliant Job Order shall not exceed $1,382.60 per home.
Failure to timely correct and resubmit non-compliant Engineering Drawings.	$100 per day until the date such Engineering Drawings are corrected in accordance with the Standard of Care and resubmitted pursuant to this Contract. Amount of liquidated damages for failure to timely correct and resubmit non-compliant Engineering Drawings shall not exceed $7080 per home.

This Contract may be executed in counterparts, all of which counterparts, when taken together, shall be deemed a fully executed instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be duly executed as of the Contract Date hereinabove written.

NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION	**Institute for Building Technology and Safety**
By: _____	By: _____
Name: Dmitri Konon	Name: SHYAM CHOUDHARY
Title: Executive Vice President	Title: COO / CFO

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PART II
GENERAL TERMS AND CONDITIONS

PART II 1

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PART II
GENERAL TERMS AND CONDITIONS

The Corporation and the Consultant agree as follows:

ARTICLE 1
PERFORMANCE OF SERVICES

1.1 Services. The Corporation hereby retains and engages the Consultant and the Consultant agrees to perform the Services as described in **Appendix B** (Scope of Services), attached hereto.

1.2 Time for Performance of Services/Term/Delays and Force Majeure.

1.2.1 The Consultant shall commence the Services upon or promptly after the Commencement Date and shall complete the Services and each phase of the Services within the time or times stated for Final Completion as set forth in **Appendix B**, and in accordance with any directive given and Progress Schedule approved by the Corporation, unless this Contract is earlier terminated pursuant to Article 3 hereof.

1.2.2 This Contract shall be for the Term as set forth in Part I, Section 1.5 unless sooner terminated pursuant to Article 3 hereof.

1.2.3 If the Consultant has been delayed and as a result will be unable to complete performance fully and satisfactorily within the time fixed therefor, the Consultant may be granted an extension of time fixed for performance equal to the period the Consultant was actually and necessarily delayed upon submission of evidence of the causes of the delay, subject to the written approval of the Director in his or her sole discretion. The decision of the Director as to the granting of the extension and its length shall be binding upon the Consultant.

1.2.4 Subject to the Corporation's determination and approval, the Corporation may extend the time or times for performance of the Services where such performance has been substantially obstructed, hindered or delayed by reason of acts of Force Majeure. The Consultant shall have no claim against the Corporation or the City for any loss or damage sustained by the Consultant nor for any extra compensation in the form of an increase in the Maximum Contract Price, or otherwise, through such delay, hindrance or obstruction.

1.3 Complete Work and Timing and Sequence/Meetings. It is the intent of the parties that the provisions of this Contract shall not be construed so as to limit the Services, but that the Services shall include all acts necessary to fully and finally complete the work described in **Appendix B** hereof. The Consultant shall schedule and perform the Services in a manner so as to permit their completion diligently and expeditiously. The Principal, the Person in Charge and such other Representatives of the Consultant as may be required under the circumstances shall be available to meet with the Director or her or his designee as often as necessary to effectively perform the Services, and as often as may be specified in **Appendix B**.

1.4 Authority of Director/Performance of Services.

1.4.1 The Services to be performed by the Consultant shall at all times be subject to the review, direction and control of the Director, whose decision shall be final and binding upon the Consultant. The Director shall have the right to determine the amount, quality, acceptability and fitness of the Services and her or his approval shall be a condition precedent to the right of the Consultant to receive any compensation under this Contract. The Director shall act reasonably in exercising her or his authority under this Contract. The Director and any other person or agent duly authorized to act for and on behalf of the Corporation shall not, by virtue of such authority or action, be liable in any manner to the Consultant.

1.4.2 The Consultant shall perform all of the Services in a prudent and professional manner and in accordance with standards and practices as are customary for such Services in the New York City Metropolitan Statistical Area.

1.5 Changes to the Services.

1.5.1 The Consultant shall not make any changes in the Services without prior authorization in writing from the Director. The Consultant shall revise or correct any Work Product submitted in accordance with this Contract until accepted by the Director and accepted by all agencies whose approval is required by law, without additional compensation or time extension. Any changes to the performance of the Services or the Work Product which are necessary due to improper performance of the Services, a defect of design, unworkability of details or other fault or error of the Consultant shall be made by the Consultant, also without additional compensation or time extension.

1.5.2 The Director shall have the right to alter the Services, provided however, that if the Consultant believes that any work or services that it has been directed to perform as a result of such alteration is beyond the Scope of Services and constitutes Extra Work, the Consultant shall so Notify the Director within three (3) days of such directive. The Director shall determine whether such altered Services are (i) within the Scope of Services; or (ii) Extra Work that is substantially within the general purview of the Scope of Services and constitutes an Allowable Additional Cost; or (iii) Extra Work requiring an amendment to the Scope of Services and the Contract. The Director's determination shall be final, binding and conclusive.

1.5.3 The Director reserves the right to reduce the Scope of Services under this Contract by Notice to the Consultant specifying the nature and extent of such reduction. The Consultant shall be compensated for all Services satisfactorily performed prior to the reduction

and for Services satisfactorily performed thereafter. If said reduction results in a credit for the Corporation, such credit shall be immediately due and owing to Corporation, and the Consultant shall either pay such credit to the Corporation or the Corporation may withhold the credit amount from any future payments by the Corporation to the Consultant, at the exclusive option of the Corporation.

1.6 Equipment.

1.6.1 The Consultant, at its own expense, shall secure all supplies, materials and equipment required to perform and complete the Services.

1.6.2 The Consultant, at its sole cost and expense, shall bear the risk of loss for any supplies, materials and equipment used to perform the Services whether such loss arises by reason of fire, theft, vandalism, negligence or any other cause whatsoever. Consultant, at its sole cost and expense, shall promptly replace or repair all such lost, stolen or damaged supplies, materials and equipment.

1.6.3 The Consultant, at its sole cost and expense, shall maintain all of its supplies, materials and equipment in good working and serviceable order so as to enable the Consultant to perform the Services in a first-class and professional manner.

1.6.4 The Consultant shall be solely responsible for the means and methods and the safety and protection of all its employees and shall assume all liability for injuries, including death, that may occur to such employees due to the act, omission, negligence, fault or default of the Consultant.

1.7 Services Subject to City Contract, Indemnification and Third Party Beneficiary. This Contract is a subcontract under the City Contract. The Consultant acknowledges that it has reviewed the City Contract and agrees to comply with the City Contract with respect to the Services and not to violate, or through its acts or failure to act cause the Corporation to violate, the City Contract. The Consultant agrees to defend, indemnify and hold harmless the Corporation from any claim, liability or judgment to which the Corporation may be subject because of any such action or failure to act. The City shall be a third party beneficiary of this Contract and shall have a direct cause of action against the Consultant in the event that any claim be made or any cause of action be brought against the Corporation or City or if the Consultant breaches this Contract.

1.8 Acts to be Performed by the Corporation. The Corporation shall perform the following acts in connection with this Contract:

1.8.1 The Corporation shall make available to the Consultant all relevant technical data (subject to the provisions of Part II, Section 5.3 herein) in regard to the Contract which is in the possession of the Corporation.

1.8.2 The Corporation shall designate a Project Manager to serve as a liaison between the Corporation and the Consultant.

ARTICLE 2
COMPENSATION

2.1 Payments.

2.1.1 Subject to, and in accordance with this Article 2, the Corporation shall pay to the Consultant, and the Consultant agrees to accept, in full consideration for the Services, and for all expenses of the Consultant in connection therewith, including Subcontractors' Costs and Allowable Additional Costs, an amount not to exceed the Maximum Contract Price, payable as provided for in this Section 2.1 and in Appendix C.

2.1.2 Requisitions shall be in a form reasonably acceptable to the Corporation and shall be supported by any appropriate or necessary documentation or other evidence relating to the amounts set forth in the Requisition, as the Corporation may reasonably require including, but not limited to invoices, receipts and vouchers from Subcontractors and suppliers, information related to M/WBEs required under Section 9.6 and, where applicable, the time sheets and/or certified payroll reports of the Consultant's staff and its Principal.

2.1.3 Each Requisition submitted to the Corporation by the Consultant shall constitute a representation that, except as specifically set forth in the Requisition, as of the date of the Requisition, all representations and warranties made by the Consultant in Article 7 are true, complete and accurate as if made as of the date of the submission of the Requisition.

2.1.4 The Director shall review the Requisitions and the Work Product. If, in her or his judgment, the Services have been satisfactorily performed in accordance with this Contract, the Director will approve the Requisition. All payments to the Consultant will be made in accordance with this Article 2.

2.1.5 Subject to Section 3.5, Final Payment will be due only upon Final Completion.

2.1.6 The Consultant, with the Director's prior approval, may exceed the Maximum Payment allocated to a particular Portion of the Services if the Consultant by Notice determines that the Maximum Payment initially allocated to the Portion is insufficient to adequately perform the Portion of the Services and if the Consultant demonstrates to the Director a savings with respect to another Portion of the Services which is at least equal to the amount of such excess. However, notwithstanding the above, in no event shall the Corporation pay the Consultant more than the Maximum Contract Price.

2.1.7 All Requisitions must be submitted to the Corporation's Accounts Payable Department.

2.2 Miscellaneous Payment Provisions.

2.2.1 In addition to its rights under Section 9.10, if the Corporation shall have reasonable grounds for believing that:

(i) the Consultant will be unable to perform the Services or any Portion thereof fully and satisfactorily in accordance with any Progress Schedule, or

(ii) a meritorious claim exists or will exist against the Corporation, the Consultant or the City arising out of the act, omission or negligence of the Consultant or the Consultant's breach of any provision of this Contract,

then the Corporation may withhold payment of any amount otherwise due and payable to the Consultant hereunder. Any amount so withheld may be retained by the Corporation for such period as it may deem advisable to protect the Corporation and the City against any loss and may, after Notice to the Consultant, be applied in satisfaction of any claim herein described.

2.2.2 The Corporation shall not be deemed to have released the Consultant from any claim or liability, or to have waived any cause of action arising from any breach of this Contract by virtue of making payments to the Consultant.

2.2.3 Upon acceptance by the Consultant of the Final Payment to be paid pursuant to this Contract, the Consultant agrees that it shall be deemed to have fully released the Corporation and the City from any and all claims, demands and causes of action whatsoever which the Consultant has or may have against the Corporation or the City in connection with this Contract and, upon the request of the Corporation, shall execute a release to such effect.

2.2.4 All payments to the Consultant under this Contract shall be subject to all applicable Legal Requirements.

2.3 Electronic Funds Transfers. All payments due under this Contract in excess of $100,000 shall be made by Electronic Funds Transfer. Upon execution of this Contract, and in no event later than its submission of its first Requisition, the Consultant shall complete and submit to the Corporation the "EFT Vendor Payment Enrollment Form" annexed to Appendix C. The Consultant shall update such information to the extent necessary for EFT payments to be made. The Corporation shall not be obligated to make any payment in excess of $100,000 unless such information is provided and shall be entitled to rely solely on the information provided by the Consultant. Payments to the Corporation shall be made by check unless the Corporation Notifies the Consultant to make payments by EFT.

ARTICLE 3
SUSPENSION OR TERMINATION

3.1 Delay, Postponement or Suspension of Work.

3.1.1 The Corporation shall have the right to delay, postpone or suspend the Services, or any Portion thereof, immediately or upon a specified date, for a period of not more than ninety (90) days, upon Notice to the Consultant, for any reason deemed by the Corporation to be in its interest. The Consultant and all of its Subcontractors and Representatives shall cease all Services, or any specified Portion thereof, immediately or as of the date specified in the Notice.

3.1.2 Any such delay, postponement or suspension shall not give rise to any cause of action for damages against the Corporation or the City, but the Term specified in Part I of this Contract and the Consultant's time for performance of the Services shall be extended for the period of the delay, postponement or suspension.

3.1.3 In the event of any delays, postponements or suspensions, the Consultant shall resume the Services upon the date specified in the Notice or upon such other date as the Corporation may thereafter specify by Notice.

3.2 Termination for Convenience. The Corporation shall have the right to terminate the Services, or any Portion thereof, immediately or upon a specified date, upon Notice to the Consultant and for any reason deemed by the Corporation to be in its interest.

3.3 Defaults and Termination for Cause.

3.3.1 In addition to any other right that the Corporation may have, upon the occurrence of an Event of Default, the Corporation shall have the right to declare the Consultant in default and terminate this Contract, in whole or in part, for cause, by giving Notice to the Consultant of the cause and the date of such termination.

3.3.2 An Event of Default shall be deemed to have occurred if any of the following events has occurred, each an "Event of Default":

(i) The Consultant fails to assign workers, order materials or enter into subcontracts in a manner sufficient to permit completion of the Services, or any Portion thereof, within the time limits of the Progress Schedule or in accordance with any Progress Schedule approved by the Corporation;

(ii) The Consultant fails to complete the Services, or any Portion thereof, within the time limits provided in this Contract or any Progress Schedule approved by the Corporation;

(iii) The Consultant materially violates any term, covenant or provision of this Contract;

(iv) The Consultant materially fails to comply with any Applicable Requirements or any Applicable Agreements;

(v) Any representation or warranty made by the Consultant in Article 7 or in any other Article in this Contract shall prove to be untrue or be breached;

(vi) The Consultant becomes insolvent, files for bankruptcy or is adjudged a debtor in possession;

(vii) The Consultant voluntarily, or by operation of law, assigns, transfers, conveys or otherwise disposes of its interest in this Contract or its right to receive funds hereunder without the prior written consent of the Corporation;

(viii) The Consultant fails to comply with the M/WBE Requirements in Article 9; or

(ix) The Consultant or any of its officers, directors, partners, members, five (5%) percent shareholders, principals or other persons substantially involved in its activities, commits any of the acts or omissions specified as the grounds for debarment in the City's *Procurement Policy Board Rules*.

3.4 Effects of Termination for Convenience or for Cause.

3.4.1 The Contract, or such portion of the Contract described in the Notice of termination, shall terminate as of the termination date set forth in the Notice given pursuant to Section 3.3.1, or immediately if no date is specified.

3.4.2 Upon receipt of a Notice of termination for cause or for convenience, the Consultant shall cease any or all Services, immediately or on the date specified, in accordance with the terms of the Notice.

3.4.3 Termination, whether for convenience or for cause, shall not give rise to any cause of action for damages against the Corporation or the City.

3.4.4 Within ten (10) days after the effective date of termination, the Consultant shall surrender and turn over to the Corporation all Work Product and any other materials related to this Contract requested by the Corporation including, without limitation, all materials, equipment and supplies purchased by the Consultant on behalf of the Corporation in connection with this Contract.

3.5 Payment Upon Termination.

3.5.1 Upon termination with or without cause, the Consultant shall promptly present to the Corporation a verified statement of all costs actually incurred prior to the date of termination, together with all documents in the Consultant's possession related thereto that the Corporation may demand in order to verify such statement of costs including, without limitation, canceled checks, subcontracts, and paid receipts and bills from Subcontractors. The Corporation will review the statement of costs and review or audit any supporting documentation provided by or in the Consultant's possession. The Corporation will Notify the Consultant of the results of such review or audit and the amount approved for payment.

3.5.2 If the termination was without cause, the Consultant shall receive such equitable compensation for such Services as shall, in the judgment of Director, have been satisfactorily performed by the Consultant up to the date of the termination, such compensation to be fixed by the Corporation after consultation with the Consultant, subject to any rights of audit provided herein. Such payment will be processed by the Corporation after Consultant provides all information and documentation required hereunder. Such payment shall constitute full and Final Payment to the Consultant.

3.5.3 If the termination was for cause, the Consultant shall receive such equitable compensation for such Services as shall, in the judgment of Director, have been satisfactorily performed by the Consultant up to the date of the termination, such compensation to be fixed by the Corporation, subject to any rights of audit provided herein, and subject to set-off by the Corporation for any additional expenses the Corporation incurs to complete the Project satisfactorily, including the expenses of engaging another consultant and the costs set forth in Section 9.10(ii). The sum of (i) such additional expenses incurred to the Corporation for the completion of the Project, and (ii) payments made to the Consultant prior to the termination of the Contract shall hereafter be referred to as the "Contract Completion Costs".

(i) If the Contract Completion Costs exceed the Maximum Contract Price, Consultant shall pay such difference to the Corporation, as described in Section 3.5.4 below.

(ii) If the Contract Completion Costs are less than the Maximum Contract Price, provided that the Consultant has provided all information and documentation required by this Section, the Corporation will pay to the Consultant, an amount equal to the lesser of (a) the

difference between the Maximum Contract Price and the Contract Completion Costs, or (b) such amount, when added to sums previously paid to Consultant, equitably compensates Consultant for Services satisfactorily performed up to the date of termination. Such payment will be made as further described in Section 3.5.4 below.

3.5.4 If the termination was for cause, the Corporation will, upon full completion of the Project, deliver a written notice to the Consultant advising the Consultant that the Project has been completed and setting forth the Contract Completion Costs. If the Contract Completion Costs exceed the Maximum Contract Price, the Consultant shall promptly pay such difference to the Corporation upon receipt of such notice. If the Contract Completion Costs are less than the Maximum Contract Price, then, subject to (i) the Consultant's providing to the Corporation all information and documentation required by this Section, and (ii) any other applicable provisions of this Contract including, without limitation, Sections 3.5.5 and 3.5.6 hereof, the Corporation will pay the Consultant the amount described in Section 3.5.3(ii). Such payment shall constitute full and Final Payment to the Consultant.

3.5.5 The Corporation need not wait until the completion of the Services to seek the enforcement of its rights against the Consultant if there has been a termination for cause, but no monies shall be due or payable to the Consultant terminated for cause until the Services are completed.

3.5.6 The provisions of this Section 3.5 shall be in addition to any other rights the Corporation may have under this Contract, any Applicable Statute, any Applicable Agreement, or otherwise, in law or in equity.

3.6 No Release. Termination of this Contract, whether by expiration of its Term or otherwise, shall not release the Consultant from any liability to the Corporation or from the Consultant's indemnification and other obligations under this Contract that have not been specifically terminated pursuant to this Article of the Contract.

ARTICLE 4
PERSONNEL AND SUBCONTRACTORS

4.1 Personnel.

4.1.1 The Consultant shall employ at its own expense all personnel and retain all Subcontractors as may be required to perform the Services, and shall be solely responsible for their work, compensation, direction and conduct during the performance of this Contract. The personnel of the Consultant and any Subcontractor shall cooperate fully with the personnel of the Corporation including, without limitation, the Director, and, in the event any personnel of the Consultant or any Subcontractor fails to cooperate, the Consultant shall relieve them of their duties of performance under this Contract.

4.1.2 The Consultant shall submit to the Director, prior to performance of Services by such personnel, resumes of the Consultant's personnel and those of its Subcontractors' personnel who will perform the Services. The experience and training of such personnel is a material inducement for the Corporation to enter into this Contract and make payment for the Services.

The Consultant and its Subcontractors are expected to use such personnel to perform the Services. If the Consultant or a Subcontractor proposes to substitute any other personnel for those heretofore identified, it shall assign persons with equivalent or better experience and training and shall submit the resumes of such proposed substitute personnel to the Director and obtain the Director's prior approval of the substitution. Notwithstanding anything contained herein to the contrary, all personnel furnished by the Consultant as required under this Contract shall be employees of the Consultant or approved Subcontractors of the Consultant and not employees or subcontractors of the Corporation or the City.

4.2 Subcontractors.

4.2.1 The Consultant is authorized to enter into subcontracts for specialized professional services as required for performance of the Services subject to the prior written approval of the Director as to the Subcontractor, the scope of services, compensation, and the Principal or other member(s) of the Consultant's staff responsible for supervising the performance of the Subcontractor's activities. The Consultant, and not the Corporation, is responsible for the Subcontractor's work, acts and omissions.

4.2.2 The Consultant shall pay any Subcontractors approved by the Corporation for work that has been satisfactorily performed no later than thirty (30) days from the date of Consultant's receipt of payments from the Corporation.

4.2.3 The Consultant is solely responsible for the payments to the Subcontractors. Upon receipt of evidence of Consultant default hereunder with respect to its obligations to make payments to its Subcontractors, the Corporation reserves the right, after three (3) calendar days prior Notice, to retain any money due the Consultant and pay directly for labor, materials, equipment, Services and all other obligations of the Consultant and to deduct the amount of any such direct payments from any payments or amounts then due or thereafter to become due to the Consultant.

4.2.4 The Consultant shall inform all Subcontractors fully of the terms and conditions of this Contract. All subcontracts shall provide that:

(i) there is no privity of contract between the Subcontractor and the Corporation or the City;

(ii) neither the Corporation nor the City will incur any liability by virtue of any act, omission, negligence, or obligation of the Subcontractor or the Consultant;

(iii) the Subcontractor shall indemnify, defend and hold harmless the Corporation and the City, their agents, employees, members, directors, officials and officers against any and all claims, judgments or liabilities to which they may be subject (including, without limitation, any and all claims for injuries to persons (including death) and damage to property) because of any negligence or any fault or default of the Subcontractor, its agents, employees or subcontractors or the breach of the Subcontractor's obligations under the subcontract;

(iv) the Subcontractor's Requisitions shall conform to the same requirements and include the representations, warranties and agreements set forth in Sections 2.1.2 and 2.1 3;

(v) the "Events of Default" set forth in Section 3.3.2 as grounds for termination for cause shall be "Events of Default" and grounds for termination of the Subcontractor for cause;

(vi) the subcontract may be assigned without the written consent of the Subcontractor to the City, NYCEDC or any other corporation, agency or instrumentality having authority to accept the assignment; and

(vii) all work and services performed under the subcontract shall strictly comply with the requirements of this Contract.

If the Consultant fails to include the provisions set forth in this Section 4.2.4 in any subcontract, the Consultant hereby agrees to indemnify, defend and hold harmless the Corporation and the City and their Representatives against any and all claims, damages, awards, judgments, liabilities, expenses, fines, penalties, costs and/or fees incurred by or imposed upon the Corporation and the City and their Representatives, including reasonable fees, as a result of said failure.

4.2.5 The Consultant shall provide the Corporation with a list of all Subcontractors employed for the performance of the Services whose subcontract amount totals $25,000 or more. The Consultant will furnish each such Subcontractor whose Subcontract amount totals less than $100,000 with the Corporation's internal qualification and background investigation forms. The Consultant will furnish each such subcontractor whose subcontract amount totals $100,000 or more with the Mayor's Office of Contracts Investigations Forms. These forms will be provided by the Corporation to the Consultant. The Consultant shall cause each such Subcontractor to fill out and complete the forms in a timely fashion but in no event later than the commencement of the Services performed by such Subcontractor pursuant to its subcontract.

4.3 Person in Charge. The Consultant has designated a Person-in-Charge who will have primary responsibility to perform and/or supervise and coordinate the performance of the Services. Substitution of said person shall be made only with the prior written approval of the Director. Failure to make such person(s) available to the extent necessary to perform the Services skillfully and promptly shall be a material violation of the terms of this Contract.

ARTICLE 5
DOCUMENTS AND MATERIALS

5.1 Approval. All Work Product to be prepared or furnished by the Consultant pursuant to this Contract or publicizing the work of the Consultant hereunder must be:

(i) approved in writing by the Director before any Work Product or publication as to the work of the Consultant shall be considered accepted and before any distribution;

(ii) revised by the Consultant in accordance with the directions of the Director prior to approval; and

(iii) prepared so as not to violate any provisions of law including, without limitation, the City Charter and the Administrative Code of the City.

5.2 Work Product.

5.2.1 All Work Product is the exclusive property of the Corporation. The Corporation may use any Work Product prepared by the Consultant in such manner, for such purposes, and as often as the Corporation may deem advisable, in whole, in part or in modified form, in all

formats now known or hereafter to become known, without further employment of or additional compensation to the Consultant.

5.2.2 The Consultant shall not use, transmit, display, publish or otherwise license such Work Product without the Corporation's prior written consent.

5.2.3 The Work Product 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 Corporation is the copyright owner thereof and of all aspects, elements and components thereof in which copyright protection might subsist. To the extent that the Work Product does not qualify as a "work-made-for-hire", the Consultant hereby irrevocably transfers, assigns and conveys exclusive copyright ownership in and to the Work Product to the Corporation, free and clear of any liens, claims or other encumbrances. The Consultant shall retain no copyright or other intellectual property interest in the Work Product.

5.2.4 To the extent that the Work Product does not qualify as a "work-made-for hire", Consultant acknowledges the existence, if any, of its statutory moral rights as those rights are described in 17 U.S.C. § 106A(a), and knowingly executes this Contract on the following terms: (i) this waiver applies to the Work Product and to any promotional materials connected with the Work Product; (ii) the Consultant hereby expressly and forever waives any and all rights under 17 U.S.C. § 106A, and any rights arising under U.S. 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*.

5.2.5 The Consultant represents and warrants that, except for material which is in the public domain and non-original material that meets the requirements of §5.2.6, the Work Product

(i) shall be wholly original material not published elsewhere;
(ii) shall not violate any copyright, trademark or other applicable law; and
(iii) shall not, to the best of Consultant's knowledge, constitute a defamation or invasion of the right of privacy or publicity, or an infringement of any kind, of any rights of any third party.

5.2.6 The Consultant represents and warrants that to the extent that the Work Product incorporates non-original material, the Consultant shall obtain and provide the Corporation with copies of all necessary permissions and clearances, in writing, for the use of such non-original material under this Contract. Since some licenses for materials may be for a limited duration, the Consultant shall provide and/or specify the following to the Corporation with respect to all non-original materials included in its Work Product:

(i) all information as to any durational limitations on use;
(ii) any requirement that a notice be displayed in connection with display, including the specific owner of the rights to be credited, and any limitation on the use under the Consultant's license; and
(iii) a statement certified by the Principal verifying the foregoing in the form annexed hereto as Appendix D.

Consultant will update the foregoing information and promptly provide such updates to the Corporation during the Contract Term.

5.2.7 The Consultant acknowledges that the Corporation or the City may, in their sole discretion, register copyright in the Work Product with the U.S. Copyright Office or any other government agency authorized to grant registrations to copyright. The Consultant will cooperate in this effort, and agrees to provide any further documentation necessary to accomplish this.

5.2.8 The Consultant agrees that the Corporation and the City may use the Consultant's name and the names, biographies and likenesses of its members, in advertising and promotion related to the Work Product, and in any and all ancillary products related to the Services regardless of the format in which such use occurs.

5.2.9 Prior to acceptance of any Work Product by the Director, upon the Director's request and within a reasonable time following delivery of the Work Product, the Consultant shall submit revised Work Product incorporating any revisions, changes or alterations reasonably requested by the Director. If the original Work Product or the revised Work Product is not acceptable to the Director, the Corporation shall have the right to use the Work Product, to prepare or finalize the Work Product or to commission a third party to do so without further employment of or compensation to the Consultant.

5.2.10 The Consultant acknowledges that the decision to accept the Work Product for use, incorporation, transmission, display or publication is within the sole discretion of the Director.

5.2.11 Consultant agrees that it will cooperate in providing any other documentation necessary to effectuate the intent of this Section of the Contract.

5.2.12 The Consultant shall not make any unauthorized use of copyrighted, trademarked or other protected materials or intellectual property and agrees to defend, indemnify and hold harmless the Corporation and the City and their respective officers, officials, agents, members, directors, and employees against any damage or liability arising out of the Consultant's infringement or unauthorized use of any such material or property.

5.3 Confidential Information.

5.3.1 The Consultant shall hold all Confidential Information provided by the Corporation in the strictest confidence. Consultant agrees to:

(i) use the Confidential Information solely for evaluation and the performance of the Services under this Contract;

(ii) not disclose the Confidential Information outside of its Subcontractors who have agreed in advance in writing to be bound by the terms of this Section 5.3 and its employees and to limit dissemination to only those Subcontractors and employees who have a need to know it in order to accomplish the Services;

(iii) execute any confidentiality agreements required by any governmental or other entities or individuals which provide any information, records, data, materials, documents or electronic files to Consultant for use in performance of the Services; and

(iv) not disclose the Confidential Information for three (3) years following Final Completion.

5.3.2 Consultant represents that it has adequate safeguards and procedures to protect the confidentiality of records and information and to limit dissemination only to authorized employees as necessary for the performance of the Services. All Confidential Information provided to Consultant shall remain the property of the Corporation.

5.3.3 Consultant agrees that money damages would not be a sufficient remedy in the event of any breach of this Section 5.3 and that, in addition to all other remedies which may be available, the Corporation shall be entitled to specific performance and injunctive or other equitable relief as a remedy for any such breach. Consultant shall defend, hold harmless and indemnify the Corporation for any and all claims, losses, expenses and/or damages arising out of breach of this Section 5.3 or unauthorized use of the Confidential Information.

ARTICLE 6
INDEMNIFICATION, CLAIMS AND INSURANCE

6.1 Indemnification of the Corporation and the City.

6.1.1 The Consultant shall indemnify, defend and hold harmless the Corporation and the City, their agents and employees from any and all claims, judgments or liabilities to which they may be subject because of any negligence or any fault or default of the Consultant, its agents, employees or subcontractors or the breach of the Consultant's obligations under the Contract.

6.1.2 The Consultant shall be solely responsible for all injuries to persons, including death, or damage to property sustained during its operations and work under this Contract resulting from any negligence, fault or default of the Consultant or of its employees, authorized agents, servants, independent contractors or subcontractors retained by the Consultant pursuant to this Contract. The Consultant agrees to indemnify, defend and hold the Corporation and the City harmless from any liability upon any and all claims for injuries to persons (including death) and damage to property on account of negligence, fault or default of the Consultant, its employees, authorized agents, servants, independent contractors and subcontractors retained by the Consultant.

6.2 Claims or Actions Against the Corporation.

6.2.1 The Consultant shall look solely to the funds appropriated by the Corporation for this Contract for the satisfaction of any claim or cause of action the Consultant may have against the Corporation in connection with this Contract or the failure of the Corporation to perform any of its obligations hereunder. In no event shall the Corporation's aggregate liability hereunder in connection herewith or related to the performance of the Services exceed the Maximum Contract Price.

6.2.2 Upon acceptance by the Consultant of the Final Payment to be paid pursuant to this Contract, the Consultant agrees that it shall be deemed to have released the Corporation from

any and all claims, causes of action, and liability to the Consultant, its Representatives, successors and assigns, in connection with this Contract or the performance of the Services.

6.2.3 No member, director, employee, servant, officer, agent or other person authorized to act on behalf of the Corporation shall have any personal liability in connection with this Contract or any failure of the Corporation to perform its obligations hereunder.

6.2.4 No person or entity shall have any right against the Director or any member, director, employee, servant or officer, agent of the City or the Corporation or other person authorized to act on their behalf or any claim against the City or the Corporation by reason of the failure or refusal to withhold money pursuant to Section 2.2.1 hereof.

6.2.5 The Consultant agrees that no cause of action against the Corporation in connection with this Contract or the Services shall lie or be maintained by the Consultant, its successors or assigns unless such action is commenced within six months after (i) the termination of this Contract, or (ii) the accrual of the cause of action, whichever is earlier.

6.2.6 If any claim is made or any action brought relating to this Contract or the Services, whether or not the Consultant is a party, the Consultant shall diligently render to the Corporation any and all assistance that the Corporation may require of the Consultant, without compensation.

6.2.7 The provisions of this Section shall not waive, limit or in any way prejudice any other right of the Corporation or the City.

6.3 Insurance.

6.3.1 At all times during the performance of the work or Services in connection with this Contract or for such other time periods as the Corporation may require, the Consultant, at its sole cost and expense, shall purchase and maintain the insurance described in this Section 6.3 and the annexed Appendix E, as may be applicable and as may be required by the Corporation.

6.3.2 Consultant shall purchase and maintain insurance with insurance companies that:

(i) are acceptable to the Corporation;
(ii) are rated A:X or better by A.M. Best Company; and
(iii) are licensed to issue such insurance by the New York State Department of Insurance.

6.3.3 The insurance policies purchased and maintained by the Consultant shall:

(i) be in form and substance satisfactory to the Corporation;
(ii) be in the minimum face policy amounts set forth in Appendix E;
(iii) list all individuals and entities identified in Appendix E as Additional Insureds except in the case of any workers' compensation, automobile liability and professional liability policies required to be maintained hereunder; and
(iv) contain the provisions set forth in Appendix E.

6.3.4 Coverage for the individuals and entities identified in Appendix E as Additional Insureds shall be written into those policies set forth in Section 6.3.3(iii) above as an endorsement at least as broad as ISO Form CG 20 10 (07/04 ed.).

6.3.5 The Consultant shall make and maintain timely premium payments for all policies required hereunder.

6.3.6 The Consultant shall require that each of its Subcontractors, prior to the commencement of their work, purchase and maintain, or be covered by, at no cost or expense to the Corporation or the City, the same types and amounts of insurance and meet all of the same requirements as required of the Consultant as set forth in this Article 6 and Appendix E. The Consultant hereby covenants and warrants that its Subcontractors shall purchase and maintain the policies required by this Section in the amounts and for the periods required by this Section.

6.3.7 Prior to the commencement of the Services the Consultant shall forward to the Corporation's Contract Administration and Procurement Department at least three (3) original certificates of insurance for each policy required for compliance with this Contract, for itself and its Subcontractors substantially as set forth in Appendix E. The Consultant shall also provide an original certificate of insurance to each of the Additional Insureds.

6.3.8 The Consultant shall provide the Corporation and the Additional Insureds written confirmation of the renewal of any policy required hereunder at least thirty (30) days prior to the expiration of any such policy.

6.3.9 Unless otherwise agreed to in writing by the Corporation, the types of insurance to be purchased and maintained by the Consultant and its Subcontractors are as follows:

(i) Workers' Compensation, Disability Benefits, and Employer's Liability Insurance. The Consultant shall purchase and maintain and shall require each of its Subcontractors to purchase and maintain workers' compensation, disability benefits insurance in statutory amounts, and employer's liability insurance in the amounts set forth in Appendix E, for all of its employees engaged in the Services. The failure of the Consultant to comply with this Section 6.3.9(i) shall make this Contract voidable at the option of the Corporation.

(ii) Commercial General Liability. The Consultant shall purchase and maintain commercial general liability insurance, including owner's protective liability insurance, to protect the Corporation, the City and the Additional Insureds, the Consultant and its Subcontractors against any and all claims for property damage, personal injury and death arising out of the Services performed by the Consultant and its Subcontractors, and any work incidental thereto. The commercial general liability insurance policy must also include products and completed operations coverage, which shall include a provision that coverage will extend for a period of at least twelve (12) months from the date of final completion and acceptance by the Corporation of all of the Services. The certificate of insurance must indicate that such insurance is on a "per occurrence" and an aggregate basis. The commercial general liability policy shall be in a form at least as broad in coverage as ISO Form CG 00 01 (10/01). The additional insured protection must be as broad as coverage that would be afforded through use of ISO Forms CG 20 26, CG 20 33 and CG 20 37. The liability policy(ies) certificate of insurance must indicate cross-liability coverage providing severability of interests so that, except with respect to the limits of insurance,

and any rights or duties specifically assigned to the first named insured, coverage will respond as if separate policies were in force for each insured. If at any time the commercial general liability policy should be canceled, terminated, or modified so that the insurance is not in effect as above required, then the Consultant shall suspend performance of the Services if the Corporation shall so direct. If the Contract is so suspended, no extension of time shall be due on account thereof. If the Contract is not suspended, whether or not because of omission of the Corporation to order suspension, then the Corporation may, at its sole option, obtain insurance affording coverage equal to that required hereunder, the cost of such insurance to be payable by the Consultant to the Corporation.

(iii) Automobile Liability Insurance. The Consultant shall purchase and maintain automobile liability insurance covering all automobiles used in connection with the work or Services under this Contract whether owned, non-owned and/or hired automobiles.

(iv) Umbrella/Excess Liability Coverage. If the Consultant purchases or maintains umbrella/excess liability insurance, such insurance should specifically list the Consultant's commercial general liability, comprehensive automobile liability and employer's liability as primary coverages, to protect the Corporation, the City, the Additional Insureds, the Consultant and its Subcontractors from any and all claims in excess of the underlying policy limits for such primary coverages. The certificate of insurance must indicate that such insurance afforded by this Section 6.3.9(iv) is on a "per occurrence" basis and an aggregate basis.

(v) If applicable, any additional policies as may be described in Appendix E.

6.3.10 As a condition precedent to payment of any amounts owing to the Consultant by the Corporation, the Consultant shall, unless otherwise expressly agreed to in writing by the Corporation, provide to the Corporation the original certificates of insurance required under this Contract and shall on demand provide true copies of policies and endorsements to policies showing compliance with the insurance requirements set forth in this Article 6 and Appendix E.

6.3.11 The policies to be maintained by the Consultant hereunder that are subject to the Additional Insured requirements set forth in Section 6.3.3 (iii) above shall constitute the primary coverage for claims arising out of this Contract, and shall state that insurance, if any, carried by the Corporation, the City or the Additional Insureds will not be called upon to contribute to a loss that would otherwise be paid by the Consultant's insurer. The Consultant shall comply with the provisions of all policies required pursuant to this Contract, and shall give the insurer, the Corporation, the City and the Additional Insureds due and timely Notice of all claims, accidents and losses promptly upon its acquiring knowledge of the same.

6.3.12 The insurance provisions of this Article 6 shall be in addition to any rights that the Corporation, the City and the Additional Insureds may have under any hold harmless and indemnification provisions of this Contract and any other right provided by this Contract or by law. The Consultant shall not violate or permit to be violated any term or condition of the policies.

6.3.13 The Commercial General Liability and Umbrella Excess Liability Coverage polices must be endorsed to show that these primary and/or excess policies are to be considered primary and non-contributory. In addition, the Commercial General Liability and Umbrella/Excess Liability Coverage policies must provide that (i) the Additional Insured protection afforded under the Consultant's policies shall be primary and not on an excess or

contributing basis with any policies which may be available to the Corporation, and (ii) that the Consultant's policies, primary and excess, must be exhausted before implicating any Corporation policy available.

6.3.14 In order to ensure vertical erosion of liability limits provided by the Consultant under this Contract, the Consultant agrees to permit the Corporation's staff and/or the Corporation's insurance consultants to review the Consultant's liability policy language for all liability policies and to endorse those policies to clarify the hierarchy of policies in the event of a claim.

ARTICLE 7
REPRESENTATIONS AND WARRANTIES

The Consultant represents and warrants that:

7.1 The Consultant is duly organized, validly existing and in good standing under the laws of its jurisdiction of formation, and has all requisite power and authority to authorize, execute, deliver and perform this Contract in accordance with its terms. The Consultant is authorized to do business in the City of New York.

7.2 The authorization, execution and delivery of this Contract, and compliance with the provisions hereof, do not and will not conflict with or constitute a violation of or default under any statute, indenture, mortgage, deed of trust or other agreement or instrument to which the Consultant is bound, or, to the knowledge of the Consultant, any order, rule or regulation of any court or governmental agency or body having jurisdiction over the Consultant or any of its activities or properties.

7.3 The Consultant has not been asked to pay, and has neither offered to pay, nor paid, any illegal consideration, whether monetary or otherwise, in connection with the procurement of this Contract.

7.4 The Consultant has not employed any person to solicit or procure this Contract, and has not made and shall not make, except to full-time employees of the Consultant, any payment or any agreement for the payment of any commission, percentage, brokerage, contingent fee or any other compensation in connection with the procurement of this Contract.

7.5 The Consultant has not acquired nor will it acquire any interest of any nature, direct or indirect (including any interest in land in an area related to the Services or any interest in any corporation, partnership, or other entity with any such interest), which would conflict in any manner or degree with the performance of the Services. The Consultant further represents and covenants that in the performance of this Contract no person having any such conflicting interest shall be employed by the Consultant.

7.6 The Consultant is not in arrears to the City upon any debt, contract or taxes and is not a defaulter, as surety or otherwise, upon any obligation to the City, and has not been declared not responsible, or disqualified, by any agency of the City, nor is there any proceeding pending relating to the responsibility or qualification of the Consultant to receive public contracts. The

Consultant represents that it has paid all applicable New York City income, excise and other taxes for all years it has conducted business activities in New York City.

7.7 All questionnaires and/or disclosure forms delivered by the Consultant and its Representatives to the Corporation to date are, to the best of the Consultant's knowledge, true and correct in all material respects; no material change has occurred in the circumstances of the Consultant, or any of its principals or affiliated persons or entities since the respective dates upon which such disclosure forms were executed that would otherwise require disclosure on such forms; and such disclosure forms do not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make any statement contained in such form not misleading.

ARTICLE 8
APPLICABLE LAWS, RULES AND REGULATIONS

8.1 New York Law Governs; New York Courts. The Contract shall be governed by and construed in accordance with the laws of the State of New York. Any and all claims asserted by or against the Corporation arising under this Contract or related hereto shall be heard and determined either in the Federal Courts, located in the City or in the New York State Courts located in the City and County of New York. To effect this agreement and intent, the Consultant agrees as follows:

8.1.1 If the Corporation initiates any action against the Consultant in Federal Court or in New York State Court, service of process may be made on the Consultant in person, wherever the Consultant may be found, or by registered mail addressed to the Consultant at its address as set forth in this Contract, or to such other address as the Consultant shall have provided to the Corporation in writing.

8.1.2 With respect to any action between the Corporation and the Consultant in New York State Court, the Consultant hereby expressly waives and relinquishes any rights it might otherwise have (i) to move to dismiss on grounds of forum non conveniens, and (ii) to move for a change of venue to a New York State Court outside New York County.

8.1.3 With respect to any action between the Corporation and the Consultant in Federal Court located in the City, the Consultant expressly waives and relinquishes any right it might otherwise have to move to transfer the action to a Federal Court outside the City.

8.1.4 If the Consultant commences any action against the Corporation in a court located other than in the City and State of New York, then, upon request of the Corporation, the Consultant shall either consent to a transfer of the action to a court of competent jurisdiction located in the City and State of New York or, if the court where the action is pending will not or cannot transfer the action, the Consultant shall consent to dismiss such action without prejudice and may thereafter reinstitute the action in a court of competent jurisdiction in the City.

8.2 Modification Required by Law. The parties agree that each and every provision of federal or state or local law, rule, regulation or order, required to be inserted in this Contract, is deemed by this reference to be so inserted in its correct form, and upon the application of either party, this Contract shall be amended by the express insertion of any such provision not so

inserted or so inserted incorrectly so as to comply strictly with the law, without prejudice to the rights of either party.

8.3 Compliance with the Law. The Consultant agrees that all acts to be performed by it in connection with this Contract shall be performed in strict conformity with all Legal Requirements, including without limitation, Applicable Requirements and Applicable Agreements. Failure by the Consultant to abide by such Legal Requirements shall be a material default under this Contract.

8.4 Equal Employment Opportunity/Employment Reports.

8.4.1 The Consultant shall comply with the applicable provisions of the Equal Employment and Affirmative Action Compliance for Non-Construction Contracts Addendum (the "Executive Order No. 50 (1980) Supply and Service Rider" or "E.O. 50") attached hereto as Appendix F and made a part hereof. Appendix F shall be attached to and made a part of any subcontract entered into by the Consultant pursuant to this Contract that exceeds $100,000.

8.4.2 The Consultant covenants that it shall complete and submit and shall require all Subcontractors to complete and submit Employment Reports (as required by E.O. 50) to the Corporation which can be found at www.nycedc.com in the section identified in Appendix G. If the Consultant cannot access or download these forms, the Corporation may, upon request, send the Consultant the required forms.

8.4.3 Intentionally Deleted.

8.4.4 The Consultant shall give consideration to employing City residents who are economically disadvantaged or are eligible under any applicable Legal Requirements including, without limitation, the Workforce Investment Act of 1998, and who have qualifications and skills commensurate with the requirements for the position available. To the greatest extent feasible, the Consultant shall give opportunities for training and employment to lower income persons in the Project area.

8.4.5 The provisions of this Section 8.4 shall be deemed supplementary to, and not in lieu of, or in substitution for, the applicable provisions of the New York State Labor Law relating to non-discrimination, and other applicable Legal Requirements.

8.5 Minimum Wages. Except for any employees whose prevailing wage is required to be fixed pursuant to Section 220, et seq. and Section 230, et seq. of the New York State Labor Law, which employees shall be paid such prevailing wage, all persons employed by the Consultant or any subcontractor in the manufacture or furnishing of the supplies, materials, or equipment, or the furnishing of work, labor or services, used in the performance of this Contract, shall be paid, without subsequent deduction or rebate unless expressly authorized by law, not less than the minimum hourly rate required by law, unless a higher amount is required pursuant to any other provision of this Contract.

8.6 No Tropical Hardwoods. Tropical hardwoods, as defined in Section 165 of the New York State Finance Law, shall not be used in the performance of this Contract except as expressly permitted by the foregoing provision of law.

8.7 Sales and Use Tax.

8.7.1 The Consultant acknowledges that the Corporation and the City are exempt from sales and use taxes imposed by Article 28 of the New York State Tax Law for purchases of tangible personal property, to the extent that such property is used to alter, maintain or improve, and becomes an integral component part of real property. This exemption does not apply to tools, machinery, equipment or other property leased by the Corporation's contractors and subcontractors or to supplies, materials or other property that are consumed in the construction or for any reason not incorporated into real property.

8.7.2 The Consultant shall inform its Subcontractors of this exemption and shall advise its Subcontractors to exclude sales and use taxes from their bids, as applicable.

8.8 MacBride Principles. The Consultant stipulates and agrees to comply with the MacBride Principles.

8.9 Iran Divestment Act. The Contractor shall comply with Section 165-a of the New York State Finance Law.

8.10 Doing Business Data Form Requirements.

8.10.1 Local Law No. 34 of 2007 amended the City's Campaign Finance Law and required the City to establish a database containing the names of any "person" that has "business with the city", as such terms are defined in LL 34. The Consultant shall comply with all requirements of LL 34 applicable to this Contract.

8.10.2 The Consultant shall complete and submit a Doing Business Data Form which can be found at www.nycedc.com. If the Consultant cannot access or download these forms, the Corporation may, upon request, send the Consultant the required forms.

8.10.3 The Consultant's failure to complete and submit a Doing Business Data Form and/or its submission of a form that is not accurate or complete may result in appropriate sanctions.

ARTICLE 9
M/WBE REQUIREMENTS

9.1 M/WBE Program. Local Law No. 129 of 2005 added Section 6-129 to the Administrative Code of the City of New York. The local law creates a program for participation by minority and women-owned business enterprises (MBEs and WBEs) in City procurement. As stated in the Section 6-129, the intent of the program is to address the impact of discrimination on the City's procurement process, and to promote the public interest in avoiding fraud and favoritism in the procurement process, increasing competition for City business and lowering contract costs. The Corporation endorses these goals and participation by MBEs and WBEs in the provision of the Services. The following goals and provisions are integral to achieve these goals. The Consultant shall comply with all requirements of the Corporation's M/WBE Program applicable to this Contract.

9.2 Minority and Women -Owned Business Enterprises. In order to be considered M/WBEs for purposes of this Contract, the M/WBEs must have received certification as such by DSBS.

9.3 Target Subcontracting Percentage. The Target Subcontracting Percentage is the percentage of the total Contract that the Corporation anticipates that the Consultant would in the normal course of business award to one or more Subcontractors for amounts under $1 million. The Target Subcontracting Percentage applicable to this Contract is set forth in Part I, Section 1.12.1. The Consultant shall be subject to said Target Subcontracting Percentage.

9.4 Participation Goal. The Participation Goal is expressed as a percentage that represents the total dollar value of subcontracts under this Contract for amounts under $1 million to be performed by M/WBEs compared to the total dollar value of all subcontracts under this Contract for amounts under $1 million. The Participation Goal applicable to this Contract is set forth in Part I, Section 1.12.2. The Consultant shall be subject to the Participation Goal, unless the Corporation grants a modification of this goal pursuant to Section 9.8.

9.5 Consultant's M/WBE Subcontractor Utilization Plan.

9.5.1 The M/WBE Subcontractor Utilization Plan for this Contract is annexed hereto as Appendix H.

9.5.2 In the event that the Corporation does not approve a Subcontractor proposed by the Consultant, the Consultant shall have a reasonable time to propose alternate Subcontractors.

9.5.3 If this Contract is a multi-year contract, the Consultant shall submit an updated M/WBE Subcontractor Utilization Plan to the Corporation's Chief Contracting Officer 30 days prior to the anniversary of the Commencement Date in each subsequent year during the Contract Term. The Consultant's updated M/WBE Plan shall be subject to the Corporation's approval and must set forth:

(i) the percentage of work the Consultant intends to subcontract;
(ii) the percentage of work the Consultant intends to award to Subcontractors for amounts under $1 million;
(iii) the identity of all proposed Subcontractors to which the Consultant intends to award subcontracts;
(iv) in cases where the Consultant intends to award subcontracts for amounts under $1 million, a description of the type and dollar value of work designated for participation by MBEs and/or WBEs; and
(v) the time frames in which such work by MBEs and/or WBEs is scheduled to begin and end.

9.6 M/WBE Compliance Reports.

9.6.1 The Consultant shall provide the Corporation with written statements ("M/WBE Compliance Reports"), certified under penalty of perjury, reporting the status of the Consultant's compliance with its M/WBE Subcontractor Utilization Plan as set forth in this Section 9.6.

9.6.2 The Consultant shall submit a M/WBE Compliance Report to the Corporation:

(i) with each Requisition for payment; and/or
(ii) on a periodic basis as the Corporation may require.

9.6.3 Each M/WBE Compliance Report shall set forth the following for the period covered by the report:

(i) the total amount paid to Subcontractors (including Subcontractors that are not MBEs or WBEs);
(ii) the names, addresses and contact numbers of each MBE or WBE hired as a Subcontractor pursuant to such plan as well as the dates and amounts paid to each MBE or WBE.

9.6.4 In addition to the foregoing, the Consultant shall submit a final, cumulative M/WBE Compliance Report to the Corporation with its Requisition for Final Payment. The Consultant shall set forth in such final report the information required by Section 9.6.3 in connection with all Services rendered by the Consultant and its Subcontractors during the entire Contract Term.

9.7 Change Orders. If the Consultant requests a change order having a value that exceeds 10 percent of the Contract, the Corporation will establish an M/WBE participation goal for the work to be performed pursuant to the change order.

9.8 Modification of the Consultant's M/WBE Subcontractor Utilization Plan. The Consultant may request modification of its M/WBE Subcontractor Utilization Plan after the award of the Contract. The Corporation may grant such request if it determines that the Consultant has established, with appropriate documentary and other evidence, that the Consultant has made all reasonable, good faith efforts to meet the Participation Goal set for the Contract. In making such determination, the Corporation will consider, along with any other relevant factors, evidence submitted by the Consultant showing that the Consultant has, without limitation, and as applicable:

(i) advertised opportunities to participate in the Contract, where appropriate, in general circulation media, trade and professional association publications and small business media, and publications of minority and women's business organizations;
(ii) provided notice of specific opportunities to participate in the Contract, in a timely manner, to minority and women's business organizations;
(iii) sent written notices, by certified mail or facsimile, in a timely manner, to advise MBEs and WBEs that their interest in the Contract was solicited;
(iv) made efforts to identify portions of the work that could be substituted for portions originally designated for participation by MBEs and/or WBEs in the Consultant's M/WBE Subcontractor Utilization Plan, and for which the Consultant claims an inability to retain MBEs or WBEs;
(v) held meetings with MBEs and/or WBEs prior to the date its proposal was due, for the purpose of explaining in detail the scope and requirements of the work for which its proposals was solicited;
(vi) made efforts to negotiate with MBEs and/or WBEs as relevant to perform specific subcontracts;

(vii) submitted timely written requests for assistance to the Corporation's M/WBE liaison officer and to DSBS;

(viii) submitted a statement as to how recommendations made by DSBS and the Corporation were acted upon and an explanation of why action upon such recommendations did not lead to the desired level of participation of MBEs and/or WBEs.

9.8.2 The Corporation's M/WBE Director and Chief Contracting Officer will provide written notice to the Consultant of the determination.

9.9 Compliance Audits. This Contract may be audited by the Corporation, DSBS and the City Comptroller to determine the Consultant's compliance with the requirements of the Corporation's M/WBE Program and the Consultant's M/WBE Subcontractor Utilization Plan.

9.10 Enforcement. In the event the Corporation determines that the Consultant or its Subcontractors have violated the requirements of the Corporation's M/WBE Program or the M/WBE Subcontractor Utilization Plan including, without limitation, a determination that the Consultant has made payments to or awarded work to M/WBE Subcontractors in amounts less than the amounts specified in the Consultant's M/WBE Subcontractor Utilization Plan (unless the Corporation has permitted the Consultant to modify the Consultant's M/WBE Subcontractor Utilization Plan in accordance with Section 9.8), the Corporation may:

(i) terminate the Contract;

(ii) assess actual and consequential damages for and/or exercise its right to set off any additional expenses the Corporation incurs to complete the Project satisfactorily in accordance with the Corporation's M/WBE Program and in order to meet the Participation Goal set for the Contract including, without limitation, the actual and administrative costs of:

(a) meeting the Participation Goal through additional procurements;

(b) payments made to any other consultant retained to complete the Services; and

(c) investigation and enforcement;

(iii) remove the Consultant from the list of qualified consultants maintained by the Corporation and/or file an advice of caution form for inclusion in VENDEX as caution data; or

(iv) assert any other right or remedy it has under the Contract.

9.11 Statements. Statements made in any instrument submitted to the Corporation in connection with the Corporation's M/WBE Program shall be submitted under penalty of perjury and any false or misleading statement or omission shall be grounds for the application of any applicable criminal and/or civil penalties for perjury.

9.12 Evaluations. The Consultant's record in implementing its M/WBE Subcontractor Utilization Plan shall be a factor in the evaluation of its performance.

ARTICLE 10
MISCELLANEOUS

10.1 Consultant as Independent Contractor. Notwithstanding anything contained herein to the contrary including, without limitation, the provisions of Section 5.2 hereof, it is specifically understood and agreed that in the performance of the terms, covenants and conditions of this Contract, the Consultant and its Representatives shall not be deemed to be acting as agents, servants or employees of the Corporation or the City by virtue of this Contract or by virtue of any approval, permit, license, grant, right, or other authorization given by the City or the Corporation or any of their Representatives in connection with this Contract, but shall be deemed to be independent contractors performing work or professional services for the Corporation, and shall be deemed solely responsible for all acts taken by them pursuant to this Contract.

10.2 Assignment. This Contract is intended to secure the Services of the Consultant or a competent Representative or Representatives of the Consultant approved by the Director. The Consultant shall not assign, convey, subcontract, or transfer this Contract or the Consultant's rights hereunder without the written consent of the Director, which Consent shall be manifested by Notice. The Corporation shall have the right to assign, convey, subcontract or transfer this Contract or the Corporation's rights hereunder without the written consent of the Consultant to the City or any other corporation, agency or instrumentality having authority to accept the assignment.

10.3 Right to Inspect. The Corporation, the City Comptroller, the Inspectors and any other individual or entity authorized under any Legal Requirement shall have the right on reasonable Notice to inspect the operations and records of the Consultant and its Subcontractors relating to this Contract.

10.4 Maintenance of Records. In order to facilitate any audit provided herein, the Consultant agrees to maintain accurate, readily auditable records and accounts with supporting documentation in accordance with generally accepted accounting principles of the Services performed by it, its employees, and its Subcontractors under this Contract and of all financial accounts and transactions maintained or undertaken in connection with this Contract, including, but not limited to, time cards and records reflecting the nature of the work performed and time consumed, bank statements, cancelled checks, bills and receipts, Requisitions, and deposit slips, and to make such records available for inspection and audit in the City by the Corporation, the City, the Inspectors and any other individual or entity authorized under any Applicable Statute or Applicable Agreement upon reasonable Notice. Said records shall be maintained for a period of six years after termination of this Contract.

10.5 Modification in Writing. No modification, amendment, waiver or release of any provision of this Contract or of any right, obligation, claim or cause of action arising hereunder shall be valid or binding for any purpose unless in writing and duly executed by the party against whom the same is asserted.

10.6 Captions. The tables of contents and captions of this Contract are for convenience of reference only and in no way define, limit or describe the scope or intent of the Contract or in any way affect this Contract.

10.7 Completeness. This Contract contains all the terms and conditions agreed upon by the parties hereto, and no other agreement, oral or otherwise, regarding the subject matter of this Contract shall be deemed to exist or to bind either of the parties hereto.

10.8 Severability. If any clause, provision or section of this Agreement be ruled invalid by any court of competent jurisdiction, the invalidity of such clause, provision or section shall not affect any of the remaining provisions hereof.

10.9 Notices.

10.9.1 Each Notice, demand, request or other communication in connection with this Contract shall be either: (i) served in person, with delivery of service acknowledged in writing by the party receiving the same; (ii) sent by nationally known overnight delivery service or telefax; or (iii) deposited in the U.S. mails, first class mail, postage prepaid, and addressed to the respective address herein set forth in Part I, Section 3 or to such other address as may be specified by Notice sent in accordance herewith.

10.9.2 Every Notice hereunder shall be deemed to have been given: (i) at the date of receipt by the respective party in the case of personal delivery, overnight delivery or telefax and (ii) five (5) business days after the date of deposit in the first class U.S. mails.

10.10 Non-Waiver. Failure of the Corporation or its Representatives to enforce or otherwise require the performance of any of the terms and conditions of this Contract, at the time or in the manner that said terms and conditions are set forth herein, shall not be deemed a waiver of any such terms or conditions by the Corporation and the same may be selectively enforced or raised as a basis of a claim or cause of action at the option of the Corporation.

10.11 Refusal to Testify.

10.11.1 The Consultant agrees to cooperate fully and faithfully with any investigation, audit or inquiry conducted by a State or City governmental 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.

10.11.2 If:

(i) any person who has been advised that her or his statement, and any information from such statement, will not be used against her or him 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, the State, or any political subdivision or public authority thereof, or the PANYNJ, or the Corporation, or any local development corporation within the City, or any public benefit corporation organized under the laws of the State of New York, or

(ii) any person refuses to testify for a reason other than the assertion of her or his 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 the Corporation, or any local development corporation within the City,

then the commissioner or agency head (each of which is hereinafter referred to as the "Commissioner") whose agency is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license involved in such investigation, audit or inquiry 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.

10.11.3 If any non-governmental party to the hearing requests an adjournment, the Commissioner who convened the hearing or the Corporation may, upon the Commissioner granting the adjournment, suspend any contract, lease, permit, or license pending the final determination pursuant to subsection 10.11.5 below without the City or the Corporation incurring any penalty or damages for delay or otherwise.

10.11.4 The Corporation or the City may impose the following penalties after a final determination by the Commissioner that penalties should attach for the failure of a person to testify:

(i) the disqualification for a period not to exceed five (5) years from the date of an adverse determination of 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 or the Corporation, as the case may be; and/or

(ii) the cancellation or termination of any and all such existing City or Corporation contracts, leases, permits or licenses that the refusal to testify concerns and that have not been assigned as permitted under this Contract, 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 or the Corporation 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 or the Corporation, as the case may be.

10.11.5 The Commissioner shall consider and address, in reaching her or his determination, and the Corporation and the Commissioner shall consider and address, in assessing an appropriate penalty, the factors in subparagraphs (i) and (ii) below. The Commissioner and the Corporation may also consider, if relevant and appropriate, the criteria established in subparagraphs (iii) and (iv) below in addition to any other information which may be relevant and appropriate:

(i) The entity'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.

(ii) 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.

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

(iv) 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 subsection 10.11.4 above), provided that the party or entity has given actual notice to the Commissioner upon the acquisition of the interest, or at the hearing called for in subsection 10.11.2(2) 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.

10.11.6 The term "license" or "permit" as used herein shall be defined as a license, permit, franchise or concession not granted as a matter of right.

10.11.7 The term "entity" as used herein shall mean any firm, partnership, corporation, association, joint venture or person that receives monies, benefits, licenses, leases or permits from or through the City or otherwise transacts business with the City.

10.11.8 The term "member" as used herein shall mean any person associated with another person or entity as a partner, director, officer, principal or employee.

10.11.9 The term "person" as used herein shall mean any natural person doing business alone or associated with another person or entity as a partner, director, officer, principal or employee.

10.12 No Political Activity. The Consultant agrees that there shall be no political activity or any activity to further the election or defeat of any candidate for public, political or party office as a part of or in connection with this Contract, nor shall any of the funds provided under this Contract be used for such purposes.

NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION
ARCHITECTURAL SERVICES RELATED TO HURRICANE SANDY RELIEF PROGRAMS
CONSULTANT CONTRACT
FOR THE PROVISION OF ARCHITECTURAL SCOPING SERVICES
NYCEDC CONTRACT NO. 55670001
PROJECT CODE NO. 5567

PART III
APPENDICES

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APPENDIX A

DEFINITIONS

APPENDIX A

DEFINITIONS

The defined terms listed below shall have the following corresponding meanings in the annexed Contract (as defined herein) unless otherwise defined or the context otherwise requires. The singular shall include the plural and vice versa as the context may dictate. The gender used in the annexed Contract shall be deemed to refer to the masculine, feminine, or neuter gender, as the context or the identity of the persons being referred to may require.

Additional Insured	All individuals and entities listed in Appendix E
Allowable Additional Costs	As defined in Appendix B Scope of Services
Applicable Agreements	Various governing agreements related to the Funds, the Project and/or this Contract, including, without limitation, any specific "Applicable Agreements" identified in Part I, and any other governing agreement or MOU with the City, State and/or federal governments, or any agency thereof
Applicable Requirements	Any and all federal, state and local laws, statutes, rules, regulations and orders applicable to this Contract, the Funds or the Project, including, without limitation, any specific "Applicable Requirements" identified in Part I
Art Commission	Art Commission of the City of New York, currently known as The Public Design Commission
Borough	The City borough where the Project is located
City	The City of New York
City Contract	The Amended and Restated Contract between the City and the Corporation, dated as of June 30, 2005 and the Amended and Restated Maritime Contract between the City and the Corporation, dated as of June 30, 2005, as applicable, as each may be amended, restated and/or revised from time to time
City Comptroller	Comptroller of the City or his or her designee
Commencement Date	The date upon which the Consultant shall commence the Services as stated in Part I, Section 1.4
Comptroller General	The United States Comptroller General

Confidential Information	Any and all information, records, data, materials, documents, electronic files or Work Product provided by NYCEDC and/or the City or any of its agencies to the Consultant except that which (i) shall have otherwise become publicly available through no fault of Consultant or its Representatives; (ii) becomes available to the Consultant on a nonconfidential basis from a source other than NYCEDC, the City or any of its agencies; or (iii) is known by the Consultant prior to its receipt from NYCEDC, the City or any of its agencies without any obligations of confidentiality with respect thereto
Consultant	The entity or person contracted by the Corporation to perform the Services pursuant to this Contract, as identified in Part I, Section 2.3
Consultant's Underlying Intellectual Property	The Consultant's analytical concepts, approaches, methodologies, or formats developed by the Consultant's staff, and to other materials not prepared for delivery to the Corporation and also including any derivatives, improvements, enhancements or extensions of the Consultant's Underlying Intellectual Property conceived, reduced to practice, or developed during the term of this Contract that are not uniquely applicable to the Corporation
Contract	The Contract between the Consultant and the Corporation to which this Appendix A is annexed, as defined in Part I, Section 1.1
Contract Completion Costs	As defined in Section 3.5.3
Contract Date	The date of this Contract, as stated in Part I, Section 1.3
Corporation	New York City Economic Development Corporation, a local development corporation organized pursuant to Section 1411 of the Not-for-Profit Corporation Law of the State of New York, ("NPCL") or any successor organized pursuant to Section 1411 of the NPCL
CPL	Contractor Pollution Liability Insurance
DBEs	Disadvantaged Business Enterprises
Director	The person set forth in Part I, Section 2.2, or such other person as may be subsequently designated by the Corporation by Notice

Disability Benefit	A type of insurance to be purchased and maintained by the Consultant and its Subcontractors, in statutory amounts, for all of its employees engaged in the Services
DCAS	New York City Department of Citywide Administrative Services
DCP	New York City Department of City Planning
DEP	New York City Department of Environmental Protection
Division	Division of Labor Services of DSBS
DOB	New York City Department of Buildings
Doing Business Data Form	The form available at www.nycedc.com to be completed by the Consultant and submitted to the Corporation pursuant to LL 34
DOS	New York City Department of Sanitation
DOT	New York City Department of Transportation
DPR	New York City Department of Parks and Recreation
DSBS	New York City Department of Small Business Services
Electronic Funds Transfer (EFT)	Any transfer of funds, other than a transaction originated by check, draft or similar paper instrument, that is initiated through an electronic terminal, telephonic instrument or computer or magnetic tape so as to order, instruct or authorized a financial institution to debit or credit an account
E.O. 50	Executive Order No. 50 (1980), as amended or revised from time to time
Employment Report(s)	The reports described in Appendix G and available at www.nycedc.com to be completed and submitted to the Corporation pursuant to Executive Order 50
Event of Default	As described in Part II, Section 3.3.2
Extra Work	A significant alteration to the work or Services that the Consultant has been directed to perform by the Director as described in Part II, Section 1.5.2
FDNY	New York City Fire Department

Federal Courts	United States Federal Courts located in New York City
FHWA	United States Federal Highway Administration
Final Completion	The performance of all Services contemplated in this Contract to the satisfaction of the Director
Final Payment	The last payment by the Corporation to the Consultant under the Contract upon Final Completion or as provided in Part II, Sections 3.5.2 and 3.5.4
Force Majeure	Any of the following acts and events that occur without the negligence or fault, and beyond the reasonable control, of Consultant and that of any of its successors, heirs, assigns, and/or Representatives and of which Consultant has given the Corporation express written notice within three (3) days after the commencement of the alleged cause of the delay, hindrance, or obstruction: governmental preemption in connection with a national emergency, war or act of war, insurrection, riot, act of public enemy, terrorist acts, labor disputes, accidents, mechanical failure and acts of God (including fire, flood or abnormal adverse weather conditions not reasonably anticipatable)
FTA	United States Federal Transit Administration
Funding Agencies	All federal, State or local agencies or entities that are the source of the Funds including, without limitation, any specific "Funding Agencies" identified in Part I
Funds	All funds from the federal, State or local sources to be applied to payments for Services under this Contract including, without limitation, any specific "Funds" identified in Part I
IDA	New York City Industrial Development Agency, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation organized pursuant to Article 18-A of the General Municipal Law of the State of New York
Inspectors	All individuals or entities specifically identified as "Inspectors" in Part I, if any
Insurer	Any insurance company retained by the Consultant pursuant to Part II, Section 6.3.2
Landmarks Preservation	The City of New York Landmarks Preservation

Commission	Commission
Legal Requirements	All applicable laws, rules, regulations, ordinances, codes and orders of all federal, state and local governmental authorities, agencies, departments or bureaus having jurisdiction over and which affect the work and/or Services under this Contract including, without limitation, all Applicable Agreements and all Applicable Requirements
Local Law 34 (LL 34)	Local Law No. 34 of 2007, as it may be amended or superseded
LPC	City of New York Landmarks Preservation Commission
MacBride Principles	Those principles relating to nondiscrimination in employment and freedom of workplace opportunities that requires employers doing business in Northern Ireland to comply with specific terms set forth in Section 6-115.1 of the City's Administrative Code
Maximum Contract Price	The maximum amount that may be paid for the Services under the Contract, as stated in Part I, Section 1.6
Maximum Payment	The maximum amount payable for each Portion of the Services during a billing period
MBEs	Minority-owned Business Enterprises
M/WBE Compliance Reports	As described in Part II, Section 9.6
M/WBEs	MBEs and WBEs, collectively
M/WBE Subcontractor Utilization Plan	As described in Part II, Section 9.5
MOU	Memorandum of Understanding
New York State Courts	Courts of the State of New York in the City and County of New York
Notice	Any written notice, demand, request, instruction, advice, directive or other communication in connection with this Contract to be delivered to a party designated in Part I, Section 3, for the receipt of notice in the manner set forth in Part II, Section 10.9.1
Notice to Proceed	Written Notice from the Corporation to the Consultant to proceed with the Services or any portion thereof

Notify	To give a Notice pursuant to Part II, Section 10.9.1
NYCDEP	New York City Department of Environmental Protection
NYCEDC	The Corporation
NYCTA	New York City Transit Authority
NYPD	New York City Police Department
NYSDEC	New York State Department of Environmental Conservation
NYSDOH	New York State Department of Health
NYSDOS	New York State Department of State
NYSDOT	New York State Department of Transportation
OMB	New York City Office of Management and Budget
OPRHP	New York State Office of Parks, Recreation and Historic Preservation
PANYNJ	The Port Authority of New York and New Jersey
Participation Goal	The Corporation's goal for M/WBE participation related to the Contract, as defined in Part II, Section 9.4.
Payment Schedule	Schedule listing Maximum Payment for each Portion of the Services, appended to Appendix C when payment for Services or a Portion of the Services is on a Tasks completed basis
Payroll Report	Forms that the Consultant and any Subcontractors that provide any on-site construction activity must complete
Percentage of Completion	An amount equal to the percentage of completion of each Portion of the Services
Person In Charge	As identified in Part I, Section 2.5, the member(s) of the Consultant's professional staff who will have primary responsibility to perform and/or supervise and coordinate the performance of the Services
PLL	Pollution Legal Liability Insurance Policy
Portion	Each portion, task or phase of the Services as described in Appendix B and/or Appendix C

Principal	The most senior officer, or member of the Consultant's staff responsible for the performance of Services as identified in Part I, Section 2.4
Progress Reports	Reports which Consultant is obligated to prepare that show the status of the Services in accordance with the Progress Schedule
Progress Schedule	Any schedule issued or approved by the Corporation for the performance of the Services, including, without limitation, Project or Services milestones, deadlines or delivery dates
Project	As identified in Part I, Section 1.7, and described in detail in Appendix B
Project Manager	A person designated by the Corporation to serve as a liaison between the Corporation and the Consultant
Project Site	The location of the Project as identified in Part I, Section 1.8 and described in detail in Appendix B
Public Design Commission ("PDC")	Public Design Commission of the New York City (f/k/a The Art Commission)
RAP	Remedial action plan
Representatives	The employees, agents, servants, officers, directors, members, independent contractors and subcontractors of a person or entity
Requisition	A request for payment, to be submitted by Consultant not more than once per month, setting forth in detail, for the billing period for which partial payment is requested, the amount requested and Services performed during the billing period
Retainage	Any sum withheld from any payment to the Consultant including, without limitation, those set forth in Part II, Sections 1.5.3, 2.2.1 and 4.2.3
Retainage Payment Date	The date by which any Retainage identified in Part I, Section 1.10 will be paid to the Consultant, as identified in Part I, Section 1.11, subject to the provisions of Part II, Article 2 and Part III, Appendix C
Scope of Services	The Services to be provided by the Consultant in connection with this Contract, as set forth in Appendix B

Services	All of the services to be provided to the Corporation by the Consultant pursuant to the Contract, as described in greater detail in Appendix B
SHPO	State Historic Preservation Officer
Specific Terms and Conditions	Part I of this Contract
Fee and Cost Schedule	Schedule listing names of Consultant's staff, hourly rates and estimated number of days to be spent providing Services, appended to Appendix C when payment for Services or a Portion of the Services is on an hourly rate basis
State	State of New York
Subcontractor	Any person or entity including, without limitation, contractors, consultants, subconsultants, vendors and subcontractors of such persons or entities, employed or retained by the Consultant in accordance with the Contract to provide any services, work, materials, equipment or supplies in connection with the Services
Subcontractors' Costs	The compensation payable by the Consultant to any subcontractor(s) of the Consultant pursuant to a contract(s) entered into pursuant to Part II, Section 4.2
Target Subcontracting Percentage	As defined in Part II, Section 9.3
Term	The time period of this Contract, as stated in Part I, Section 1.5
USACOE	United States Army Corps of Engineers
USDOT	United States Department of Transportation
UST	Underground storage tanks
WBEs	Women-owned Business Enterprises
Worker's Compensation	A type of insurance to be purchased and maintained by the Consultant and its Subcontractors, in statutory amounts, for all of its employees engaged in the Services
Work-Made-For-Hire	As defined in Section 101 of the United States Copyright Act, 17 U.S.C. § 101

Work Product	All reports, plans, studies, surveys, data, databases, programs, processes, systems, drawings, tracings, blueprints, photographs, computer drawings, schematics, specifications, log books, correspondence, models, studies, permits approvals, designs, deliverables, samples, presentation materials, analyses, punch lists, submissions, filings, applications, schedules, documents and materials, including, without limitation, those related to inspections, tests and test results, in all formats now known or hereinafter known, prepared or furnished by the Consultant pursuant to this Contract, provided however that Work Product shall not include any Consultant's Underlying Intellectual Property

APPENDIX B

SCOPE OF SERVICES

Introduction/Objective

Hurricane Sandy impacted approximately 64,000 residential buildings in New York City including 17,000 single family dwellings (one and two family buildings). The City is launching a Community Development Block Grant (CDBG) Program to provide financial assistance to impacted homeowners for residential repairs. As part of this program, the City will be conducting detailed assessments of damaged homes and creating Work Orders for distribution to participating General Contractors. The New York City Housing Recovery Office (HRO) is seeking professional architectural services to support the home assessment program.

The City anticipates that approximately 8,000 to 10,000 will require preparation of a detailed scoping document (Work Order) describing home damage. Most homes that enter this program, will have sustained less than 50% physical damage based on the pre-storm fair market value of the home. A small percentage of homes will have received greater than 50% damage and will require the home to be raised.

The selected vendor(s) will be responsible for creating comprehensive work order packages and cost estimates of qualifying home repairs consistent with Federal, State and local requirements. The scoping documents for each home will include a list of unit price quantities, general floor plans of flood damaged areas, simple floor plan and elevation drawings of kitchen and bathroom repairs, a photographic inventory of the existing conditions, and general notes on hazardous mitigation requirements.

The selected vendor(s) is expected to have extensive experience in single family dwelling home design and familiarity with Federal Housing and Urban Development (HUD) CDBG requirements for home reconstruction.

Contracts will be awarded to up to 3 architectural firms based on the selection criteria described in this solicitation.

TASK 1. PROJECT MANAGEMENT

The selected vendor(s) shall provide a sufficient and well-organized project administration team to manage the project throughout the entire period of the Contract including proper supervision of all staff and subcontracted services.

Task 1.1 Project Execution Plan

The selected vendor(s) shall develop and implement a Project Execution Plan (PEP) detailing the manner in which the project will be planned, managed and executed. The objective of the PEP is to define the approach to be used by the project team to deliver the intended project and how project information will be communicated. The PEP shall be updated as necessary to reflect changes in the project and all revisions will be submitted to DEP for review and comment.

Task 1.2 Monthly Progress Reports and Weekly Progress Meetings

The selected vendor(s) shall prepare and submit a Monthly Progress Report detailing activities completed in previous month, activities anticipated in upcoming month, expenditure against planned budget,

schedule progress against planned schedule, and critical issues. The Monthly Progress Reports shall be clear and concise.

The Project Manager of the selected vendor(s) shall attend a weekly coordination meeting with the Program Director to review progress, discuss of items requiring feedback and review a list of outstanding issues requiring resolution.

The selected vendor(s) shall prepare a monthly invoice which includes a full accounting of all staff, number of hours, loaded hourly rate, sub-consultants and Other Direct Costs organized by individual scope task. Complete back up of all timesheets and other direct costs are required to substantiate billing.

TASK 2. DEVELOP POLICIES AND PROCEDURES

The selected vendor(s) shall prepare detailed procedures for the execution of home inspections including but not limited to written standard operating procedures, checklists, and floor plan and elevation "quick" forms, etc. The goal of the procedures is to create a consistent and efficient process of working with the homeowners and contractors to finalize the scoping document and initiate construction. All staff will be trained on these procedures and will be expected to comply with all policies and procedures in execution of the work without exception.

TASK 3. CONDUCT HOME INSPECTIONS AND PREPARE WORK ORDERS

Conduct site visit of home and prepare DRAFT Work Order of qualifying home repairs. Results of the Preliminary Damage Assessment performed by the Housing Recovery Office will be provided for each home. The Preliminary Damage Assessment provides a general description of eligible repairs and includes results of all hazards analysis and associated hazard mitigation requirements. The selected vendor(s) will build a detailed Work Order of all necessary repairs. General services under this sub-task include the following:

- Review assessment and environmental review performed on home during the Intake Process to verify work required in the home.
- Verify that a Right of Entry has been signed by the homeowner to allow access to the home.
- Inspect home and prepare detailed quantity take-offs for all necessary repairs. Record quantities and produce quick floor plans and elevations sufficient for basic kitchen and bath layouts in the electronic tablet (see Task 4). The unit price items will be based on the Xactimate estimating software package.
- Record written descriptions of hazardous remediation for lead, mold, and asbestos in addition to identified unit price quantities.
- Prepare detailed photographic inventory of the home (using electronic tablet) during inspection including all areas of damage and planned repairs. All photographs shall be properly logged and labeled consistent with documented procedures to facilitate ease of retrieval.
- Coordinate selection of all eligible options with homeowners including, but not limited to, basic kitchen layout, cabinetry, finishes, flooring, kitchen and bathroom fixtures, non-luxury appliances, etc.
- Identify appropriate repair duration (30 Days, 45 Days, 60 Days or 90 Days) depending on extent of damage. The repair schedule will be used as a basis of assessing liquidated damages to the contractors.

- Identify and record contractor start date on the home, based on assessment of advance need to procure supplies.
- Conduct final walk through of home with selected General Contractor to confirm scope and solicit final sign-off of the document from Contractor and Homeowner.

It is intended that these services will be completed in no more than 2 home visits, with each visit limited to approximately 4 hours. If final agreement on homeowner selected materials and layouts cannot be completed within these time frames, the homeowner will be required to make an appointment at a customer service station to finalize the selection process. All appointments for home visits to conduct investigations and prepare Work Orders will be made by a City Customer Service Representative.

TASK 4. DEVELOP TABLET-BASED WORK ORDER SYSTEM

Develop tablet-based system to record unit price quantities, store photo inventory of the home, provide visual images of allowable materials, and produce quick floor plans and elevations of storm-damaged homes. In addition to producing completed work order packages, the tablet will serve as a valuable communication tool with the homeowner to finalize overall home floor plans, and specifically, kitchen and bathroom plan and elevation drawings. The system shall allow visual imaging sufficient for quick optioneering of various layout configurations for "on the spot" communication with homeowners, and record selected options and materials for key home components (e.g. cabinet style, toilet, kitchen sink, etc.). Output from the tablet shall automatically create simple 8-1/2" x 11" plan and elevation drawings and document homeowner selected materials, including standard photographs that will be incorporated into the overall scope package for the building general contractor. Selected vendor(s) will be responsible for providing tablets and wireless printers and configuring tablets to produce DRAFT Work Order documents.

TASK 5. QUALITY MANAGEMENT

The selected vendor(s) will provide centralized independent review of all scoping documents prior to finalization including review of photographs, unit price list, floor plans, elevations, etc. to verify eligibility, completeness, accuracy, local code compliance, and compliance with HUD Single Family Housing Rehabilitation Standards, and the HUD CPD Green Building Retrofit Checklist. Any quality issues identified during review shall be corrected prior to contractor sign-off of the scoping document. It is expected that all quality sign-offs will be completed within 24 hours of submittal of a draft Scope of Work Package.

TASK 6 PREPARE ENGINEERING DRAWINGS AND INSPECTION FOR HOME RAISING

The selected vendor(s) shall be responsible for a design solution for elevating each building according to its topography, the Base Flood Elevation plus an additional margin to meet NYC resiliency goals, access and egress provisions (including lifts when needed), energy code compliance assessment, ADA compliance, and zoning analysis to comply with new City height and bulk restrictions.

TASK 7 REVIEW/APPROVAL OF POTENTIAL CHANGE ORDERS

The selected vendor(s) shall be responsible for reviewing and approving changes to the original scope document including an evaluation of a time extension to complete the extra work. Potential scope changes must be submitted in writing from the General Contractor and where applicable, an electronic photo inventory of the changed condition must be provided. Where necessary, the architect shall make a home visit to verify the change condition; otherwise, the photographic inventory provided by the contractor shall be used to assess the changed condition. All contractor submissions and owner approval of changed conditions shall be made electronically into the City's web-based data management system. It is expected that all change requests shall be reviewed and approved within 48 hours of submission from the General Contractor. Requests for changes must be approved by the vendor(s) prior to the initiation of the work.

TASK 8 REQUESTS FOR INFORMATION/CLARIFICATION

The selected vendor(s) shall be responsible for reviewing and responding to scope related requests for information (RFI) from the General Contractor. The General Contractor must submit all RFIs through the web-based Construction Management System. It is expected that all RFIs shall be responded to within 48 hours of receipt.

TASK 9 SUBMITTAL REVIEW

The General Contractors will be required to provide basic submittals of materials for all unit price items for review and approval. The selected vendor(s) will be required to review the submissions for compliance with the contract specifications as well as HUD Single Family Housing Rehabilitation Specifications. Each selected contractor is expected to provide submittals within 30 days of contract registration for all unit price items. The selected vendor(s) is expected to review all submittals within 14 days of the initial submission. Substitutions for approved submittals may be received throughout the construction period and the selected vendor(s) is expected to review and approve individual submissions within 48 hours of submission.

APPENDIX C

PAYMENTS

APPENDIX C

PAYMENTS BASED ON TASKS COMPLETED

The Maximum Payment for each Portion of the Services shall be the respective amounts set forth for in the Payment Schedule annexed hereto as Exhibit 1 to this Appendix C.

Interim payments shall be made to the Consultant. The interim payments will be made no more frequently than once a month in an amount equal to the Percentage of Completion of each Portion of the Services, multiplied by the Maximum Payment for each Portion performed during the billing period, less any Retainage. The Consultant shall also be reimbursed for Allowable Additional Costs as such costs accrue. Except as may permitted under Part II, Section 2.2.1 of the Contract, Retainage will not be applied against Allowable Additional Costs.

To request an interim payment, the Consultant shall submit to the Corporation's **Accounts Payable Department**, not more than once per month, a Requisition setting forth in detail, for the period for which partial payment is requested, the following:

(i) the Percentage of Completion for each Portion of the Services performed by the Consultant during the billing period;
(ii) Allowable Additional Costs incurred during the billing period (not applicable to this Contract);
(iii) the amount of partial payment requested; and
(iv) a representation and warranty that, except as set forth in the Requisition, the representations and warranties made by the Consultant in Article 7 of the Contract are true and correct as of the date of the Requisition as if made on the date of the Requisition.

An EFT Enrollment Form is attached as Exhibit 2 to this Appendix C and must be completed and returned to the Corporation prior to Consultant's submission of its first Requisition.

In addition, the Consultant shall submit Progress Reports to the Director at least monthly or in accordance with any other schedule approved by the Director, or at the Director's request. Such Progress Reports shall clearly state the reasons for any actual or anticipated delays in completion of the Services.

PAYMENTS BASED ON HOURLY RATES

Interim payments shall be made to the Consultant no more frequently than monthly based on the number of hours members of the Consultant's staff, as shown on the Staff and Fee Schedule annexed hereto as Exhibit 1 to this Appendix C, spent providing the Services, multiplied by the hourly rate and applicable multiplier for each such member of the Consultant's staff on the Staff and Fee Schedule, less any Retainage. The Consultant shall also be reimbursed for Allowable Additional Costs incurred.

On or before the Commencement Date, the Consultant shall provide to the Director an estimate of the number of hours members of the Consultant's staff, as set forth on the annexed Staff and Fee Schedule (Exhibit 1), and its Principal are anticipated to spend providing the Services. Such estimate shall be subject to the Director's approval.

To request an interim payment, the Consultant shall submit to the Corporation's **Accounts Payable Department**, not more than once per month, a Requisition setting forth in detail, for the period for which partial payment is requested, the following:

(i) Services performed by Consultant's Principal and by its professional and technical staff;
(ii) the number of hours worked by each such Principal and its professional and technical staff in connection with the Services performed during the billing period;
(iii) actual salaries incurred during such month;
(iv) Allowable Additional Costs incurred;
(v) Subcontractors' Costs incurred during the billing period;
(vi) the amount of partial payment requested; and
(vii) a representation and warranty that, except as set forth in the Requisition, the representations and warranties made by the Consultant in Article 7 of the Contract are true and correct as of the date of the Requisition as if made on the date of the Requisition.

An EFT Enrollment Form is attached as Exhibit 2 to this Appendix C and must be completed and returned to the Corporation prior to Consultant's submission of its first Requisition.

No multiplier overhead, administrative fee or other mark up will be paid to Consultant for Subcontractors' Costs or Allowable Additional Costs. Except as may permitted under Part II, Section 2.2.1 of the Contract, Retainage will not be applied against Allowable Additional Costs.

In addition, the Consultant shall submit Progress Reports to the Director at least monthly or in accordance with any other schedule approved by the Director, or at the Director's request. Such Progress Reports shall clearly state the reasons for any actual or anticipated delays in completion of the Services.

EXHIBIT 1 TO APPENDIX C

FEE AND COST SCHEDULE

IBTS Resubmission of the Fee Schedule for Architectural Services, August 7 version (Corrected)

General Assumptions (applicable to all Tasks)

1. Hourly rates are fully burdened rates including the overhead, G&A, and fees.
2. IBTS has provided names of inspectors and many other staff. IBTS will be happy to provide additional details about the names of the staff specifically dedicated to each task, upon request.
3. Tasks 7, 8, and 9 are time and material. Other tasks are fixed unit costs or lump sum. The breakdowns of hours and ODCs are only for example.
4. All calculations assume that IBTS will be paid within 30 days (one month) of invoice approval by the City.
5. One day (or 24 hours) means a full business day.

Task 1. Project Management

Assumption: Contract Duration 2 Years

Name	Title	Role	Hourly Rate	Hours	Total
Shyam Choudhary	COO	Executive Oversight	$350.00	600	$210,000
Dan Gerrity	CDM Executive	3rd Party Oversight	$350.00	200	70,000
Nancy Pogensky	Project Manager	Program Management	$197.08	1,600	315,328
Anthony Portillo	A/E Task Manager	Arch Svcs Management	$135.00	1,500	202,500
Keith Ortale	Assessment TM	Damage Assessment Management	$135.00	1,500	202,500
Steve Traina	Contract Manager	High Quality High Volume	$172.50	1,000	172,500
Robert Burns/ Contracts	Director	Compliance	$197.08	500	98,540
TBD	Administration	Program Support	$57.50	1,800	103,500
			Labor Sub-Total		$1,374,868
			ODC'S		362,000
			Task Total		$1,736,868

List of Assumptions

1. Task 1.1, Project Execution Plan, cost represents $42,212.00 of the total cost for Task 1 above.
2. The Meeting and Reports cost, Task 1.2, will $1,736,868 - $42,212.00 = $1,694,656 for completing 5,000 homes and the cost will be spread over 24 months, 1/24th per month.
3. $362,000 in ODCs include:
   a. Out of town travel by SMEs/Senior management Steve Traina: $6000 (room, board, period travel to/from) x 20 = $120,000, plus other travel by HQs staff (Shyam Choudhary, Robert Burns) 40 trips (two trips a month)/travel/lodging/board @$1600 per 3 day trip = $64,000
   b. Project cost: $5000 per month (supplies, internet, data storage, security, staff support) x 20 months = $100,000. Note: office rent cost is part of Overhead.
   c. Cost of additional insurance for six years $50,000, local travel cost = $12,000, and local travel cost of $18,000 for attending meetings.

Task 3. Conduct Home Inspections and Prepare Work Orders

Assumption: 5,000 Homes

Name	Title	Role	Hourly Rate	Hours	Total
TBD	Admin.	Support	$57.50	5,000	$287,500
See Attached	Dmg. Assessor	Pre-Site Review	$100.00	10,000	1,000,000
See Attached	Dmg. Assessor	Damage Assessment	$100.00	20,000	2,000,000
See Attached	HO Selections	Selections	$86.25	20,000	1,725,000
See Attached	Dmg. Assessor	guide staff, Post-Site package	$100.00	5,000	500,000
Ken Garret/Steve T	Compliance/production	Production	$135.00	2,300	310,500
			Labor Sub-Total		$5,823,000
			ODC'S		1,090,000
			Task Total		$6,913,000

List of Assumptions

1. The above price is for 5,000 dwelling units and is based on fixed price of $1,382.60 per home. It includes 12.46 hours of time per home, and $219.20 for travel (local and out of town for SMEs), cell phones, and other ODCs related with field travel and reporting. Labor hours include travel time from/to office and between sites.
2. IBTS assumes that there will be very close coordination between the City and IBTS for field visit scheduling. Ample notice (3-7 days) of inspections will be maintained and unexpected circumstances may require schedule revisions. The City will advise of any special requirements in advance including accommodations for disability and languages as examples. IBTS also requires the flexibility to refine the inspection schedules produced by the City to maximize the efficiency of inspectional process.
3. After the City has organized the schedules of field visits, if No Shows by Homeowner(s) or contractors occur, IBTS proposes a unit price of $767 for such effort.
4. If the Homeowner(s) or the contractor do not sign the final construction scope, a report listing their reasoning (exception report) will be provided. If IBTS assistance is needed later to resolve those issues, it will be Task 7 Time and Material services.
5. For homes having more than 1 unit, each Residential unit, rented or owned by a separate occupant will be considered a dwelling unit.
6. The field work will be started by IBTS upon receiving complete information from the City, including approvals on all relevant issues, such as historical or environmental issues.
7. If there is a revised estimate required due to federal, state, or city requirements or due to a change in policy or procedure, a price of $767 is proposed for each revision.
8. If IBTS will be required to coordinate with other agencies, this effort may vary and will be performed under Task 7 Time and Material.
9. For homeowners who choose to utilize "Do it yourself" option, IBTS will not be sending a Design Associate with the field team. The reduced price will be $1085, reduction representing 4 hours of Design Associate time @86.25 an hour, plus travel cost for that person.
10. ODC cost of $1,090,000 includes:
    a. Local travel (to and from office or home to the site, tolls, parking, etc.) 5000 @ $40 per inspection person x two persons, $400,000. Each Damage Assessor will either use their car and get reimbursed for mileage or rental car will be provided. Enterprise Rental Car is IBTS partner, and has quoted $900 a month car rent, plus we have to pay fuel, tolls, and parking. Either way, this local travel cost is part of all Damage Assessment type field work.
    b. Out of town travel cost for subject matter experts, $5000 per month room/board plus $1000 a month travel back home, $6000 per person x 8 persons x 12 months = $576,000. The names of eight subject matter experts include for example: Ken Garrett, Eric Cruz, Phillip Smith, Joe Conry, Justin Kelly, Tracy Collins, Jeff Halfman, Frank Minnella. Actual name and time of travel may vary.
    c. Cell phone, internet hot spots, @$80 per person per month x 40 persons x 20 months = $64,000
    d. Misc. costs $50,000 for data storage for six years, etc.

Task 5. Quality Management

Assumption: 5,000 Homes

Name	Title	Role	Hourly Rate	Hours	Total
Tracy Collins	On site Team Lead	On site QC Review	$115.00	2,500	$287,500
Vincent Lander	Enviro Review	Resolution of issues	$135.00	500	67,500
Ken Garrett	Final Review/submission	Approval, Root Cause analysis	$130.00	2,500	325,000
TBD	Admin	Support	$57.50	1,500	86,250
			Labor Sub-Total		$766,250
			ODC'S		50,000
			Task Total		$816,250

List of Assumptions

1. Fixed Unit cost is $163.25 that includes about 1.4 hours of staff time, plus local travel for on site QA/QC
2. These figures include Review by a team lead of the field work for completeness and accuracy prior to final submission and any guidance needed by the field team for unexpected issues. If any errors are found requiring additional field inspection to correct any oversights by the IBTS field staff which results in changes to the scope and estimate, it will be revised at this stage.
3. $50,000 in ODCs include local travel by the quality system damage assessor to go on site to spot check the field work.

Task 6. Prepare Engineering Drawings and Inspection for Home Raising

Assumption: 500 Homes

Name	Title	Role	Hourly Rate	Hours	Total
TBD	Admin	Support	$57.50	1,000	$57,500
See Attached	Dmg. Assessor	Inspection	$100.00	1,000	100,000
See Attached	Dmg. Assessor	Elevate Worksheet	$100.00	1,000	100,000
James Bouler	Sr. Architect	Foundation Design	$135.00	4,000	540,000
Liz Saunier	Project Manager	Drafting	$85.00	8,500	722,500
Eric Cruz	Arch. Technician	RFP	$118.24	500	59,120
James Bouler	Sr. Architect	Site Visits	$135.00	2,500	337,500
TBD	Admin	Final Packaging	$57.50	1,000	57,500
			Labor Sub-Total		$1,974,120
			ODC'S		1,565,880
			Task Total		$3,540,000

List of Assumptions

1. Survey will be provided by IBTS. Geotechnical borings may be done on as needed basis. These costs included in ODCs.
2. Stamped drawings will be electronically delivered to contractor for pricing and DOB.
3. These prices are based on fixed unit prices of $7080 per home. If in future, the City changes requirements, the increased level of effort will be negotiated. The $7080 unit price will be billed in two parts. The first totals $6580. The second part, totaling $500, represents the final inspection.

Task 7. Review/ Approval of Potential Change Orders

Name	Title	Role	Hourly Rate	Hours	Total
Nancy Pogensky	Architect	Technical Review	$197.08	658	$129,678.64
Justin Kelley	Cost Estimator	Site Visit	$112.33	2629	295,315.57
Justin Kelley	Cost Estimator	Prepare Detailed Estimate	$112.33	2632	295,315.57
Nancy Pogensky	Architect	Final Review	$197.08	658	$129,678.64
			Labor Sub-Total		$849,988.42
			ODC'S		11.58
			Task Total		$850,000.00

List of Assumptions

1. These figures include the time for discussions regarding the change orders and for overall management, reporting, meetings, quality assurance, and expediting the resolution of the change order issues in full consultation with the City.
2. This is a time and material task.

Task 8. Review Request for Information/Clarification

Name	Title	Role	Hourly Rate	Hours	Total
Nancy Pogensky	Architect	Technical Review	$197.08	461	$90,853.88
Eric Cruz	Arch. Tech	Resolve/Clarify Issues	$118.24	1846	218,271.04
Nancy Pogensky	Architect	Final Review	$197.08	461	$90,853.88
			Labor Sub-Total		$399,978.80
			ODC'S		21.20
			Task Total		$400,000.00

List of Assumptions

1. This is a time and material Task.

Task 9. Submittal Review

Name	Title	Role	Hourly Rate	Hours	Total
Nancy Pogensky	Architect	Technical Review	$197.08	226	$44,540.08
Eric Cruz	Arch Tech	Review Materials/Equipment Data	$118.24	1359	160,688.16
Nancy Pogensky	Architect	Final Approval	$197.08	227	44,737.16
			Labor Sub-Total		$249,965.40
			ODC'S		34.60
			Task Total		$250,000.00

List of Assumptions

1. This is a time and material task.

Add/Alternate 1. Develop Policies and Procedures (Formerly Task 2.)

Name	Title	Role	Hourly Rate	Hours	Total
Nancy Pogensky	Project Manager	Management Oversight	$197.08	60	$11,824.80
Eric Cruz	Sr. Estimator	Develop Assessment Policy	$118.24	147	17,381.28
Steve Traina	Contract Manager	Develop Assessment Procedures	$172.50	80	13,800.00
Keith Ortale	Assessment Lead	Develop Training Programs	$162.00	176	28,512.00
Project Staff (50 staff)	Procedure & Program Requirement Training		$100.00	2400	240,000.00
			Labor Sub-Total		$311,518.08
			ODC'S		119,815.92
			Task Total		$431,334.00

List of Assumptions

1. The original cost of developing the tablet system for tasks 3 and 5 remains unchanged as $81,334. Other added costs have been described below.
2. Added One week initial training on procedure and program requirements to ensure high quality and high volume, consistency among all contractors. Additional 4 hours per staff quarterly training, cost $240,000.
3. ODC includes two trainer staff cost, price for one day of training: $5,000 to cover for trainers time and travel, 10 proposed trainings= $50,000 (5 day trainer for 50 staff x 2 contractors, periodic webinars, $2,500 per webinar or 4 hours meeting, assume 20 such short meetings, other meetings with stakeholders $1,000 per meeting, 10 meeting, total: $110,000. Proposed additional cost.

Add/Alternate 2. Develop Tablet-Based Work Order System (Formerly Task 4.)

Name	Title	Role	Hourly Rate	Hours	Total
Eric Cruz	Sr. Estimator	Define System Requirements	$118.25	60	$7,095
Steve Traina	Contract Mngr.	Manage System Development	$172.50	40	6,900
Keith Ortale	Assessment Lead	Develop Training Materials	$162.00	40	6,480
IT help desk & IT Eng. for IBTS and Other Contractor Staff	Help Desk - 1.5 FTE for IBTS and Other Contractor staff, over the period of the project for 5000 homes for each contractor.	Assist project staff, solve Hardware, connectivity, transfer of data, system issue	$100.00	2,500	250,000
Lantel Sys	IT system Develop	System Development and Maintenance	$58,000.00	1	58,000
			Labor Sub-Total		$328,475
			ODC'S		289,860
			Task Total		$618,335

List of Assumptions

1. These figures include the system that is ready to support Task 3 on site work and submission to the City. These figures also include: specifications of the hardware, quote for leasing and purchasing the tablets and related equipment, User Manual, and leasing agreement. The User agreement needs to be signed by other contractors and the document will have conditions that are customary and normal for such services and it will be for a limited period of two years. The system does not include management of the City's host site or other computer systems.
2. If the system needs to be enhanced further, such costs will be negotiated and paid through T & M.
3. Hardware purchase cost: $4,000 x 20 IBTS staff= $80,000 (tablets, printers, carry on, chargers, computers for office staff, cameras. Cost of Exactimate, $200 per user per month x 24 months= $60,000. Total ODC for these costs will $80,000 + $60,000= $140,000.
4. IBTS will provide hardware, software, help desk, engineering, connectivity support to 20 staff of Other Contractor; the cost will be similar to IBTS. This additional cost will be $80,000 for hardware, $60,000 for Exactimate.
5. An additional ODC cost of $9,860 is included for miscellaneous travel.

EXHIBIT 2 TO APPENDIX C

EFT ENROLLMENT FORM

NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION

DIRECT DEPOSIT/ELECTRONIC FUNDS TRANSFER (EFT) VENDOR PAYMENT ENROLLMENT FORM

INSTRUCTIONS: Please complete all sections of this Enrollment Form and attach a voided check or a copy of an encoded deposit slip that includes an imprinted vendor's name. See the reverse side for more information and instructions.

Mail to: New York City Economic Development Corporation, 110 William Street, 4th Floor, New York, NY 10038
Attention: Controller, Accounting Dept. or Fax to: 212-312-3914

SECTION I – VENDOR INFORMATION

1. SOCIAL SECURITY NUMBER OR TAXPAYER ID NUMBER: (AS IT APPEARS ON W-9 FORM)

2. VENDOR NAME (AS IT APPEARS ON W-9 FORM): (AS IT APPEARS ON W-9 FORM)

3. VENDOR'S PRIMARY ADDRESS:

4. VENDOR'S EMAIL ADDRESS:

5. CONTACT PERSON NAME:

6. CONTACT PERSON TELEPHONE NUMBER:

SECTION II – FINANCIAL INSTITUTION INFORMATION

1. BANK ACCOUNT NUMBER:

2. ACCOUNT NAME:

3. BANK NAME:

4. BANK BRANCH ADDRESS:

5. ROUTING TRANSIT NUMBER: (LOCATED AT THE BOTTOM OF YOUR CHECK)

6. ACCOUNTING TYPE: (CHECK ONE) ☐ CHECKING ☐ SAVINGS

7. DIRECT DEPOSIT/ACH/EFT COORDINATOR'S NAME:

8. TELEPHONE NUMBER:

SECTION III – VENDOR SIGNATURE

VENDOR SIGNATURE _____ PRINT NAME _____ DATE _____

NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION

DIRECT DEPOSIT/ELECTRONIC FUNDS TRANSFER (EFT) VENDOR PAYMENT ENROLLMENT FORM

GENERAL INSTRUCTIONS

Please complete all sections of the Direct Deposit EFT Enrollment Application and forward the completed application along with a voided check or a copy of an encoded deposit slip that includes an imprinted vendor's name to:

New York City Economic Development Corporation, 110 William St., Room 400
New York, NY 10038 – Attention: Controller, Accounting Dept or Fax to: 212-312-3914.

SECTION I – VENDOR INFORMATION

1. Enter the vendor's social security number or taxpayer ID number, the 9-digit number reported on W-9 form.
2. Provide the name of the vendor (as it appears on the W-9).
3. Enter the vendor's complete address for EFT correspondence associated with this account.
4. Provide the vendor's E-mail address, if you have one.
5. Indicate the name and telephone number of the vendor's contact person. (If you are enrolling yourself individually, you are the contact person).

SECTION II – FINANCIAL INSTITUTION INFORMATION

1. Indicate the vendor's bank account number.
2. Indicate the vendor's account name.
3. Provide bank's name.
4. Provide the complete address of your bank.
5. Indicate 9-digit routing (ABA) transit number (located at the bottom of your check).
6. Indicate type of account: (Check one box only).
7. List name and telephone number of your bank's Direct Deposit/EFT Coordinator.

SECTION III – VENDOR SIGNATURE

Sign and date where indicated.

APPENDIX D

FORM OF CERTIFIED STATEMENT REGARDING USE OF NON-ORIGINAL MATERIALS

APPENDIX D

FORM OF CERTIFIED STATEMENT REGARDING USE OF NON-ORIGINAL MATERIALS

STATE OF)
) ss.:
COUNTY OF)

The undersigned, being first duly sworn, deposes and states as follows:

1. I am the Principal of the Consultant named below in connection with the contract (the "Contract") identified below between the Consultant and New York City Economic Development Corporation ("NYCEDC").

2. I make this affidavit pursuant to Section 5.2.6(iii) of the Contract to verify certain information regarding non-original materials included in the Work Product (as defined in the Contract) furnished by the Consultant to NYCEDC pursuant to the Contract.

3. I hereby certify that the information set forth on the "List of Rights, Limitations and Requirements Regarding the Use and Display of Non-Original Materials Included in Consultant's Work Product" (the "Non-Original Materials List") annexed hereto and made a part hereof, and the licenses, releases, permissions, clearances and other documents (collectively, the "Licenses") annexed thereto, are complete, true and accurate as of the date of this affidavit, and I acknowledge and understand that NYCEDC shall rely thereon in connection with any use and display of such materials.

4. In particular, I hereby certify that the annexed Non-Original Materials List and Licenses set forth (i) all non-original materials included in Consultant's Work Product; (ii) all information as to the source of such materials; (iii) all information as to any durational limitations on use of such materials; (iv) all requirements as to notices that must be displayed in connection with display, including the specific owner of the rights to be credited; and (v) all other limitations on the use and display under the Licenses.

Dated: _____ Signature: _____

Consultant: _____ Printed Name: _____

NYCEDC Contract No.: _____ Title: _____

Sworn to before me this
day of , 20

_____
Notary Public

LIST OF RIGHTS, LIMITATIONS AND REQUIREMENTS REGARDING THE USE AND DISPLAY OF NON-ORIGINAL MATERIALS INCLUDED IN CONSULTANT'S WORK PRODUCT

Non-Original Material	Source	Rights/Limitations/Requirements*

* ATTACH COPIES OF ALL LICENSES, RELEASES, PERMISSIONS, CLEARANCES AND OTHER RELEVANT DOCUMENTS

APPENDIX E

INSURANCE REQUIREMENTS

1. **Required Policies and Amounts**
2. **Additional Insureds**
3. **Required Provisions**
4. **Sample Form of Insurance Certificate**

APPENDIX E

INSURANCE REQUIREMENTS

1. Required Policies and Amounts

Workers' Compensation/ Disability Benefits:	In statutory amounts
Employer's Liability:	The greater of statutory amounts or $1,000,000
Commercial General Liability (including Owner's Protective Liability):	A minimum of $1,000,000 per occurrence, with an annual aggregate of not less than $2,000,000 in the aggregate The maximum deductible or self-insured retention ("SIR") for the Commercial General Liability policy shall be $10,000
Automobile Liability:	$1,000,000 combined single limit per occurrence
Umbrella/Excess Liability:	$10,000,000 on a per occurrence and aggregate basis, and shall be excess of primary general, automobile and employer's primary liability limits

If the Consultant or its Subcontractors use floating equipment, barges or floats, or performs marine-related construction, the Consultant and as applicable, its Subcontractors, shall purchase and maintain additional insurance of the following types and in the following amounts in connection with the performance of the Services:

U.S. Harbor Workers' Long Shoremens' Compensation Act:	In statutory amounts
Marine Protection and Indemnity:	$25,000,000 per occurrence, but if an annual aggregate is applicable to the policy not less than $25,000,000 in the aggregate per year

If the Project is adjacent to or includes an existing railroad or subway line, the Consultant, or its Subcontractors, shall purchase and maintain the following insurance in the following amounts in connection with the performance of the Services by the Consultant and its Subcontractors, and any work incidental thereto:

Railroad Protective Liability:	$1,000,000 per occurrence, but if an annual aggregate is applicable to the policy not less than $2,000,000 in the aggregate

If the Consultant or any of its Subcontractors is performing asbestos or other toxic or hazardous materials remediation, removal, abatement, storage or disposal work including, without limitation, related demolition work, the Consultant or its Subcontractors shall purchase and maintain additional insurance of the following types and in the following amounts in connection with the performance of the Services and any work incidental thereto:

Contractor Pollution Liability ("CPL") Policy and, as applicable, Asbestos Abatement Liability Policy, Lead Abatement Contractors Liability Policy, Stop Loss Policy, Professional Services Policy, Pollution Legal Liability ("PLL") Policy, Transportation Coverage and Non-Owned Disposal Site Coverage:	$5,000,000 combined single limit per occurrence for bodily injury or death, and property damage, but if an annual aggregate is applicable to the policy not less than $5,000,000 in the aggregate per year dedicated to this Project, on an "occurrence" basis, with a term of not less than ten (10) years

Such CPL and PLL policies shall be for a term of not less than (10) years, on an "occurrence" basis, and any aggregate applicable to such policies shall be dedicated to this Project. In addition, such policies shall include, without limitation, and as applicable, (a) bodily injury and defense coverage for asbestos and lead; (b) coverage for unknown UST's; (c) a definition of "property damage" that includes diminution in value of third-party properties; (d) a statement that such insurance is primary and over any surety contracts or bonds covering the Services; (e) a statement that the insured's rights will not be prejudiced if there is a failure to give notice due to the insured's belief that the occurrence was not covered; (f) coverage for products brought onto the work site where Services are being performed; (g) a definition of "stop loss" or "cleanup cost cap" that includes monitoring activities; (h) a definition of "cleanup costs" that includes any costs associated with natural resources damages; and (i) a statement that exclusions for modifications of remedial action plans ("RAP") shall not include changes required by regulatory agencies (either via a change in regulations or as a result of governmental entity oversight, increased levels or quantities of pollutants within the boundary of the RAP, discovery of pollutants not identified in the exclusion, and amendments to the RAP because of a change in technological approach).

If the Consultant or any of its Subcontractors is performing professional services in its capacity as a professional, including as may be evidenced by a license to practice that profession, the Consultant or its Subcontractors shall purchase and maintain additional insurance of the following type and in the following amount in connection with the performance of the Services and any work incidental thereto:

Professional Liability/Errors & Omissions Insurance:	Professional liability ("PL") and/or errors and omissions ("E & O") insurance policies shall be written with a minimum amount of $2,000,000 per claim and in the aggregate.

If the Consultant cancels its PL or E & O policy during, or lets its PL or E & O policy coverage lapse after, the policy period in which the term for services under the Consultant Contract ends, the Consultant must obtain tail coverage, or an extended reporting period endorsement, that extends coverage of the professional liability insurance for a period of at least three years.

APPENDIX E

INSURANCE REQUIREMENTS

2. Additional Insureds

For the purposes of this Contract and the requirements of Article 6 thereof including, without limitation, Section 6.3.3 (iii), the term "Additional Insureds" shall include the following individuals and entities:

New York City Economic Development Corporation
The City of New York

and such other entities and individuals as the Corporation may direct from time to time

APPENDIX E

INSURANCE REQUIREMENTS

3. Required Provisions

The policies required under Section 6.3.9 (ii) of the Contract shall contain the following provisions, if available:

"A. Notices from the insurer (the "Insurer") to the New York City Economic Development Corporation (the "Corporation") and the City of New York (the "City"), in connection with this policy, shall be addressed to the General Counsel, New York City Economic Development Corporation, at 110 William Street, New York, New York 10038 (with a copy to the Corporation's Contract Administrator at the same address), and to the Commissioner, New York City Department of Small Business Services, at 110 William Street, New York, New York 10038 or such other addresses as may be specified by the Corporation;

B. The Insurer shall accept notice of accident from the Corporation or the City, within 120 days after receipt by an official of such Additional Insured (as identified in Appendix E of the Contract between the Corporation and the Consultant to which this policy applies) of notice of such accident as valid and timely notice under this policy;

C. The Insurer shall accept notice of claim from the City within 120 days after such claim has been filed with the Comptroller of the City and notice of claim from the Corporation, within 120 days after receipt by such party as valid and timely notice under this policy;

D. Notice of accident or claim to the Insurer by the Consultant, the Corporation or the City shall be deemed notice by all under this policy;

E. This policy shall not be canceled, terminated or modified by the Insurer or the Consultant unless 30 days prior written notice is sent by registered mail to the Corporation or the City;

F. The presence of engineers, inspectors or other employees or agents of the Consultant, the Corporation or the City at the site of the Services performed by the Consultant shall not invalidate this policy of insurance; and

G. Violation of any of the terms of any other policy issued by the Insurer to the Consultant or a subcontractor of the Consultant shall not inviolate this policy; and

H. Insurance, if any, carried by the Corporation, the City or the Additional Insureds will not be called upon to contribute to a loss that would otherwise be paid by the Insurer."

APPENDIX E

INSURANCE REQUIREMENTS

4. Sample Form of Insurance Certificate

ACORD. CERTIFICATE OF INSURANCE

ISSUE DATE (MM/DD/YY): 11/11/11

PRODUCER

Insurance Broker's Name
Address

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURED

Your Firm's Name
Address

COMPANIES AFFORDING COVERAGE

COMPANY LETTER A: General Liability Company

COMPANY LETTER B: Auto Liability Company

COMPANY LETTER C: State Insurance Fund

COMPANY LETTER D: Professional Liability Company

COMPANY LETTER E: Builders Risk Company

COVERAGES

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

CO LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
	GENERAL LIABILITY S				GENERAL AGGREGATE $ 2,000,000
A	X COMMERCIAL GENERAL LIABILITY	Insurance Policy #	11/11/11	22/22/22	PRODUCTS-COMP/OP AGG. $
	CLAIMS MADE OCCUR.				PERSONAL & ADV. INJURY $
	OWNER'S & CONTRACTOR'S PROT.				EACH OCCURRENCE $ 1,000,000
	X Additional Insureds-City of A New York; New York City Economic Development Corp.; and Apple Industrial Development Corp.				FIRE DAMAGE (Any one fire) $
					MED. EXPENSE (Any one person) $
	AUTOMOBILE LIABILITY				COMBINED SINGLE LIMIT $ 1,000,000
B	X ANY AUTO	Insurance Policy # M	11/11/11	22/22/22	
	ALL OWNED AUTOS				BODILY INJURY (Per person) $
	SCHEDULED AUTOS				
	HIRED AUTOS				BODILY INJURY (Per accident) $
	NON-OWNED AUTOS				
	GARAGE LIABILITY		P		PROPERTY DAMAGE $
	EXCESS LIABILITY				EACH OCCURRENCE $
	UMBRELLA FORM				AGGREGATE $
	OTHER THAN UMBRELLA FORM		L		
					X STATUTORY LIMITS
C	WORKER'S COMPENSATION AND EMPLOYERS' LIABILITY	Insurance Policy #	11/11/11	22/22/22	EACH ACCIDENT $
					DISEASE—POLICY LIMIT $
				E	DISEASE—EACH EMPLOYEE $

OTHER

D Professional Liability (Consultant Contracts Only)

E Builders Risk (Construction Contracts Only)

F Owner's Protective (construction contracts only)*

*In very limited situations, we will require Owner's Protective.

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS

Referenced Project: Contract #1000000
Name of Project – Type of Project

CERTIFICATE HOLDER

New York City Economic Development Corp.
110 William Street, 6th Floor
New York, NY 10038
Attention: Contract Administration

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ~~ENDEAVOR TO~~ MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, ~~BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES.~~

AUTHORIZED REPRESENTATIVE

SIGNATURE HERE.....

ACORD 25-S (7/90)

©ACORD CORPORATION 1990

APPENDIX F

E.O. 50 SUPPLY & SERVICE RIDER

EQUAL EMPLOYMENT OPPORTUNITY

APPENDIX F

E.O. 50 SUPPLY & SERVICE RIDER

EQUAL EMPLOYMENT OPPORTUNITY

[Note: for purposes of this rider, the "contractor" means the Consultant identified in this Contract]

This contract is subject to the requirements of Executive Order No. 50 (April 25, 1980) (§10-14) as revised ("E.O.50") and the Rules and Regulations promulgated thereunder. No contract will be awarded unless and until these requirements have been complied with in their entirety. By signing this contract, 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, handicap, 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 in the selection of subcontractors on the basis of the owner's, partners' or shareholders' race, color, creed, national origin, sex, age, handicap, marital status or 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 regard to race, creed, color, national origin, sex, age, handicap, marital status, sexual orientation or citizenship status, or 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 (§10-14) and the rules and regulations promulgated thereunder; and

(5) will furnish before the contract is awarded all information and reports including an Employment Report which are required by E.O. 50 (§10-14), the rules and regulations promulgated thereunder, and orders of the Director of the Division of Labor Services (the "Division"). Copies of all required reports are available upon request from the contracting agency; and

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

The contractor understands that in the event of its noncompliance with the nondiscrimination clauses of this contract or with any such rules, regulations, or orders, such noncompliance shall constitute a material breach of the contract and noncompliance with E.O. 50 (§10-14) and the rules and regulations promulgated thereunder. After a hearing held pursuant to the rules of the Division, the Director may direct the imposition by the contracting agency head of any or all of the following sanctions:

(i) disapproval of the contractor;
(ii) suspension or termination of the contract;
(iii) declaring the contractor in default; or
(iv) in lieu of any of the foregoing sanctions, the Director may impose an employment program.

The Director of the Division may recommend to the contracting agency head that a contractor who has repeatedly failed to comply with E.O 50 (§10-14) and the rules and regulations promulgated thereunder be determined to be nonresponsible.

The contractor agrees to include the provisions of the foregoing paragraphs in every subcontract or purchase order in excess of New York City's small purchase limit established by rule of New York City's Procurement Policy Board to which it becomes a party unless exempted by E.O. 50 (§10-14) 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 the Division of Labor Services as a means of enforcing such provisions including sanctions for noncompliance.

The contractor further agrees that it will refrain from entering into any contract or contract modification subject to E.O. 50 (§10-14) and the rules and regulations promulgated thereunder with a subcontractor who is not in compliance with the requirements of E.O. 50 (§10-14) and the rules and regulations promulgated thereunder.

APPENDIX G

E.O. 50 EMPLOYMENT REPORT FORM

The Consultant shall complete and submit, and if applicable, shall require its Subcontractors to complete and submit, Employment Reports (as required by E.O. 50) to the Corporation which can be found at www.nycedc.com in the following section:

"Resources/Vendor Resources"

If the Consultant cannot access or download these forms, the Corporation will, upon request, send the Consultant the required forms. The text of said section reads as follows:

Non-Construction Consulting Contracts

Non-construction consulting contracts require a Supply & Service employment report. Generally, the "under 50 employees" form should be used by companies with fewer than 50 employees, and the longer "full form" should be used for companies with more than 50 employees. Please refer to the Supply & Service instructions document to learn more about the forms.

Supply & Service Employment Report Instructions
Supply & Service – under 50 employees
Supply & Service – full form

APPENDIX H

M/WBE PLAN

SUBCONTRACTORS PARTICIPATION PLAN

Check One: ☑ Initial Plan ☐ Amended Plan **5/30/2013**

The purpose of this form is to ensure that appropriate planning and consideration go into the subcontractor utilization process, and to serve as documentation of your commitment comply with M/W/DBE requirements for this project. Please complete the forms electronically and email to opportunitymwdbe@nycedc.com. Please also include a signed PDF copy to the same email. If you have any questions, you may contact Opportunity M/W/DBE at 212-312-4256.

I affirm that the following statements are true and accurate:

1. I have read and understand the M/W/DBE requirements for this Project.

2. I will make and thoroughly document Good Faith Efforts to meet M/W/DBE requirements.

3. This Subcontractors Participation Plan ("Plan") lists all subcontractors I intend to use, including non-M/W/DBE firms. I understand that **Intent to Perform as Subcontractor** forms, which verify that subcontractors listed below have been contacted and intend to participate on this project, must be submitted for each contractor together with this form.

4. I understand that I must submit an amended Plan if there are any changes to the information I have provided herein.

5. Upon request, I will provide NYCEDC with proof of payments made to subcontractors.

6. **FOR CONSTRUCTION MANAGEMENT CONTRACTS ONLY.** I must submit a separate Plan for each direct subcontractor listed below who will retain second-tier subcontractors. Each direct subcontractor's Plan should be received prior to the date that subcontractor commences work on the project. If a direct subcontractor on this form is not subcontracting out a portion of its work, it must submit a **Self-Perform Statement** in lieu of a plan.

x Abbe. L. Gonzalez
Authorized Person

22 July 2013
Date

NYCEDC hereby authorizes this Plan:

x J Rooney
Opportunity M/W/DBE Officer

7/22/13
Date

"Statements" section in RFP/IFB and Contract document, any statements made in any instrument submitted to NYCEDC in connection with the Corporation's M/WBE Program shall be submitted under penalty of perjury and any false or misleading statement or omission shall be grounds for the application of any applicable criminal and/or civil penalties for perjury.

Project Information		Project Calculations- *Automatically Calculated* *NOTE: Calculations do not take into account information provided in First-Tier Subcontractor Plans. That information will be factored in manually.*	
Contract #/Project #:	5567001 / 5567	Subcontract Awards Below $1MM	$1,650,000.00
Business Name:	Institute for Building Technology and Safety	Percentage of Total Subcontracting Below $1 MM (TSP)	**13.41%**
Project Award Amount:	12,300,000	Subcontract Awards Below $1MM to M/W/DBEs	$800,000.00
Project Manager:	Principal - Shyam	Percentage of Awards Below $1MM to M/W/DBEs	**48.48%**
Email:		Subcontract Awards to M/W/DBEs	$800,000.00
Phone:		Percentage of Total Award to M/W/DBEs	**6.50%**

Subcontractor Information				
Business Name	**M/W/DBE? ("Y" or "N")**	**Subcontract Award Amount**	**Services to be Provided**	**Anticipated Start Date**
US Inspect	N	$400,000.00	Housing Inspections	7/3/2013
CSA Group	Y	$500,000.00	Professional Architectural and Engineering Services	7/3/2013
Bouler Pfluger Architects	N	$1,500,000.00	Professional Architectural and Engineering Services	7/3/2013
Lantel Systems	N	$400,000.00	IT Development Services	7/3/2013
CDM Smith	N	$50,000.00	Consulting Services	7/3/2013
Quality Environmental Solutions & Technologies, Inc.	Y	$300,000.00	Environmental Consulting and Training Services	7/3/2013

APPENDIX I

OUTSIDE FUNDING SOURCES

APPENDIX I

OUTSIDE FUNDING SOURCE PROVISIONS

1. General Terms.

This Contract will be funded in whole or in part by the Funds identified in Part I, Section 4.1 of this Contract. The receipt of such Funds is conditioned upon the Consultant's compliance with certain mandatory federal, State and City terms and conditions. The Consultant must comply with all applicable mandatory terms and conditions set forth in the Applicable Requirements and Applicable Agreements including, without limitation, those set forth in Part I, Section 4.3, 4.4, this Appendix, Appendix J and in Appendix K. This Appendix shall be annexed to and made a part of any subcontract entered into by the Consultant pursuant to this Contract, and shall be binding on any Subcontractor. To the extent any terms and conditions set forth in this Appendix conflict with any other terms of this Contract, the terms and conditions of this Appendix shall govern. In the event any terms and conditions set forth in this Appendix conflict with the terms and conditions of Appendix J or Appendix K, the more stringent of the conflicting provisions shall govern.

Consultant acknowledges and agrees that the Corporation has the right to delegate the responsibilities of the Director to the City or such agency of the City as may be appropriate.

The Funds have been made available for the Project under the Applicable Requirements and Applicable Agreements including, without limitation, those listed in Part I, Section 4.4 and 4.5, and any other governing statute or agreement related to the Funds, the Project and/or the Contract.

Notwithstanding anything to the contrary in this Contract, the Corporation shall be under no obligation to make such payments except when, and to the extent, such Funds are available. The Corporation shall not be liable to the Consultant in the event any or all of such Funds are not made available.

2. Termination or Suspension Related to Unavailability of Funds.

In addition to any other right to postpone, delay suspend or terminate the Services or the Contract set forth in this Contract, if, pursuant to the Applicable Requirements or Applicable Agreements or otherwise, there shall be a suspension, termination or reduction of the Funds funding this Contract as a result of which Funds are not available for some or all payments under this Contract, the Corporation shall so notify the Consultant and the Consultant shall, and agrees to, cease to perform the activities specified in the notice (permanently or temporarily, as specified in the notice) on the date set forth therein, which may be immediately. The Consultant shall assume no further binding obligations in connection with any Services specified in the notice to be stopped, after the date set forth in the notice, except that such cessation need only be for the period of suspension if the Services are suspended rather than terminated. The award of Funds funding this Contract may be suspended or terminated if the Consultant materially fails to

comply with any term of such award. The award may also be terminated for convenience in accordance with the Applicable Requirements and Applicable Agreements.

APPENDIX J

APPLICABLE CERTIFICATIONS AND SECTION 3 CLAUSE

REQUIREMENTS REGARDING LOBBYING ACTIVITIES ON FEDERAL AID CONTRACTS

Federal regulations require that any contractor or firm intending to do business with the Federal government, or wishing to participate in any Contract funded with Federal money, disclose to the Federal government any lobbying activities which that Contractor or firm may have undertaken. More specifically, and in addition to disclosing lobbying efforts of any kinds, any prospective contractor or firm who expects to perform work funded with Federal moneys must certify that none of this lobbying activity has been paid for with Federal funds of any kind.

<table>
<tr>
<td>1. Type of Federal Action:

A. contract
B. grant
C. cooperative agreement
D. loan
E. loan guarantee
F. loan insurance</td>
<td>2. Status of Federal Action:

A. bid/offer/application
B. initial award
C. post-award</td>
<td>3. Report Type:

A. initial fling
B. material change
For Material Change Only:
year_____ quarter_____
date of last report_____</td>
</tr>
<tr>
<td colspan="2">4. Name and Address of Reporting Entity.

☐ Prime ☐ Subawardee
Tier _____, if known:

Congressional District, if known:</td>
<td>5. If Reporting Entity in No. 4 is Subawardee,

Enter Name and Address of Prime:

Congressional District, if known:</td>
</tr>
<tr>
<td colspan="2">6. Federal Department/Agency</td>
<td>7. Federal Program Name/Description:

CFDA Number, if applicable:</td>
</tr>
<tr>
<td colspan="2">8. Federal Action Number, if known:</td>
<td>9. Award Amount, if known:

$</td>
</tr>
<tr>
<td colspan="2">10. a. Name and Address of Lobbying Registrant:
(If individual , last name, first name MI):</td>
<td>b. Individuals Performing Services
(including address if different from No. 10a)
(last name, first name, MI)</td>
</tr>
<tr>
<td colspan="2">11. Information requested through this form is authorized by title 31 U.S.C. Section 1352. This disclosure of lobbying activities is material representation of facts upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.</td>
<td>Signature: _____

Print Name: _____

Title: _____

Telephone No: _____

Date: _____</td>
</tr>
</table>

INSTRUCTIONS FOR COMPLETION OF STANDARD FORM LLL DISCLOSURE OF LOBBYING ACTIVITIES.

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material required for each, payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or any employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identity the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action Identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number, the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-001".

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/ loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, state and zip code of the registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full name of individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).

11. The certifying official shall sign and date the form, print his/her name, title and phone number.

CERTIFICATION OF RESTRICTION ON LOBBYING

I, _____, hereby certify on behalf
(name of authorized official)

of _____ that:
(name of bidder)

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or any employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form – LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.

3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance is placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making for entering into this transition imposed by Section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Executed this _____ day of _____, 20___

By: _____
(Signature of Authorized Official)

_____
(Signature of Authorized Official)

Proposal No. _____

Description: _____

_____

CERTIFICATION OF A POTENTIAL PRIME CONTRACTOR (MAJOR THIRD PARTY CONTRACTOR) REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS

The Potential Contractor _____, certifies to the best of its knowledge and belief, that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

2. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or Local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or Local) with commission of any of the offenses enumerated in paragraph (2) of this certification; and

4. Have not within a three-year period preceding this proposal or bid had one or more public transactions (Federal, State or Local) terminated for cause or default.

5. The potential Contractor agrees to provide the Authority with immediate written notice if, at any time, it learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances. Each Subcontractor or Vendor for the Contractor shall provide the same updated notice to the Contractor and the Contractor shall be solely responsible for collecting, updating and submitting updated information to the Authority.

NOTE: If for any reason the potential Contractor is unable to certify to any of the statements in this certification, the potential Contractor shall attach an explanation to this certification.

THE POTENTIAL CONTRACTOR, _____, CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF THE CONTENTS OF THE STATEMENTS SUBMITTED ON OR WITH THIS CERTIFICATION AND UNDERSTANDS THAT THE PROVISIONS OF 31 U.S.C. SECTIONS 3801 ET SEQ. ARE APPLICABLE THERETO.

_____

Signature and Title of Authorized Official

_____

Date

Proposal No. _____

Description: _____

_____

CERTIFICATION OF A POTENTIAL SUBCONTRACTOR/ SUPPLIER REGARDING DEBARMENT, SUSPENSION, AND OTHER INELIGIBILITY AND VOLUNTARY EXCLUSION

1. The potential Subcontractor/ Supplier, _____, certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

2. If for any reason the potential Subcontractor/ Supplier, is unable to certify to any of the statements in this certification, it shall attach a explanation to this proposal.

3. THE POTENTIAL SUBCONTRACTOR/ SUPPLIER, _____, CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF THE CONTENTS OF THE STATEMENTS SUBMITTED ON OR WITH THIS CERTIFICATION AND UNDERSTANDS THAT THE PROVISIONS OF 31 U.S.C. SECTIONS 3801 ET. SEQ. ARE APPLICABLE THERETO.

4. The Subcontractor/ Supplier shall provide to the Authority and the Subcontractor shall to Contractor immediate written notice, at any time, it learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

_____
Signature and Title of Authorized Official

_____
Date

Contractor Note: **Contractor must require all Subcontractor/ Suppliers to complete this certification and Contractor shall submit the certifications to the Authority as they are received.**

Section 3 Clause

All Section 3 covered contracts must include the following clause **in its entirety:**

A. The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted project covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low- income persons, particularly persons who are recipients of HUD assistance for housing.

B. The parties to this contract agree to comply with HUD's regulations in 24 CFR Part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

C. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment practices can see the notice. The notice shall described the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

D. The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.

E. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected, but before the contract is executed, and (2) with persons other than those to whom the regulation of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.

F. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD-assisted contracts.

G. With respect to work performed in connection with Section 3 covered Indian housing assistance, Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of Section 3 and Section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with Section 7(b).[1]

[1] This paragraph (G) is not applicable to the HOME Program; nonetheless, the regulations require that the Section 3 clause be included verbatim in all contracts subject to the requirements of Section 3.

APPENDIX K

APPLICABLE AGREEMENTS

SHOULD ANY PROVISIONS OF THE APPENDIX C CONTAINED IN THE FOLLOWING SUBRECIPIENT AGREEMENT CONFLICT WITH THE PROVISIONS OF NYCEDC'S MASTER CONTRACT WITH THE CITY, THE PROVISIONS OF NYCEDC'S MASTER CONTRACT WITH THE CITY SHALL TAKE PRECEDENCE.

SUBRECIPIENT AGREEMENT

Between

THE CITY OF NEW YORK
Acting by and through its Mayor's Office of Housing Recovery Operations

And

NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION
as Subrecipient

Related to

CDBG-DR Programs
Dated as of July 16, 2013

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SUBRECIPIENT AGREEMENT

This SUBRECIPIENT AGREEMENT, dated as of July 16, 2013 (this "Agreement") by and between the CITY OF NEW YORK, a New York municipal corporation (the "City"), acting by and through its Mayor's Office of Housing Recovery Operations ("HRO"); and the NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION, a New York not-for-profit corporation ("Subrecipient", and together with City, the "Parties" and each individually, a "Party").

Recitals

WHEREAS, pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1974 (42 U.S.C. 5121 et seq.), the City received major disaster declarations as a result of Hurricane Sandy and other eligible events in calendar years 2011, 2012, and 2013;

WHEREAS, pursuant to the Disaster Relief Appropriations Act, 2013 (Public Law 113-2, approved January 29, 2013), as amended ("Act"), Congress appropriated $16,000,000,000 for the Community Development Block Grant Disaster Recovery ("CDBG-DR") program;

WHEREAS, pursuant to the March 5, 2013 Federal Register notice for Hurricane Sandy Allocations, the City has received an allocation of CDBG-DR funds from the U.S. Department of Housing and Urban Development ("HUD") in the amount of $1,772,820,000;

WHEREAS, on May 10, 2013, HUD approved the City's CDBG-DR Action Plan A, which addresses housing, business and infrastructure (together with any additional Action Plans submitted by the City and approved by HUD in connection with the City's allocation of CDBG-DR funds, the "Action Plan");

WHEREAS, Grantee will comply with all Hurricane Sandy Allocation requirements and Subrecipient will also be required to meet all requirements;

WHEREAS, in connection with such allocation, the City anticipates entering into one or more grant agreements with HUD (the initial grant agreement, hereinafter the "Grant Agreement");

WHEREAS, the City acting by and through its Department of Small Business Services and the Subrecipient entered into an agreement dated June 30, 2012 (as amended, the "Master Agreement"), which provides that the Subrecipient shall assist the Grantee in fostering housing recovery in the City and the funds to be provided under this Agreement shall be funded pursuant to such Master Agreement;

WHEREAS, the Subrecipient has long-standing experience and staff knowledge in the area of specialized qualification procurements involving construction, and HRO could benefit from that expertise by retaining the Subrecipient to procure and administer the necessary services for HRO's housing program, to be funded with CDBG-DR funds (the procurement and

administration of such contracts, hereinafter, the "Program") so that the housing program can be implemented efficiently and assistance can be provided to residents affected by Sandy in a timely manner;

WHEREAS, the City, acting by and through HRO, wishes to engage the services of the Subrecipient to assist the City with such Program;

WHEREAS, the Subrecipient has agreed to undertake such Program;

WHEREAS, the Subrecipient agrees to submit requisitions and documents in a form agreed to by the City for payment in respect of the Program; and

WHEREAS, such requisitions, approved by the City, will be funded with CDBG-DR funds on the terms set forth below.

NOW, THEREFORE, the Parties agree to the following terms and conditions:

1. DEFINITIONS AND INTERPRETATION

1.1. Definitions. Except as otherwise provided herein, as used in this Agreement capitalized terms shall have the following meanings:

"Act" has the meaning given in the recitals to this Agreement.

"Action Plan" has the meaning given in the recitals to this Agreement.

"Agreement" means this Subrecipient Agreement including the Scope of Work in Schedule I; the Budget in Schedule I-A; Schedule II, Required Program Records; Appendix A, Supplementary General Conditions; Appendix B, Hurricane Sandy CDBG-DR Appendix; Federal Exhibit 1; Federal Exhibit 2; the HUD Notices; Appendix C, General Provisions Governing Contracts For Consultants, Professional, Technical, Human and Client Services; Appendix D, Whistleblower Protection Expansion Act (Local Law Nos. 30 and 33) Rider and Notice; and Appendix E, Subcontractor Reporting System Notice and Rider.

"Budget" means the budget of Subrecipient attached hereto at Schedule I-A which may be revised by mutual agreement between the City of New York's Office of Management and Budget ("OMB") and Subrecipient, as required, to provide additional details of the specific budget requirements for each phase of implementation of the Program and which may include reallocation of such amounts to other City agencies or contractors providing services in connection with the Program.

"Business Day" shall mean a day that is not either Saturday or Sunday and is not a holiday observed by the City.

"CDBG-DR" has the meaning given in the recitals to this Agreement.

"CDBG Rules" means Title 24 of the Code of Federal Regulations, Part 570 (24 CFR 570), as the same may be modified by the HUD Notices.

"Charter Documents" means with respect to any Person, the articles or certificate of incorporation or organization and bylaws or similar organizational documents of such Person.

"City" has the meaning given in the preamble to this Agreement.

"Client" means any Person (other than Contractors) that receives Program Funds from Subrecipient in connection with one or more of the Programs.

"Close-Out Requirements" means all requirements to be satisfied by each Party in order to close-out this Agreement and the CDBG-DR funds provided herein in accordance with applicable Requirements of Law, including the execution and delivery by one or more of the Parties of all close-out agreements or other legal instruments and the taking of any actions by one or more of the Parties in connection with such close-out, in any case as required under applicable Requirements of Law.

"Contractor" means any Person selling supplies, equipment (including Program Equipment), construction or other services to or for the benefit of Subrecipient, where such sale is paid for or reimbursed out of Program Funds.

"Commitment Period" means with respect to any specific allocation of Program Funds, the period beginning on the effective date of any CDBG-DR grant agreement between the City and HUD with respect to such Program Funds and ending on the second anniversary of the effective date of such Grant Agreement or on such later date as is approved by HUD.

"Default" means any of the events specified in Section 12.1(a) which, but for the passage of time or the giving of notice, would constitute an Event of Default.

"Effective Date" has the meaning given in Section 2.1.

"Eligible Costs" means costs and expenses incurred and paid by Subrecipient in connection with the Program, including any payments, funding or disbursements made by Subrecipient to any Contractors; provided, that such costs and expenses: (a) were incurred by Funding Recipient in connection with an Eligible Purpose; (b) are reimbursable by the City with the proceeds of CDBG-DR funds to be provided to the City under the Grant Agreement; (c) are incurred in connection with any activity described in the Scope of Services which is eligible under Disaster Relief Appropriations Act of 2013 (PL 113-2) and Title I of the Housing and Community Development Act of 1974; (d) conform to the requirements and standards of the U.S. Office of Management and Budget Circular A-122 "Cost Principles for Non-profit Organizations"; (e) are otherwise eligible for reimbursement or payment with Program Funds

under this Agreement; (f) are items identified in the Budget; and (g) are not "Indirect Costs" as such term is defined in OMB Circular A-122.

"Eligible Purposes" means the purposes described in the Scope of Work.

"Event of Default" has the meaning given in Section 12.1(a).

"Grant Agreement" has the meaning given in the recitals to this Agreement.

"HUD" has the meaning given in the recitals to this Agreement.

"HUD Notices" means the Federal Register Notice published by HUD on March 5, 2013, entitled "Allocations, Common Application, Waivers, and Alternative Requirements for Grantees Receiving Community Development Block Grant (CDBG) Disaster Recovery Funds in Response to Hurricane Sandy", Federal Register, Volume 78, No. 43 and the Federal Register Notice published by HUD on April 19, 2013, entitled "Clarifying Guidance, Waivers, and Alternative Requirements for Hurricane Sandy Grantees in Receipt of Community Development Block Grant Disaster Recovery Funds", Federal Register, Volume 78, No. 76.

"Master Agreement" has the meaning given in the recitals to this Agreement.

"Minority and Women's Business Enterprise" means a business at least fifty-one percent (51%) owned and controlled by minority group members or women. For the purpose of this definition, "minority group members" are Afro-Americans, Spanish-speaking, Spanish surnamed or Spanish-heritage Americans, Asian-Americans, and American Indians.

"Notices" has the meaning given in Section 13.1.

"OMB Circular A-122" means U.S. Office of Management and Budget Circular A-122 "Cost Principles for Non-profit Organizations", as the same may be amended from time to time.

"Party" has the meaning given in the preamble to this Agreement.

"Person" means any individual, sole proprietorship, partnership, limited liability company, joint venture, trust, unincorporated organization, joint stock company, association, corporation, institution, entity, party or government (including any division, agency or department thereof) or any other legal entity, whether acting in an individual, fiduciary or other capacity, and, as applicable, the successors, heirs and assigns of each.

"Program" has the meaning given in the recitals to this Agreement.

"Program Assets" means all Program Funds, Program Income and Program Equipment.

"Program Documents" means this Agreement, all books, records (including computer records and programs), documents, reports, all records pertinent to this Agreement, the Required Program Records, Required Reports, and all other written materials in printed or electronic format pertaining to the Program.

"Program Equipment" means any equipment that is acquired using Program Funds.

"Program Funds" has the meaning given in Section 5.1.

"Program Income" means gross income generated from the use of Program Funds, or prorata portion thereof for activities only partially assisted with Program Funds, received by the City, a unit of local government, tribe or the Subrecipient of the City, including: (a) proceeds from the disposition by sale or long-term lease of real property purchased or improved with Program Funds; (b) proceeds from the disposition of equipment purchased with Program Funds; (c) gross income from the use or rental of real or personal property (including Program Equipment), less costs incidental to generation of such income (i.e., net income); (d) net income from the use or rental of real property that was constructed or improved with Program Funds; (e) payments of principal and interest on loans made using Program Funds; (f) proceeds from the sale of loans made with Program Funds; (g) proceeds from the sale of obligations secured by loans made with Program Funds; (h) interest earned on program income pending disposition of such income; (i) funds collected through special assessments made against properties owned and occupied by households not of low- and moderate-income, where the special assessments are used to recover all or part of the CDBG–DR portion of a public improvement; and (j) gross income paid to a State, the City, a unit of local government, tribe, or paid to the Subrecipient thereof from the ownership interest in a for-profit entity in which such income is in return for the provision of CDBG–DR assistance.

"Representative" means, with respect to any Person, the directors, officers, officials, employees, advisors, legal counsel, accountants, consultants, contractors and other agents and representatives of such Person.

"Required Program Records" means the records to be maintained by Subrecipient specified in Schedule II attached hereto.

"Required Reports" means the reports to be prepared by Subrecipient in connection with the Program and Subrecipient's performance of the Scope of Work, including any weekly, monthly, quarterly, annual or other reports, and any progress reports.

"Requirements of Law" means the Requirements of Title 24 of the Code of Federal Regulations, Part 570 (HUD's regulations concerning Community Development Block Grants (CDBG)) including subpart K of such regulations, except (1) the Grantee's environmental responsibilities described in 24 CFR 570.604, (2) the Grantee's responsibility for initiating the review process under the provisions of 24 CFR Part 52 and (3) where waivers or alternative requirements are provided for in the HUD Notices; the provisions of Appendices A, B, C, D and

E attached to this Agreement, including the Exhibits thereto, and all other applicable Federal, state and local laws, regulations, policies and Grantee guidelines, whether existing or to be established, governing the Grant Funds provided under this Agreement.

"Section 3 Requirements" means the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701).

"Small Business" means a small business, as defined by the U.S. Small Business Administration under 13 CFR 121.

"Subrecipient" has the meaning given in the preamble to this Agreement.

"Subcontract" means any subcontract, contract, or other agreement entered into by or between Subrecipient and any other Person pursuant to which Program Funds will be funded, paid, disbursed or otherwise transferred to such Person by Subrecipient, including agreements with Contractors, and any other agreements with any other Person in connection with Subrecipient's performance of the Scope of Work.

"Scope of Work" means scope of work attached hereto as Schedule I.

"Termination Notice" has the meaning given in Section 12.1(b).

1.2. Rules of Interpretation Except as otherwise provided herein, the following rules of interpretation shall apply to this Agreement:

(a) The singular includes the plural and the plural includes the singular.

(b) The word "or" is not exclusive.

(c) A reference to any Requirements of Law includes any amendment, modification or replacement to such Requirements of Law.

(d) A reference to any Person includes its permitted successors, permitted replacements and permitted assigns.

(e) The words "include", "includes" and "including" are not limiting.

(f) Unless otherwise expressly provided, references to any document, instrument or agreement (i) shall include all exhibits, schedules and other attachments thereto, (ii) shall include all documents, instruments or agreements issued or executed in replacement thereof, and (iii) shall mean such document, instrument or agreement, or replacement or predecessor thereto, as amended, amended and restated, modified and supplemented from time to time and in effect at any given time.

(g) The words "hereof", "herein" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement.

(h) References to "days" shall mean calendar days, unless the term "Business Day" shall be used.

(i) References to a time of day shall mean such time in New York, New York, unless otherwise specified.

(j) The section headings and subheadings contained in this Agreement are included for convenience only and shall not limit or otherwise affect the terms of this Agreement.

2. EFFECTIVE DATE AND TERM

2.1. Effective Date.

(a) This Agreement shall become effective and the Parties shall become bound by all provisions applicable to them pursuant to this Agreement on the date on which the conditions set forth below have been fully satisfied or waived by the Parties (the "Effective Date"):

(i) this Agreement has been fully executed and delivered; and

(ii) the Grant Agreement has been fully executed and delivered and shall have become effective.

2.2. The City authorizes the Subrecipient to incur costs for activities undertaken in accordance with this Agreement prior to the Effective Date of this Agreement, including pre-award costs incurred in compliance with 24 CFR section 570.200(h)(1) and HUD CDBG-DR Allocation Rules contained in the March 5, 2013 Federal Register Notice.

2.3. Term.

(a) This Agreement shall remain in full force and effect during the Term, unless earlier terminated in accordance with the provisions hereof; provided, that in accordance with Section 13.5, certain provisions of this Agreement shall survive the end of the Term or early termination hereof. Pursuant to applicable Requirements of Law, the term of this Agreement (the "Term") commences on the Effective Date and expires on the later of (i) September 30, 2019, (ii) the date on which the Subrecipient no longer has control over any Program Assets or other CDBG-DR funds, as such date shall be determined in the manner set forth in the Scope of Work; (iii) the date as of which the Parties agree in writing that all Close-Out Requirements have been satisfied or, where no Close-Out Requirements are applicable to this Agreement, the

date as of which the Parties agree in writing that no Close-Out Requirements are applicable hereto; and (iv) such later date as the Parties may agree to in a signed writing.

3. SCOPE OF WORK

(a) The Subrecipient shall administer the Program and perform the activities detailed in the Scope of Work in a manner satisfactory to the City and otherwise in accordance with this Agreement. The Scope of Work is set forth in Schedule I, annexed hereto.

(b) The City shall monitor the performance of the Subrecipient and Subrecipient's Contractors against the Program goals and performance standards or measures set forth in the Scope of Work. Substandard performance as determined by the City shall constitute noncompliance with this Agreement. If action to correct such substandard performance is not taken by the Subrecipient within a reasonable period of time (as determined by the City) after being notified by the City, the City may initiate contract suspension or termination procedures.

4. BUDGET

(a) The Subrecipient's approved Budget is attached hereto as Schedule I-A. Any subsequent modifications to the Budget shall otherwise be in a form and substance satisfactory to the City and consistent with applicable Requirements of Law. The City may, from time to time, require a more detailed or supplementary Budget breakdown for the Budget attached hereto, and the Subrecipient shall provide such detailed or supplementary Budget information in a timely fashion in the form and content prescribed by the City.

(b) In accordance with the CDBG Rules, the Subrecipient shall cause the Budget to be in sufficient detail to provide a sound basis for the City effectively to monitor Subrecipient's performance under the Agreement and to meet the requirements set forth in the CDBG Rules that must be complied with to allow payments of Program Funds to the Subrecipient.

5. PROGRAM FUNDS

5.1. Program Funds.

(a) The aggregate total amount of all CDBG-DR funds to be disbursed under this Agreement to the Subrecipient by the City shall not exceed the amount of program funds identified in the Budget (the "Program Funds"). No funds may be disbursed in excess of the Budget for additional Services unless this Subrecipient Agreement is amended pursuant to Article 9 of Appendix C. The City reserves the right to reduce the Program Funds if the actual costs, as determined by a duplication of benefits analysis, for performing the Eligible Activities or any other approved activities are less than those set forth in the Budget.

(b) Subrecipient shall use all Program Funds disbursed hereunder solely for Eligible

Costs incurred for Eligible Purposes and in the amounts specified in the Budget and otherwise in accordance with this Agreement and the applicable Requirements of Law.

(c) Subrecipient shall be reimbursed, subject the CDBG Rules, for general administrative costs and planning costs; provided, that no reimbursement for general administrative costs or planning costs shall exceed, in each case, four percent (4%) of the total amount of Program Funds budgeted by activity allocation to Subrecipient pursuant to this Agreement. In addition, Subrecipient shall also be reimbursed, subject to CDBG Rules, for Program eligible costs identified in the Budget.

5.2. Disbursements of Program Funds.

(a) During the Term, the Subrecipient may request disbursements (each, a "Disbursement") of the Program Funds as reimbursement to Subrecipient for Eligible Costs when (i) total funds requested associated with Program activities will be disbursed within 72 hours and (ii) total funds requested to cover Subrecipient costs are identified by line item from the Budget, as specified in Schedule I-A and the Subcontract. Notwithstanding the foregoing, the City intends to use its own funds to make advances to Subrecipient pursuant to the approved Program Budget that will subsequently be reimbursed to the City with Program Funds. Payment requests must be certified by HRO in advance of payment as eligible and in compliance with the CDBG Rules and the applicable Subcontract. Each Disbursement of Program Funds, other than the initial Disbursement, shall be made on notice, given not later than 12:00 Noon (New York time) on the tenth (10th) Business Day prior to the date of the proposed Disbursement by the Subrecipient to the City and the initial Disbursement under this Agreement shall be made on notice given reasonably in advance of the date of such proposed Disbursement. Each such notice of a Disbursement, shall be by written notice (by email, as an attachment in ".PDF" format), substantially in the form approved by the City (a "Disbursement Request"). No more than one Disbursement may be requested or made in any two (2) calendar week period (unless otherwise agreed by the City in writing and in its sole discretion). The City reserves the right to request additional proof of reimbursement from Subrecipient with respect to Disbursements of Program Funds to cover its Eligible Costs.

(b) No Disbursement by the City of an improper or unauthorized request for Program Funds shall constitute a waiver of the City's right to: (i) challenge the validity of such payment; (ii) enforce all rights and remedies set forth in this Agreement; or (iii) take corrective or remedial administrative action including suspension or termination of the Subrecipient's funding under this Agreement.

(c) The use of Program Funds is conditioned upon the Subrecipient incurring Eligible Costs permitted under the terms of this Agreement or as otherwise pre-approved, in writing, by the City. The Subrecipient shall not incur any Eligible Costs or any other costs to be reimbursed with Program Funds until all applicable Requirements of Law have been satisfied.

(d) With respect to any specific allocation of Program Funds, after the end of the

Commitment Period, the City shall not make any Disbursement of such Program Funds to the Subrecipient and the Subrecipient shall make no request for any such Disbursement.

(e) Upon receipt of each Disbursement of Program Funds, Subrecipient shall cause such funds to be paid, transferred or otherwise disbursed to Clients or Contractors within seventy-two (72) hours of the time such Program Funds are deposited into Subrecipient's accounts. Notwithstanding the foregoing, the City intends to use its own funds to make advances to Subrecipient that will be subsequently reimbursed to the City with Program Funds.

5.3. Conditions to Initial Disbursement.

Prior to making the initial Disbursement of Program Funds under this Agreement the Effective Date of this Agreement shall have occurred and each of the additional conditions, if any, to making such initial Disbursement set forth in the applicable Scope of Work shall have been satisfied.

5.4. Conditions to All Disbursements.

Prior to making any Disbursement of Program Funds under this Agreement, each of the following conditions shall have been satisfied:

(a) The City shall have received the following in form and substance satisfactory to the City and its counsel:

(i) a Disbursement Request, duly executed by Subrecipient; and

(ii) such other agreements, instruments and evidence as the City deems necessary in its sole and absolute discretion in connection with the transactions contemplated hereby.

(b) all representations and warranties contained in this Agreement shall be true, correct, complete and not misleading on and as of the date of such Disbursement as if then made, other than representations and warranties that expressly relate solely to an earlier date, in which case they shall have been true and correct as of such earlier date;

(c) no Default or Event of Default shall have occurred and be continuing or would result from the making of the requested Disbursement as of the date of such request;

(d) The additional conditions to any Disbursement of Program Funds set forth in the Scope of Work, if any, shall have been satisfied.

5.5. Return of Program Assets. All Program Income shall be returned to the City.

5.6. Return of Interest. All interest earned on Program Income held or controlled by

Subrecipient shall be returned to the City.

5.7. Eligible Costs and Travel. The Subrecipient shall comply with all applicable Requirements of Law regarding reimbursement of Eligible Costs that are travel expenses to be paid for with Program Funds and, prior to incurring any such expenses, the Subrecipient shall obtain prior written approval from the City if such travel is to locations outside of the City of New York.

6. GENERAL OBLIGATIONS OF SUBRECIPIENT

6.1. Legal and Other Requirements Generally. The Subrecipient shall comply with all applicable Requirements of Law, including in connection with the performance of the Scope of Work and the other obligations of Subrecipient set forth herein. The Subrecipient shall comply with all applicable policies and City guidelines provided by the City from time to time which govern the Program Funds provided under this Agreement.

6.2. Obligations Retained by City. In accordance with applicable Requirements of Law, Subrecipient shall not be responsible for and does not hereunder assume any obligation with respect to the following:

(a) the environmental responsibilities set forth in Section 570.604 of the CDBG Rules; and

(b) initiating the review process under the provisions of 24 CFR Part 52.

6.3. Reporting, Monitoring and Compliance. Notwithstanding any provisions to the contrary in this Agreement, it is the express understanding of the Parties that the City, acting through HRO, will assume all programmatic, reporting, monitoring and compliance responsibilities in connection with this Agreement. The Subrecipient assumes the following limited procurement responsibilities, to be performed in compliance with CDBG Rules: to issue Requests for Proposals to contract with the vendors who will perform the tasks set forth in the Scope of Work; to conduct an evaluation process to select such vendors; to execute the contract documents with the selected vendors; and to make payment to the Contractors.

6.4. Independent Contractor. Nothing contained in this Agreement is intended to, or shall be construed in any manner, as creating or establishing the relationship of employer/employee between or among the Parties. The Subrecipient shall at all times remain an "independent contractor" with respect to the services to be performed under this Agreement. The City shall be exempt from payment of all Unemployment Compensation, FICA, retirement, life and/or medical insurance and Workers' Compensation Insurance, as the Subrecipient is an independent contractor.

6.5. Insurance.

(a) Subject to the requirements of Section 6.4(b), the Subrecipient shall procure and maintain during the Term public liability insurance, third party property damage insurance and replacement value insurance on its assets under such policies of insurance, with such insurance companies, in such amounts and covering such risks as are commercially reasonable given the Subrecipient's business and its performance of the Scope of Work.

(b) In accordance with the CDBG Rules, the Subrecipient shall undertake the following with respect to insurance:

(i) In the event that Subrecipient pays Contractors with Program Funds, comply with the bonding and insurance requirements of 24 CFR 84.31 and 84.48;

(ii) provide Workers' Compensation Insurance coverage for all of its employees involved in performing the Scope of Work under this Agreement;

(iii) in the event that Subrecipient acquires Program Equipment, carry sufficient insurance coverage to protect all such Program Equipment from loss due to theft, fraud and/or undue physical damage;

(iv) comply with the fidelity bond requirements set forth in Article 9 of Appendix A hereto; and

(v) shall maintain the insurance required by Section 6.01 of the Master Agreement throughout the Term of this Agreement.

6.6. City Recognition. The Subrecipient shall insure recognition of the role of the City in providing services through this Agreement.

7. ADMINISTRATIVE OBLIGATIONS

7.1. Financial Management. Without limiting the other terms of this Agreement, the Subrecipient shall undertake the obligations concerning financial management set forth in the Scope of Work. The Subrecipient agrees to comply with 24 CFR 84.21-28 and the accounting principles and procedures described therein, utilize adequate internal controls, and maintain necessary source documentation for all Eligible Costs that are the subject of any Disbursement request or any other costs incurred.

7.2. Cost Principles. The Subrecipient shall administer the Program in a manner consistent with the applicable Requirements of Law related to cost principles, including as set forth in Section 570.502 of the CDBG Rules.

7.3. Documentation and Record Keeping.

(a) Program Documents. During the retention period specified in Section 7.3(b), the Subrecipient shall maintain and retain all Program Documents.

(b) Retention Period. Pursuant to Section 570.502 of the CDBG Rules, the Subrecipient shall retain all Program Documents for a retention period that (i) starts on the date on which the City submits to HUD the quarterly performance and evaluation report of the City in which the activities funded under this Agreement are reported on for the final time; and (ii) ends on the date that is the sixth (6th) anniversary of such submission date; provided, that if there is litigation, claims, audits, negotiations or other actions that involve any of the Program Documents which has started before the expiration of the retention period specified above, then such Program Documents must be retained until completion of such litigation, claims, audits, negotiations or other actions and resolution of all issues. Promptly following the date on which the City submits to HUD the annual performance and evaluation report of the City in which the activities funded under this Agreement are reported on for the final time, the City shall give Notice to Subrecipient of the occurrence of such date.

7.4. Client Data. The Subrecipient shall maintain Client data demonstrating Client eligibility for the Program Funds or services provided or to be provided to them. Such data shall include Client name, address, income level or other basis for determining eligibility, and a description of the funds or services provided to them. Such information shall be made available to the City and HUD, or any of their respective Representatives or designees for review upon request.

7.5. Disclosure. The Subrecipient understands that information collected under this Agreement is private and the use or disclosure of such information, when not directly connected with the administration of the City's or Subrecipient's responsibilities with respect to services provided under this Agreement, is subject to the provisions of Article 6-A, "Personal Privacy Protection Law", of the New York State Public Officers Law, as well as all other applicable State and Federal privacy laws. The Subrecipient's attention is directed to the confidentiality requirements in Section 5.08 of Appendix C.

7.6. Close-outs. The Subrecipient shall assist the City and its Representatives with the satisfaction of all Close-Out Requirements, including by promptly delivering any Program Documents requested by City and executing such agreements and other instruments as reasonably requested by City or HUD in accordance with applicable Requirements of Law.

7.7. Audits & Inspections.

(a) The Subrecipient shall have an annual agency audit conducted in accordance with current City policy concerning subrecipient audits and OMB Circular A-133.

(b) All Program Documents shall be made available to the City, HUD, and the Comptroller General of the United States or any of their authorized Representatives, at any time during normal business hours, as often as deemed necessary, to audit, examine, and make excerpts or transcripts of all relevant data. Any deficiencies noted in audit reports must be fully cleared by the Subrecipient within thirty (30) days after receipt by the Subrecipient. Failure of the Subrecipient to comply with the above audit requirements shall constitute a violation of this Agreement and may result in the withholding of future Disbursements hereunder.

(c) Subrecipient shall provide the City and its Representatives access to the premises of the Subrecipient at any time and from time to time during normal business hours and upon reasonable notice under the circumstances for the purposes of (i) inspecting and copying (at Subrecipient's expense) any and all Program Documents maintained by the Subrecipient, and (ii) discussing the affairs, finances and business of the Subrecipient with any Representative of Subrecipient who is present at such premises or with the Auditors to disclose to the City and its Representatives any and all financial and other information regarding the Subrecipient that is reasonably related to the Program.

7.8. Required Reports.

(a) Subrecipient shall deliver to HRO the Required Reports at such times in such form as is required in accordance with CDBG Rules.

(b) Each Required Report delivered by Subrecipient hereunder shall include appropriate information on all Program Income, if any, generated by activities carried out by Subrecipient with Program Funds.

(c) Each Required Report delivered by Subrecipient hereunder shall include appropriate information on all Eligible Costs.

8. [Intentionally Omitted].

9. CONTRACTORS

9.1. Procurement. With respect to the purchase by Subrecipient of any Program Equipment, property or services from any Contractors in which such purchase will be paid for or reimbursed out of Program Funds, the following provisions shall apply:

(a) Compliance. If the Subrecipient uses Program Funds to purchase any Program Equipment from Contractors, the Subrecipient shall comply with current City policies concerning the purchase of equipment and shall maintain inventory records of all Program Equipment as may be procured with funds provided herein.

(b) OMB Standards. If the Subrecipient procures any Program Equipment, property or services from any Contractors with Program Funds, unless specified otherwise within this Agreement, the Subrecipient shall undertake such procurement in accordance with the requirements of 24 CFR 84.40–48.

9.2. "Section 3" Clause.

(a) Compliance with the provisions of Section 3 of the HUD Act of 1968, as amended, and as implemented by the regulations set forth in 24 CFR 135, and all applicable rules and orders issued hereunder prior to the execution of this Agreement, shall be a condition of the Federal financial assistance provided under this Agreement and binding upon the City, the Subrecipient and any of the Subrecipient's Contractors. Failure to fulfill these requirements shall subject the City, the Subrecipient and any of the Contractors, their successors and assigns, to those sanctions specified in the Grant Agreement. The Subrecipient hereby certifies to the City and agrees that no contractual or other disability exists that would prevent compliance with these requirements.

(b) The Subrecipient shall comply with these "Section 3" requirements and shall include the following language in all Subcontracts:

> "The work to be performed under this Agreement is a project assisted under a program providing direct Federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701). Section 3 requires that to the greatest extent feasible opportunities for training and employment be given to low- and very low-income residents of the project area, and that contracts for work in connection with the project be awarded to business concerns that provide economic opportunities for low- and very low-income persons residing in the metropolitan area in which the project is located."

(c) The Subrecipient further agrees to ensure that opportunities for training and employment arising in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction project are given to low- and very low-income persons residing within the metropolitan area in which the CDBG-DR funded project is located; where feasible, priority should be given to low- and very low-income persons within the service area of the project or the neighborhood in which the project is located, and to low- and very low-income participants in other HUD programs; and award contracts for work undertaken in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction project to business concerns that provide economic opportunities for low- and very low-income persons residing within the metropolitan area in which the CDBG-DR funded project is located; where feasible, priority should be given to business concerns that provide economic opportunities to low- and very low-income residents within the service area or the

neighborhood in which the project is located, and to low- and very low-income participants in other HUD programs.

(d) The Subrecipient hereby certifies to the City and agrees that no contractual or other legal incapacity exists that would prevent compliance with these requirements.

(e) Notifications. If Subrecipient has a collective bargaining agreement or other contract or understanding with any labor organization or similar group of workers, the Subrecipient shall send to each such labor organization or the Representative of such group of workers a notice advising such labor organization or worker's Representative of its obligations under this Section 9.2, and shall post copies of such notice in conspicuous places available to employees and applicants for employment or training.

(f) Subcontracts. The Subrecipient shall include this Section 3 clause in every Subcontract and shall take appropriate action pursuant to each such Subcontract upon a finding that the Person to receive Program Funds thereunder is in violation of Requirements of Law. The Subrecipient shall not enter into any Subcontract with any Person where Subrecipient has notice or knowledge that such Person has been found in violation of regulations under 24 CFR Part 135 and shall not enter into any Subcontract with any Person unless such Person has first provided Subrecipient with a preliminary statement of ability to comply with the requirements of all applicable Requirements of Law.

9.3. Subcontracts.

(a) Approvals. The Subrecipient shall not enter into any Subcontract with any Person to assist with the Subrecipient's performance of its obligations under this Agreement without the written approval of the City prior to the execution of such agreement. The Subrecipient shall provide the City with documentation concerning the selection process prior to its approval of any Subcontract.

(b) Monitoring. In accordance with guidelines to be issued by the City, the Subrecipient shall monitor all Subcontracted services on a regular basis to assure contract compliance. Results of monitoring efforts shall be summarized in written reports and supported with documented evidence of follow-up actions taken to correct areas of noncompliance.

(c) Content. The Subrecipient shall cause all of the provisions of this Agreement in its entirety to be included in and made a part of any Subcontract executed in the performance of this Agreement. Each Subcontract shall comply with and include the provisions required to be included in such Subcontract pursuant to Section 3.08 of Appendix C.

(d) Selection Process. The Subrecipient shall undertake to insure that all Subcontracts with Contractors entered into by Subrecipient in performing its obligations hereunder shall be awarded on a fair and open competition basis in accordance with applicable procurement requirements including all CDBG Rules. Executed copies of all Subcontracts shall

be forwarded to the City. The City shall be provided with the documentation concerning the selection process prior to the execution of any Subcontract.

(e) Performance Requirements and Liquidated Damages. The Subrecipient shall incorporate performance requirements and liquidated damages provisions into each procured contract or agreement.

(f) Local Resources. The City encourages the Subrecipient to understand the local community and use local resources where appropriate. The Subrecipient shall include the following provision in each procured contract or agreement: "Subrecipient encourages the contractor to understand the local community and use local resources where appropriate."

(g) Indemnification. The Subrecipient shall include the following provision in any Subcontract procured pursuant to this Agreement:

(i) Neither the Contractor nor any of its employees nor any of its subcontractors is or shall be an agent, servant, or employee of the New York City Economic Development Corporation or the City of New York by virtue of this contract or by virtue of any approval, permit, license, grant, right or other authorization given by the New York City Economic Development Corporation or the City of New York or any of its officers, agents or employees.

(ii) The Contractor shall defend, indemnify and hold New York City Economic Development Corporation and the City of New York, including their 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 New York City Economic Development Corporation and the City of New York, including their officers and employees, may be subjected or which they 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 law. Insofar as the facts or law relating to any claim would preclude New York City Economic Development Corporation and the City of New York from being completely indemnified by the Contractor, the New York City Economic Development Corporation and the City of New York shall be partially indemnified by the Contractor to the fullest extent permitted by law.

(iii) The Contractor shall defend, indemnify and hold New York City Economic Development Corporation and the City of New York, 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 New York City

Economic Development Corporation and the City of New York may be subject to or which they 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 New York City Economic Development Corporation and the City of New York, 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 New York City Economic Development Corporation and the City of New York from being completely indemnified by the Contractor, the New York City Economic Development Corporation and the City of New York shall be partially indemnified by the Contractor to the fullest extent permitted by law.

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

(h) Insurance. The Subrecipient shall require the Contractor and any of its subcontractors involved in the performance of this Agreement to maintain the insurance required pursuant to section 4.06 of the Master Agreement.

9.4. Access to Records. The Subrecipient shall cause each Person with whom Subrecipient executes a Subcontract to furnish all information and reports required hereunder and shall permit access to its books, records and accounts by the City or its Representatives, HUD or its agent, other authorized Federal officials for purposes of investigation to ascertain compliance with the rules, regulations and provisions stated herein.

9.5. Subcontract Provisions. The Subrecipient shall include the provisions of Sections 10.1 and 10.2 in every Subcontract or purchase order, specifically or by reference, so that such provisions shall be binding upon each of its own subrecipients or subcontractors.

10. PERSONNEL AND PARTICIPANT CONDITIONS

10.1. Civil Rights, Affirmative Action and Other Requirements. The Subrecipient shall comply with all applicable Requirements of Law, including all applicable Requirements of Law concerning civil rights, non-discrimination in employment and with respect to individuals with disabilities or handicaps, equal opportunity and affirmative action programs, prohibitions on certain activities (including political activities, inherently religious activities, lobbying, political patronage, and nepotism activities), labor standards (including those under the Davis-Bacon Act) and any other Requirements of Law applicable to Subrecipient in connection with this Agreement, the Program or otherwise.

10.2. Minority- and Women-Owned Business (M/WBE). The Subrecipient shall use its best efforts to afford Small Businesses, and Minority and Women's Business Enterprises the maximum practicable opportunity to participate in the performance of this Agreement. The Subrecipient may rely on written representations by businesses regarding their status as Minority and Women's Business Enterprises in lieu of an independent investigation.

10.3. Conflict of Interest. The Subrecipient shall comply with all applicable Requirements of Law concerning conflicts of interest (including the provisions of 24 CFR 84.42 and 24 CFR 570.611).

10.4. Lobbying Certification. The Subrecipient hereby certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;

(b) if any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, it shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) Subrecipient shall require that the language of sub-Sections (a) and (b) of this certification be included in all Subcontracts and that all Contractors shall certify and disclose accordingly; and

(d) this certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Subrecipient acknowledges that Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S.C. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

11. ENVIRONMENTAL CONDITIONS

11.1. General. The Subrecipient shall comply with all environmental requirements imposed under applicable Requirements of Law. Pursuant to Section 570.503(b)(5)(i) of the CDBG Rules, the Subrecipient shall not be responsible for the environmental responsibilities as

described in 24 CFR 570.604 or for the performance of any other Requirements of Law which are to be the obligation or responsibility of any other Person.

11.2. Air and Water. The Subrecipient agrees to comply with the following requirements insofar as they apply to the performance of this Agreement:

(a) Clean Air Act, 42 U.S.C. 7401, et seq.;

(b) Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251, et seq., as amended, 1318 relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder; and

(c) Environmental Protection Agency regulations pursuant to 40 CFR Part 50, as amended.

11.3. Flood Disaster Protection. In accordance with the requirements of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001), the Subrecipient shall assure that for activities located in an area identified by the Federal Emergency Management Agency as having special flood hazards, flood insurance under the National Flood Insurance Program is obtained and maintained as a condition of financial assistance for acquisition or construction purposes (including rehabilitation).

11.4. Lead-Based Paint. The Subrecipient agrees that any construction or rehabilitation of structures containing residential units with assistance provided under this Agreement shall be subject to HUD Lead-Based Paint Regulations at 24 CFR 570.608, and 24 CFR Part 35, Subpart B. Such regulations pertain to all CDBG-assisted housing and require that all owners, prospective owners, and tenants of properties constructed prior to 1978 be properly notified that such properties may include lead-based paint. Such notification shall point out the hazards of lead-based paint and explain the symptoms, treatment and precautions that should be taken when dealing with lead-based paint poisoning and the advisability and availability of blood lead level screening for children under seven. The notice should also point out that if lead-based paint is found on the property, abatement measures may be undertaken. The regulations further require that, depending on the amount of Federal funds applied to a property, paint testing, risk assessment, treatment and/or abatement may be conducted.

11.5. Historic Preservation.

(a) The Subrecipient agrees to comply with the Historic Preservation requirements set forth in the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470) and the procedures set forth in 36 CFR Part 800, Advisory Council on Historic Preservation Procedures for Protection of Historic Properties, insofar as they apply to the performance of this Agreement.

(b) In general, this requires concurrence from the State Historic Preservation Officer

for all rehabilitation and demolition of historic properties that are fifty years old or older or that are included on a Federal, state, or local historic property list.

12. EVENTS OF DEFAULT AND TERMINATION

12.1. Events of Default.

(a) The occurrence and continuance following notice to the Subrecipient and a reasonable opportunity to cure of any of the following events shall constitute an "Event of Default":

(i) pursuant to 24 CFR 85.43, if the Subrecipient for any reason materially fails to comply in a timely manner with any terms of this Agreement; or

(ii) if the Subrecipient uses any Program Funds for Eligible Costs incurred for Eligible Purposes, or Program Assets for any purposes other than one of the Eligible Purposes; or

(iii) if the Subrecipient submits any Required Reports to the City, HUD or any of their respective Representatives or auditors, which are incorrect or incomplete in any material respect.

(b) If this Agreement is terminated by either Party prior to the end of the Term, the Party terminating this Agreement shall give advance Notice of such termination (a "Termination Notice") to the other Party of no less than thirty (30) days. All Termination Notices given hereunder shall set forth in reasonable detail the reasons for such termination, the date on which such termination shall become effective, and, in the case of partial termination, the provisions of this Agreement that are to be terminated. If, in the case of a partial termination, the City or HUD in its sole discretion determines that the remaining portion of the award of the Grant Funds contemplated herein will not accomplish the purpose for which such award was made, the City or HUD may terminate this Agreement in its entirety.

12.2. Termination. Upon the occurrence and during the continuance of an Event of Default, the City may take any or all of the following actions, without prejudice to the rights of the City to enforce claims against the Subrecipient:

(a) Termination or Suspension. Pursuant to the applicable General Requirements of Law (including Section 570.502 of the CDBG Rules), prior to the end of the Term and subject to the applicable notice and cure periods, this Agreement may be or terminated, or temporarily suspended:

(b) Termination of Commitment. To declare the Commitment Period and the City's obligations to make Disbursements hereunder immediately terminated (except with respect to any Event of Default with respect to the Subrecipient set forth in Section 8.1(d) of the Scope or

(e), in which case the Commitment Period and such obligation shall automatically terminate) and, at all times thereafter, any Disbursement made by the City shall be in the City's sole and absolute discretion.

12.3. Remedies Cumulative. All of the City's remedies under the Program Documents shall be cumulative, may be exercised simultaneously against the Subrecipient or in such order and with respect to the Subrecipient as the City may deem desirable, and are not intended to be exhaustive.

12.4. Termination for Convenience. This Agreement is subject to the termination for convenience provisions set forth in 24 CFR 85.44.

12.5. Termination Undertakings. Upon the end of the Term or the earlier termination of this Agreement:

(a) Pursuant to Section 570.503(b)(7) of the CDBG Rules, Subrecipient shall promptly transfer to the City by wire transfer to an account designated by the City all Program Funds and other CDBG-DR funds on hand or controlled by the Subrecipient, and all accounts receivable attributable to the use of Program Funds under this Agreement;

(b) all Program Income held or controlled by the Subrecipient shall be paid to the City;

(c) ownership rights in and to all Program Equipment, if any, shall revert to the City;

(d) if this Agreement is terminated prior to the end of the Term, the Parties shall cooperate in good faith to identify and promptly satisfy any applicable Close-Out Requirements which may need to be satisfied in accordance with applicable Requirements of Law;

(e) Ownership rights in Program Equipment, if any, that is not needed by the Subrecipient in connection with undertaking its obligations under this Agreement shall be (a) transferred to the City for the CDBG program or (b) retained by Subrecipient after compensating the City in an amount equal to the current fair market value of such Program Equipment, less the percentage of non-CDBG-DR funds used to acquire such Program Equipment; and

(f) Subrecipient shall deliver to the City all Program Documents and other deliverables, if any, as specified in the Scope of Work.

12.6. Acquired or Improved Real Property. Pursuant to Section 570.503(b)(7) of the CDBG Rules, upon the end of the Term or the earlier termination of this Agreement, if Subrecipient has control over any real property that was acquired or improved by Subrecipient, in whole or in part, with Program Funds in excess of twenty-five thousand dollars ($25,000), then Subrecipient shall cause such real property to be used for a CDBG National Objective pursuant to Section 570.208 of the CDBG Rules until the date that is the fifth (5th) anniversary

of the last day of the Term or the effective date of the earlier termination of this Agreement, or for such longer period of time as the City deems appropriate. If the Subrecipient fails to cause such real property to be used in such manner for such prescribed period of time, then upon receipt of written Notice from the City the Subrecipient shall pay to the City an amount equal to the current fair market value of the property less any portion of the value attributable to expenditures of non-CDBG-DR funds for acquisition of, or improvement to, such real property. All such payments shall constitute Program Income to the City. The Subrecipient may retain real property acquired or improved under this Agreement after the expiration of such five (5)-year period or such longer period of time as the City may have deemed to be appropriate.

13. MISCELLANEOUS.

13.1. Notices. All notices, requests and consents of any kind made pursuant to this Agreement ("Notices") shall be in writing and shall be deemed to be effective as of the date it is sent by certified mail, return receipt requested. All Notices given under this Agreement shall be addressed to the individuals in the capacities indicated below, unless otherwise modified by subsequent Notice. Communication and details concerning this Agreement shall be directed to the following individuals:

City:	Mayor's Office of Housing Recovery Operations 250 Broadway, 24th Floor New York, NY 10007 Attn.: Director
With a copy to:	The New York City Law Department 100 Church Street New York, New York 10007 Attn.: Chief, Economic Development Division
Subrecipient:	New York City Economic Development Corporation 110 William Street New York, New York 10038 Attn: Chief Compliance Officer
With a copy to:	New York City Economic Development Corporation 110 William Street New York, New York 10038 Attn: General Counsel

13.2. Written Approvals. Except as otherwise provided herein, any provision herein providing that written approval is necessary may be satisfied by delivery of such written approval by Email or as a Notice under Section 13.1.

13.3. Representations and Warranties. The Subrecipient hereby represents and warrants to the City as follows:

(a) The Subrecipient (i) is a not-for-profit corporation duly organized, validly existing and in good standing under the laws of the state of New York; (ii) has the corporate power and authority to own its properties and assets and to transact the businesses in which it presently is, or proposes to be, engaged; and (iii) is duly qualified, authorized to do business and in good standing in each jurisdiction where it presently is, or proposes to be, engaged in business.

(b) The Subrecipient has the requisite corporate power and authority to execute, deliver and perform its obligations under this Agreement. All corporate action necessary for the execution, delivery and performance by the Subrecipient of this Agreement has been taken.

(c) This Agreement is or will be (when executed) the legal, valid and binding obligation of the Subrecipient enforceable in accordance with its terms, except as enforceability may be limited by (i) bankruptcy, insolvency or similar laws affecting creditors' rights generally and (ii) general principles of equity.

(d) The execution, delivery and performance by the Subrecipient of this Agreement does not and will not contravene or (i) any of the Charter Documents of the Subrecipient.

13.4. Severability. In case any provision in or obligation under this Agreement or any other Program Document shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

13.5. Survival. The provisions set forth in Sections 5.5, 5.6, 6.1, 7.1, 7.2, 7.3, 7.4, 7.5, 7.6, 7.7, 7.8, 9.1, 9.4, 10.5, 12.5, 12.6, 13.5, 13.9, 13.10, 13.11 and 13.12 shall survive the end of the Term or the early termination of this Agreement.

13.6. Waiver. No failure on the part of the City to exercise, and no delay in exercising, any right hereunder shall operate as a wavier thereof; nor shall any single or partial exercise by the City of any right hereunder preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedy available to the City at law or in equity.

13.7. Assignability. The Subrecipient shall not assign or transfer any of its interests in or obligations under this Agreement without the prior written consent of the City thereto.

13.8. Entire Agreement. This Agreement constitutes the entire agreement between the City and the Subrecipient for the use of funds received under this Agreement and it supersedes all prior or contemporaneous communications and proposals, whether electronic, oral, or written between the City and the Subrecipient with respect to this Agreement.

13.9. Conflicting Provisions. In the event of any conflict between this document and any exhibit, schedule, annex or appendix attached hereto, the terms and provisions of this document, as amended from time to time, shall take precedence. In the event of any conflict between the provisions of this Agreement and the HUD Notices or any other Requirements of Law, the HUD Notices or such other Requirements of Law shall take precedence. In the case of discrepancies between this Agreement and any of the following, the order of precedence shall be as follows:

(a) this Agreement;

(b) the Grant Agreement; and

(c) all other Program Documents.

13.10. Service of Process. THE SUBRECIPIENT IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS OUT OF ANY OF THE COURTS DESCRIBED IN SECTION 13.11 IN ANY SUCH ACTION OR PROCEEDING BY THE MAILING OF COPIES THEREOF BY REGISTERED OR CERTIFIED MAIL, POSTAGE PREPAID, TO IT AT THE ADDRESS FOR NOTICES PURSUANT TO SUCH SERVICE TO BECOME EFFECTIVE TEN (10) DAYS AFTER SUCH MAILING. NOTHING HEREIN SHALL AFFECT THE RIGHT OF THE CITY TO SERVE LEGAL PROCESS IN ANY OTHER MANNER PERMITTED BY LAW.

13.11. Waiver of Jury Trial. EACH OF THE PARTIES HERETO HEREBY WAIVES TO THE FULLEST EXTENT PERMITTED BY LAW ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED UPON, ARISING OUT OF, OR IN ANY WAY RELATING TO (I) THIS AGREEMENT; (II) ANY OTHER PROGRAM DOCUMENT OR OTHER PRESENT OR FUTURE INSTRUMENT OR AGREEMENT AMONG THE SUBRECIPIENT, HRO AND THE CITY RELATING TO THE PROGRAM; OR (III) ANY CONDUCT, ACTS OR OMISSIONS OF THE SUBRECIPIENT, THE CITY OR ANY OF THEIR RESPECTIVE DIRECTORS, OFFICIALS, OFFICERS, EMPLOYEES, AGENTS, ATTORNEYS OR OTHER AFFILIATES, IN EACH CASE WHETHER SOUNDING IN CONTRACT, TORT, EQUITY OR OTHERWISE.

13.12. Further Assurances. Without cost or expense to the City, from time to time the Subrecipient shall, promptly upon the request of the City: (a) deliver to the City and HRO such

other non-confidential additional documents that are in the Subrecipient's possession; (b) execute and deliver such additional agreements or instruments, in either such case as are reasonably necessary to carry out the purposes of this Agreement or the Program; and (c) cooperate in good faith with the City in connection with the foregoing.

13.13. No Third Party Beneficiaries. Nothing herein shall or be deemed to create or confer any right, action, or benefit in, to, or on the part of any Person that is not a party to this Agreement. This provision shall not limit any obligation which either Party has to HUD in connection with the use of CDBG funds, including the obligations to provide access to records and cooperate with audits as provided in this Agreement.

13.14. Counterparts. This Agreement may be executed in one or more counterparts which, when taken together, shall constitute one and the same instrument.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, this Agreement has been executed by the duly authorized Representatives of the Parties as of the date set forth in the preamble above.

Approved as to form:

By:_____
Acting Corporation Counsel

JUL 17 2013

The City of New York, acting through its Mayor's Office of Housing Recovery Operations

By:_____
Name:
Title:

New York City Economic Development Corporation

By:_____
Name: DMITRI KONON
Title: EXECUTIVE VICE PRESIDENT

IN WITNESS WHEREOF, this Agreement has been executed by the duly authorized Representatives of the Parties as of the date set forth in the preamble above.

Approved as to form:

By:_____
Acting Corporation Counsel

The City of New York, acting through its Mayor's Office of Housing Recovery Operations

By:_____
Name:
Title:

New York City Economic Development Corporation

By:_____
Name: DMITRI KONON
Title: EXECUTIVE VICE PRESIDENT

IN WITNESS WHEREOF, this Agreement has been executed by the duly authorized Representatives of the Parties as of the date set forth in the preamble above.

Approved as to form:

By:_____
Acting Corporation Counsel

JUL 17 2013

The City of New York, acting through its Mayor's Office of Housing Recovery Operations

By:_____
Name: BRAD GAIR
Title: DIRECTOR

New York City Economic Development Corporation

By:_____
Name: DMITRI KONON
Title: EXECUTIVE VICE PRESIDENT

SCHEDULE I

Scope of Work, Housing Recovery Program

General:

Retain consultants to provide pre-construction services, architectural scoping services and construction inspection services for the rehabilitation and reconstruction of NYC houses, which includes single-family homes (one to two units) that are either occupied by the homeowner or year-round tenants, or three- to four-unit buildings that are owner-occupied and for multi-family buildings (five or more units) and three- to four-unit properties that are not owner-occupied.

Specific:

1. Pre-Construction Services
2. Architectural Scoping Services
3. Construction Inspection Services
4. On-Call Management and Economic Development Consulting Services

Roles and Responsibilities:

As set forth in Section 6.3 of this Agreement, and notwithstanding any provisions to the contrary, it is the express understanding of the Parties that the City, acting through HRO, will assume all programmatic, reporting, monitoring and compliance responsibilities in connection with this Agreement. The Subrecipient assumes the limited procurement responsibilities to: issue Requests for Proposals to contract with the vendors who will perform the tasks set forth in this Scope of Work; conduct an evaluation process to select such vendors; execute the contract documents with the selected vendors; and, upon receipt of certification from HRO as to eligibility and compliance with CDBG Rules and the applicable contract for a requested payment, process such payment request to OMB and upon receipt of funds from OMB make payment to Contractor.

The scopes of work recited below are informational, and are subject to the language in the final contracts negotiated with each selected vendor.

1. Pre-Construction Services

The New York City Economic Development Corporation (NYCEDC) will retain two Consultants to provide Pre-Construction Professional Services. These programs are designed to help NYC residents directly affected by Hurricane Sandy to achieve permanent, sustainable housing solutions. The Consultant will play an essential role in ensuring that the program accurately assesses the level of damage incurred at a building and prepare estimates of the cost to complete rehabilitation or repair of the building, including the development and implementation of appropriate strategies to address resiliency issues or mitigate environmental concerns.

This solicitation for this program is issued by NYCEDC in support of the Mayor's Office of Housing Recovery Operations (HRO). Programmatic oversight will be provided by HRO. While NYCEDC will hold the contracts for this work, HRO will primarily oversee the contract services and provide direction and feedback to the selected Consultants.

In response to housing needs incurred as a result of Hurricane Sandy, the City of New York (the City) applied for assistance through the Department of Housing and Urban Development (HUD) Community Development Block Grant-Disaster Recovery (CDBG-DR) program. This solicitation will build the capacity for the City to deliver assistance under the CDBG-DR program. This solicitation seeks Consultants to provide the following services:

- Task I: Damage Assessments and Cost to Complete
    - Complete inspection report verifying damage was a result of the Storm (structural, electrical, plumbing, visual mold inspection, testing for lead based paint, etc.) and photo documentation of existing conditions.
    - Develop a cost estimate of total damage caused by the Storm that will be used to determine whether the unit is "substantially" damaged.
    - Assessment of remaining work to rehabilitate building.
    - Determine the scope and quality (code compliance) of any repairs completed by Homeowner for use in Duplication of Benefits determination by Case Manager (case management not in scope).
    - On-site collection of Environmental Data for environmental review.
    - Not in scope: detailed cost estimate and case management services.
- Task II: Professional Engineering Services
    - Feasibility review to determine appropriate housing recovery activity.

- Other planning and engineering services necessary to evaluate special circumstances related to housing recovery options (land use issues, feasibility of hazard mitigations, elevation surveys, etc).

- Task III: Environmental Review and Environmental Data Management
  - Desktop and Tier II site-specific environmental screening.
  - Production of site-specific environmental review records.
  - Developing site-specific mitigation plans, where required.
- Task IV: Appraisal Services
  - Determine Fair Market Value (FMV) of home pre-storm to be used in determination of substantial damage. If storm damage to home is equal or greater than fifty percent of FMV pre-storm, the home qualifies as substantially damaged.

The following background section provides context for the services to be provided under Tasks I through IV.

I. BACKGROUND: COMMUNITY DEVELOPMENT BLOCK GRANT—DISASTER RECOVERY (CDBG-DR) HOUSING PROGRAMS OVERVIEW

The City's Housing Recovery Programs are designed to meet the unmet housing assistance needs described in the NYC CDBG-DR Action Plan and help people affected by Hurricane Sandy - including homeowners and tenants of rental properties - achieve permanent, sustainable housing solutions that allow them to remain in New York City and, where possible, return to their neighborhoods.

The objectives of the programs include:

1. Help people affected by Sandy directly by replacing and rehabilitating housing units, including identifying opportunities for mitigation enhancement measures;
2. Help people affected by Sandy by improving the resilience of their housing units while restoring their buildings/residences;
3. Support resilience improvements to reduce risk and strengthen neighborhoods in flood zones; and,
4. Leverage philanthropic investments to address immediate gaps with flexible capital and maximize CDBG-DR dollars at scale.

To pursue these objectives, the City has built programs that incorporate lessons from past disasters; build upon stakeholder input from agencies and relevant organizations across the city, state, and national levels; and, leverage the experience of locally-based organizations to ensure the diverse needs and particular contexts of affected residents are addressed. Our focus is to provide assistance to affected New Yorkers quickly while ensuring accountability and proper use of funds. We have also accounted for the complexities faced by affected residents working through the assistance process and therefore embedded quality customer service and counseling

options to help people understand their options and the impacts (financial and otherwise) of their decisions. The City's strategy will balance speedy response with adequate planning and take into account the distinct needs of different communities. For program operations, the City will maximize private and non-profit sector expertise and the deep experience of the NYC housing infrastructure while putting appropriate accountability and oversight mechanisms in place.

The City's housing recovery programs are designed to meet the unmet housing assistance needs described in the NYC CDBG-DR Action Plan and help people affected by Hurricane Sandy—including homeowners and tenants of rental properties—achieve permanent, sustainable housing solutions that allow them to remain in New York City and, where possible, return to their neighborhoods.

Housing Program Overview

The City will have two programs, each with several permanent housing recovery paths that maximize coordination across agencies. In this way, the City's programs will leverage scale, where possible, while providing solutions tailored for the different needs of homeowners or landlords in need of assistance (e.g., by geography, building type and size). Specifically, the City will have the following core programs to provide assistance to those who suffered damage from Sandy:

NYC Houses—Grants for reconstruction or rehabilitation of homes that have been destroyed or damaged by Sandy. Assistance will incorporate resilience measures for homes that are destroyed or have substantial damages defined by the NYC CDBG-DR Action Plan.

The City will also use CDBG-DR to create a rental subsidy program to serve extremely low-income households displaced by Hurricane Sandy. The City will assist households in finding apartments in the existing affordable housing portfolio.

Multi-family Building Rehabilitation—Grants, low-interest loans, and/or credit support for rebuilding or rehabilitation of multi-family rental buildings that have suffered damage. Rebuilding or rehabilitation will incorporate resilience measures for those multi-family buildings that have been destroyed or have suffered major damage. Grant disbursement will be managed through a mechanism separate from the Consultant responding to this solicitation

The initial funding will allow the City to serve a segment of its targeted population, as follows:

- **NYC Houses:** The City will prioritize assistance for those with the most severe damage and owners with the highest level of financial need. Accordingly, the City's first priority will be to assist up to 1,000 units of low, moderate and middle income homeowners whose primary residences or rental properties with year-round tenants were destroyed or had major damage. The City will also assist up to 8,300 low, moderate, and middle

income households whose primary residences experienced moderate damage.

- **Multi-family buildings:** The city will invest in its multi-family housing stock—both affordable and market rate, capitalizing on the strong HPD and HDC institutional infrastructure. Through this first round of funding, the City will rehabilitate and enhance the resiliency of approximately 13,000 units of housing for low, moderate, and middle income
New Yorkers.

- **Public housing:** The City will allocate $120 million to design and construct improvements to public housing directly impacted by Hurricane Sandy. The first phase of this program is to install permanent emergency generators at 100 of NYCHA's most vulnerable buildings that were impacted. Accordingly, a portion of this allocation will be used as the non-federal share for FEMA Public Assistance projects.

Preliminary estimates suggest potential rehabilitation needs for a total of ~20,000 single-family buildings (1–4 units) and ~1800 multi-family buildings (ranging from 5 to 558 units with an average building size of 60 units). These estimates also suggest potential reconstruction of ~800 single-family buildings and ~20 multi-family buildings. The lowest income households will be prioritized.

The City of New York has decided to proceed with a tiered environmental review in accordance with provisions identified in 24 CFR 58.15. This approach addresses broad programs and issues in initial Tier 1 or systems-level analyses, and analyzes site-specific proposals and impacts in subsequent tier studies. The initial Tier 1 or broad-level review is being conducted for the programs identified (separate from this solicitation). The broader Tier I reviews will establish the standards and processes to be followed in the site-specific reviews.

II. SPECIFIC SCOPE OF PRE-CONSTRUCTION SERVICES REQUESTED OF CONSULTANT

Overall Deliverables:

- Site assessments to include environmental data collection and estimated cost of storm damage.
- Validation and valuation of repairs completed by others for the purpose duplication of benefits determinations.
- Tier 2 Environmental Review desktop review.

- Feasibility Report determining appropriate housing recovery activity.
- Electronic deliverables in a format consistent with SQL or similar backend database (the overall Case Management System utilized by the Program is based on a Microsoft Dynamics platform)

Overall Service level requirements:

- Targeted start of data collection visits is July 1, 2013, with the bulk of visits expected to be completed over a 4 – 6 month period.
- The Consultant shall interface with the Program Case Management System which is based on Microsoft Dynamics platform. Cost estimating systems shall be compatible with the Program Cost Estimating system which is based on Xactimate ®.

Task I: Damage Assessment and Cost to Complete

The scope of this Task is to conduct field damage assessments and cost estimating services.

Under both the NYC Houses and Multi-family Building Rehabilitation program, each eligible applicant will be assigned a Home Assessor to confirm damage caused by Hurricane Sandy and cost to complete rehabilitation of the applicant's damaged property.

The assessment will consist of site visits to carry-out the following services:

- Complete inspection report verifying damage was a result of the Storm (structural, electrical, plumbing etc.)
- Verify address and use GPS to capture precise address data.
- Conduct a visual mold assessment.
- Collect environmental data as required for Tier 2 Site Assessment.
- If the building is destroyed or unsafe to enter, the Assessor will indicate estimated total square footage.
- Verify storm related repairs previously completed to support a Duplication of Benefits determination.
- Verify storm related repairs previously completed meet HUD Housing Quality Standards.
- Photo document areas of the home damaged by the Storm, repairs done post Storm and areas of concerns regarding rehabilitation.
- Develop a budgetary cost estimate of the total damaged caused by the Storm.
- Damage assessment specialist shall be available to respond to Case Manager inquiries.
- Conduct follow-up visits as required.

- Upload each individual assessment to the Program Case Management System upon completion of the site visit.

Deliverables for this scope element include:

- Final damage assessment report for each individual property consisting of home inspection (as detailed above), details of storm related repairs previously completed, estimated cost to rehabilitate, GPS coordinates and photo documentation.
- Final report of all completed Sandy related repairs.
- Final environmental data report.

Service level requirements:

- Designate and assign a staff of experienced home inspectors, trained and ready to start site visits by July 1, 2013
- Targeted start of assessments of damage and cost to complete is July 1, 2013, with the bulk of assessments expected to be completed over a 4 – 6 month period
- Each field visit should be completed within one weeks of being assigned a property
- Expected assessments: 10,000 single family houses (1-4 units) 900 multi-family buildings
- Capability to rapidly adjust to changes in the volume of assessments to be completed within required timeframe.

Task II: Professional Engineering Services

- Feasibility review to determine appropriate housing recovery activity based on data from Task I- estimated cost repairs and Task III – environmental Tier 2 mitigation measures.
- Housing Recovery Activities will be defined in Program Policy Guidelines and include:
  i) Rehabilitation
  ii) Rehabilitation with resiliency
  iii) Demolition and reconstruction

- Perform other engineering-related consultations as requested, such as geotechnical services, land surveys, and land use planning.

Deliverables for this scope element include:

- Final feasibility report identifies appropriate housing recovery activity as defined above.
- Other architectural/engineering studies and reports, as requested.

Service level requirements:

- Targeted start of data collection visits is July 1, 2013, with the bulk of visits expected to be completed over a 4 – 6 month period.
- Feasibility reports should be completed within three (3) days of receiving Assessment Report and Tier 2 environmental review.
- Expected Feasibility Reports: 10,000 single family houses (1-4 units) 900 multi-family buildings
- Capability to rapidly adjust to changes in the volume of reports to be completed within required timeframe.

Task III: Environmental Review and Environmental Data and Document Management

Environmental Review

The Consultant will be required to assist the City in developing and implementing a written strategy for reviewing and complying with HUD environmental requirements for each applicant to NYC's CDBG-DR housing recovery programs over the course of all allocations. This task is broken into two elements:

1. Site-Specific Environmental Review
2. Environmental Data and Document Management

Site-Specific Environmental Review

The Consultant will be expected to propose and implement strategies intended to engage the public as well as governmental agencies in the NEPA environmental review process. Efficient consultation will be required with federal, state and/or city agencies such as: the United States Fish and Wildlife Service; New York State Department of Environmental Conservation, New York State Office of Parks and Recreation/State Historic Preservation Officer (SHPO); New York City Mayor's Office of Environmental Coordination, New York City Mayor's Office of Remediation, NYC Landmarks Preservation Commission (LPC), Department of Environmental Protection, New York City Department of Parks and Recreation.

To the extent that circumstances and or conditions dictate the need for community level studies the Consultant shall recommend the approach, breadth, and scope of such analyses.

As determined by the Tier I Programmatic Environmental Review, the Consultant will utilize HUD's statutory worksheet to complete site-specific analyses and develop and implement a series

of site checklists for use in the application review to ensure compliance with applicable HUD regulations, governing laws, Executive Orders, et al. (Draft of Tier 1 is attached at link above).

The Consultant will use these checklists to conduct site checks and/or field visits, as needed, to homeowner properties and their surrounding areas in order to complete said checklists. Site-specific Environmental Reviews shall be sufficient to meet requirements in accordance with 24 CFR part 58. Finally, the Consultant will support the development of potential mitigation alternatives, as required, for sites with potential environmental impacts and/or known issues.

Project scoping will involve field inspections for the purposes of initiating agency consultations, screening for hazardous and or toxic sites/conditions, and other notable site conditions.

Deliverables for this scope element include:

- Site-specific Statutory checklist and environmental review documentation
- Completed, validated, written report(s) on environmental significance, if any, per application site or by logical grouping of project(s), delivered in a format which is compatible with the City's case management system
- Report of potential mitigation alternatives, as required for sites with potential environmental impacts or known issues

Service level requirements:

- Each site-specific review should be completed within the lesser of 21 days of assignment and/or 3 days of LPC determination
- Expected Tier 2 ERs: 10,000 single family houses (1-4 units)
  900 multi-family buildings
- Field visits as required
- Capability to rapidly adjust to changes in the volume of site specific reviews to be completed within required timeframe.

2) Environmental Data and Document Management

The Consultant will prepare and implement plan for the control and management of all documents produced under this contract and for the environmental data collected in support of the Environmental Desktop Reviews. The plan will clearly describe how Pre-construction Services case deliverables will be controlled in both hard and soft copy. The plan should indicate basic metadata that will be captured for each document to aid in document retrieval and how the

files are uploaded to the HRO Program Case Management System. The plan will indicate how hard copy files will be minimized and centrally managed and the quality control procedures to ensure compliance with the document management plan.

The plan shall also clearly indicate how the use of existing environmental data resources are maximized, including the identification of previously performed environmental reviews by NEPA cooperating federal agencies.

The Consultant will also develop and maintain a geographic information system (GIS) for all relevant information necessary to support the Environmental Review Record for the NYC Housing Recovery Programs. The foundation data for the GIS exists and will be shared with the Consultant.

Deliverables under this scope element include:

- Environmental Data and Document Management Plan
- Provision of relevant environmental data to support environmental reviews in a form which can be integrated with NYC data systems
- Assist the City's environmental officer to maintain the Environmental Review Record

Task VI: Appraisal Services

The Consultant will provide appraisal services for the City.

Under both the NYC Houses and Multi-family Building Rehabilitation program, an appraisal might be ordered for pre-storm fair market value of the building for each applicant with substantial damage to their building.

Deliverables for this scope element include:

- Appraisal of the pre-storm fair market value of each individual building requested by the City

Service level requirements:

- Targeted start of appraisal orders is July 1, 2013, with the bulk of orders expected to be completed over a 4 – 6 month period
- Each appraisal should be completed within one week of being assigned a property
- Expected assessments: 10,000 single family homes (1-4 unit) 900 multi-family buildings

- Capability to rapidly adjust to changes in the volume of appraisals to be completed within required timeframe

2. Architectural Scoping Services

The New York City Economic Development Corporation (NYCEDC) is seeking architectural scoping services to support the home assessment program. This solicitation for this program is issued by NYCEDC in support of the Mayor's Office of Housing Recovery Operations (HRO). Programmatic oversight will be provided by HRO. While NYCEDC will hold the contracts for this work, HRO will primarily oversee the contract services and provide direction and feedback to the selected Consultants through its agent the New York City Department of Environmental Protection ("DEP").

The City anticipates that approximately 8,000 to 12,000 homes will require preparation of a detailed scoping document (Work Order) describing home damage. Most homes that enter this program, will have sustained less than 50% physical damage based on the pre-storm fair market value of the home. A small percentage of homes will have received greater than 50% damage and a small percentage of homes will require raising pursuant to NYC Department of Buildings code requirements.

The selected vendor(s) will be responsible for creating comprehensive work order packages and itemized quantity take-off cost estimates of qualifying home repairs consistent with Federal, State and local requirements. The scoping documents for each home will include a list of unit price quantities, general floor plans of flood damaged areas, simple floor plan and elevation drawings of kitchen and bathroom repairs, a photographic inventory of the existing conditions, and general notes on hazardous mitigation requirements.

The selected vendor(s) is expected to have extensive experience in single family dwelling home design and familiarity with Federal Housing and Urban Development (HUD) CDBG requirements for home reconstruction.

TASK 1. PROJECT MANAGEMENT

The selected vendor(s) shall provide a sufficient and well-organized project administration team to manage the project throughout the entire period of the Contract including proper supervision of all staff and subcontracted services.

Task 1.1 Project Execution Plan

The selected vendor(s) shall develop and implement a Project Execution Plan (PEP) detailing the manner in which the project will be planned, managed and executed. The objective of the PEP is to define the approach to be used by the project team to deliver the intended project and how

project information will be communicated. The PEP shall be updated as necessary to reflect changes in the project and all revisions will be submitted to DEP for review and comment.

Task 1.2 Monthly Progress Reports and Weekly Progress Meetings

The selected vendor(s) shall prepare and submit a Monthly Progress Report detailing activities completed in previous month, activities anticipated in upcoming month, expenditure against planned budget, schedule progress against planned schedule, and critical issues. The Monthly Progress Reports shall be clear and concise.

The Project Manager of the selected vendor(s) shall attend a weekly coordination meeting with the Program Director to review progress, discuss of items requiring feedback and review a list of outstanding issues requiring resolution.

The selected vendor(s) shall prepare a monthly invoice which includes a full accounting of all staff, number of hours, loaded hourly rate, sub-consultants and Other Direct Costs organized by individual scope task for tasks to be paid on a time and material basis. For tasks paid by lump sum, verification of the units shall be provided. Complete back up of all timesheets and other direct costs are required to substantiate billing.

TASK 2. DEVELOP POLICIES AND PROCEDURES

The selected vendor(s) shall prepare detailed procedures for the execution of home inspections including but not limited to written standard operating procedures, checklists, and floor plan and elevation "quick" forms, etc. The goal of the procedures is to create a consistent and efficient process of working with the homeowners and contractors to finalize the scoping document and initiate construction. All staff will be trained on these procedures and will be expected to comply with all policies and procedures in execution of the work without exception.

TASK 3. CONDUCT HOME INSPECTIONS AND PREPARE WORK ORDERS

Conduct site visit of home and prepare DRAFT Work Orders of qualifying home repairs. Results of the Preliminary Damage Assessment performed by the Housing Recovery Office will be provided for each home. The Preliminary Damage Assessment provides a general description of eligible repairs and includes results of all hazards analysis and associated hazard mitigation requirements. The selected vendor(s) will build a detailed Work Order of all necessary repairs. General services under this sub-task include the following:

- Review damage assessment and environmental review reports performed on the home during the Intake Process to verify work required in the home.
- Verify that a Right of Entry has been signed by the homeowner to allow access to the home.
- Inspect home and prepare detailed quantity take-offs for all necessary repairs. Record

quantities and produce quick floor plans and elevations sufficient for basic kitchen and bath layouts in the electronic tablet (see Task 4). The unit price items will be based on the Xactimate estimating software package.

- Record written descriptions of hazardous remediation for lead, mold, and asbestos in addition to identified unit price quantities.
- Prepare detailed photographic inventory of the home (using electronic tablet) during inspection including all areas of damage and planned repairs. All photographs shall be properly logged and labeled consistent with documented procedures to facilitate ease of retrieval.
- Coordinate selection of all eligible options with homeowners including, but not limited to, basic kitchen layout, cabinetry, finishes, flooring, kitchen and bathroom fixtures, non-luxury appliances, etc.
- Identify appropriate repair duration (15 days, 30 Days, 45 Days, 60 Days or 90 Days) depending on extent of damage. The repair schedule will be used as a basis of assessing liquidated damages to the contractors.
- Identify and record contractor start date on the home, based on assessment of advance need to procure supplies.
- Conduct final walk through of home with selected General Contractor to confirm scope and solicit final sign-off of the document from Contractor and Homeowner.

It is intended that these services will be completed in 1 home visit limited to approximately 4 hours. If final agreement on homeowner selected materials and layouts cannot be completed within these time frames, the homeowner will be required to make an appointment at a customer service station to finalize the selection process. All appointments for home visits to conduct investigations and prepare Work Orders will be made by a City Customer Service Representative.

TASK 4 DEVELOP TABLET-BASED WORK ORDER SYSTEM

Develop tablet-based system to record unit price quantities (e.g. Xactimate Software), store photo inventory of the home, provide visual images of allowable materials, and produce quick floor plans and elevations of storm-damaged homes. In addition to producing completed work order packages, the tablet will serve as a valuable communication tool with the homeowner to finalize overall home floor plans, and specifically, kitchen and bathroom plan and elevation drawings. The system shall allow visual imaging sufficient for quick optioneering of various layout configurations for "on the spot" communication with homeowners, and record selected options and materials for key home components (e.g. cabinet style, toilet, kitchen sink, etc.). Output from the tablet shall automatically create simple 8-1/2" x 11" plan and elevation drawings and document homeowner selected materials, including standard photographs that will be incorporated into the overall scope package for the building general contractor. Selected

vendor(s) will be responsible for providing tablets and wireless printers and configuring tablets to produce Work Order documents.

TASK 5 QUALITY MANAGEMENT

The selected vendor(s) will provide centralized independent review of all scoping documents prior to finalization including review of photographs, unit price list, floor plans, elevations, etc. to verify eligibility, completeness, accuracy, local code compliance, and compliance with HUD Single Family Housing Rehabilitation Standards, and the HUD CPD Green Building Retrofit Checklist. Any quality issues identified during review shall be corrected prior to contractor sign-off of the scoping document. It is expected that all quality sign-offs will be completed within 24 hours of submittal of a draft Scope of Work Package.

TASK 6 PREPARE ENGINEERING DRAWINGS AND INSPECTION FOR HOME RAISING

It is anticipated that approximately 250 to 500 homes will require raising in order to comply with NYC Department of Buildings code requirements. The selected vendor will be responsible for conducting all field investigations and producing signed and sealed engineering drawings and specifications for DOB approval. Upon DOB approval, the vendor shall prepare bid documents for the City's General Contractor to prepare a Non-Prepriced cost proposal. The Engineer of Record will also be required to perform a final inspection on the house raise to support final acceptance of the Job Order.

TASK 7 REVIEW/APPROVAL OF POTENTIAL CHANGE ORDERS

The selected vendor(s) shall be responsible for reviewing and recommending changes to the original scope document including an evaluation of a time extension to complete the extra work. Potential scope changes must be submitted in writing from the General Contractor and where applicable, an electronic photo inventory of the changed condition must be provided. Where necessary, the architect shall make a home visit to verify the change condition; otherwise, the photographic inventory provided by the contractor shall be used to assess the changed condition. All contractor submissions and owner approval of changed conditions shall be made electronically into the City's web-based data management system. It is expected that all change requests shall be reviewed and approved within 48 hours of submission from the General Contractor. Requests for changes must be approved by the vendor(s) prior to the initiation of the work.

TASK 8 REQUESTS FOR INFORMATION/CLARIFICATION

The selected vendor(s) shall be responsible for reviewing and responding to scope related requests for information (RFI) from the General Contractor. The General Contractor must submit all RFIs through the web-based Construction Management System. It is expected that all RFIs shall be responded to within 48 hours of receipt.

TASK 9 SUBMITTAL REVIEW

The General Contractors will be required to provide basic submittals of materials for all unit price items for review and approval. The General Contractors may also be required to provide submittals related to house raising as requested in the Non-Prepriced Bid Documents. The selected vendor(s) will be required to review the submissions for compliance with the contract specifications as well as HUD Single Family Housing Rehabilitation Specifications. Each selected contractor is expected to provide submittals within 30 days of contract registration for all unit price items. The selected vendor(s) is expected to review all submittals within 14 days of the initial submission. Substitutions for approved submittals may be received throughout the construction period and the selected vendor(s) is expected to review and approve individual submissions within 48 hours of submission.

3. Construction Inspection Services

The New York City Economic Development Corporation (NYCEDC) is seeking construction inspection ("Inspection") services to support the home rehabilitation program. This solicitation for this program is issued by NYCEDC in support of the Mayor's Office of Housing Recovery Operations (HRO). Programmatic oversight will be provided by HRO. While NYCEDC will hold the contracts for this work, HRO will primarily oversee the contract services and provide direction and feedback to the selected vendors through its agent the New York City Department of Environmental Protection ("DEP").

The selected vendor(s) will be responsible for conducting interim and final acceptance inspections of allowable rehabilitation work ("Work") performed at participating homes to ensure conformance with the contract specifications as detailed in the Job Order and to review and approve payments to the contractors on each home. Home construction will be performed by either a City-provided General contractor or a contractor selected by the homeowner. In either case, a detailed job order of Work will be prepared and will form the basis of all inspection services.

The selected vendor will also be responsible for performing Special Inspections as required under the New York City Building code and must be certified in accordance with section 101-06 of the NYC Building Code where applicable. The inspection services provided under this contract do not replace any inspections performed by the NYC Buildings Department for the purposes of permit compliance (e.g. electrical inspections).

The selected vendor(s) is expected to have extensive experience in single family dwelling home inspection and familiarity with Federal Housing and Urban Development (HUD) CDBG requirements for home reconstruction and be familiar with the NYC Building Code requirements for residential construction including dwellings of up to four individual units.

TASK 2. PROJECT MANAGEMENT

The selected vendor(s) shall provide a sufficient and well-organized project administration team to manage the project throughout the entire period of the Contract including proper supervision of all staff and subcontracted services.

Task 2.1 Project Execution Plan

The selected vendor(s) shall develop and implement a Project Execution Plan (PEP) detailing the manner in which the project will be planned, managed and executed. The objective of the PEP is to define the approach to be used by the project team to deliver the intended project and how

project information will be communicated. The PEP shall be updated as necessary to reflect changes in the project and all revisions will be submitted to DEP for review and comment.

Task 2.2 Monthly Progress Reports and Weekly Progress Meetings

The selected vendor(s) shall prepare and submit a Monthly Progress Report detailing activities completed in previous month, activities anticipated in upcoming month, expenditure against planned budget, schedule progress against planned schedule, and critical issues. The Monthly Progress Reports shall be clear and concise.

The Project Manager of the selected vendor(s) shall attend a weekly coordination meeting with the DEP Reconstruction Program Director to review progress, discuss of items requiring feedback and review a list of outstanding issues requiring resolution.

The selected vendor(s) shall prepare a monthly invoice which includes a full accounting of all staff, number of hours, loaded hourly rate, sub-consultants and Other Direct Costs organized by individual scope task for tasks to be paid on a time and material basis. For tasks paid by lump sum, verification of the units shall be provided. Complete back up of all timesheets and other direct costs are required to substantiate billing.

TASK 2. DEVELOP POLICIES AND PROCEDURES/STAFF TRAINING

Prior to beginning work, the selected vendor(s) shall prepare detailed procedures for the execution of home inspections including but not limited to written standard operating procedures and checklists. All staff will be thoroughly trained on these procedures and will be expected to comply with all policies and procedures in execution of the Work without exception. Periodic update training will be expected to maintain compliance.

TASK 3 QUALITY MANAGEMENT

The selected vendor(s) will develop and implement a quality management plan to ensure the overall quality of the inspection services. Plan implementation shall include audits of all services and submission of audit reports to the DEP Rehabilitation Program Office for review. Corrective action reports shall be prepared where program implementation deficiencies are observed.

TASK 4. CONDUCT HOME INSPECTIONS

For all inspection work described below, it is the Contractor's responsibility to request inspection services at the noted Work progress milestones described below. The Contractor will be

required to utilize the City's Construction Management Information System ("CMIS") to request inspections. The inspections must be requested by the Contractor at least 3 days in advance.

Task 4.1 Inspection of Homes NOT Elevated

For participating homes that are not required to be elevated, the selected vendor will be required to perform two (2) inspections for conformance with the Job Order document.

a. In-Progress Inspection: The first inspection will be conducted prior to the Contractor "closing" up walls and other surfaces so that all Work that can be observed
b. Final Acceptance Inspection: Once the Work has been completed and all DOB inspections have been completed

During each inspection, the inspector will inspect the Work performed by the contractor for:

- conformance to the Job Order including documentation of all quantities installed against the recorded quantities in the Job Order,
- general workmanship,
- code compliance
- compliance with contract specifications

The inspector will record the results of the inspection in the tablet system software to be provided by the DEP Reconstruction Program Director ("Tablet system") and also prepare a detailed photographic inventory of the home (using electronic tablet) including all areas of damage and repair work. All photographs shall be properly logged and labeled consistent with documented procedures to facilitate ease of retrieval.

It is intended that each inspection will be completed in approximately 1 to 4 hours depend on the size of the property and the complexity of the damage.

Task 4.2 Inspection of Homes Elevated

In addition to the In-Progress and Final Acceptance Inspections described in Task 4.1, additional on-site inspections shall be performed for homes that require raising. Three (3) additional inspections are required:

a. Pre-Conditions Inspection: Prior to the start of the raising process,
b. Elevation On-Site Inspection: During the raising process (1 to 2 days max),
c. Final Elevation Inspection: Once the permanent structural support has been completed

At each step in the process, the inspector will prepare a detailed photographic inventory of the pre-existing, post-elevation, and post structural support system completion conditions. Detailed inspection reports will be completed at each visit documenting conformance with the approved plans and specifications included in the Job Order.

TASK 5 SPECIAL INSPECTIONS

The selected vendor(s) shall provide all special inspections required under the NYC Building Code and identified in the TR-1 form prepared by the Architectural Scoping Consultant (procured from an independent RFP) for each home. The selected vendor shall be responsible for coordinating with each assigned Contractors to ensure timely special inspections are performed for all required Work. Results of all inspections shall be documented according to the procedures developed for the program and logged into the City's CMIS. Results of all inspections shall be included in the Final Acceptance Job Order Package.

TASK 6 INTEGRATE INSPECTION MODULES IN CITY TABLET SYSTEM

The selected vendor(s) shall integrate all inspection documentation needs in the City's Tablet system including results of all inspections including inspection reports, verification of quantities from the Job Orders, verification of all permits, and storage of photo inventory of the home both in progress and upon completion. The additional inspection modules must be developed in collaboration with the City's tablet configuration vendor. All tablet data must be integrated into the City's overall Construction Management Information System ("CMIS").

TASK 7 INVOICE REVIEW

Both the DEP contractors and private owner-selected contractors shall be permitted to submit payment requisitions for homes upon passing a Final Acceptance Inspection and submitting all required documentation. The selected Inspection vendor(s) shall be responsible for reviewing all payment requisitions and verifying that all documents required for final acceptance have been filed and that the payment requisition is consistent with the approved Job Order and any Supplemental Job/Change Orders issued on the home as approved by the Architectural Scoping Consultant. The vendor will sign the payment requisition and submit to the DEP Reconstruction Program Director for final review and approval.

4. On-Call Management and Economic Development Consulting Services

Summary of Scope

The Mayor's Office of Housing Recovery Operations (HRO) requests services to assist in providing permanent housing solutions in the aftermath of the late season hurricane event that hit New York in October 2012 known as Superstorm Sandy. The HRO was created by Executive Order of the Mayor's Office with the mission of returning New York City residents to a permanent home within 18 months of the disaster. In order to achieve its mission, HRO has created a program to utilize Community Development Block Grant Disaster Relief ("CDBG-DR") funding from the U.S. Department of Housing and Urban Development ("HUD"), and will need the following support:

- Support in the development, coordination, and operation of CDBG-DR funded housing programs, including recommendations and refinement of operational models and procedures, management analysis, general project management, and operations recommendations,
- Communications and outreach support to NYC communities
- Support in federal environmental review requirements
- Refinement of "unmet" need estimates as defined by HUD in its Disaster Relief Appropriations Act of 2013 (Public Law 113-2, January 29, 2013) based on data from program applicants and damage assessments of properties
- Analysis of client characteristics and comparison to demography of affected neighborhoods, and support of outreach activities to ensure program participation
- Support the ongoing activities of the Program Management Office
- Support HRO's efforts to obtain additional federal funding, which includes, among other things, creating and modifying Action Plans
- Post-implementation review and evaluation of program results.

Specific Services

The Consultant will deliver the following products to support the HRO, with efforts beginning immediately upon the award of contract and continuing for approximately 24 months. The Project Manager will assign tasks throughout the term of the contract based on needs described below, using the attached rate schedule. Where tasks involve support and deliverables as needed/required, the Project Manager will assign tasks and may request specific qualifications and experience/expertise corresponding with the levels in the Rate Schedule.

Task I – Communications and Outreach Support

The Consultant will provide expert services and support to the City for Program Outreach to Sandy victims and the broader NYC community. Outreach efforts have included soliciting community and stakeholder input from constituents, elected officials, and community groups, fostering dialogue from small group conversations to large-town hall style meetings, leveraging existing outreach efforts across NYC agencies, and direct engagement through online social media.

Support will include analysis of the effectiveness of existing outreach activities, development of detailed strategies to reach targeted communities and demographics, and the development and production of a suite of multi-media communication materials to support effective outreach.

1st Deliverable Due Weekly: Analysis of the effectiveness of existing outreach activities based on target demographics in affected areas

2nd Deliverable Due Monthly for 6 months, then as required: Development of detailed strategies to reach targeted communities and demographics

3rd Deliverable Due Monthly for 6 months, then as required: Development and production of a suite of multi-media communication materials to support effective outreach

Task II – Programmatic Environmental Support

An environmental review is the process of reviewing a property ("project") and its potential environmental impacts to determine whether it meets federal, state, and local environmental standards. The environmental review process is triggered when federal funds are used solely or in combination with other funds to finance a project. All projects receiving HUD assistance must have an environmental review in compliance with 24 CFR Part 58 to ensure that the proposed project does not negatively impact the surrounding environment and that the project site itself is safe for development. Every project's environmental impact must be in compliance with the National Environmental Protection Act (NEPA), and other related Federal and state environmental laws. Environmental review responsibilities must be completed prior to implementation and committal (obligation) of any funds for the approved project, but the extent of the review varies.

The Environmental Reviews will follow the Tiering process described at 24 CFR 58.15. The Tier 1 environmental review involves a broad analysis of relevant, general environmental conditions in the target area. The Tier 1 review also provides structure for the Tier 2 review by establishing

procedures for site-specific environmental compliance. The Tier 2 review focuses on site-specific environmental conditions that cannot be adequately evaluated at the Tier 1 level.

A Tier 1 Environmental Review is expected to be out for Public Comment prior to the start of this effort. The Consultant will provide expert services in support of the completion of the Tier 1 Environmental Review. Services could include but would not be limited to response to public comment on the potential impact of the proposed program activities on the environment, revision to the Tier 1 Environmental Review based on public input and Agency Consultations, development and negotiation of Programmatic Agreements with Agencies or stakeholder groups with regard to environmental, cultural, or historic mitigations, etc. Provide support to ensure compliance with the Tier 1 and HUD NEPA requirements during the execution of lower tier (Tier 2) analyses. Support the coordination and publication of required public notices under the Environmental Compliance Program.

1st Deliverable: Support the completion of the Tier 1 Environmental Review, including but not be limited to response to public comment on the potential impact of the proposed program activities on the environment, revision to the Tier 1 Environmental Review based on public input and Agency Consultations

2nd Deliverable: Compliance reviews of Tier 1 and 2 Environmental Reviews, including providing support to ensure compliance with the Tier 1 and HUD NEPA requirements during the execution of lower tier (Tier 2) analyses and supporting the coordination and publication of required public notices under the Environmental Compliance Program

Task III – Program Management Operations Support

The Program Management Office (PMO) oversees the execution of the Housing Recovery Program. PMO provides overall generation administration as well as support to our vendors.

The Consultant shall provide Subject Matter Experts and staff augmentation for the Program Management Office, as required, to support the implementation of the City's Housing Recovery Operations. Support could include but is not limited to the following areas: Project Controls Specialists, Cost Controls, Document Management, Quality Assurance/Quality Control Specialists, Financial Analysts, CDBG-DR Experts, Duplication of Benefits Experts, Fair Housing Experts, and Data and Reporting Analysts. The Consultant will support ad-hoc problem-solving design-related hurdles as they arise.

Task IV – CDBG-DR Policy Support

The City's housing recovery programs are designed to meet the unmet housing assistance needs described in the NYC CDBG-DR Action Plan (http://www.nyc.gov/cdbg), which is incorporated into this solicitation by reference, and help people affected by Hurricane Sandy – including homeowners and tenants of rental properties – achieve permanent, sustainable housing solutions that allow them to remain in New York City and, where possible, return to their neighborhoods.

The objectives of the programs include:

1. Help people affected by Sandy directly by replacing and rehabilitating housing units, including identifying opportunities for mitigation enhancement measures;
2. Help people affected by Sandy by improving the resilience of their housing units while restoring their buildings/residences;
3. Support resilience improvements to reduce risk and strengthen neighborhoods in flood zones; and,
4. Leverage philanthropic investments to address immediate gaps with flexible capital and maximize CDBG-DR dollars at scale.

To pursue these objectives, the City has built programs that incorporate lessons from past disasters; built upon stakeholder input from agencies and relevant organizations across the city, state, and national levels; and, leveraged the experience of locally-based organizations to ensure the diverse needs and particular contexts of NYC's affected residents are addressed. HRO's focus is to provide assistance to affected New Yorkers quickly while ensuring accountability and proper use of funds. HRO has also accounted for the complexities faced by affected residents working through the assistance process and therefore embedded quality customer service and counseling options to help people understand their options and the impacts (financial and otherwise) of their decisions. The City's strategy will balance speedy response with adequate planning, support equity, and take into account the distinct needs of different communities and abilities of those community members. For program operations, the City will maximize private and non-profit sector expertise and the deep experience of the housing infrastructure in NYC while putting appropriate accountability and oversight mechanisms in place to ensure compliance with HUD regulatory requirements found at 24 CFR 570 and as defined by HUD in its Disaster Relief Appropriations Act of 2013 (Public Law 113-2, January 29, 2013).

The City's housing recovery programs are designed to meet the unmet housing assistance needs described in the NYC CDBG-DR Action Plan and help people affected by Hurricane Sandy – including homeowners and tenants of rental properties – achieve permanent, sustainable housing solutions that allow them to remain in New York City and, where possible, return to their neighborhoods.

The Consultant shall provide expert support in monitoring the effectiveness of the Housing Recovery Program and, as necessary, support changes to the Action Plan and ongoing program design. In addition, the Consultant shall monitor the effectiveness and appropriateness of established Program Guidelines, Policies and Procedures. The Consultant will provide expert review and analysis in support of appropriate revisions or waivers, as necessary, to ensure consistency throughout the program execution.

Timeline

The expected duration of this effort is for the duration of the CDBG-DR Housing Program or 24 months.

SCHEDULE I-A

Budget, Housing Recovery Program

General

The following represent total allocations for each contract and for work by the subcontractor but no payments pursuant to this Agreement shall be processed until there are specific performance benchmarks assigned to specific budget amounts per subcontract and per the scope of work consistent with CDBG rules governing eligibility, compliance, and contract performance for payment of Eligible Costs with CDBG-DR funds. The timeline benchmarks for completion of each task set forth in the subcontracts will be deemed added to the payment schedule upon execution of the subcontracts and as such shall become part of this Agreement for compliance and payment purposes.

Pre-Construction Services	$37,600,382.60
Architectural Scoping Services	$29,729,983.80
Construction Inspection Services	$18,115,812.00
On-Call Management and Economic Development Consulting Services	$5,000,000.00
Subrecipient Administrative Costs	$475,000.00
Total:	$90,921,178.40

APPENDIX A

To Subrecipient Agreement

REQUIRED PROGRAM RECORDS

As applicable to the specific activities contemplated in the Scope of Work, the Subrecipient shall maintain the following:

1. records pertinent to the activities funded under this Agreement;
2. records providing a full description of each activity undertaken by Subrecipient hereunder;
3. records demonstrating that each activity undertaken by Subrecipient hereunder meets one of the National Objectives of the CDBG program, as modified by the HUD Notices;
4. records as required to determine the eligibility of the activities undertaken by Subrecipient hereunder under the CDBG Rules;
5. records as required to document the acquisition, improvement, use or disposition of real property acquired or improved with CDBG-DR funds;
6. records documenting compliance with the fair housing and equal opportunity components of the CDBG program;
7. financial records as required under applicable Requirements of Law (including 24 CFR 570.502, and 24 CFR 84.21–28);
8. records as necessary to document compliance with Subpart K of 24 CFR Part 570; and
9. any records otherwise required to be maintained by Subrecipient under applicable Requirements of Law (including 24 CFR 570.606).

APPENDIX A
To Subrecipient Agreement

SUPPLEMENTARY GENERAL CONDITIONS

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ARTICLE 1
DEFINITIONS

As used in this Agreement:

(a) "Act" means Title 1 of the Housing and Community Development Act of 1974 (P.L. 93-383) as amended.

(b) "Agency" and/or "Recipient" means the entity, or entities, executing this Agreement on behalf of the City of New York.

(c) "City" means the City of New York.

(d) "Construction" means the building, rehabilitation, alteration, conversion, extension, demolition, painting or repair of any improvement to real property.

(e) "Contractor" and/or "Subrecipient" means the entity or entities executing this Agreement, other than the Agency.

(f) "Grant" means Community Development Block Grant Program funds provided to the Contractor through the City of New York and by the Federal Department of Housing and Urban Development.

(g) "HUD" means the Secretary of Housing and Urban Development or a person authorized to act on his or her behalf.

(h) "Program" means the New York City Community Development Block Grant Program approved by HUD as the same may from time to time be amended.

(i) "Subcontractor" means any person, firm or corporation, other than employees of the Contractor, or another Subcontractor who is engaged by the Contractor to furnish labor or labor and materials at the site of the work performed under this agreement.

ARTICLE 2
FEDERAL CONDITIONS

This Agreement is subject to:

(b) Title 1 of the Housing and Community Development Act of 1974 (P.L. 93-383) as amended (The Act) and all rules, regulations and requirements now issued or hereafter issued pursuant to the Act; the Agreement may be suspended and/or terminated without liability to the City if the Grant to the City pursuant to the Act is suspended or terminated, and unless and until the City or Agency receives Community Development funds in an amount that is deemed sufficient to enable it to fund this Agreement, the City or Agency is under no obligation to make any payments to the Contractor. In this regard, the Agency is under no obligation to make any payments to the Contractor, and shall not make any such payment, and the Contractor shall not commence performance, until:

(i) the Agency has received from the City's Office of Management and Budget instructions to proceed, evidencing compliance with the National Environmental Policy Act, as amended, and with regulations of the U.S. Department of Housing and Urban Development, related thereto, found at 24 CFR Part 58; and

(ii) the Contractor has been notified of such instructions by the Agency. Furthermore, the Contractor and the City mutually agree that the Contractor shall not advance any funds, from any source without limitation, to pay for costs intended to be paid for under this Agreement prior to the receipt and notification described in this paragraph (a), and the City shall not reimburse the Contractor for any costs incurred in violation of this provision.

(c) Title VIII of the Civil Rights Act of 1968 (P.L. 90-284; 42 U.S.C. §§ 3602-3620), as amended, which prohibits discrimination in the sale or rental of housing and in the provision of brokerage services based on race, color, religion, sex, national origin, disability, or familial status, and which requires affirmative action in the furtherance of Fair Housing objectives.

(d) Executive Order 11063, as amended by Executive Order 12259, pursuant to regulations issued at 24 CFR Part 107 which prohibits discrimination on the basis of race, color, religion, sex or national origin and requires equal opportunity in housing constructed, operated or provided with federal funds.

(e) Title VI of the Civil Rights Act of 1964 (P.L. 88-352; 42 U.S.C. §§ 2000d *et seq.*) and implementing regulations in 24 CFR Part 1, which states that no person shall, on the ground of race, color or national origin, be excluded from participation in, be denied the benefits of, or otherwise be subject to discrimination under any Program or activity made possible by, or resulting from, this agreement. The provisions of this Article 2(d) shall be incorporated in and made a part of all subcontracts executed in connection with this agreement.

(f) Section 3 of the Housing and Urban Development Act of 1968 (P.L. 90-448). Pursuant to 24 CFR § 135.38, the Contractor agrees to the following:

(i) The work to be performed under this Agreement is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. § 1701 u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly

persons who are recipients of HUD assistance for housing.

(ii) The parties to this Agreement agree to comply with HUD'S regulations in 24 CFR Part 135, which implement Section 3. As evidenced by their execution of this Agreement, the parties to this Agreement certify that they are under no contractual or other impediments that would prevent them from complying with the Part 135 regulations.

(iii) The Contractor agrees to send to each labor organization or representative of workers with which the Contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the Contractor's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

(iv) The Contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the Subcontractor is in violation of the regulations in 24 CFR Part 135. The Contractor will not subcontract with any Subcontractor where the Contractor has notice or knowledge that the Subcontractor has been found in violation of the regulations in 24 CFR Part 135.

(v) The Contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the Contractor is selected but before the Agreement is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 135 require employment opportunities to be directed, were not filled to circumvent the Contractor's obligations under 24 CFR Part 135.

(vi) Noncompliance with HUD's regulations in 24 CFR Part 135 may result in sanctions, termination of this Agreement for default, and debarment or suspension from future HUD assisted contracts.

(vii) With respect to work performed in connection with Section 3 covered Indian Housing Assistance, Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this Agreement. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this Agreement that are subject to the provisions of Section 3 and Section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with Section 7(b).

(g) Lead-Based Paint Poison Prevention provisions found in 24 CFR § 570.608, the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4821-4846), the Residential Lead Based Paint Hazard Reduction Act of 1992 (U.S.C. §§ 4851-4856, and 24 CFR Part 35, subparts A, B, J, K, and R. This Article 2(f) is to be included in all subcontracts, for work in connection with this Agreement, which

relate to residential structures.

(h) Pursuant to the provisions in 24 CFR § 570.605, Section 202(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. § 4106), and the regulations in 44 CFR Parts 59-79 apply to this Agreement.

(i) Consistent with 24 CFR § 570.614, the Contractor warrants that all services, programs, and/or Construction (including design and alteration) under this Agreement shall be performed in accordance with all federal, state and local laws and regulations regarding accessibility standards for persons with disabilities including, but not limited to, the following: Section 504 of the Rehabilitation Act, the Architectural Barriers Act of 1968 (42 U.S.C. § 4151-4157), the Uniform Federal Accessibility Standards (Appendix A to 24 CFR Part 40 and Appendix A to 41 CFR Part 101-19, subpart 101-19.6), and the Americans with Disabilities Act (42 U.S.C. § 12131; 47 U.S.C. §§ 155, 201, 218, and 225).

(j) The Historic Preservation Act of 1966 (P.L. 89-665; 16 U.S.C. §§ 470 *et seq.*), the Archeological and Historic Preservation Act of 1974 (P.L. 93-291; 16 U.S.C. §§ 469-469c), Executive Order 11593 and regulations at 36 CFR Part 800. In general, this requires concurrence from the State Historic Preservation Officer for all rehabilitation and demolition of historic properties that are fifty years old or older or that are included on a Federal, state, or local historic property list.

(k) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. §§ 4601-4655) and regulations at 49 CFR Part 24.

(l) Uniform Administrative Requirements.

(i) Subrecipients that are governmental entities, including those that are public agencies or authorities, shall comply with the following:

1. Federal Office of Management and Budget (OMB) circular A-87, Cost Principles for State, Local and Indian Tribal Governments;

2. Federal Office of Management and Budget (OMB) circular A-133, Audits of States, Local Governments, and Non-Profit Organizations (rev. 6/27/03);

3. The sections of 24 CFR Part 85, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, that are set forth in 24 CFR § 570.502(a).

(ii) Subrecipients, except those which are governmental entities, public agencies or authorities, shall comply with the following:

1. Federal Office of Management and Budget (OMB) circular A-122, Cost Principles Non-Profit Organizations;

2. In the event that the Contractor is an educational institution, Federal Office of Management and Budget (OMB) circular A-21, Cost Principles for Educational Institutions;

3. The sections of 24 CFR Part 84, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and other Non-Profit Organizations, that are set forth in 24 CFR § 570.502(b). The provisions of 24 CFR Part 84 implement OMB circular A-110;

4. Federal Office of Management and Budget (OMB) Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations (rev. 6/27/03).

5. Execution of a subrecipient agreement.

(iii) Contractors shall comply with the provisions of 24 CFR Part 85 and 48 CFR Part 31, as applicable.

(m) The Contractor agrees that if any income is generated from the Community Development Block Grant Program funded activities, Contractor shall return such income to the City's Community Development Block Grant Program unless expressly authorized by the City. Such funds are subject to all applicable requirements governing the use of Community Development Block Program Funds, including 24 CFR § 570.503(b)(3), which provides that, at the end of the program year, the City may require remittance of all or part of any program income balances (including investments thereof) held by the Subrecipient (except those needed for immediate cash needs, cash balances of a revolving loan fund, cash balances from a lump sum drawdown, or cash or investments held for section 108 security needs).

(n) If the Contractor is, or may be deemed to be, a religious or denominational institution or organization operated for religious purposes which is supervised or controlled by or in connection with a religious or denominational institution or organization, the Contractor agrees that in connection with services to be provided under this Agreement:

(i) it shall not discriminate against any employee or applicant for employment on the basis of religion and shall not limit employment or give preference in employment to persons on the basis of religion.

(ii) it shall not discriminate against any person applying for such public services on the basis of religion or religious belief and shall not limit such services or give preference to persons on the basis of religion or religious belief.

(iii) it shall provide no religious instruction or counseling, conduct no religious worship or services, engage in no religious proselytizing, and exert no other religious influence in the provision of such public services.

(iv) it shall not use CDBG funds for the acquisition, construction, or rehabilitation of structures to the extent that those structures are used for inherently religious activities. CDBG funds may be used for the acquisition, construction, or rehabilitation of structures only to the extent that those structures are used for conducting eligible activities under 24 CFR Part 570. Where a structure is used for both eligible and inherently religious activities, CDBG funds may not exceed the cost of those portions of the acquisition, construction, or rehabilitation that are attributable to eligible activities in accordance with the cost accounting requirements applicable to CDBG funds in 24 CFR Part 570. Sanctuaries, chapels, or other rooms that a CDBG-funded

religious congregation uses as its principal place of worship, however, are ineligible for CDBG-funded improvements. Disposition of real property is subject to 24 CFR § 570.200(j)(5).

(o) Executive Order 11246, as amended, and the implementing regulations contained in 41 CFR Chapter 60, as amended, prohibit discrimination in employment due to race, color, religion, sex or national origin during the performance of all Federal or federally assisted contracts.

(i) during the performance of this Agreement the Contractor agrees as follows:

1. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

2. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, sex, religion or national origin.

3. The Contractor will send to each labor union or representative of workers with which he/she has a collective bargaining agreement or other Agreement or understanding, a notice to be provided by the Agency contracting officer, advising the labor union or worker's representatives of the Contractor's commitments under Section 202 of Executive Order 11246 of September 24, 1965, as amended, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

4. The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, as amended, and of the rules, regulations and relevant orders of the Secretary of Labor.

5. The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, as amended, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the Department and the Secretary of Labor for purposes of investigations to ascertain compliance with such rules, regulations, and orders.

6. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Agreement or with any of such rules,

regulations, or orders, this Agreement may be cancelled, terminated or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted Construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, as amended, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, as amended, or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.

7. The Contractor will include the provisions of this Article 2(n) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, as amended, so that 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 Secretary of Labor as a means of enforcing such provisions, including sanctions for non-compliance: Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a Subcontractor or vendor as a result of such direction, the Contractor may request the United States to enter into such litigation to protect the interest of the United States.

(p) The Contractor agrees that if it enters a Construction subcontract as part of its Agreement with the City, and this Construction subcontract is for an amount more than $10,000, the notice found at FEDERAL EXHIBIT 1 of this Agreement must be included in that Construction subcontract.

ARTICLE 3
ADDITIONAL FEDERAL CONDITIONS FOR CONSTRUCTION

In the event that this Agreement involves Construction work, design for Construction or Construction services, all such work or services performed or administered by the Contractor shall be subject to the following requirements in addition to those set forth in Article 2.

(a) Federal Labor Standards: The Contractor will comply with the following:

(i) The Davis-Bacon Act (40 U.S.C. §§ 3141 et seq.): In Construction contracts involving an excess of $2000, unless exclusively in connection with the rehabilitation of residential property containing fewer than 8 units, all laborers and mechanics must be paid at a rate not less than those determined by the Secretary of Labor to be prevailing for the City, which rates are to be provided by the Agency. These wage rates are a federally mandated minimum only, and will be superseded by any State or City requirement mandating higher wage rates. The Contractor also agrees to comply with Department of Labor Regulations pursuant to the Davis-Bacon Act found in 29 CFR Parts 1, 3, 5 and 7 which enforce statutory labor standards provisions.

(ii) Sections 103 and 107 of the Contract Work Hours and Safe Standards Act (40 U.S.C. §§ 3701 et seq.), which provides that no laborer or mechanic shall be required or permitted to work more than eight hours in a calendar day or in excess of forty hours in any workweek, unless such laborer or mechanic is paid at an overtime rate of 1½ times his/her basic rate of pay for all hours worked in excess of these limits, under any Construction Agreement costing in excess of $2000. In the event of a violation of this provision, the Contractor shall not only be liable to any affected employee for his/her unpaid wages, but shall be additionally liable to the United States for liquidated damages.

(iii) The Copeland "Anti-Kickback" Act (18 U.S.C. § 874), as supplemented by the regulations contained in 29 CFR Part 3, requiring that all laborers and mechanics shall be paid unconditionally and not less often than once a week, and prohibiting all but "permissible" salary deductions.

(iv) The more complete detailed statement of Federal Labor Standards annexed hereto as FEDERAL EXHIBIT 2.

(v) The provisions of Article 3(a) of this Agreement shall be included in all subcontracts for work in connection with this Agreement.

(b) Executive Order 11246, as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR chapter 60) for Construction contracts or subcontracts in excess of $10,000.

Standard Federal Equal Employment Opportunity Construction Contract Specifications for Contracts and Subcontracts in Excess of $10,000.

1. As used in these specifications:

a. "Covered area" means the geographical area described in the solicitation from which this Agreement resulted;

b. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;

c. "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.

d. "Minority" includes:

(i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);

(ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);

(iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and

(iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

2. Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any Construction trade, it shall physically include in each subcontract in excess of $10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this Agreement resulted.

3. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7 a

through p of these specifications. The goals set forth in the solicitation from which this Agreement resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each Construction trade in which it has employees in the covered area. Covered Construction Contractors performing Construction work in geographical areas where they do not have a Federal or federally assisted Construction contract shall apply the minority and female goals established for the geographical areas where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.

6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

    a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each Construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

    b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organization's responses.

    c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.

d. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 7b above.

f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where Construction work is performed.

g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with on-site supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of Construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.

i. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's work force.

k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.

l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.

n. Ensure that all facilities and company activities are non-segregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female Construction contractors and suppliers, including circulation of solicitations to minority and female Contractor associations and other business associations.

p. Conduct a review, at least annually, of all supervisor's adherence to and performance under the Contractor's EEO policies and affirmative action obligations.

8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through p). The efforts of a Contractor association, joint Contractor-union, Contractor-community, or other similar group of which the Contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through p of these specifications provided that the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the Program are reflected in the Contractor's minority and female work force participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).

10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

11. The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246 or suspended or is otherwise excluded from or ineligible for participation in federal assistance programs.

12. The Contractor shall carry out such sanctions and penalties for violation of these

specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

13. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.

14. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, Construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, Contractors shall not be required to maintain separate records.

15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for hiring of local or other areas residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

ARTICLE 4
NONDISCRIMINATION

(a) The Contractor shall not, in any Program or activity receiving funds under this Agreement, discriminate against any person on the grounds of race, color, national origin, religion, sex, age, or disability. The Contractor agrees to comply with provisions of 24 CFR Part 6, 8, and 146.

ARTICLE 5
RECORDS AND AUDITS

(a) Records shall be maintained in accordance with requirements prescribed by HUD and/or the City with respect to all matters covered by this Agreement and retained for at least three years after the City makes final payments and all other pending matters concerning this Agreement are closed.

(b) At such times on such forms as HUD and/or the City may require, there shall be furnished to HUD and/or the City such statements, records, reports, data and information, as HUD and/or the City may request pertaining to matters covered by this Agreement. At a minimum, such forms will include the following:

(i) Annual Data Collection Report forms for the purpose of including specific Program description, accomplishment, expenditure and beneficiary information in the City's Annual Performance Report.

(ii) Annual Property Register forms for the purpose of tracking the use of CDBG purchased real property.

(c) At any time during normal business hours and as often as the City, the Agency, HUD, Inspector General, U.S. General Accounting Office, and/or the Comptroller General of the United States may deem necessary, the Contractor shall make available for examination to the City, HUD, Inspector General, U.S. General Accounting Office and/or representatives of the Comptroller General all of its books, accounts, records, reports, files, and other papers or property with respect to all matters covered by this Agreement and shall permit the City, HUD and/or representatives of the Comptroller General and the U.S. General Accounting Office to audit, examine, make excerpts of, and make transcriptions from such books, accounts, records, reports, files, and other papers or property and to make audits of all contracts, invoices, materials, payrolls, records or personnel, conditions of employment and other data relating to all matters covered by this Agreement.

ARTICLE 6
UNEARNED PAYMENTS

Unearned payments under this Agreement may be suspended or terminated upon refusal to accept any additional conditions that may be imposed by HUD at any time, or if the Grant to the City under the Act is suspended or terminated. Unearned payments received by the Contractor will be returned to the City. All interest on funds advanced to the Contractor will be returned to the City.

ARTICLE 7
DISBURSEMENT RESTRICTIONS

No money under this Agreement shall be disbursed by the Agency to any Contractor except pursuant to a written contract which incorporates the applicable Supplementary General Conditions and unless the Contractor is in compliance with HUD requirements with regard to accounting and fiscal matters, to the extent they are applicable, and provided that the Agency has completed HUD requirements, including but not limited to environmental certifications pursuant to 24 CFR 58.

ARTICLE 8
DOCUMENTATION OF COSTS

All costs shall be supported by properly executed payrolls, time records, invoices, contracts, or vouchers, or other official documentation evidencing in proper detail the nature and propriety of the charges. All checks, payrolls, invoices, contracts, vouchers, orders or other accounting documents, pertaining in whole or in part to the Agreement, shall be clearly identified and readily accessible.

ARTICLE 9
BONDING

The Agency must receive a statement from the Contractor's chief fiscal officer or their insurer assuring that all persons handling funds received or disbursed under this Agreement are covered by fidelity insurance in an amount and manner consistent with the coverage deemed necessary by the City of New York for its own employees. If the bond is cancelled or coverage is substantially reduced, the Contractor shall promptly notify the Agency of this fact in every case not later than 48 hours. In such event, the Agency shall not disburse any more funds to the Contractor until it has received assurance that adequate coverage has subsequently been

obtained.

ARTICLE 10
ACCOUNTING SYSTEM

The Contractor shall submit to the Agency a detailed description of its accounting, reporting and internal control systems, including but not limited to the procedures for cash receipts, cash disbursements, payrolls, personnel policies, fixed petty cash controls and other systems which are necessary under the circumstances. The Agency shall evaluate and document all systems and only upon acceptance and approval of the accounting, reporting and internal control systems by the Agency, shall funds be disbursed to the Contractor, other provisions of the Agreement notwithstanding.

ARTICLE 11
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, including software, produced 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 subsist. 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 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 U.S. Copyright Office or any other government agency authorized to grant copyright registrations. The Contractor shall cooperate in this effort, and agrees to provide any further 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 materials 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 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) HUD reserves a royalty-free, nonexclusive, perpetual and irrevocable license to reproduce, publish, display, perform, distribute, or otherwise use, and to authorize others to use, for Federal or State government purposes, the copyright in any Copyrightable Materials developed under or the rights to which are purchased

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.

ARTICLE 12
PATENTS

The Contractor shall promptly and fully report to the City any discovery or invention arising out of or developed in the course of performance of this Agreement. In addition, any discovery or invention arising out of or developed in the course of work aided by this Agreement shall be promptly and fully reported to HUD for determination by HUD as to whether patent protection on such invention or discovery, including rights under any patent issued thereon, shall be disposed of and administered, in order to protect the public interest.

ARTICLE 13
SUBCONTRACTORS

(a) The provisions of this Agreement shall apply to Subcontractors and their officers, agents and employees in all respects as if they were employees of the Contractor. The Contractor shall not be discharged from its obligations and liabilities, but shall be liable for all acts and negligence of Subcontractors, and their officers, agents and employees, as if they were employees of the Contractor.

(b) Employees of the Subcontractor shall be subject to the same provisions as employees of the Contractor.

(c) The services furnished by Subcontractors shall be subject to the provisions hereof as if furnished directly by the Contractor, and the Contractor shall remain responsible therefor.

ARTICLE 14
SUSPENSION AND TERMINATION

(a) Where the Contractor fails to perform the work satisfactorily as enumerated in the part of this Agreement known as the scope of work, the City may withhold payment, in addition to any other remedy provided for by this Agreement. Where there is failure to comply with the Agreement terms, the City reserves the right to terminate the Agreement. The City further reserves the right to terminate the Agreement for convenience.

(b) The Contractor certifies that neither it nor its principals is currently in a state of debarment, suspension or other ineligible status as a result of prior performance, failure, fraud, or violation of City laws. The Contractor further certifies that neither it nor its principals is debarred, suspended, otherwise excluded from or ineligible for participation in Federal assistance programs. The City reserves the right to terminate this Agreement if knowledge of debarment, suspension or other ineligibility has been withheld by the Contractor.

(c) If this Agreement is between the City and a subrecipient, the City may suspend or terminate the Agreement if Subrecipient materially fails to comply with any terms of this Agreement, pursuant to 24 CFR § 85.43, and for convenience, pursuant to 24 CFR § 85.44.

ARTICLE 15
REVERSION OF ASSETS

(a) At the Contract's expiration, the Contractor shall transfer to the City all Community Development funds on hand at the time of expiration and any accounts receivable attributable to the use of Community Development funds.

(b) Any real property under the City's or the Contractor's control that was acquired in whole or in part with Community Development funds in excess of $25,000 will be used to meet the national objectives in Section 570.208 or disposed in a manner which results in the Program being reimbursed in the amount of the current fair market value of the property less any portion thereof attributable to expenditures of non-Community Development funds for acquisition of, or improvements to, the property.

(c) Any real property under the City's control that was improved in whole or in part with Community Development funds in excess of $25,000 will be used to meet the national objectives in Section 570.208 for a period equal to the life of those improvements. The term shall be determined by the Office of Management and Budget's Office of Community Development. If the City decides to dispose of or change the use of that property so that it no longer continues to meet a national objective, the Program shall be reimbursed in the amount of the current replacement cost of those improvements, divided by the number of years of the life of the improvements, multiplied by the number of years that remain in the life of the improvements.

(d) Any real property under the Contractor's control that was improved in whole or in part with Community Development funds in excess of $25,000 will be used to meet the national objectives in Section 570.208 for a period of five years after the date of completion of those improvements or disposed in a manner which results in the Program being reimbursed in the amount of the current replacement cost of those improvements.

(e) Title to all equipment in excess of $150 purchased or leased pursuant to this Agreement with Community Development funds or furnished by the City shall vest in the City and the same shall be conspicuously labeled as such.

ARTICLE 16
SMALL FIRMS, M/WBE FIRMS, AND LABOR SURPLUS AREA FIRMS

The Contractor shall take the following affirmative steps in the letting of subcontracts, if subcontracts are to be let, in order to ensure that minority firms, women's business enterprises, and labor surplus area firms are used when possible:

(a) Placing qualified small minority businesses and women's business enterprises on solicitation lists;

(b) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

(c) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;

(d) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; and

(e) Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce.

ARTICLE 17
ENVIRONMENTAL PROTECTION

For agreements, subcontracts, and subgrants of amounts in excess of $100,000, the Contractor shall comply with all applicable standards, orders, or requirements issued under the Clean Air Act (42 U.S.C. § 7401, Federal Water Pollution control Act (33 U.S.C. §§ 1251, *et seq.*) Section 508 of the Clean Water Act (33 U.S.C. § 1368), Executive Order 11738, and Environmental Protection Agency regulations (provisions of 40 CFR Part 50 and 2 CFR Part 1532 related to the Clean Air Act and Clean Water Act).

ARTICLE 18
ENERGY EFFICIENCY

The Contractor shall comply with mandatory standards and policies relating to energy efficiency that are contained in the New York State energy conservation plan issued in compliance with the Energy Policy Conservation Act (Pub. L. 94-163).

(a) Hatch Act: The Subrecipient agrees that no funds provided, nor personnel employed under this Agreement, shall be in any way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of Title V of the U.S.C.

(b) Lobbying: The Subrecipient agrees that no funds provided will be used by it or its subcontractors in violation of 24 CFR § 87.100.

(c) Conflict of Interest: The Subrecipient agrees to abide by the provisions of 24 CFR §§ 84.42, 85.36, and 570.611.

ARTICLE 19
BINDING AUTHORITY

If any provision in this Appendix A directly conflicts with any other provision in the Agreement, the other provision in shall be controlling.

Federal Exhibits 1 and 2, are attached to, and made a part of this Appendix A.

Any subcontracts entered into pursuant to this Agreement shall incorporate the following City of New York provisions by reference, which shall be binding on every Subcontractor:

- Investigations;
- Executive Order 50; and
- Conflicts of Interest

FED. EXHIBIT 1

NOTICE TO BIDDERS

NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY (EXECUTIVE ORDER 11246, as amended) FOR ALL CD FUNDED CONSTRUCTION CONTRACTS AND SUB-CONTRACTS IN EXCESS OF $10,000

1. The Offeror's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth herein.

2. The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all Construction work in the covered area, are as follows:

Goals and Timetables for Minorities

Trade	Goal (percent)		
Electricians	9.0	to	10.2
Carpenters	27.6	to	32.0
Steamfitters	12.2	to	13.5
Metal Lathers	24.6	to	25.6
Painters	28.6	to	26.0
Operating Engineers	25.6	to	26.0
Plumbers	12.0	to	14.5
Iron Workers (structural)	25.9	to	32.0
Elevator Constructors	5.5	to	6.5
Bricklayers	13.4	to	15.5
Asbestos Workers	22.8	to	28.0
Roofers	6.3	to	7.5
Iron Workers (ornamental)	22.4	to	23.0
Cement Masons	23.0	to	27.0
Glazers	16.0	to	20.0
Plasterers	15.8	to	18.0
Teamsters	22.0	to	22.5
Boilermakers	13.0	to	15.5
All Other	16.4	to	17.5

Goals and Timetables for Women
From April 1, 1980 until the present 6.9

These goals are applicable to all the Contractor's Construction work (whether or not it is Federal or federally assisted) performed in the covered area. If the Contractor performs Construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the Contractor also is subject to the goals for both its federally involved and nonfederally involved Construction.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4

shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a), and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the Contractor shall made a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

3. The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days of award of any Construction subcontract in excess of $10,000 at any tier for Construction work under the contract resulting from this solicitation. The notification shall list the name, address and telephone number of the Subcontractor; employer identification number of the Subcontractor; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the contract is to be performed.

4. As used in this Agreement, the "covered area" is the City of New York.

Federal Labor Standards Provisions

U.S. Department of Housing and Urban Development
Office of Labor Relations

Applicability

The Project or Program to which the construction work covered by this contract pertains is being assisted by the United States of America and the following Federal Labor Standards Provisions are included in this Contract pursuant to the provisions applicable to such Federal assistance.

A. 1. **(i) Minimum Wages.** All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR 5.5(a)(1)(ii) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii) (a) Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(b) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by HUD or its designee to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB control number 1215-0140.)

(c) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

(d) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(ii)(b) or (c) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part

of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

2. **Withholding.** HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract in the event of failure to pay any laborer or mechanic, including any apprentice, trainee or helper, employed or working on the site of the work, all or part of the wages required by the contract, HUD or its designee may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased. HUD or its designee may, after written notice to the contractor, disburse such amounts withheld for and on account of the contractor or subcontractor to the respective employees to whom they are due. The Comptroller General shall make such disbursements in the case of direct Davis-Bacon Act contracts.

3. **(i) Payrolls and basic records.** Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section 1(b)(2)(B) of the Davis-bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5 (a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs. (Approved by the Office of Management and Budget under OMB Control Numbers 1215-0140 and 1215-0017.)

(ii) (a) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i) except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at http://www.dol.gov/esa/whd/forms/wh347instr.htm or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this subparagraph for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to HUD or its designee. (Approved by the Office of Management and Budget under OMB Control Number 1215-0149.)

(b) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under 29 CFR 5.5 (a)(3)(ii), the appropriate information is being maintained under 29 CFR 5.5(a)(3)(i), and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR Part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(c) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by subparagraph A.3.(ii)(b).

(d) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under subparagraph A.3.(i) available for inspection, copying, or transcription by authorized representatives of HUD or its designee or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, HUD or its designee may, after written notice to the contractor, sponsor, applicant or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and Trainees.

(i) **Apprentices.** Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) **Trainees.** Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by

the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) **Equal employment opportunity.** The utilization of apprentices, trainees and journeymen under 29 CFR Part 5 shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

5. **Compliance with Copeland Act requirements.** The contractor shall comply with the requirements of 29 CFR Part 3 which are incorporated by reference in this contract.

6. **Subcontracts.** The contractor or subcontractor will insert in any subcontracts the clauses contained in subparagraphs 1 through 11 in this paragraph A and such other clauses as HUD or its designee may by appropriate instructions require, and a copy of the applicable prevailing wage decision, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this paragraph.

7. **Contract termination; debarment.** A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. **Compliance with Davis-Bacon and Related Act Requirements.** All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.

9. **Disputes concerning labor standards.** Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and HUD or its designee, the U.S. Department of Labor, or the employees or their representatives.

10. (i) **Certification of Eligibility.** By entering into this contract the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001. Additionally, U.S. Criminal Code, Section 1 01 0, Title 18, U.S.C., "Federal Housing Administration transactions", provides in part: "Whoever, for the purpose of . . . influencing in any way the action of such Administration..... makes, utters or publishes any statement knowing the same to be false..... shall be fined not more than $5,000 or imprisoned not more than two years, or both."

11. **Complaints, Proceedings, or Testimony by Employees.** No laborer or mechanic to whom the wage, salary, or other labor standards provisions of this Contract are applicable shall be discharged or in any other manner discriminated against by the Contractor or any subcontractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or relating to the labor standards applicable under this Contract to his employer.

B. **Contract Work Hours and Safety Standards Act.** The provisions of this paragraph B are applicable where the amount of the prime contract exceeds $100,000. As used in this paragraph, the terms "laborers" and "mechanics" include watchmen and guards.

(1) **Overtime requirements.** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which the individual is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

(2) **Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in subparagraph (1) of this paragraph, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in subparagraph (1) of this paragraph, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the clause set forth in sub paragraph (1) of this paragraph.

(3) Withholding for unpaid wages and liquidated damages. HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contract, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act which is held by the same prime contractor such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in subparagraph (2) of this paragraph.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in subparagraph (1) through (4) of this paragraph and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in subparagraphs (1) through (4) of this paragraph.

C. Health and Safety. The provisions of this paragraph C are applicable where the amount of the prime contract exceeds $100,000.

(1) No laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.

(2) The Contractor shall comply with all regulations issued by the Secretary of Labor pursuant to Title 29 Part 1926 and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act, (Public Law 91-54, 83 Stat 96). 40 USC 3701 et seq.

(3) The contractor shall include the provisions of this paragraph in every subcontract so that such provisions will be binding on each subcontractor. The contractor shall take such action with respect to any subcontractor as the Secretary of Housing and Urban Development or the Secretary of Labor shall direct as a means of enforcing such provisions.

APPENDIX B

To Subrecipient Agreement

HURRICANE SANDY CDBG-DR APPENDIX

ARTICLE 1. DEFINITIONS

The definitions in Article 1 of Appendix A apply to this Hurricane Sandy CDBG-DR Appendix.

ARTICLE 2. ADMINISTRATIVE CAP

Pursuant to the Disaster Relief Appropriations Act of 2013 (P.L. 113-2) and Section VI(A)(10)(b) of HUD Docket No. FR-56960-N-01, attached, a Subrecipient shall not be reimbursed for general administration costs that exceed five percent.

ARTICLE 3. FLOOD INSURANCE

Subrecipients shall implement procedures and mechanisms to ensure that assisted property owners comply with all flood insurance requirements set forth in Section VI(B)(31) of HUD Docket No. FR-56960-N-01.

ARTICLE 4. CIVIL RIGHTS REQUIREMENTS

Subrecipients shall comply with all civil-rights related requirements, pursuant to 24 CFR § 570.503(b)(5).

ARTICLE 5. RELIGIOUS ORGANIZATIONS

In addition to the provisions in Article 2(m)(iv) of Appendix A, which cover a religious or denominational institution or organization operated for religious purposes which is supervised or controlled by or in connection with a religious or denominational institution or organization, payment may be authorized for a portion of eligible rehabilitation or construction costs attributable to the non-religious use of a facility that is not used exclusively for religious purposes, pursuant to Section VI(A)(4)(c) of HUD Docket No. FR-56960-N-01.

ARTICLE 6. QUARTERLY REPORTS

The reports required by Article (5)(b) of Appendix A shall be provided by the Contractor or Subrecipient to the City on a quarterly basis, pursuant to Section VI(A)(2)(e) of HUD Docket No. FR-56960-N-01.

ARTICLE 7. CONSTRUCTION STANDARDS

The Contractor or Subrecipient shall comply with the construction standards concerning energy efficiency set forth in section VI(A)(1)(a)(5) of HUD Docket No. FR-5696-N-01.

ARTICLE 8. PROGRAM INCOME

To the extent deemed necessary by the City, the Program Income provisions set forth in Article 2(1) of

Appendix A may be waived and instead the City may apply the alternative program requirements set forth in Section VI(A)(17)(a)-(b) of Docket No. FR-56960-N-01, which concern the definition of program income. In such event, the alternative requirements shall be set forth in the Subrecipient Agreement.

ARTICLE 9. PERFORMANCE REQUIREMENTS AND LIQUIDATED DAMAGES

Contractor and or Subrecipient shall be subject to the performance requirements and liquidated damages set forth in the Agreement.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5696-N-01]

Allocations, Common Application, Waivers, and Alternative Requirements for City's Receiving Community Development Block Grant (CDBG) Disaster Recovery Funds in Response to Hurricane Sandy

Available On-line at
http://portal.hud.gov/hudportal/documents/huddoc?id=CDBG-FR_Sandy_Notice.PDF

APPENDIX C

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

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

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 C, 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.

2. REPRESENTATIONS AND WARRANTIES

Section 2.01 Procurement of Agreement

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

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

Section 2.02 Conflicts of Interest

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

B. Consistent with Charter § 2604 and other related provisions of the Charter, the Admin. Code and the New York State Penal Law, no elected official or other officer or employee of the City, nor any person whose salary is payable, in whole or in part, from the City Treasury,

shall participate in any decision relating to this Agreement which affects his or her personal interest or the interest of any corporation, partnership or other entity in which he or she is, directly or indirectly, interested; nor shall any such official, officer, employee, or person have any interest in, or in the proceeds of, this Agreement. This Paragraph B shall not prevent directors, officers, members, partners, or employees of the Contractor from participating in decisions relating to this Agreement where their sole personal interest is in the Contractor.

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

D. 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.

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 C 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.

4. LABOR PROVISIONS

Section 4.01 Independent Contractor Status

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

Compensation coverage, Disability Benefits coverage, Unemployment Insurance benefits, Social Security coverage or employee retirement membership or credit.

Section 4.02 Employees

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

Section 4.03 Removal of Individuals Performing Work

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

Section 4.04 Minimum Wage

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

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

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

1. In the hiring of employees for the performance of work under this Agreement or any subcontract hereunder, neither the Contractor, subcontractor, nor any

person acting on behalf of such Contractor or subcontractor, shall by reason of race, creed, color, disability, sex or national origin discriminate against any citizen of the State of New York who is qualified and available to perform the work to which the employment relates;

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

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

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

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

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

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

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

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

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

D. Any person, or the employee, manager or owner of or officer of such firm or corporation who shall violate any of the provisions of this Section shall, upon conviction thereof,

be punished by a fine of not more than One Hundred Dollars ($100) or by imprisonment for not more than thirty (30) Days, or both.

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

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

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

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

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

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

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

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

B. The Contractor understands that in the event of its noncompliance with the nondiscrimination clauses of this Agreement or with any of such rules, regulations, or orders, such noncompliance shall constitute a material breach of this Agreement and noncompliance with E.O. 50 and the rules and regulations promulgated thereunder. After a hearing held

pursuant to the rules of DLS, the Director of DLS may direct the Commissioner to impose any or all of the following sanctions:

1. Disapproval of the Contractor; and/or

2. Suspension or termination of the Agreement; and/or

3. Declaring the Contractor in default; and/or

4. In lieu of any of the foregoing sanctions, imposition of an employment program.

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

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

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

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

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 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 C, 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.

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.

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;

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 C 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, Department of Small Business Services, 110 William Street, 7th Floor, New York, New York 10038, Att: First Deputy Commissioner 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.

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.

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.

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.

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.

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.

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, 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.

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 C.

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 C, 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

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.

APPENDIX D

WHISTLEBLOWER PROTECTION EXPANSION ACT RIDER

1. In accordance with Section 12-113 of the New York City Administrative Code,

(a) Any subcontractor of the Subrecipient under this Agreement whose subcontract exceeds $100,000 (a "Covered Subcontractor") 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 Agreement to (i) the Commissioner of the Department of Investigation, (ii) a member of the New York City Council, the City's Public Advocate or the Comptroller, or (iii) the City Chief Procurement Officer, DEP Chief Contracting Officer ("DEP ACCO") or DEP Commissioner.

(b) If any of a Covered Subcontractor's officers or employees believes that he or she has been the subject of an adverse personnel action in violation of subsection (a) above, he or she shall be entitled to bring a cause of action against the Covered Subcontractor 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. An officer or employee described in this paragraph may bring an action in any court of competent jurisdiction for such relief. An officer or employee who brings a cause of action pursuant to this paragraph shall notify the DEP ACCO or DEP Commissioner of such action; provided, however, that failure to provide such notice shall not be a jurisdictional defect, and shall not be a defense to an action brought pursuant to this paragraph. This paragraph shall not be deemed to create a right of action against the City, any public agency or other public entity, or the Subrecipient, nor shall any such public agency, entity or corporation be made a party to an action brought pursuant to this subdivision.

(c) Officers and employees of the Subrecipient are subject to and protected by Section 12-113b.1 and e.1 of the New York City Administrative Code.

2. In accordance with Section 6-132 of the New York City Administrative Code, the Subrecipient and Covered Subcontractors shall post a notice in the form provided by the City in a prominent and accessible place on any site where work by it pursuant to this Agreement or covered subcontract hereunder, respectively, is performed that contains information about:

(a) 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 this Agreement or such subcontract; and

(b) 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 this Agreement or such subcontract.

3. For the purposes of this Section, "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.

4. The Subrecipient shall include the above applicable provisions in all subcontracts with a value in excess of $100,000.

WHISTLEBLOWER PROTECTION NOTICE FORM (ATTACHED)

REPORTING INFORMATION TO THE NEW YORK CITY DEPARTMENT OF INVESTIGATION

If you have information of any corrupt or fraudulent activities or unethical conduct relating to a New York City funded project or contract, contact:

Department of Investigation (DOI) Complaint Bureau
212-825-5959

or by mail or in person at:
DEPARTMENT OF INVESTIGATION
80 MAIDEN LANE, 17th FLOOR
NEW YORK, NEW YORK 10038
Attention: COMPLAINT BUREAU

or file a complaint on-line at:
www.nyc.gov/doi

All communications are confidential.

THE LAW PROTECTS EMPLOYEES OF CITY CONTRACTORS WHO REPORT CORRUPTION

- Any employee of a contractor or subcontractor that has a contract with the City or a City contractor of more than $100,000 is protected under the law from retaliation by his or her employer if the employee reports wrongdoing related to the contract to the DOI.
- To be protected by this law, an employee must report information about fraud, false claims, corruption, criminality, conflict of interest, gross mismanagement, or abuse of

authority relating to a City contract over $100,000 to DOI or to certain other government officials all of whom must forward the report to DOI.

- Any employee who has made such a report and who believes he or she has been dismissed, demoted, suspended, or otherwise subject to an adverse personnel action because of that report is entitled to bring a lawsuit against the contractor and recover damages.

APPENDIX E

NOTICE TO BIDDERS

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 C 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.