REQUEST FOR PROPOSALS
NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION
HHC – CONEY ISLAND HOSPITAL
REQUEST FOR PROPOSALS
FOR THE PROVISION OF CDBG-DR FUNDED ARCHITECTURAL DESIGN AND
RELATED CONSULTANT SERVICES
NYCEDC CONTRACT NO. 61620001
PROJECT CODE NO. 6162

TABLE OF CONTENTS

PART I INTRODUCTION ...........................................................................................................2
1. INVITATION TO SUBMIT PROPOSAL ...................................................................................2
2. RFP SUMMARY .........................................................................................................................4

PART II GENERAL REQUIREMENTS ..................................................................................10
1. SERVICES TO BE PERFORMED AND WORK PRODUCT ..................................................10
2. STAFFING ...................................................................................................................................10
3. COMPENSATION ......................................................................................................................11
4. MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISE PARTICIPATION ..........11
5. DOING BUSINESS DATA FORM REQUIREMENTS. ..............................................................
6. CONTRACT CONDITIONS .....................................................................................................14
7. GENERAL CONDITIONS, TERMS, LIMITATIONS AND REQUIREMENTS ....................16

PART III SPECIFIC REQUIREMENTS .................................................................................22
1. STRUCTURE AND CONTENT. ..............................................................................................22
2. PRE-PROPOSAL INFORMATION MEETING. ..............................................................24
3. INTERVIEWS. .........................................................................................................................24
4. SELECTION. ............................................................................................................................24
5. SUBMISSION. ..........................................................................................................................24

EXHIBIT 1 PROPOSAL CERTIFICATION FORM
EXHIBIT 2 FEE AND COST SCHEDULES
EXHIBIT 3 DOING BUSINESS DATA FORM
EXHIBIT 4 M/W/BE FORMS
EXHIBIT 5 CONTRACT DRAFT
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PART I
INTRODUCTION
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1. INVITATION TO SUBMIT PROPOSAL

General Background.

The New York City Health and Hospitals Corporation (“HHC”) is a public benefit corporation of the State of New York created in 1969 under the New York City Health and Hospitals Corporation Act, New York Unconsolidated Laws §7381 et seq., for the purpose of operating the municipal hospital system of the City and providing comprehensive physical and mental health care and substance abuse services to the ill and infirm in the City. HHC is the largest municipal hospital system in the United States with over 39,300 employees and an annual operating budget in excess of $6.7 billion. HHC operates a facility-based network of more than 7,500 beds comprised of eleven acute care hospitals, four skilled nursing facilities, six diagnostic and treatment centers, a network of over seventy community based clinics and a 400,000 member health plan.

When Hurricane Sandy hit New York City on October 29, 2012, among other areas, southern Brooklyn’s Coney Island Hospital (“CIH”) campus was severely impacted. Hurricane Sandy put unprecedented stress on the provider system and placed the health of medically fragile individuals at risk.

Following Hurricane Sandy, the “NYC Special Initiative for Rebuilding and Resiliency” (“SIRR”) was established by the Mayor of the City of New York (the “City”) and in June 2013 SIRR released a report entitled “A Stronger, More Resilient New York” (the “SIRR Report”).

As of the date of this RFP, the SIRR Report is available online at:

In keeping with the overarching goals of SIRR – to minimize the impacts of climate change and enable quick recovery after extreme weather events – the City is working to make the healthcare system more resilient.
1.2. Project Description

CIH, a member of HHC, serves a community of nearly 750,000 people and due to its location the hospital is vulnerable to extreme coastal storms. In October 2012, CIH suffered extensive flood damage as a result of Hurricane Sandy and was forced to suspend services for many months. Since then CIH has temporarily restored the damaged areas and, working with FEMA, has developed plans to mitigate damage to CIH from future storms and flooding.

The New York City Economic Development Corporation (“NYCEDC”), on behalf of the City benefitting HHC, is issuing this Request for Proposal (“RFP”) to retain a consultant (the “Consultant”) to provide design and related consultant services for the repair / restoration and hazard mitigation of CIH campus (the “Project”).

To address the high risk of flooding along the City’s waterfront, it is anticipated that the Project will renovate and rebuild portions of the CIH campus, including the construction of a new Critical Services Structure (“CSS”) with all necessary support services and certain renovations and hazard mitigation solutions for existing buildings, to advance the City’s comprehensive, five borough resiliency plan. The intent of this work is to repair damages incurred during Hurricane Sandy and protect the hospital from future coastal flooding.

1.3. Other Requirements.

On January 29, 2013, President Obama signed into law the Disaster Relief Appropriations Act of 2013 (Public Law 113-2) which, among other things, appropriated $16 billion in community development block grant funds for disaster recovery (“CDBG-DR Funds”). The CDBG-DR Funds are to be used for necessary expenses related to disaster relief, long-term recovery, restoration of infrastructure and housing, and economic revitalization in the areas most impacted and distressed after Hurricane Sandy.

The U.S. Department of Housing and Urban Development (“HUD”), which administers CDBG-DR Funds, has entered into a grant agreement with the City (the “City Grant Agreement”) to disburse CDBG-DR Funds. As a grantee of CDBG-DR Funds, the City is not limited in its recovery to returning to pre-disaster conditions. HUD encourages the use of CDBG-DR Funds to carry out activities that not only address disaster-related impacts, but leave communities sustainably positioned to meet the needs of their post-disaster populations and to further prospects for growth.

It is anticipated that the Scope of Services under this RFP will be funded primarily with CDBG-DR funds administered by HUD. If necessary and appropriate, portions of the Scope of Services may also be funded with grant funding (the “FEMA Funds”) indirectly provided by the Federal Emergency Management Agency (“FEMA”).

Subject to the availability of funds and the responses to this RFP, NYCEDC will select one or more Consultant(s) to provide the Services. The Consultant(s) shall be experienced in all aspects of the Services. The Consultant(s) will commence the Services upon a written Notice to Proceed from NYCEDC or upon execution of the Contract by the Consultant(s) and NYCEDC.
substantially in the form of the Contract Draft. The Contract Draft is an initial draft subject to
further review and revision by NYCEDC prior to execution. NYCEDC shall not be bound to the
terms of any aspect of the Contract Draft, and the final acceptance of any successful proposal
shall be subject to, and contingent upon, the negotiation between the parties of a Contract in form
and substance acceptable to NYCEDC. Nevertheless, you should review the Contract Draft
and be familiar with all of the terms and conditions set forth therein prior to submitting
your proposal.

This RFP and the resulting Contract will be subject to rules and requirements arising from the
use of CDBG-DR Funds, and potentially FEMA Funds, as the sources of funding to compensate
the Consultant. Certain of these additional rules and requirements are described in more detail in
Part I, Section 4 and Appendices I, J and K of the Contract Draft attached to this RFP.

2. RFP SUMMARY

2.1 In General. This summary of terms, deadlines and requirements specific to this
RFP is set forth for your immediate reference and convenience only. It does not set forth all of
the requirements of this RFP, but should be read in conjunction with the General Requirements
(Part II) and the Specific Requirements (Part III) of this RFP. You should review and become
familiar with all parts of this RFP prior to submitting your proposal.

2.2 Specific Terms, Deadlines and Requirements.

2.2.1 Project Information.

2.2.1.1 The Project: HHC – Coney Island Hospital

2.2.1.2 The Project Site: 2601 Ocean Parkway, Brooklyn NY

2.2.1.3 Type of Services: Architectural Design and Related Services (the
“Services”), as more specifically described in the Scope of Services
(Appendix B of the Contract Draft)

2.2.2 The Consultant(s):

2.2.2.1 Type: Architect/Design Consultant

2.2.2.2 The Consultant Team: It is anticipated that the Consultant will lead
a team of consultants (collectively, with the Consultant, the “Consultant
Team”) in providing the Services. The members of the Consultant’s staff
and/or the Consultant’s Subcontractors on the Consultant Team are expected
to include, without limitation, the following:

2.2.2.2.1 Required Consultant Team Members:

2.2.2.2.1.1 Architectural Design/Lead Project Consultant

2.2.2.2.1.2 Flood Risk Management Consultant
2.2.2.2.1.3 Civil Engineer
2.2.2.2.1.4 Landscape/Site Architectural Design
2.2.2.2.1.5 LEED/Integrated Green Design Consultant
2.2.2.2.1.6 Structural Engineer
2.2.2.2.1.7 MEP, Fire Protection/Life Safety Engineer
2.2.2.2.1.8 Existing Condition/Laser Survey
2.2.2.2.1.9 Cost Estimator
2.2.2.2.1.10 Zoning and Code Consultant
2.2.2.2.1.11 Environmental Engineer
2.2.2.2.1.12 Geotechnical/Asbestos/Environmental Remediation Engineer
2.2.2.2.1.13 Survey Engineer
2.2.2.2.1.14 Medical Planner, Equipment, and Technologies
2.2.2.2.1.15 Signage and Graphics
2.2.2.2.1.16 Exterior Envelope Engineer
2.2.2.2.1.17 Vertical Transportation
2.2.2.2.1.18 IT/AV/Security
2.2.2.2.1.19 Food Services
2.2.2.2.1.20 Acoustical
2.2.2.2.1.21 Construction Noise, Vibration, and Air Quality Monitoring
2.2.2.2.1.22 Healthcare Transition Planning and Management
2.2.2.2.1.23 Healthcare Patient Safety and Risk Management
2.2.2.2.1.24 BIM Services
2.2.2.2.1.25 Materials Management
2.2.2.3 **Experience Required:** The Consultant shall be experienced in the following:

2.2.2.3.1 The ability and resources to perform the Scope of Services, including at least five (5) years experience in providing design services similar to those called for in the Scope of Services; provide references of specific projects as part of the Proposal.

2.2.2.3.2 Consultant shall have served as lead architect overseeing consultants of various disciplines and have experience managing multidisciplinary teams on large scale healthcare facilities projects completed within the five (5) years immediately preceding this RFP.

2.2.2.3.3 Experience with programs that utilize federal, state or city funds and the ability and resources to ensure compliance with all applicable funding requirements.

2.2.2.3.4 While experience working with the City of New York is preferred it is not required; however, comparable experience working within the private or public sector, within or outside New York City, is required.

2.2.3 **Contract Information.**

2.2.3.1 **Anticipated Contract Execution Date:** October 2015

2.2.3.2 **Anticipated Contract Term:** Five (5) years, with two one year extensions exercisable at NYCEDC’s sole discretion

2.2.4 **Questions Regarding RFP.**

2.2.4.1 **Question/Clarification Deadline:**

(i) **Date:** June 10, 2015

(ii) **Time:** 5:00 pm

2.2.4.2 **Permitted Method:** At Pre-Proposal Meeting, if one is conducted; otherwise in writing to Recipient at Recipient’s Mailing Address or Email Address as listed in Section 2.2.6 below only.

2.2.4.3 **Question Response Date:** June 18, 2015

2.2.4.4 **Answers to Questions Available at** [www.nycedc.com](http://www.nycedc.com) (the “Website”)

2.2.5 **Pre-Proposal Meeting.**
2.2.5.1 **Date:** June 3, 2015

2.2.5.2 **Time:** 9:00 am

2.2.5.3 **Meeting Place:** NYCEDC, 110 William Street, NY, NY

2.2.5.4 **Confirmation Contact:** Email address as listed in Section 2.2.6 below

2.2.5.5 **Attendance Mandatory:** No

2.2.6 **Proposal Submission Requirements.**

2.2.6.1 **Label on Envelope:**

2.2.6.1.1 One for the Proposal Only: “Proposal for CDBG-DR Funded Architectural Design and Related Consultant Services for HHC-Coney Island Hospital”

2.2.6.1.2 One for Prices Only: “Price Proposals for CDBG-DR Funded Architectural Design and Related Consultant Services for HHC-Coney Island Hospital”

2.2.6.1.3 One for the Doing Business Data Form Only: “Doing Business Data Form for CDBG-DR Funded Architectural Design and Related Consultant Services for HHC-Coney Island Hospital”

2.2.6.1.4 One for M/WBE Forms Only, if required by Part I, Section 2.2.7: “M/WBE Forms for CDBG-DR Funded Architectural Design and Related Consultant Services for HHC-Coney Island Hospital”

2.2.6.2 **Number of Sets of Proposals to be submitted:** Seven (7) hard copies and Three (3) electronic USB flash drives

2.2.6.3 **Submission Deadline:**

   (i) **Date:** June 26, 2015
   (ii) **Time:** 4:00 pm

2.2.6.4 **Method:** By Hand or Express Mail or other nationally-known overnight courier

2.2.6.5 **Submit to the following Recipient:**

   Maryann Catalano
   Senior Vice President

2.2.6.6 **Recipient’s Mailing Address:**
NYCEDC  
110 William Street, 4th Floor  
New York, NY 10038

2.2.6.7 **Recipient’s E-mail address:** CIHDesign@edc.nyc

2.2.7 **M/WBE Participation Goal.** 25 - 35%

2.2.8 **Local Resources.** The City encourages contractors to understand the local community and use local resources where appropriate.

2.2.9 **Selection Criteria.** NYCEDC will base its selection upon the following criteria:

40% The respondent and, as applicable, the proposed Consultant Team’s experience in providing services similar to the Scope of Services described herein; the quality of the respondent’s management, reputation, and references; and the terms under which the respondent will commit its personnel without transfers and changes.

30% The quality of the proposal and the degree to which it demonstrates the respondent’s approach and full understanding of and the ability to perform the Services to be rendered and the content of the proposal demonstrating the consultant’s full understanding of the Project schedule and budget.

15% The Respondent’s ability to meet M/WBE Participation Goals. The Participation Goal is expressed as a range, the lower bound of which will be the minimal participation goal for which NYCEDC will award points in the selection criteria. The high percentage in the range represents the optimum participation goal. Respondents submitting proposals with a Participation Goal lower than the minimal participation goal shall receive a score of zero (0) for this selection criteria.

15% The respondent’s and, as applicable, the Consultant Team’s favorable history, if any, in contracting or doing business with the City and/or NYCEDC.

2.2.10 **Outside Funding Requirements:** See Part I Section 4 and Appendices I, J and K of the Exhibit 5 Draft Contract
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PART II
GENERAL REQUIREMENTS
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GENERAL REQUIREMENTS

1. SERVICES TO BE PERFORMED AND WORK PRODUCT

The Consultant shall perform all work and services and deliver all of the Work Product specifically described in and required by the Scope of Services annexed as Appendix B in Part III of the Contract Draft. **Prior to submitting your proposal, please be sure that you review and fully understand the Scope of Services.**

2. STAFFING

2.1 **Personnel.** The Consultant shall, at its own expense, employ all personnel and retain all Subcontractors (including the subconsultants on the Consultant Team, if any) as may be required to perform the Services, and shall be solely responsible for their work, compensation, direction and conduct during the Contract Term. The Consultant and its Subcontractors will be expected to cooperate fully with NYCEDC personnel. The respondent shall submit with its proposal resumes of its personnel and those of its Subcontractors who will perform the Services. The respondent, if selected, will be expected to use substantially the same personnel and Subcontractors described in the proposal to perform the Services. All personnel furnished by the Consultant as required under the Contract shall be employees or approved Subcontractors of the Consultant and not of NYCEDC or the City.

2.2 **Subcontractors.** If the Consultant is authorized under the Contract to enter into subcontracts for specialized services as required for performance of the Services, such authorization shall be subject to the prior written approval by NYCEDC of the Subcontractor (other than members of the Consultant Team which have been previously approved), the scope of services, compensation, and the principal responsible for supervising the performance of the Subcontractor's activities. The Consultant, and not NYCEDC, will be responsible for the Subcontractor's work, acts and omissions. Respondents are directed to Article 4 of the Contract Draft for further information as to the requirements regarding subcontracting under the Contract.

2.3 **Person in Charge.** In its proposal, respondent shall identify the member of the respondent’s staff who will have primary responsibility to perform and/or supervise and coordinate the performance of the Services.
3. COMPENSATION

Subject to and in accordance with the final terms of the Contract, NYCEDC shall compensate the selected Consultant as follows:

3.1 In General. Under the Contract, NYCEDC will agree to pay to the Consultant an amount not to exceed a Maximum Contract Price to be negotiated between NYCEDC and the Consultant based upon its response to this RFP. The Maximum Contract Price shall be the maximum compensation for all of the Services provided by the Consultant pursuant to the Contract and all expenses of the Consultant in connection therewith, including costs of any Subcontractors. The Maximum Contract Price shall be payable as provided for in Sections 2.1 and 2.2 of the General Terms and Conditions (Part II) of the Contract and Appendix C (Part III of the Contract).

3.2 Payments. In order to receive payment for Services, the Consultant will be required to submit a Requisition setting forth in detail, for the period for which payment is requested, the Services actually rendered during that period and the amount of payment requested and due therefor. Requisitions may not be submitted more than once per month. All Requisitions shall be subject to NYCEDC’s review, verification and approval, and all payments shall be conditioned upon NYCEDC’s determination that all Services have been performed satisfactorily and in accordance with the terms of the Contract.

3.3 Sales and Use Tax. NYCEDC is exempt from state and local sales and use tax. SUCH TAX IS NOT TO BE INCLUDED IN PROPOSALS or in invoices submitted under the Contract. NYCEDC will provide the selected Consultant with an appropriate “sales and use tax exemption certificate”.

4. MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISE PARTICIPATION

4.1 M/WBE Program. Local Law No. 129 of 2005 added and Local Law 1 of 2013 amended Section 6-129 of the Administrative Code of the City of New York (hereinafter “Section 6-129”). Section 6-129 establishes a program for participation in City procurement by minority-owned business enterprises (“MBEs”) and women-owned business enterprises (“WBEs”, together with “MBEs” collectively referred to as “M/WBEs”), certified in accordance with Section 1304 of the City Charter. 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. NYCEDC endorses these goals and has adopted an M/WBE Program to further participation by MBEs and WBEs in the provision of the Services. All respondents shall comply with all requirements of the Corporation’s M/WBE Program applicable to this RFP.

4.2 Minority and Women -Owned Business Enterprises. M/WBE firms must be certified by DSBS to credit such firms’ participation toward attainment of the Participation Goals. Such certification must occur prior to the firms’ commencement of work. A list of M/WBE firms may be obtained from the DSBS website at www.nyc.gov/buycertified, by emailing DSBS at buyer@sbs.nyc.gov, by calling (212) 513-6356, or by visiting or writing
DSBS at 110 William Street, New York, New York, 10038, 7th Floor. Eligible firms that have not yet been certified may contact DSBS in order to seek certification by visiting www.nyc.gov/getcertified, emailing MWBE@sbs.nyc.gov, or calling the DSBS certification helpline at (212) 513-6311. No credit shall be given for participation by a graduate M/WBE, as defined in Section 6-129(c)(20).

4.3 **M/WBE Participation Goal.**

4.3.1 The Participation Goal for the Contract is set forth in Part 2.2.7. The Participation Goal represents a percentage of the total dollar value of the Contract that may be achieved by awarding subcontracts to firms certified with DSBS as MBEs or WBEs, and/or by crediting the participation of the respondent as provided in Section 4.3.4 below.

4.3.2 “The Participation Goal is expressed as a range, the lower bound of which will be the minimal participation goal for which NYCEDC will award points in the selection criteria. The high percentage in the range represents the optimum participation goal. Respondents submitting proposals with a Participation Goal lower than the minimal participation goal shall receive a score of zero (0) for selection criteria. The M/WBE selection criteria accounts for 15% of respondent’s total score.”

4.3.3 The Participation Goal is a material term of the Contract and the selected Consultant shall be subject to the NYCEDC approved Participation Goal.

4.3.4 An M/WBE respondent shall be permitted to count its own participation toward fulfillment of the Participation Goal. A respondent may not subcontract more than 50% of the total value of the Contract unless it is working under a retainer contract or a construction management contract. The value of an M/WBE respondent’s participation shall be determined by subtracting from the total value of the Contract any amounts that the respondent will pay to direct Subcontractors. If a respondent is not an M/WBE, it must meet the Participation Goal through the awarding of subcontracts to firms certified with DSBS as MBEs or WBEs.

4.3.5 A respondent that is a Qualified Joint Venture shall be permitted to count a percentage of its own M/WBE participation toward fulfillment of the Participation Goal. The value of the Qualified Joint Venture’s participation shall be determined by first subtracting from the total value of the Contract, any amounts that the Qualified Joint Venture will pay to direct Subcontractors. Thereafter, the M/WBE percentage of the Qualified Joint Venture shall be applied to the remaining value of the Contract to determine the overall Participation Goal.

4.4 **M/WBE Proposal Submission Forms**

4.4.1 If Part I, Section 2.2.7 sets forth a Participation Goal, then the respondent must complete and submit as part of its proposal a subcontractors participation plan (the “Subcontractors Participation Plan”) and an Intent to Perform as Subcontractor form (the “ITP Form”) in the form annexed at Exhibit 4 to this RFP. The respondent’s Subcontractors Participation Plan must set forth:
4.4.1.1 the proposed Participation Goal;
4.4.1.2 whether the Respondent is an MBE, WBE or qualified joint venture;
4.4.1.3 the percentage of work it intends to award to direct Subcontractors
4.4.1.4 the identity of all proposed M/WBE Subcontractors to which the respondent intends to award subcontracts;
4.4.1.5 a description of the type and dollar value of work designated for participation by M/WBEs; and
4.4.1.6 the time frames in which such work by M/WBEs is scheduled to begin and end.

4.4.2 Each Subcontractor listed in the respondent’s Subcontractor Participation Plan must complete an ITP Form, which the respondent must include with its proposal.

4.4.3 The Subcontractors Participation Plan, as approved by the Corporation, shall be annexed to and made part of the Contract.

4.4.4 **Statement on M/WBE Goals.** If this Contract will be a Retainer Contract requiring multiple task orders or for Construction Management Services, respondents will be required to submit a narrative describing their methods for engaging M/WBEs and that it will make good faith efforts to meet the Participation Goal for the overall Contract value, including a description of any M/WBE related program administered by the respondent. The respondent must also submit the “Statement on M/WBE Goals”, attached hereto at Exhibit 4, with its proposal or it will be deemed non-responsive.

4.4.5 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.

4.5 **Qualified Joint Ventures.** Respondents are encouraged to enter into joint ventures with MBEs and WBEs. Respondents who submit a proposal as a Joint Venture must include a copy of the Joint Venture agreement. Only Qualified Joint Ventures may be permitted to count its own participation toward fulfilling the Participation Goal as set forth in in Part 2.2.7.

4.6 **Violations by Respondents to RFPs.** If the Corporation determines that a respondent has violated the requirements of the Corporation’s M/WBE Program, then the Corporation may disqualify the respondent from competing for the Contract and may remove the respondent from the list of qualified consultants maintained by the Corporation.

4.7 **Statements.** Statements made in any instrument submitted to the Corporation in connection with the Corporation’s M/WBE Program or the M/WBE requirements applicable to this RFP or the Contract 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.
4.8 **Other M/WBE Requirements.** Article 9 of the General Terms and Conditions (Part II) of the Contract Draft contains additional provisions related to the Corporation’s M/WBE Program regarding, without limitation, reporting, change orders, modifications to Subcontractors Participation Plans, compliance audits, enforcement and evaluations. **Please be sure that you review and understand all of the requirements of the Corporation’s M/WBE Program applicable to this RFP and the Contract prior to submitting your proposal.**

5. **DOING BUSINESS DATA FORM REQUIREMENTS.**

5.1 Pursuant to the City’s Local Law No. 34 (“**LL34**”), amending the City’s Campaign Finance Law, the City is required to establish a computerized database containing the names of any “person” that has “business dealings with the city”, as such terms are defined in LL34.

5.2 In order for the City to obtain information necessary to establish the required database, each respondent must complete a Doing Business Data Form in the form available at the Website and described in Exhibit 3 and return it in a separate envelope with the respondent’s proposal.

5.3 The submission of a Doing Business Data Form that is not accurate and complete may result in appropriate sanctions. Respondents are encouraged to consult legal counsel with respect to the impact of LL34. Respondents may also wish to review the document “Q&A: The Doing Business Data Form and the Doing Business Database” available at the Website and described in for further information. Note that responding to this RFP constitutes “doing business with the city” under LL34.

6. **CONTRACT CONDITIONS**

6.1 **In General.** The acceptance of any proposal shall be subject to, and contingent upon, the execution by NYCEDC of a Contract substantially in the form of the Contract Draft annexed hereto. NYCEDC shall not be bound to the terms of the Contract Draft but shall use such form as a basis of negotiating a final Contract with the selected Consultant, if any. **However, please note that the General Terms and Conditions (Part II) and the Appendices (Part III), other than Appendix B and Appendix C, are NOT NEGOTIABLE.**

6.2 **Specific Terms.** The Contract shall contain, among other terms, certain provisions required by law, by policies of the City, and the City Contract including, without limitation, the following:

6.2.1 Executive Order 50 Supply and Service Rider - attached as Appendix F in Part III of the Contract. This rider contains equal opportunity requirements mandated under Executive Order No. 50 (1980).

6.2.2 Provisions providing that the Consultant:

6.2.2.1 is an independent contractor and that neither it nor any of its employees is or shall be an agent, servant or employee of the City or NYCEDC;
6.2.2.2 shall defend, indemnify and hold harmless the City and NYCEDC against any claims or damages relating to its acts and omissions;

6.2.2.3 shall maintain financial and other records relating to the Contract, including, without limitation, payroll records, for a period of six (6) years from the end of the Contract Term, and shall make such records available for inspection and audit;

6.2.2.4 has no conflicts of interest with, or outstanding financial obligations owing to, the City;

6.2.2.5 maintains insurance as specified in Article 6 of the General Terms and Conditions (Part II) of the Contract and Appendix E of Part III of the Contract with insurers licensed or authorized to provide insurance and in good standing in the State of New York, such policies to be in a form acceptable to, and include any conditions reasonably required by NYCEDC, and naming NYCEDC and the City as additional insureds;

6.2.2.6 is licensed to conduct business in the State of New York;

6.2.2.7 shall comply with the City's requirements regarding vendor background investigations, which include a review by the City's Department of Investigation of the City's past experience with the Consultant;

6.2.2.8 shall complete and submit the Business Entity Questionnaire and a Principal Questionnaire for each principal of the Consultant (collectively, the "Vendex Clearance Forms");

6.2.2.9 shall complete and submit the Doing Business Data Forms;

6.2.2.10 shall represent and warrant that neither it nor any of its directors, officers, members, or employees has any interest, nor shall they acquire any interest, directly or indirectly, which would conflict in any manner or degree with the performance of the Services as set forth in the Contract. The Consultant must further agree that it shall employ no person having such a conflict of interest in the performance of the Services;

6.2.2.11 shall agree to New York County as the venue in any legal action or proceeding between the Consultant and NYCEDC;

6.2.2.12 acknowledges that the Contract shall be assignable to the City;

6.2.2.13 shall comply with the City’s prohibition of certain business practices with respect to Northern Ireland;

6.2.2.14 shall comply with the City’s prohibition of certain business practices with respect to Iran; and

6.2.2.15 shall comply with the City’s Whistleblower protections.

Respondents are directed to the Contract Draft (Exhibit 5 to this RFP) for the exact
language of the provisions referred to in the foregoing paragraphs.

7. GENERAL CONDITIONS, TERMS, LIMITATIONS AND REQUIREMENTS

7.1 Proposal as Offer to Contract. Unless a specific exception is noted, submission of a proposal in response to this RFP shall constitute an offer on the part of the successful respondent to execute the Contract substantially in the form annexed hereto as Exhibit 5. Any supporting documents or other items attached as exhibits to this RFP shall be incorporated into the Contract. The successful respondent shall cooperate in supplying any information as may be required with respect to the Vendex Clearance Forms, and any other government review and approval forms. Respondent’s proposal shall remain open for acceptance by NYCEDC and shall remain firm and binding upon the respondent for at least sixty (60) days after the date on which the proposals are received by NYCEDC, except that NYCEDC may by written notice to the respondent extend that date for an additional forty-five (45) days.

7.2 News Releases. Recipients of this RFP shall make no news or press release pertaining to this RFP or anything contained or referenced herein without prior written approval from NYCEDC. All news and press releases pertaining to this RFP must be made in coordination with NYCEDC.

7.3 Investigations/Derogatory Information. The respondent, the members of its Consultant Team, and all officers, principals, principal shareholders, partners and members thereof, if applicable, must complete a background questionnaire and shall be subject to investigation by NYCEDC and the City’s Department of Investigation. The selection of a respondent may be rejected or revoked, or the Contract, if awarded, terminated for cause, in NYCEDC’s sole discretion, in the event any materially derogatory information is revealed by such investigation or otherwise including, without limitation, that any such persons or any other persons substantially involved in the respondent’s activities has committed any of the acts or omissions specified as the grounds for debarment in the City’s Procurement Policy Board Rules.

7.4 Freedom of Information Law. All proposals submitted to NYCEDC in response to this RFP may be disclosed in accordance with the standards specified in the Freedom of Information Law, Article 6 of the Public Officers Law of the State of New York (“FOIL”). A respondent may provide in writing, at the time of its submission, a detailed description of the specific information contained in its submission which it has determined is a trade secret and which, if disclosed, would substantially harm such entity’s competitive position. This characterization shall not be determinative, but will be considered by NYCEDC when evaluating the applicability of any exemptions in response to a FOIL request.

7.5 Costs. NYCEDC shall not be liable for any cost incurred by the respondent in the preparation of its proposal or for any work or services performed by the respondent prior to the execution and delivery of the Contract. NYCEDC is not obligated to pay any costs, expenses, damages or losses incurred by any respondent at any time unless NYCEDC has expressly agreed to do so in writing.

7.6 NYCEDC Rights. This is a “Request for Proposals” and not a “Request for Bids”.
NYCEDC shall be the sole judge of whether a proposal conforms to the requirements of this RFP and of the merits and acceptability of the individual proposals. Notwithstanding anything to the contrary contained herein, NYCEDC reserves the right to take any of the following actions in connection with this RFP: amend, modify or withdraw this RFP; waive any requirements of this RFP; require supplemental statements and information from any respondents to this RFP; award a contract to as many or as few or none of the respondents as NYCEDC may select; accept or reject any or all proposals received in response to this RFP; extend the deadline for submission of proposals; negotiate or hold discussions with one or more of the respondents; permit the correction of deficient proposals that do not completely conform with this RFP; waive any conditions or modify any provisions of this RFP with respect to one or more respondents; reject any or all proposals and cancel this RFP, in whole or in part, for any reason or no reason, in NYCEDC’s sole discretion. NYCEDC may exercise any such rights at any time, without notice to any respondent or other parties and without liability to any respondent or other parties for their costs, expenses or other obligations incurred in the preparation of a proposal or otherwise. All proposals become the property of NYCEDC.

7.7 **Applicable Law.** This RFP and any Contract, Subcontract or any other agreement resulting herefrom are subject to all applicable laws, rules, regulations and executive orders, policies, procedures and ordinances of all Federal, State and City authorities, as the same may be amended from time to time, including without limitation, equal employment opportunity laws.

7.8 ** Modifications and Questions.**

7.8.1 NYCEDC will advise RFP respondents of any modifications to this RFP by posting them on the Website. (See Part I, Section 2.2.4.4.) Nothing stated at any time by any representative of NYCEDC or of any other entity shall effect a change in, or constitute a modification to this RFP unless posted on the Website or confirmed in writing by NYCEDC.

7.8.2 Respondents may submit questions and/or request clarifications from NYCEDC by submitting them *in writing* to the Recipient at the Recipient’s Mailing Address or E-Mail Address listed in the RFP Summary (Part I, Section 2.2.6). All questions and requests for clarifications must be submitted no later than the Question/Clarification Deadline listed in the RFP Summary (Part I, Section 2.2.4.1). Any questions or requests for clarifications received after this date will not be answered. All questions received through the Question/Clarification Deadline will be answered no later than the Question Response Date listed in the RFP Summary (Part I, Section 2.2.4.3), and NYCEDC shall post such answers on the Website, so as to be available to all respondents, if NYCEDC determines that such answers provide material clarification to the RFP.

7.8.3 Respondents are reminded to check the Website periodically to view updated information and answers to questions posed by other respondents.

7.8.4 While NYCEDC may send Notices, addenda or other information related to this RFP to respondents via e-mail alerts or otherwise in writing, such e-mail alerts and other written materials shall be considered courtesy copies only. In the event any conflict exists between any information set forth on the Website and any Notice, addendum or other
information provided to a respondent by NYCEDC in writing via e-mail or otherwise, the
information set forth on the Website will govern and be definitive. NYCEDC is not obligated to
provide the respondent with any Notices, addendum or other information that appears on the
Website in writing, and the fact that NYCEDC may have sent one or more e-mails, Notices,
addenda or other written information to a respondent shall not be deemed to imply that
NYCEDC has any duty or obligation to continue to do so.

7.9 **City Not a Party.** The City is not a party to this RFP, has made no representation
to any prospective respondent and shall have no liability whatsoever in connection with this
RFP.

7.10 **Brokerage Fees or Commissions.** The City and NYCEDC shall not be obligated
to pay any fee, cost or expense for brokerage commissions or finder's fees with respect to the
execution of the Contract. The respondent agrees to pay the commission or other compensation
due to any broker or finder in connection with the Contract, and to indemnify and hold harmless
the City and NYCEDC from any obligation, liability, cost and/or expense incurred by the City
or NYCEDC as a result of any claim for commission or compensation brought by any broker or
finder in connection with the Contract.

7.11 **Proposals From Principals.** Only proposals from principals and authorized
officers will be considered responsive.

7.12 **Disclaimer.** NYCEDC and the City, and their respective officers, directors,
agents, members and employees make no representation or warranty and assume no
responsibility for the accuracy of the information set forth in this RFP. Further, NYCEDC and
the City do not warrant or make any representations as to the quality, content, accuracy or
completeness of the information, text, graphics, links or any other facet of this RFP once it has
been downloaded or printed from this or any server, and hereby disclaim any liability for any
technical errors or difficulties of any nature that may arise in connection with the Website on
which this RFP is posted, or in connection with any other electronic medium utilized by
respondents or potential respondents in connection with or otherwise related to the RFP.

7.13 **Protest Procedures.** The procedures set forth in this section shall apply to all
protests (collectively, “Protests” and each individually, a “Protest”) related to this procurement.
NYCEDC will not entertain any Protest that is untimely or fails in any manner to comply fully
with the procedures set forth in this section.

7.13.1 **Types of Protests.** There are three types of procurement Protests:

7.13.1.1 Pre-Proposal Protest: A protest submitted prior to the
Submission Deadline to challenge the notice procedures followed by the Corporation;

7.13.1.2 Pre-Award Protest: A protest submitted after the Submission
Deadline but before Contract execution; and

7.13.1.3 Post-Award Protest: A protest submitted after the Contract has
been executed, but only to the extent that the protest is based on newly discovered information
that was not available prior to execution of a Contract.
7.13.2 Submission of Protests/Deadlines. All Protests must be in writing and must be submitted in accordance with the following timeline for the following types of Protests:

7.13.2.1 A Pre-Proposal Protest must be submitted at least two (2) business days prior to the Submission Deadline set forth in Part I, Section 2.2.6.3 of the RFP;

7.13.2.2 A Pre-award Protest must be submitted five (5) business days from the later of receipt of Notice of the Corporation’s contingent award of the Contract and the date proposals are made publicly available; and

7.13.2.3 A Post-award Protest must be submitted five (5) working days from the date the protesting party knew or should have known the newly discovered evidence that serves as the grounds of its Protest.

A Protest will be considered submitted when the Protest is received by the Corporation.

7.13.3 Contents of Protest: The Protest should include, without limitation, the following information:

7.13.3.1 name, address and telephone number of the protester;

7.13.3.2 appropriate identification of the procurement, including the Contract Number;

7.13.3.3 statement of the basis of the Protest;

7.13.3.4 supporting exhibits and documentary evidence to substantiate the grounds for the Protest; and

7.13.3.5 form of relief requested.

7.13.4 Address for Submission of Protests:

NYCEDC
110 William Street
New York, NY 10038
Attention: Maryann Catalano, Senior Vice President, Contracts

7.13.5 Method of Submission: By Hand or U.S. Mail

7.13.6 Envelope: The envelope enclosing the Protest must be clearly labeled “PROTEST” and must list the Contract Number to which the Protest relates.

7.13.7 Additional Information: The Corporation may request that the protestor submit additional information that it may need in order to consider the Protest. Any additional information requested by the Corporation must be submitted within the time period established by the Corporation in order to expedite consideration of the Protest. Failure of the protestor to comply with a request for information within the specified time period will result in a resolution
of the Protest without consideration of any information subsequently submitted by the protester in an untimely manner.

7.13.8 **Determinations.** The President or his/her designee has the authority to make a final determination. The Corporation will respond to each substantive issue in the Protest. The Corporation may, in its sole discretion, meet with the protesting respondent and any affected party to discuss the Protest. The Corporation shall have the right to take such appropriate action as may be in the best interests of the Corporation and the City in light of the determination.

The Corporation’s determination shall be final. The respondent shall have been deemed to have received NYCEDC’s determination notice no later than five (5) days from the date of mailing or upon delivery, if delivered by hand of NYCEDC’s determination.
NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION
HHC – CONEY ISLAND HOSPITAL
REQUEST FOR PROPOSALS
FOR THE PROVISION OF CDBG-DR FUNDED ARCHITECTURAL DESIGN AND
RELATED CONSULTANT SERVICES
NYCEDC CONTRACT NO. 61620001
PROJECT CODE NO. 6162

PART III
SPECIFIC REQUIREMENTS
PART III
SPECIFIC REQUIREMENTS

1. STRUCTURE AND CONTENT.

In order to be considered responsive, your proposal must be organized and include all of the items as listed below. If Part I, Section 2.2.7 indicates that:

- M/WBE Participation Goals are not applicable to this RFP, the proposal must be submitted in three (3) sealed envelopes
- M/WBE Participation Goals are applicable to this RFP, the proposal must be submitted in four (4) sealed envelopes.

The contents of the envelopes must be as follows:

1.1 Envelope # 1 [Required for All Proposals]. In one sealed envelope, labeled as required by Part I, Section 2.2.6.1.1 place the following:

1.1.1 Respondent’s Proposal Certification Form, attached hereto at Exhibit 1

1.1.2 A statement of your approach to the Services that clearly demonstrates your understanding of the Scope of Services and your ability to manage and complete multiple projects in a timely and cost-efficient manner. The proposal must include a detailed statement of your approach and ability to provide the required Services and Work Product including, but not limited to a schedule for completing all aspects of the Services. It is imperative that the proposal includes a list and detailed explanation of the extent of all work or services to be performed by Subcontractors.

1.1.3 Proposals should demonstrate clearly that the respondent is capable of and experienced in providing all of the Services necessary for the complete performance of the Contract.

1.1.4 The proposal should contain a description of the respondent’s organization, including a history of the firm, a description of all subsidiaries and affiliates, an organization chart indicating the level of responsibility of all personnel who are expected to provide Services, and the name and location(s) of business of the respondent. This should be accompanied by, to the extent known, the names and resumes of all individuals and entities that will be performing
the Services under the Contract including, without limitation, all personnel, Subcontractors and other entities or individuals performing and/or supervising the Services, and the respondent’s proposed staffing schedule. Please include the addresses, phone and fax numbers, e-mail addresses, designated roles, and relevant experience and expertise for the same.

1.1.5 The respondent shall make the following statements and representations as part of its proposal:

1.1.5.1 That the respondent has examined all parts of this RFP, including the Contract Draft and the Scope of Services, and all terms and conditions hereof.

1.1.5.2 That the respondent agrees to obtain all necessary approvals, permits and/or licenses required by law or regulation for the performance of the Services.

1.1.6 The respondent should provide a description of services it has previously provided to governmental and quasi-governmental organizations with similar requirements to those contained herein. Written statements of reference or the names, addresses and telephone numbers of administrators or contract officers, who can explain the respondent’s involvement and the scope of services, should be included. Information concerning personnel assignment and contract duration should be described.

1.1.7 If the Scope of Services (Appendix B, Part III of the Contract) permits payment of Allowable Additional Costs, the respondent should provide a list of anticipated Allowable Additional Cost items, excluding costs for these items.

1.1.8 If Respondent is a joint venture, response must include a copy of the joint venture agreement.

1.1.9 Do not include in this portion of your proposal any costs or fees associated with the above items. Costs and fees should be included in a separate envelope. (See Part III, Section 1.2 below.)

1.1.10 Do not include in this portion of your proposal your Doing Business Data Form. This form should be included in a separate envelope. (See Part III, Section 1.3 below.)

1.1.11 Do not include in this portion of your proposal your M/WBE Forms. Your M/WBE Forms should be included in a separate envelope. (See Part III, Section 1.4 below.)

1.2 Envelope #2 [Required for All Proposals]. In a second sealed envelope labeled as required by Part I, Section 2.2.6.1.2 place complete fee and cost schedules for all Services. All fee and cost schedules should be submitted in the forms attached hereto as Exhibit 2 to this RFP. NYCEDC may not consider fee and cost schedules that do not follow the prescribed formats.

1.3 Envelope #3 [Required for All Proposals]. In a third sealed envelope labeled as required by Part I, Section 2.2.6.1.3 place a complete and accurate Doing Business Data Form in the form as described in Exhibit 3 to this RFP.
1.4 **Envelope #4 [Proposals Subject to M/WBE Forms Only]**. If Part I, Section 2.2.7 sets forth M/WBE Participation Goals for this Contract or for future tasks, in a fourth separate sealed envelope labeled as required by Part I, Section 2.2.6.1.4 place a completed and signed M/WDBE Subcontractors Participation Plan, ITP Forms or, if this RFP is for a Retainer Contract or Construction Management Services, a Statement on M/WBE Goals, attached hereto at Exhibit 4, and a narrative describing methods for engaging M/WBEs, including good faith efforts and a description of any M/WBE related program administered by the respondent. See Exhibit 4 for submission forms.

1.5 **Non-compliant Proposals**. In furtherance of and without limiting NYCEDC’s rights as set forth in Part II, Section 7.6 of this RFP, non-compliant proposals may, in NYCEDC’s sole discretion, be considered “not responsive” and may be rejected by NYCEDC including, without limitation, proposals that are:

- 1.5.1 not enclosed in separate sealed envelopes as aforesaid;
- 1.5.2 not properly labeled;
- 1.5.3 received by a person other than the designated Recipient; and/or
- 1.5.4 missing any information, certifications, supplemental forms or other documentation required by this RFP or by applicable law.

1.6 **Cover Letter**. You should include a cover letter summarizing key points of your proposal.

2. **PRE-PROPOSAL INFORMATION MEETING**. If Part I, Section 2.2.5 indicates that a pre-proposal information meeting will be held, you should attend the meeting in order to receive any additional information that may be distributed at the meeting. You will also be able to obtain answers to any questions you may have about the Services at the meeting. If Part I, Section 2.2.5.5 indicates that attendance at the pre-proposal information meeting is mandatory and you do not attend the meeting, your proposal will not be accepted. Please confirm your attendance to the Confirmation Contact identified in Part I, Section 2.2.5 indicating who from your office will attend. Except as may otherwise be permitted by Part I, Section 2.2.4.2, no other contact with NYCEDC or the City regarding issues raised by this RFP is permitted.

3. **INTERVIEWS**. Interviews may be held with any or all of the respondents after the receipt of proposals. Interviews with NYCEDC will be scheduled after its initial review of proposals.

4. **SELECTION**. NYCEDC will review each respondent’s proposal in its totality. The selected respondent, if any, will be a respondent whose proposal is most advantageous to NYCEDC’s goals. See Part I, Section 2.2.8 for an explanation of the criteria on which NYCEDC will base a selection.

5. **SUBMISSION**.

- 5.1 You must submit the number of sets of your proposal indicated in Part I, Section
2.2.6.2.

5.2 All proposals must be delivered by hand or express mail or other nationally-known overnight courier. Proposals received via facsimile or e-mail transmittal, or by regular mail will not be accepted.

5.3 Proposals are due and must be received by the Recipient at the location designated in Part I, Section 2.2.6.6 no later than the Submission Deadline. Please be sure to leave adequate time to get through building security. Proposals received after the indicated date and hour and/or at a different location may not be considered.

5.4 NYCEDC reserves the right, in its discretion, from time to time, to postpone the date for submission and opening of proposals. Respondents are again reminded to check the Website periodically for updated information, which may include a notice of postponement. Any proposal submitted prior to such notice may be withdrawn without prejudice.

5.5 Please note that you must respond to this RFP in order to be eligible to be considered for the award of the Contract for the Services pursuant to this RFP.

5.6 For more information, please contact the Recipient in writing at the Recipient’s Mailing Address or at Recipient’s E-mail address, all as identified in Part I, Section 2.2.6.
NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION
HHC – CONEY ISLAND HOSPITAL
REQUEST FOR PROPOSALS
FOR THE PROVISION OF CDBG-DR FUNDED ARCHITECTURAL DESIGN AND
RELATED CONSULTANT SERVICES
NYCEDC CONTRACT NO. 61620001
PROJECT CODE NO. 6162

EXHIBIT 1
TO
REQUEST FOR PROPOSALS

RESPONDENT’S PROPOSAL CERTIFICATION FORM
NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION
HHC – CONEY ISLAND HOSPITAL
REQUEST FOR PROPOSALS
FOR THE PROVISION OF CDBG-DR FUNDED ARCHITECTURAL DESIGN AND
RELATED CONSULTANT SERVICES
NYCEDC CONTRACT NO. 61620001
PROJECT CODE NO. 6162

EXHIBIT 1
TO
REQUEST FOR PROPOSALS

RESPONDENT'S PROPOSAL CERTIFICATION FORM
Submitted by

[Insert Name of Respondent] (The “Respondent”)

Respondent, in accordance with and subject to all of the terms and conditions of the Request for Proposals pursuant to which this proposal (the “Proposal”) is being submitted, agrees that it will provide in consideration of the price(s) set forth in the Fee and Cost Schedule, all of the Services set forth in the Scope of Services in accordance with the Contract, and to accept in full compensation therefore (including without limitation all overhead, profit, taxes and other charges and expenses applicable thereto), the price(s) stated in the Fee and Cost Schedule. The Fee and Cost Schedule, is simultaneously being delivered to you in a separate sealed envelope and is incorporated herein and made part hereof.

Respondent makes the following statements and representations as part of its Proposal:

(a) That the Respondent has examined all parts of the RFP, including the Contract Draft and the Scope of Services, and all terms and conditions hereof.

(b) That the Respondent agrees to obtain all necessary approvals, permits and/or licenses required by law or regulation of the performance of the Services.
In order to induce NYCEDC to accept this Proposal, Respondent hereby agrees to abide by all of the terms and conditions of the Contract including, without limitation, all representation and warranties set forth therein.

WHERFORE, the Respondent submits this Proposal to NYCEDC.

____________________________________________________
[INSERT NAME OF RESPONDENT]

Signed by: ____________________________________________
Printed Name: __________________________________________
Title: _________________________________________________
Respondent’s Address: __________________________________
Notice Address (if different from above): _____________________
Respondent’s Telephone Number: __________________________
Respondent’s Fax Number: ________________________________
Respondent’s E-mail Address: _____________________________
Respondent’s Tax I.D. Number: ____________________________
1. The Respondent shall complete and submit a Fee and Cost Schedule, substantially in the form of the “Sample Fee and Cost Schedule” on the following page.

2. The submitted Fee and Cost Schedule should cover all Services and Tasks described in the RFP and the Contract Draft and shall provide a breakdown of staff costs and Allowable Additional Costs per Task.

3. PLEASE BE SURE THAT YOU SUBMIT YOUR FEE AND COST SCHEDULE IN A SEPARATE ENVELOPE.

(See Sample Fee and Cost Schedule on following page)
NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION  
HHC – CONEY ISLAND HOSPITAL  
REQUEST FOR PROPOSALS  
FOR THE PROVISION OF CDBG-DR FUNDED ARCHITECTURAL DESIGN AND  
RELATED CONSULTANT SERVICES  
NYCEDC CONTRACT NO. 61620001  
PROJECT CODE NO. 6162  

Submitted by  

________________________________________________  
[Insert Name of Respondent] (The “Respondent”)
## SAMPLE FEE SCHEDULE

<table>
<thead>
<tr>
<th>Project Tasks</th>
<th>Maximum Payment</th>
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<tbody>
<tr>
<td><strong>Task 1.0: Physical Assessment Survey and Data Review</strong></td>
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<td>1.1 : Main Building</td>
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<tr>
<td>Task 1: Main Building</td>
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<td>1.1.A : Existing Conditions / Laser Survey and Data Review</td>
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<td>1.1.B : Exterior and Roof Conditions Report</td>
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<td>1.1.C : MEP/FP Equipment and Systems Assessment Report</td>
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<td>1.1.D : Preliminary Elevator Evaluation Report</td>
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<td>1.2 : Tower Building</td>
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<tr>
<td>1.2.A : Existing Conditions / Laser Survey and Data Review</td>
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<tr>
<td>1.2.B : Exterior and Roof Conditions Report</td>
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<td>1.2.C : MEP/FP Equipment and Systems Assessment Report</td>
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<tr>
<td>1.2.D : Preliminary Elevator Evaluation Report</td>
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<td>1.3 : Building 3 – FDNY EMS portion only</td>
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<tr>
<td>1.3.A : Existing Conditions / Laser Survey and Data Review</td>
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<td>1.3.B : Exterior and Roof Conditions Report</td>
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<td>1.3.D : Preliminary Elevator Evaluation Report</td>
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<td><strong>Subtotal, Task 1.0</strong></td>
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<td><strong>Task 2.0: BIM Requirements and Deliverables</strong></td>
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<td>2.1 : Pre-Design</td>
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<td>2.2 : Schematic Design</td>
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<td>2.3 : Design Development</td>
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<td>2.4 : Contract Documents</td>
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<td>2.5 : Construction Administration &amp; Project Closeout</td>
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<td><strong>Subtotal, Task 2.0</strong></td>
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<td><strong>Task 3.0: Technical Surveys</strong></td>
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<td>3.0.A : Topographic Survey</td>
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<td>3.0.B : Metes and Bounds - Existing Survey</td>
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<td>3.0.C : Utility Survey</td>
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<td>3.0.D : Sewer Investigation</td>
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<td>3.0.E : Hazardous Materials Survey</td>
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<td><strong>Task 4.0: User Group Meetings and Development of Final Program Requirements</strong></td>
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<td>Project Tasks</td>
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<td><strong>Task 5.0: Environmental Studies and Surveys</strong></td>
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<td>5.0.A: Environmental Reviews</td>
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<td>5.0.B: Geotechnical Survey</td>
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<td>5.0.C: Hydrologic and Hydraulic Survey</td>
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<td>5.0.D: Flood Risk Assessment Report</td>
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<td><strong>Task 6.0: Conceptual Design</strong></td>
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<td>6.1: CSS</td>
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<td>6.2: Tower Building – limited renovations</td>
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<td>6.3: Parking Structure</td>
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<td>6.4: Site Improvements</td>
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<td>6.5: Flood Wall</td>
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<td>6.6: Main Building – re-program spaces</td>
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<td>6.7: Main Building – programmatic master plan</td>
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<td><strong>Task 7.0: Certificate of Need (“CON”) Process</strong></td>
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<td><strong>Task 8.0: Schematic Design</strong></td>
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<td>8.1: CSS</td>
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<td>8.2: Tower Building – limited renovations</td>
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<td><strong>Subtotal, Task 8.0</strong></td>
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<td><strong>Task 9.0: Design Development</strong></td>
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<td>9.1: CSS</td>
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<td>9.2: Tower Building – limited renovations</td>
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<td>9.3: Parking Structure</td>
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<td>9.4: Site Improvements</td>
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<td>9.5: Flood Wall</td>
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<td>9.6: Main Building – re-program spaces</td>
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<td><strong>Subtotal, Task 9.0</strong></td>
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<tr>
<td>Task 10.0: Contract Documents</td>
<td>Maximum Payment</td>
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<tr>
<td>10.1 : CSS</td>
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<td>10.2 : Tower Building – limited renovations</td>
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<td>10.6 : Main Building – re-program spaces</td>
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<td><strong>Subtotal, Task 10.0</strong></td>
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<thead>
<tr>
<th>Task 11.0: Review and Analysis of Bids</th>
<th>Maximum Payment</th>
</tr>
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<tbody>
<tr>
<td>11.1 : CSS</td>
<td></td>
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<tr>
<td>11.2 : Tower Building – limited renovations</td>
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<td>11.3 : Parking Structure</td>
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<td>11.4 : Site Improvements</td>
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<td>11.5 : Flood Wall</td>
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<td>11.6 : Main Building – re-program spaces</td>
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<tr>
<td>11.7 : Demolition of Structures</td>
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<tr>
<td><strong>Subtotal, Task 11.0</strong></td>
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<thead>
<tr>
<th>Task 12.0: Shop Drawing Review / Construction Contract Administration</th>
<th>Maximum Payment</th>
</tr>
</thead>
<tbody>
<tr>
<td>12.1 : CSS</td>
<td></td>
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<tr>
<td>12.2 : Tower Building – limited renovations</td>
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<tr>
<td>12.3 : Parking Structure</td>
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<td>12.4 : Site Improvements</td>
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<td>12.5 : Flood Wall</td>
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<tr>
<td>12.6 : Main Building – re-program spaces</td>
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<tr>
<td>12.7 : Demolition of Structures</td>
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<tr>
<td><strong>Subtotal, Task 12.0</strong></td>
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</table>

<table>
<thead>
<tr>
<th>Task 13.0: Maintenance and Operations Manual</th>
<th>Maximum Payment</th>
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<tbody>
<tr>
<td>13.1 : CSS</td>
<td></td>
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<tr>
<td>13.2 : Tower Building – limited renovations</td>
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<td>13.3 : Parking Structure</td>
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<td>13.4 : Site Improvements</td>
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<td>13.5 : Flood Wall</td>
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<td>13.6 : Main Building – re-program spaces</td>
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<td><strong>Subtotal, Task 13.0</strong></td>
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<tr>
<td>Project Tasks</td>
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<tr>
<td>------------------------------------------------------------------------------</td>
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<td><strong>Task 14.0: Life Safety Code Survey and Report</strong></td>
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<td>14.1 : CSS</td>
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<td>14.2 : Tower Building – limited renovations</td>
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<td>14.3 : Parking Structure</td>
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<tr>
<td>14.4 : Main Building – re-program spaces</td>
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<tr>
<td><strong>Subtotal, Task 14.0</strong></td>
<td></td>
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<tr>
<td><strong>Task 15.0: Demolition of Structures</strong></td>
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<tr>
<td>15.1 : Hammett Pavilion</td>
<td></td>
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<tr>
<td>15.2 : Building 3 – Selective Demolition (Shops / MER portion only)</td>
<td></td>
</tr>
<tr>
<td>15.3 : Building 6</td>
<td></td>
</tr>
<tr>
<td>15.4 : Main Building – Selective Demolation</td>
<td></td>
</tr>
<tr>
<td><strong>Subtotal, Task 15.0</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Allowance #1</strong>: Existing Systems Assessment Firm to perform Third-Party testing and assessment of existing mechanical systems and equipment</td>
<td>$ 500,000</td>
</tr>
<tr>
<td><strong>Allowance #2</strong>: Air Quality Monitoring</td>
<td>$ 150,000</td>
</tr>
<tr>
<td><strong>Allowance #3</strong>: Test Borings and Soils Lab Consultant</td>
<td>$ 350,000</td>
</tr>
<tr>
<td><strong>SUBTOTAL – Tasks 1-15 and Allowances #1-3</strong></td>
<td>$ 1 000,000</td>
</tr>
<tr>
<td><strong>Additional Allowable Costs (10% x Line 118)</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Additional Design Services (10% x Line 118)</strong></td>
<td></td>
</tr>
<tr>
<td><strong>MAXIMUM CONTRACT PRICE (Line 118 + Line 119 + Line 120)</strong></td>
<td></td>
</tr>
</tbody>
</table>
EXHIBIT 3
TO
REQUEST FOR PROPOSALS

DOING BUSINESS DATA FORM

The Consultant shall complete and submit a Doing Business Data Form which can be found at www.nycedc.com in the following section:

“Resource/Vendor Resources”

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

Doing Business Accountability Project Forms

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

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

Doing Business Form
Doing Business Form-Real Property
Q&A General
Q&A Real Property
NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION
HHC – CONEY ISLAND HOSPITAL
REQUEST FOR PROPOSALS
FOR THE PROVISION OF CDBG-DR FUNDED ARCHITECTURAL DESIGN AND RELATED
CONSULTANT SERVICES
NYCEDC CONTRACT NO. 61620001
PROJECT CODE NO.  6162

EXHIBIT 4
TO
REQUEST FOR PROPOSALS
M/WBE FORMS
# SUBCONTRACTORS PARTICIPATION PLAN

**Check One:**  
- Initial Plan  
- Amended Plan  

7/19/2013

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 to comply with M/W/DBE requirements for this project. Please complete the forms electronically and email to opportunitymwbeproject@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 212-312-4215.

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.

---

**NYCEDC hereby authorizes this Plan:**

X

Authorized Person: ___________________________ Date: __________

X

Opportunity M/W/DBE Officer: ___________________________ 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.

---

<table>
<thead>
<tr>
<th><strong>Project Information</strong></th>
<th><strong>Project Calculations- Automatically Calculated</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Contract #/Project #: /</td>
<td>Awards to M/W/DBEs</td>
</tr>
<tr>
<td>Business Name:</td>
<td>Percentage of Total Award to M/W/DBEs</td>
</tr>
<tr>
<td>Project Award Amount:</td>
<td></td>
</tr>
<tr>
<td>Project Manager:</td>
<td></td>
</tr>
<tr>
<td>Email:</td>
<td></td>
</tr>
<tr>
<td>Phone:</td>
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</tbody>
</table>

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Exhibit 4 – 2
# NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION
## INTENT TO PERFORM AS SUBCONTRACTOR

<table>
<thead>
<tr>
<th>BIDDER/PRIME CONTRACTOR</th>
<th>SUBCONTRACTOR</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>NAME</strong></td>
<td><strong>NAME</strong></td>
</tr>
<tr>
<td><strong>ADDRESS</strong></td>
<td><strong>ADDRESS</strong></td>
</tr>
<tr>
<td><strong>PHONE</strong></td>
<td><strong>PHONE</strong></td>
</tr>
<tr>
<td><strong>FED.ID No.</strong></td>
<td><strong>FED.ID No.</strong></td>
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<table>
<thead>
<tr>
<th><strong>NYCEDC CONTRACT NUMBER:</strong></th>
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<tr>
<th><strong>PROJECTED START DATE:</strong></th>
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<tr>
<th><strong>PROJECTED COMPLETION DATE:</strong></th>
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<tr>
<th><strong>WORK TO BE PERFORMED:</strong></th>
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<tr>
<th><strong>PRICE OF WORK TO BE PERFORMED:</strong></th>
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### CERTIFICATION

The contractor hereby commits to hiring the Subcontractor and the Subcontractor hereby affirms its intent to participate on the Project. The Contractor must notify an Opportunity M/W/DBE Officer in writing of any changes to the information provided herein. By signing below each party certifies that the above information is true and accurate. Providing false or misleading information shall be grounds for the application of any applicable criminal and/or civil penalties for perjury.

<table>
<thead>
<tr>
<th>Contractor’s Signature</th>
<th>Subcontractor’s Signature</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Title:</strong></td>
<td><strong>Title:</strong></td>
</tr>
<tr>
<td><strong>Date:</strong></td>
<td><strong>Date:</strong></td>
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</tbody>
</table>

Contractor’s Signature: ____________________________  Subcontractor’s Signature: ____________________________

Date: ___________, 20__

---

NYCEDC Contract Number: [NYCEDC Official Stamp]
Consultant Statement on M/WBE Goals

NYCEDC Contract Number: ____________________________

Consultant Firm Name: ____________________________

I affirm that the following statements are true and accurate:

1. I have read and understand the requirements of NYCEDC’s M/WBE Program as set forth in RFP.

2. If awarded the Contract, I will submit a Subcontractors Participation Plan ("Plan") with Award Letters for approval whenever new contractors/consultants are engaged for Task Orders under the Contract. I will obtain and submit the same for my direct subcontractors (unless a Self-Perform Statement is submitted) along with a “Intent to Perform as Subcontractor” form from each contractor/consultant that appears on the Plans of my direct subcontractors. I understand that these forms must be submitted to NYCEDC before the direct subcontractor commences work under the Contract.

3. I understand that assistance with procurement planning and M/WBE outreach process is available to me from NYCEDC and I should contact NYCEDC’s Opportunity M/W/DBE program if I have questions or concerns regarding compliance with the M/WBE Program and the M/WBE Participation Goals.

4. I will make Good Faith Efforts to meet the M/WBE Participation Goal set forth in the Contract. I will be expected to provide substantial proof of Good Faith Efforts in the event the M/WBE Participation Goal is not met. In the event that Good Faith efforts are deemed insubstantial, NYCEDC has the right to enforce any remedies detailed in Article 9 of the contract.

5. I will ensure that any direct contractor/consultant hired on this contract will follow the M/WBE procedures, as applicable.

You shall be declared Non-Responsive if this signed form is not submitted with your proposal materials.

Authorized Person Signature ____________________________ Date __________

Print Name/Title ____________________________
NYCEDC is dedicated to furthering the participation of minority- and women-owned businesses in its work. Each RFP Respondent must submit this form together with its proposal to indicate how M/WBE participation will be achieved if it is selected.

Construction Manager/Lead Consultant: Click here to enter text.

Project Number: Click here to enter text.

A. Establishment of numerical M/WBE contracting utilization goals or targets

The Participation Goal Range for this contract is set in Part I Section 2.2.7 of the RFP. Please indicate the goal you commit to reaching on this contract by entering your M/WBE Participation Commitment Percentage below. Please note, if you are selected this goal will become part of your contract.

MWBE Participation Commitment Percentage*: Click here to enter text.

*M/WBE Participation Commitment Percentage = Projected Payments to MWBEs/Total Contract Payments

B. Prequalified list information (Construction Management contracts only)

What is the size of your list of prequalified subcontractors? Click here to enter text.

How many M/WBE's are on your list of prequalified subcontractors? Click here to enter text.

Please fill out table below so that we may determine how well M/WBEs represented on your prequalified list for trades that are key to this project.

<table>
<thead>
<tr>
<th>1. Trade</th>
<th>2. No. of Prequalified Contractors/Consultants for Trade</th>
<th>3. No. of Firms in Previous Column (#2) that is M/WBE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Key Trade #1</td>
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<td>Key Trade #2</td>
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<td>Key Trade #3</td>
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<td>Key Trade #4</td>
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<tr>
<td>Key Trade #5</td>
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C. List of Subcontractors (Retainers, On-Call and CM contracts)

Please separately attach the Subcontractors Participation Plan (SPP) listing all subcontractors, both M/WBE and non-M/WBE, that will be used on this contract. For CMs, list all the members of the team included in proposal. The SPP will be reviewed and rated based on:

- Percentage of subcontractors who are certified as M/WBE with the appropriate agency
- Number of M/WBE firms on the SPP
D. Strategies and methods that will facilitate participation by M/WBE firms

Please separately attach a narrative that lists the specific measures that will be taken to fulfill the M/WBE requirements of this contract and the goals established. Below are some recommended methods for engaging M/WBE firms. In the narrative, be sure to indicate which of the methods will be incorporated into your M/WBE outreach efforts as well as any additional strategies. These strategies should be specific and easily verifiable. Also include detailed information about any MWBE programming offered by your firm. Note that specific actions committed to in the narrative must be documented sufficiently so that proof of their application can be readily obtained. As this narrative will be a factor in selection, it is critical that consultants fulfill every aspect of the narrative set forth in the response to the RFP.

- Advertise opportunities for M/WBEs
- Hold direct subcontractors accountable to meeting Participation Goals
- Engage in direct outreach to M/WBEs
- Hold informational meetings with M/WBEs
- Work with M/WBE and community organizations to enhance outreach
- Reach out to vendors on the NYCEDC Interested Subcontractor List
- Seek assistance from NYCEDC Opportunity M/W/DBE staff
- Carve out specific work for M/WBE contractors
- Unbundle bid packages to engage more subcontractors

E. Provide the name and contact information of in-house M/WBE contact

E. Attestation

I acknowledge that all the information provided herein is true and correct. In addition, I confirm the following:

- I have read and understand the M/WBE requirements for this contract.
- I will make and thoroughly document Good Faith Efforts utilized in encouraging M/WBE participation.
- I understand that I must notify NYCEDC of any material changes to the information submitted herein.

Authorized Person

Date

Officer’s Name, Title
EXHIBIT 5

TO

REQUEST FOR PROPOSALS

CONTRACT DRAFT

[SEPARATE ATTACHMENT]

NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION
HHC – CONEY ISLAND HOSPITAL
REQUEST FOR PROPOSALS
FOR THE PROVISION OF CDBG-DR FUNDED ARCHITECTURAL DESIGN AND RELATED
CONSULTANT SERVICES
NYCEDC CONTRACT NO. 61620001
PROJECT CODE NO. 6162
NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION
HHC – CONEY ISLAND HOSPITAL
PROFESSIONAL SERVICES CONSULTANT CONTRACT
FOR THE PROVISION OF CDBG-DR FUNDED ARCHITECTURAL DESIGN AND
RELATED CONSULTANT SERVICES
NYCEDC CONTRACT NO. 61620001
PROJECT CODE NO. 6162

CONSULTANT CONTRACT
NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION
HHC – CONEY ISLAND HOSPITAL
PROFESSIONAL SERVICES CONSULTANT CONTRACT
FOR THE PROVISION OF CDBG-DR FUNDED ARCHITECTURAL DESIGN AND
RELATED CONSULTANT SERVICES
NYCEDC CONTRACT NO. 61620001
PROJECT CODE NO. 6162

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. 61620001
1.3 Contract Date: The date of the Contract is as of October 2015
1.4 Commencement Date: [blank]
1.5 Term: Five (5) years with two one year extensions exercisable at NYCEDC’s sole discretion
1.6 Maximum Contract Price:
1.7 Project: HHC – Coney Island Hospital
1.8 Project Site: 2601 Ocean Parkway, Brooklyn, NY
1.9 Allowable Additional Costs: The Allowable Additional Costs are defined in Appendix B (Scope of Services) and the amount set forth in Appendix C (Payments). [IF NONE, INSERT “NONE” OR “NOT APPLICABLE”]
1.10 Retainage: NOT APPLICABLE
1.11 Retainage Payment Date: NOT APPLICABLE
1.12 M/WBE Participation Goal: 25 - 35%

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: [INSERT NAME OF APPROPRIATE SVP OR EVP]
2.3 The Consultant: [_________________________], a [INSERT STATE CONSULTANT WAS ORGANIZED AND TYPE OF BUSINESS ENTITY, e.g. a New York corporation (or partnership, LLP or LLC)], having an office at:

[ADDRESS:__________________________]
____________________________________
____________________________________
____________________________________
____________________________________
[FEDERAL TAX ID#______________________]

2.4 Principal: [INSERT NAME OF CONSULTANT’S MOST SENIOR OFFICER RESPONSIBLE FOR THE PERFORMANCE OF THE SERVICES]
2.5 Person in Charge: [INSERT NAME OF THE MEMBER OF THE CONSULTANT’S PROFESSIONAL STAFF WHO WILL HAVE PRIMARY RESPONSIBILITY TO PERFORM AND/OR SUPERVISE AND COORDINATE PERFORMANCE OF THE SERVICES]

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: [NAME:__________________________]

3.2 Notices to the Consultant:

[NAME:__________________________]
[ADDRESS:__________________________]

Attn: [NAME:__________________________]
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 statute and 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 and, potentially, Sections 406 and 428 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (the “Stafford Act”), codified at 42 U.S.C. § 5172 and 42 U.S.C § 5189(f), respectively.

4.2 **Funding Agencies:** U.S. Department of Housing and Urban Development (“HUD”) and, potentially, the Federal Emergency Management Agency (“FEMA”)

4.3 **Applicable Requirements:** See Appendix J

4.4 **Applicable Agreements:** See Appendix K

4.5 **Federal Compliance:** The Consultant and all Sub-consultants under this Agreement will be subject to all relevant requirements of the funding statutes cited above.

5. **Special Provisions** The provisions set forth below are hereby added to and made part of, or deleted from this Contract, as indicated. 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 **Liquidated Damages:** As stated in Article 1, Section 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.

Upon completion of work and as stated in Article 2, Section 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. Failure to provide such appropriate or necessary documentation or other evidence relating to the amounts set forth in the Requisition, as the Corporation may reasonably require, will result in non-payment.
As stated in Article 2, Section 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. If in her or his judgment, the Services have not been satisfactorily performed in accordance with this Contract, the Director will not approve the Requisition and payment will not be received. All payments to the Consultant will be made in accordance with this Article 2.

In addition, per Article 2, Section 2.2.1, 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.

5.2 CDBG-DR Section 3 Compliance: Within 60 days of the contract start date, the Consultant must contact the Department of Small Business Services (“SBS”) at Section3@nycedc.com to coordinate review of the Consultant’s hiring plan for Section 3 compliance. In addition, the Consultant will be required to submit a Section 3 progress report with every request for payment under the Contract.

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 [INSERT CONSULTANT NAME]

By: ________________________________ By: ________________________________
Name: ______________________________ Name: ______________________________
Title: ______________________________ Title: ______________________________
PART II
GENERAL TERMS AND CONDITIONS

ARTICLE 1 PERFORMANCE OF SERVICES

ARTICLE 2 COMPENSATION

ARTICLE 3 SUSPENSION OR TERMINATION

ARTICLE 4 PERSONNEL AND SUBCONTRACTORS

ARTICLE 5 DOCUMENTS AND MATERIALS

ARTICLE 6 INDEMNIFICATION, CLAIMS AND INSURANCE

ARTICLE 7 REPRESENTATIONS AND WARRANTIES

ARTICLE 8 APPLICABLE LAWS, RULES AND REGULATIONS

ARTICLE 9 M/WBE REQUIREMENTS

ARTICLE 10 MISCELLANEOUS
NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION
HHC – CONEY ISLAND HOSPITAL
PROFESSIONAL SERVICES CONSULTANT CONTRACT
FOR THE PROVISION OF CDBG-DR FUNDED ARCHITECTURAL DESIGN AND
RELATED CONSULTANT SERVICES
NYCEDC CONTRACT NO. 61620001
PROJECT CODE NO. 6162

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 written authorization 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 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
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 (“EFT”). 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 Requirement, 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 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 no less than five (5) 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 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 insurance policy shall be in a form at least as broad in coverage as the most current ISO Form CG 00 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 policies 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 The Consultant and any subcontractor that provide any on-site construction activity shall complete and submit the Payroll Report to the Corporation in the form annexed to this Contract as Appendix C.

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 Whistleblowers.

8.8.1 In accordance with Section 12-113 of the New York City Administrative Code (the “Administrative Code”),

8.8.1.1 The Consultant 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 of the Consultant or any of its Subcontractors to (i) the Corporation, (ii) the City’s Department of Investigation, (iii) a member of the New York City Council, the City’s Public Advocate or the Comptroller, or (iv) the City Chief Procurement Officer, DSBS Chief Contracting Officer (“DSBS ACCO”) or DSBS Commissioner.

8.8.1.2 If any of the Consultant’s officers or employees believes that s/he or has been the subject of an adverse personnel action in violation of paragraph 8.8.1.1 above, s/he shall be entitled to bring a cause of action against the Consultant 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 DSBS ACCO or DSBS 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 Corporation, nor shall any such public agency, entity or corporation be made a party to an action brought pursuant to this subdivision.

8.8.2 In accordance with Section 6-132 of the Administrative Code, the Consultant shall post a notice in the form annexed hereto at Exhibit L
8.8.3 For 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.

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

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

8.11 Doing Business Data Form Requirements.

8.11.1 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.

8.11.2 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.

8.11.3 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 and Local Law 1 of 2013 amended Section 6-129 of the Administrative Code of the City of New York (hereinafter “Section 6-129”). Section 6-129 establishes a program for participation in City procurement by minority-owned business enterprises (“MBEs”) and women-owned business enterprises (“WBEs”, together with “MBEs” collectively referred to as “M/WBEs”), certified in accordance with Section 1304 of the City Charter. 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 has adopted an M/WBE Program to further participation by MBEs and WBEs in the provision of the Services. All Consultants shall comply with all requirements of the Corporation’s M/WBE Program applicable to this Contract.

9.2 Minority and Women-Owned Business Enterprises. M/WBE firms must be certified by DSBS to credit such firms’ participation toward attainment of the Participation Goals. Such certification must occur prior to the firms’ commencement of work.

9.3 Participation Goal.
9.3.1 The Participation Goal for this Contract is set forth in Part I, Section 1.12. The Participation Goal represents a percentage of the total dollar value of the Contract that may be achieved by awarding subcontracts to firms certified with DSBS as MBEs or WBEs, and/or by crediting the participation of the Consultant.

9.3.2 The Participation Goal is a material term of the Contract and the Consultant shall be subject to the Participation Goal.

9.3.3 A consultant that is an M/WBE shall be permitted to count its own participation toward fulfillment of the Participation Goal, provided that the value of the Consultant’s participation shall be determined by subtracting from the total value of the Contract any amounts that the Consultant pays to direct Subcontractors. A Consultant may not subcontract more than 50% of the total value of the Contract unless it working under a retainer contract or a construction management contract. The value of an M/WBE Consultant’s participation shall be determined by subtracting from the total value of the Contract any amounts that the respondent will pay to direct Subcontractors. If the Consultant is not an M/WBE, it must meet the Participation Goal through the awarding of subcontracts to firms certified with DSBS as MBEs or WBEs.

9.3.4 A Consultant that is a Qualified Joint Venture shall be permitted to count a percentage of its own M/WBE participation toward fulfillment of the Participation Goal. The value of the Qualified Joint Venture’s participation shall be determined by first subtracting from the total value of the Contract, any amounts that the Qualified Joint Venture will pay to direct Subcontractors. Thereafter, the M/WBE percentage of the Qualified Joint Venture shall be applied to the remaining value of the Contract to determine the overall Participation Goal.

9.4 Subcontractors Participation Plan.

9.4.1 The Subcontractors Participation Plan for this Contract is annexed hereto as Appendix H.

9.4.2 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 M/WBE Compliance Reports.

9.5.1 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 Participation Plan as set forth in this Section 9.5.

9.5.2 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.

9.5.3 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.

9.5.4 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 9.5.3 in connection with all Services rendered by the Consultant and its Subcontractors during the entire Contract Term.

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

9.7 Modification of the Consultant’s Subcontractors Participation Plan.

9.7.1 The Consultant may request modification of its Subcontractors Participation 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.

9.7.2 Good Faith Efforts. Good faith efforts should be documented by Consultant requesting a modification and such documentation provided to the Corporation upon the Corporation’s request. In determining whether the Consultant has made all reasonable good faith efforts to meet the Participation Goal, the Corporation will consider, along with any other relevant factors, evidence submitted by the Consultant showing that the Consultant has, without limitation, conducted the following:

9.7.2.1 Direct Outreach. The Consultant provided timely notice to M/WBEs of specific opportunities to participate in the Contract;

9.7.2.2 NYCEDC Assistance. The Consultant submitted timely requests for assistance to the Corporation’s M/WBE liaison officer and provides the Corporation with a description of how the Corporation’s recommendations were acted upon and an explanation of how action upon such recommendations did not lead to the desired level of participation of M/WBEs;

9.7.2.3 Advertised Opportunities. The Consultant advertised opportunities to participate in the Contract in general circulation media, trade and professional association publications, small business media and publications of M/WBE organizations;

9.7.2.4 Follow Up with M/WBEs. The Consultant sent timely written notices to advise M/WBEs that their interest in the Contract was solicited;

9.7.2.5 Substitution of Work. The Consultant made efforts to identify portions of the Contract Work that could be substituted for portions originally designated for the
participation by M/WBEs in the M/WBE Subcontractors Participation Plan and for which the Consultant claims an inability to retain M/WBEs;

9.7.2.6 Meeting with M/WBEs. The Consultant held meetings with M/WBEs prior to the date their proposals were due, for the purpose of explaining in detail the scope and requirements of the work for which their proposals were solicited;

9.7.2.7 Negotiated with M/WBEs. The Consultant made efforts to negotiate with M/WBEs as relevant to perform specific subcontracts, or acts as suppliers or service providers; and

9.7.2.8 Interested Subcontractor List. The Consultant made efforts to contact interested M/WBEs listed on the Website’s Interested Subcontractor list.

9.7.3 The Corporation’s M/WBE Director and Chief Contracting Officer will provide written notice to the Consultant of the determination on whether the Consultant has made all reasonable good faith efforts to meet the Participation Goal.

9.8 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 Subcontractors Participation Plan.

9.9 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 Subcontractors Participation 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 Participation Plan (unless the Corporation has permitted the Consultant to modify the Consultant’s M/WBE Subcontractors Participation Plan in accordance with Section 9.7), 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 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; or
(iii) assert any other right or remedy it has under the Contract.

9.10 Liquidated Damages for Failure to Fulfill Approved Participation Goals. If the Consultant fails to fulfill its Participation Goals set forth in its Subcontractors Participation Plan or the Participation Goals as modified by the Corporation pursuant to Section 9.7, the Corporation may assess liquidated damages in the amount of ten percent (10%) of the difference between the dollar amount of work required to be awarded to M/WBEs to meet the Participation Goal and the dollar amount the Consultant actually awarded and paid to M/WBEs. In view of
the difficulty of accurately ascertaining the loss which the Corporation will suffer by reason of
the Consultant’s failure to meet the Participation Goals, the foregoing amount is hereby fixed
and agreed as the liquidated damages that the Corporation will suffer by reason of such failure,
and not as a penalty. The Corporation may deduct and retain out of any monies which may
become due under this Contract the amount of any such liquidated damages; and in case the
amount which may become due under this Contract shall be less than the amount of the
liquidated damages suffered by the Corporation, the Consultant shall be liable to pay the
difference.

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
Participation 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 (6) 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
HHC – CONEY ISLAND HOSPITAL
PROFESSIONAL SERVICES CONSULTANT CONTRACT
FOR THE PROVISION OF CDBG-DR FUNDED ARCHITECTURAL DESIGN AND
RELATED CONSULTANT SERVICES
NYCEDC CONTRACT NO. 61620001
PROJECT CODE NO. 6162

PART III
APPENDICES

APPENDIX A DEFINITIONS
APPENDIX B SCOPE OF SERVICES
APPENDIX C PAYMENTS
APPENDIX D FORM OF CERTIFIED STATEMENT REGARDING USE OF NON-ORIGINAL MATERIALS
APPENDIX E INSURANCE REQUIREMENTS
APPENDIX F EQUAL EMPLOYMENT AND AFFIRMATIVE ACTION COMPLIANCE FOR NON-CONSTRUCTION CONTRACTS ADDENDUM
APPENDIX G E.O. 50 EMPLOYMENT REPORT FORM
APPENDIX H SUBCONTRACTORS PARTICIPATION PLAN
APPENDIX I OUTSIDE FUNDING SOURCES
APPENDIX J APPLICABLE REQUIREMENTS
APPENDIX K APPLICABLE AGREEMENTS
APPENDIX L WHISTLEBLOWER POSTER
APPENDIX M RESERVED
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

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, 2013 and the Amended and Restated Maritime Contract between the City and the Corporation, dated as of June 30, 2013, 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 not-for-profit corporation organized pursuant to laws of the State of New York.

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.

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

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

DSNY  New York City Department of Sanitation

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

Joint Venture An association, of limited scope and duration, between two or more persons who have entered into an agreement to perform and/or provide services required by a contract, in
which each such person contributes property, capital, effort, skill and/or knowledge, and in which each such person is entitled to share in the profits of the venture in reasonable proportion to the economic value of its contribution.

<table>
<thead>
<tr>
<th>Landmarks Preservation Commission (LPC)</th>
<th>The City of New York Landmarks Preservation Commission</th>
</tr>
</thead>
<tbody>
<tr>
<td>Legal Requirements</td>
<td>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</td>
</tr>
<tr>
<td>Local Law 34 (LL 34)</td>
<td>Local Law No. 34 of 2007, as it may be amended or superseded</td>
</tr>
<tr>
<td>MacBride Principles</td>
<td>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</td>
</tr>
<tr>
<td>Maximum Contract Price</td>
<td>The maximum amount that may be paid for the Services under the Contract, as stated in Part I, Section 1.6</td>
</tr>
<tr>
<td>Maximum Payment</td>
<td>The maximum amount payable for each Portion of the Services during a billing period</td>
</tr>
<tr>
<td>MBEs</td>
<td>Minority-owned Business Enterprises</td>
</tr>
<tr>
<td>M/WBE Compliance Reports</td>
<td>As described in Part II, Section 9.6</td>
</tr>
<tr>
<td>M/WBEs</td>
<td>MBEs and WBEs, collectively</td>
</tr>
<tr>
<td>M/WBE Subcontractors Participation Plan</td>
<td>As described in Part II, Section 9.5</td>
</tr>
<tr>
<td>MOU</td>
<td>Memorandum of Understanding</td>
</tr>
<tr>
<td>New York State Courts</td>
<td>Courts of the State of New York in the City and County of New York</td>
</tr>
<tr>
<td>Notice</td>
<td>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</td>
</tr>
<tr>
<td>Notice to Proceed</td>
<td>Written Notice from the Corporation to the Consultant to proceed with the Services or any portion thereof</td>
</tr>
<tr>
<td>-------------------</td>
<td>--------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Notify</td>
<td>To give a Notice pursuant to Part II, Section 10.9.1</td>
</tr>
<tr>
<td>NYCEDC</td>
<td>The Corporation</td>
</tr>
<tr>
<td>NYCTA</td>
<td>New York City Transit Authority</td>
</tr>
<tr>
<td>NYPD</td>
<td>New York City Police Department</td>
</tr>
<tr>
<td>NYSDEC</td>
<td>New York State Department of Environmental Conservation</td>
</tr>
<tr>
<td>NYSDOH</td>
<td>New York State Department of Health</td>
</tr>
<tr>
<td>NYSDOS</td>
<td>New York State Department of State</td>
</tr>
<tr>
<td>NYSDOT</td>
<td>New York State Department of Transportation</td>
</tr>
<tr>
<td>OMB</td>
<td>New York City Office of Management and Budget</td>
</tr>
<tr>
<td>OPRHP</td>
<td>New York State Office of Parks, Recreation and Historic Preservation</td>
</tr>
<tr>
<td>PANYNJ</td>
<td>The Port Authority of New York and New Jersey</td>
</tr>
<tr>
<td>Participation Goal</td>
<td>The Corporation’s goal for M/WBE participation related to the Contract, as defined in Part II, Section 9.3.</td>
</tr>
<tr>
<td>Payment Schedule</td>
<td>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</td>
</tr>
<tr>
<td>Payroll Report</td>
<td>Forms that the Consultant and any Subcontractors that provide any on-site construction activity must complete</td>
</tr>
<tr>
<td>Percentage of Completion</td>
<td>An amount equal to the percentage of completion of each Portion of the Services</td>
</tr>
<tr>
<td>Person In Charge</td>
<td>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</td>
</tr>
<tr>
<td>PLL</td>
<td>Pollution Legal Liability Insurance Policy</td>
</tr>
<tr>
<td>Portion</td>
<td>Each portion, task or phase of the Services as described in</td>
</tr>
</tbody>
</table>

Appendix A-7
Principal
The Consultant’s most senior officer 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)

Qualified Joint Venture ("QJV")
A Joint Venture between one or more MBEs and/or WBEs and another person, in which the percentage of profit to which the certified firm or firms is entitled for participation in the Contract, as set forth in the joint venture agreement, is at least 25% of the total profit.

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

Term
The duration 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
APPENDIX B

SCOPE OF SERVICES

ARCHITECTURAL DESIGN AND RELATED CONSULTANT SERVICES
FOR CONEY ISLAND HOSPITAL

I. ADDITIONAL DEFINITIONS

All definitions set forth in the Contract to which this Appendix B is attached (or as defined in Appendix A) shall have the same meaning herein unless otherwise defined or the content otherwise requires.

The following terms shall have the following corresponding meanings.

“Allowable Additional Costs” Means Costs of out-of-pocket expenses which may include the cost of printing, special mailings (such as overnight delivery and messenger services), Services-related long distance telephone and facsimile charges, costs associated with the procurement of contractors, costs associated with any potential EIS and/or ULURP Services, additional artistic architectural renderings of the principal elevation of the building(s), additional meetings as specified in the Scope of Services, and any other out-of-pocket expenses, approved in advance by the Director in writing, on a direct cost basis (with no additional provisions or overhead fee). Allowable Additional Costs shall not include travel to and from the Project site, meals and those costs considered to be overhead such as normal mailing, local telephone and facsimile charges, in-house copying secretarial, clerical and typist time and the purchase of office or graphic supplies. Allowable Additional Costs shall also not include printing related to coordination within the Design Team and/or between subconsultants, and agency reviews.

“Agencies” Means DEP, DOB, DOT, FDNY, FEMA, HUD, NYPD, NYSDEC, NYSDOT, NYSOEM, USACOE, DSBS, U.S. Coast Guard, NYSOS, OMB, SHPO, DCP, ORR, HHC, Joint Commission on Healthcare Accreditation, NYSDOH, NYSDHSES, Centers for Medicaid and Medicare Services, NYSOMH, NYSOASAS (all as defined in Appendix A or herein below), and any other agencies, bureaus, departments, offices, or other discrete
entities of The City of New York, the State of New York, or the United States that have jurisdiction over any activities carried out in respect of the Services and/or the Project.

“Construction Manager” Means The construction manager retained by the Corporation for the Project work.

“Contract Documents” Means Any trade contracts for Project work, together with any related drawings, specifications, schematics or other documents created by the Design Team, the Construction Manager and/or the Corporation including, plans and drawings; procurement documents; specifications; all addenda issued prior to the receipt of bids or proposals; forms for the notice of awards, and the bid, performance and payment bonds; the General Conditions provisions; and all other supplementary or special provisions or conditions.

“HHC” Means The New York City Health and Hospitals Corporation.

“Design Services” Means The design services described in this Scope of Services as described in Section V of this Appendix B.

“Design Team” Means Collectively the Consultant and any Subconsultant.

“Project Team” Means NYCEDC and HHC.

“Project Area” Means As described in Appendix B-1 attached hereto.

“Subconsultant” Means Any architect, landscape architect, engineer, licensed professionals, experts or advisors hired by the Consultant to perform any portion of the Services.

“Task” Means A portion of the Services to be provided to the Corporation by the Consultant pursuant to this Contract, as described in greater detail in this Appendix B.

“Utility” Means Any and all private or public utilities affected by or otherwise interested in the Project.

II. GENERAL INFORMATION

A. Project History and Background

In October 2012, Coney Island Hospital (“CIH”), a member of HHC, suffered extensive flood damage as a result of Hurricane Sandy and was forced to suspend services for several months. Since then, CIH has temporarily restored the damaged areas and, working with FEMA, has developed plans to mitigate damage to CIH from future storms and flooding. CIH’s plan involves renovating its hospital to advance the City’s comprehensive, five borough resiliency plan, repairing the damages incurred during Hurricane Sandy, and protect the hospital from
future natural disasters. CIH is located in Brooklyn, New York.

a. **Funding Sources**

This project is being funded by two Federal funding sources. FEMA’s Public Assistance Program is funding 90% of the project and HUD’s Community Development Block Grant – Disaster Recovery (CDBG-DR) is funding 10% of the project.

b. **Regulatory Requirements**

There are FEMA and HUD regulatory requirements that must be met for this project.

The project design for the new resilient acute care hospital tower, which will be known as the Critical Services Structure (“CSS”), is currently envisioned to include vital administrative, medical and mechanical services, as well as disaster mitigation features to protect against the risk of future flooding. The campus plan currently includes a new parking structure, and approximately 33,000 gross square feet of rebuilding or replacement of structures damaged during Hurricane Sandy, and incorporate flood protection design.

The new design of the CIH campus will significantly improve the care environment for its patients/residents, achieve greater operating efficiencies, and build a stronger, more resilient hospital.

The CIH campus project (the “**Project**”) is currently envisioned to include the following components; it will be this Design Team’s initial effort to review and validate program assumptions and subsequent layout scenarios:

- Build a new resilient acute care hospital tower to be known as the Critical Services Structure (“CSS”);
- Build a new 350 space employee and visitor parking structure;
- Demolition of existing buildings, including Hammett Pavilion, Building 6, Building 3 (Shops / MER Building), and various existing site improvements;
- Renovation and selective demolition of portions of the existing Main Building and Tower Building; and
- Build a new permanent flood mitigation structure (s) (e.g. flood wall) around the campus.

**Planned construction must not interfere with the day-to-day operations of the existing campus, specifically the Tower Building, Main Building, Hammett Pavilion, Building 6 and the EMS Building.**

**New CSS:** CIH is currently seeking to build a new inpatient acute care hospital tower (CSS) and move certain existing inpatient / acute care functions from other areas of the campus to the new CSS. The project will also include demolition, rehabilitation, and/or renovation activities related to these decommissioned areas within the existing facilities; such scope is described in further detail below.
It is anticipated that the new CSS may consist of approximately 310,000 gross square feet of new construction which includes a ten story pile foundation, steel structure tower with screened rooftop equipment at the roof level. There may be approximately 40,000 gross square feet of additional area to be re-programmed into the Tower Building or added to the CSS total above. The CSS will be designed with connections to CIH’s existing Tower Building and new parking structure.

Zoning analysis may be required as a part of the design of the CSS. The FEMA Environmental Planning and Historic Preservation Program (“EHP”) analysis is currently being completed by the Pre-Design Team.

Phased demolition of existing buildings, structures, and site improvements will be required in order to build the new CSS on the CIH campus.

The CSS is currently envisioned to include such core functional program areas as: the CIH Emergency Department (includes an ambulance dock and vehicular drop off with a ramp constructed to grade level), Interventional Suite, Radiology, Imaging, Clinical Laboratories, Central Sterile Supply, Cardiac Catheterization Suite, Pharmacy, Medical Surgical Nursing Unit (includes a total of 80 inpatient beds), and a Behavioral Health Care Nursing Unit (includes a total of 64 inpatient beds). Other programs that may be included in the CSS or Tower Building are Labor & Delivery, Endoscopy, Inpatient Detox, and Food Service.

The Project design must include provision for all necessary utilities and infrastructure appropriately designed and elevated to provide uninterrupted and state of the art service protected against the risk of future flooding and hazards. All required mechanical systems must be considered including, but not limited to, boilers, condensate systems and chillers, normal and emergency switchgear, automatic transfer switches, transformers, UPS systems, emergency generators, domestic water and fire pumps, domestic hot water generators and pumps, medical and vacuum pumps, oxygen, nitrous oxide, nitrogen, and CO2 manifolds, pneumatic system, communications, elevators, information, nurse call and security systems and all other miscellaneous ancillary system components.

The lowest level of the CSS will not house power, utility or any other essential services. The lowest level will be at the current grade level and will be used for parking and possibly future Fire Department of the City of New York and New York Emergency Management Services’ occupancy. No basement/crawl space or utility tunnels will be constructed. The lowest level of the CSS may include at grade parking or open space and an entrance to the parking structure via Avenue Z.

The first occupied level of the CSS will be designed to above the 500 year flood level and will contain the Emergency Department. All other programs and services will be located on levels above the Emergency Department.

New Parking Structure: The new 350-space, five-level open air precast parking structure is intended for employee and visitor parking. The parking structure is anticipated to be connected to the new CSS via an elevator / stair tower. For the parking structure to be built,
phased demolition of Building 6 and the Building 3- Shops / MER Building only (the existing EMS Building portion shall remain) will be required prior to its construction.

Demolition of existing buildings, structure and site improvements: To build the new CSS tower and parking structure, phased demolition of existing buildings, structure and site improvements is required within the CIH campus. As part of the Project scope, the following buildings shall be demolished: Hammett Pavilion, Building 6, the Shops / MER Building, and various existing site improvements such as medians, at grade parking and landscaped areas.

Renovation and selective demolition of portions of the existing Main Building and Tower Building: Upon construction completion of the CSS, certain existing program functions within the Main and Tower Buildings will be relocated to the CSS. The Main Building will require approximately 5,000 gross square feet of renovations, including removal of all active patient rooms and converting the vacated program areas to administrative office space for the CIH campus. As the Main Building will have no inpatient services, the flood protection for this area will be designed to above the 100 year flood level. Hazardous materials management plan (e.g.: Asbestos abatement, mold abatement and lead testing / inspection scope and services) will be required as part of the Project. The Behavioral Healthcare Ambulatory Services will require approximately 19,000 gross square feet of renovations within the Main Building.

The Tower Building will require interior renovations for re-programmed areas and areas connecting to the CSS.

Flood Mitigation Structure Project Scope: The Project seeks to construct new permanent flood wall(s) for flood protection for the existing and new campus. It is anticipated that the permanent flood wall(s) will include both deployable vehicular and pedestrian gates and are anticipated to be of varying heights throughout the campus.

Refer to “Section V. Specific Tasks” for environmental review requirements on the Project.

The following exhibits are incorporated by reference to this Scope of Services and are available and posted at the following link and then project specific (e.g.: “HHC - Coney Island Hospital Design RFP”):
http://www.nycedc.com/opportunities/real-estate-development-procurement

- Exhibit A: Existing CIH Campus Site and Floor Plans
- Exhibit B: CIH Campus Draft Flood Design Level of Protection
- Exhibit C: CSS – Zoning Analysis
- Exhibit D: CSS - CON Functional Space Program
- Exhibit E: CSS - Preliminary Schematics
- Exhibit F: CSS – Structural Basis of Design, including Parking Structure
- Exhibit G: CSS – Life Safety Plans
- Exhibit H: CSS – MEP FP Conceptual Design Criteria and Systems Description and Plans
- Exhibit I: CSS – Vertical Transportation Study

Appendix B-6
The Construction Manager shall hold all construction subcontracts in the execution of the Services except as expressly provided herein. Such construction subcontractors shall be competitively procured by the Construction Manager.

It is anticipated that the Project will be delivered in multiple phases with multiple design packages in each phase. The Consultant will coordinate with the CM on development of phasing plans and any required egress modification drawings and/or temporary works.

B. Consulting/Design Team

1. The FEMA Pre-Design Consulting Team

The FEMA Pre-Design ("FEMA Pre-Design") drawings and designs for the Project were prepared by the FEMA Pre-Design consulting team identified below.

<table>
<thead>
<tr>
<th>Firm</th>
<th>Responsibility</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arcadis U.S. Inc.</td>
<td>Lead Pre-Design Consultant &amp; Site / Civil Engineer</td>
</tr>
<tr>
<td>AKRF</td>
<td>Zoning and Environmental Consultant</td>
</tr>
<tr>
<td>Perkins Eastman</td>
<td>Architecture</td>
</tr>
<tr>
<td>Jaros, Baum &amp; Bolles Consulting Engineers</td>
<td>MEP FP, Vertical Transport Engineer</td>
</tr>
<tr>
<td>Leslie E. Robertson Associates, RLLP</td>
<td>Structural Engineer</td>
</tr>
<tr>
<td>RTKL</td>
<td>Healthcare Technologies</td>
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</tbody>
</table>

Work status: Completed

2. The Project Design Team

The Consultant shall be the lead consultant on the project design team ("Project Design Team") for the Project. The Consultant shall identify and provide the Design Team members for the disciplines indicated below.

Responsibility
a) Architectural Design / Lead Project Consultant;
b) Flood Risk Management Consultant;
c) Civil Engineer;
d) Landscape / Site Architectural Design;
e) LEED / Integrated Green Design Consultant;
f) Structural Engineer;
g) MEP, Fire Protection / Life Safety Engineer;
h) Existing Condition / Laser Survey;
i) Cost Estimator;
j) Zoning and Code Consultant / Code Expeditor;
k) Environmental Engineer;
l) Geotechnical / Asbestos / Environmental Remediation Engineer;
m) Survey Engineer;
n) Medical Planner, Equipment and Technologies;
o) Signage and Graphics;
p) Exterior Envelope Engineer (e.g.: Curtain Wall, Roofing);
q) Vertical Transportation;
r) IT / AV / Security;
s) Food Services;
t) Acoustical;
u) Construction Noise, Vibration and Air Quality Monitoring;
v) Healthcare Transition Planning and Management;
w) Healthcare Patient Safety and Risk Management (e.g. mock survey, accreditation support, life safety evaluation);
x) BIM Services; and
y) Materials Management.

Note: LEED Commissioning Consultant contract will be held separately by the Corporation.

C. Construction Cost/Budget Constraints

The current pre-construction, construction and post-construction budget for the Project is approximately $700,000,000, inclusive of all project costs including hard costs, soft costs, escalation and contingencies. Funding is capped by amount of Federal funds available. The Construction Manager shall monitor the submissions of the Design Team from pre-construction through Project completion to ensure that the Project design is completed within the available budget.

The Corporation may establish an incentive program that utilizes integrated project delivery concepts once a deliverable schedule is agreed to with the Construction Manager.

D. Project Structure

The Consultant will lead the Design Team and provide site and landscape architectural design, and graphic design services for the Project. The Consultant will be responsible for all Design Team Services, including but not limited to: Building Information Modeling (“BIM”), overall Project coordination; preliminary Project surveys and relevant data; traffic, civil, structural and related engineering services; sustainable design and other environmental requirements; coordination of Contract Documents; zoning and permitting from relevant Agencies and Utilities; assistance in cost estimating and value engineering, and assistance in strategic efforts to develop construction phases for the Project. Additional Services may be added at the sole discretion of the Corporation.
Within thirty (30) days of the Effective Date, the Corporation, Design Team and Construction Manager shall meet to agree upon the BIM standards, protocols, and formats to be used by all Project participants, including the Construction Manager, Subcontractors and the Consultant, and such agreement shall be memorialized by the parties through the execution of a BIM “Execution Plan” approved by the Corporation. See “Section V: Specific Tasks” of the Project Scope of Services for additional BIM requirements.

The Design Team shall provide electronic files to the Construction Manager and Subcontractors upon request by the Corporation to facilitate the development of models and submittals for coordination between the Construction Manager and its subcontractors.

The Design Team shall also review principal programmatic, design and construction decisions through regularly scheduled meetings.

The Construction Manager will direct the Design Team during pre-construction phases to provide Services including, but not limited to, cost estimating and value engineering Services, and constructability and construction documents review such as staging and phasing plans. The Construction Manager will provide independent oversight and review of the Design Team’s Services and will assist the Corporation in Project controls and the preparation of bid packages.

Time is of the essence for this Project. The Design Team shall immediately begin work on Tasks 1-4 and make all reasonable efforts to complete Tasks 1-4 within ninety (90) days of the Effective Date. The Design Team shall work on the flood wall, CSS, and parking structure project scopes concurrently upon notice to commence work on those tasks.
FEMA Pre-Design Consultant Team (work completed)

HHC

NYCEDC

Construction Manager (TBD) Design Team

Architect/Lead

Flood Risk Consultant Civil Engineer

Landscape Engineer LEED/Integrated Green

Structural Engineer MEP Engineer

Existing Condition/Laser Survey Cost Estimator

Code Expeditor Environmental

Geotechnical/Asbestos/Environmental Remediation Survey Engineer

Medical Planner, Equipment, & Technologies Signage & Graphics

Exterior Envelope Engineer Vertical Transportation

IT/AV/Security Food Services

Acoustical/Vibration Healthcare Transition Planning & Management

Healthcare Patient Safety & Risk Management Building Information Modeling (BIM)

Materials Management

Appendix B-10
III. GENERAL SCOPE OF SERVICES

The Consultant shall coordinate its Services with any consultants employed by the Corporation. The Construction Manager shall participate in the design progress through regularly scheduled meetings with the Consultant. The Design Team shall coordinate its Services in conjunction with day-to-day activities and all related work in and around the Project Area.

The design and coordination Services shall consist of the disciplines as noted in “Section II. General Information” of the Project Scope of Services.

A. General Administrative Requirements

The Design Team shall provide cost estimating services, independent of cost estimates developed by the Construction Manager, as may be directed by the Corporation. During all stages of the Services, the Design Team shall assist the Corporation in seeking public approvals and permits as may be required by Agencies. All Services shall comply with Agency codes and regulations and the Consultant shall immediately alert the Corporation as to any compliance issues. The Design Team shall attend Project meetings as necessary during all stages of the Project and assist the Corporation as required if the Corporation seeks reconsideration from approving Agencies.

The Design Team shall coordinate its Services and attend meetings with appropriate Agencies for the review of proposed design Contract Documents, and shall incorporate Agency comments into the aforementioned documents.

The Design Team shall coordinate their Services as required with the Corporation, the Construction Manager, Agencies and other consultants. As part of this coordinated work effort, the Design Team members responsible shall:

a) Attend regular progress and coordination meetings;
b) Attend various Agency meetings;
c) Attend value engineering exercises;
d) Review and comment on cost estimates of the Project;
e) Make Project Area visits;
f) Prepare Conceptual, 25%, 70% and 100% Contract Document interim submissions;
g) Conduct page-turns at each interim documents submission;
h) Obtain Client sign-off and approvals;
i) Prepare monthly progress reports and invoices acceptable for FEMA reimbursement;
j) Implement a quality control plan;
k) Coordinate with appropriate Agencies and approvals;
l) Develop and review of cost estimates;
m) Develop construction phasing plans and design package milestones in consultation with the Corporation, the Construction Manager, and other consultants to allow for phased bidding and construction;
n) Prepare submittal checklist to coordinate the preparation of procurement packages
with the Construction Manager; and

o) Prepare special inspections checklist to coordinate the preparation of procurement package(s) with the Corporation.

B. Contract Documents

The Design Team shall prepare Contract Documents for the purpose of bidding and procurement by the Construction Manager. All Contract Documents shall be prepared for approval by the Corporation and shall consist of drawings, specifications, and related documents that set forth in detail the requirements for the Project as directed by the Corporation, in consultation with HHC. Any and all design work to be procured must be completed in accordance with the Contract and the construction budget.

Drawings included in the Contract Documents for all Tasks shall be prepared with necessary construction details, fully dimensioned and with detailed specifications from which prospective bidders can make accurate and reliable estimates of the quantities, quality and character of the labor and materials required to complete the Project and to install any equipment therein.

The Contract Documents shall be prepared in such manner and form that will enable the Corporation and the Construction Manager to award separate contracts as deemed in the best interests of the construction and/or budget. The Contract Documents shall include all final designs, specifications, estimates, and other related documents for each separate contract. The Contract Documents shall be reasonably coordinated within a given package and with previously issued packages so as to preclude the necessity for design changes, adjustments or change orders during construction due to lack of coordination of the Consultant’s plans. The Corporation recognizes that a reasonable number of design changes, adjustments and change orders are a foreseeable part of the construction process and that not all design changes, adjustments and change orders can be avoided. Design changes, adjustments and change orders must be reported by the Design Team on a timely basis to the Corporation and HHC so that it can notify changes in the scope of work to FEMA and NYSOEM.

The Design Team shall assist the Corporation in its efforts to acquire approvals of the Contract Documents from applicable Agencies. The Design Team shall submit contract drawings and specifications to appropriate Agencies including DOB and FDNY. The Design Team shall also submit Contract Documents to the Corporation, HHC, DEP, DEC, DOT and other relevant Agencies as requested by the Corporation for their review and approval. The Design Team shall make such changes in the plans and specifications as may be reasonably necessary to obtain such approval or approvals without any additional compensation.

The Consultant shall insure that the Contract Documents are in compliance with Local Law 86 (2005) of the City of New York ("LL 86").

The Consultant shall prepare final program submittals for Tasks 1-5. Thereafter, the Consultant shall prepare designs for all Tasks that shall be submitted corresponding to the
following levels of completion:

- Conceptual
- 25%
- 70%
- 100%
- Contract Documents (for bidding and procurement)

For each of the aforementioned phases, the Consultant shall prepare and transmit, as directed by the Corporation, the following sets of Contract Documents (comprised of drawings, specifications and other relevant data in digital archival format and graphic standards):

a) Final program submittals: Two (2) electronic copies and one (1) copy of PDF files;

b) Site analysis/concept design submittals: Seven (7) full-size sets, one (1) reproducible full-size set, one (1) half-size set, two (2) engineer’s estimate and two (2) electronic copies of all information required to create the Site analysis/concept design submittals; and one (1) copy of PDF files of the Site analysis/concept design submittals;

c) Conceptual Documents: Seven (7) full-size sets, one (1) reproducible full-size set, one (1) half-size set, two (2) engineer’s estimate and two (2) electronic copies of all information required to create the Conceptual documents required; one (1) copy of PDF files of the Conceptual documents;

d) 25% Contract Documents: Seven (7) full-size sets, one (1) reproducible full-size set, one (1) half-size set, two (2) engineer’s estimate and two (2) electronic copies of all information required to create the 25% documents required; one (1) copy of PDF files of the 25% Contract documents;

e) 70% Contract Documents: Seven (7) full-size sets, one (1) reproducible full-size set, one (1) half-size set, two (2) engineer’s estimate and two (2) electronic copies of all information required to create the 70% documents required; one (1) copy of PDF files of the 70% Contract documents;

f) 100% Contract Documents: Seven (7) full-size sets, one (1) reproducible full-size set, one (1) half-size set, two (2) engineer’s estimate and two (2) electronic copies of all information required to create the 100% documents required; (1) copy of PDF files of the 100% Contract documents; and

g) Contract Documents (bid set for each contract to be procured): Two (2) full-size sets, one (1) reproducible full-size set, four (4) half-size sets (Contract drawings only), two (2) engineer’s estimates, and two (2) copies of all electronic files used to create the Contract Documents, and (1) copy of PDF files of the bid Contract Documents.

The drawings shall be stapled with a paper binding. The specifications and all other items shall be post-bound in multiple binder volumes as appropriate per industry standards. All copies and reproducibles are to be in a clear and legible form acceptable to the Corporation.

The Design Team shall also comply with the following guidelines and requirements for
submissions and approvals throughout the design process; designing to the codes and guidelines which carry the most stringent requirements. This includes, but is not limited to:

- Article 28- State Hospital Code Drawing Submission Requirement DSG-01 8/12/2010;
- New York State Department of Health, Division of Health Facility Planning, Bureau of Architectural & Engineering Facility Planning;
- Facility Guidelines Institute ("FGI") Guidelines, 2010 Edition;
- Public Health Law, Section 2803 New York State Hospital Code- Compilation of the Rules and Regulations of the State of New York, Title 10 Current Standards of Construction ("NYSHC NYCRR Title 10");
- Code requirements for Project in NYS and their referenced standards; and
- Handicap Accessibility Requirements

The Design Team shall deliver all Contract Documents to the Corporation, revised where necessary to conform to comments by any appropriate Agency, the Corporation and interested parties (including community groups), along with all necessary signed and written approvals, applications, certificates, or permits (excluding building permits) from Agencies that have jurisdiction over any phase of the work.

The Design Team shall deliver a project that is compliant with all codes and regulations within the City of New York, and capable of obtaining a Final Certificate of Occupancy for the entire Coney Island Hospital campus.

The Design Team shall provide, at no additional cost to the Corporation, professional services to design, document and process corrective measures resulting from errors or omissions caused by the Design Team.

The Contract Documents shall have the seal and authorized facsimile of the signatures of the responsible architects or engineers and shall be original computer plots or drawings.

The Contract Documents shall include delivery of a final coordinated BIM deliverable; refer to “Section V: Specific Tasks” of the Project Scope of Services, for specifics.

C. Construction Contract Administration

The Design Team shall provide administration services with regard to the construction contracts as set forth below.

The Design Team shall assist the Corporation and Construction Manager with the bidding of the construction work following the Corporation’s approval of the Contract Documents. Services shall include review and coordination of the Design Team’s drawings and specifications with the scope of work and contract language prepared by the Construction Manager. The Construction Manager shall provide the scope of work and contract language
for each package in a timely manner to allow coordination with the Design Team’s timeline for drawings and specifications. The Design Team will provide comments, if any, to the Corporation from the Design Team’s review of such scope of work and contract language. The Design Team shall not be responsible for documents prepared by the Construction Manager.

The Design Team shall deliver reproducible and/or reproduced sets of Contract Documents to the Construction Manager as directed by the Corporation or the Construction Manager for the purposes of procuring bids.

If the low bids of all qualified and responsible contractors for the various bid packages for complete construction of the Project are in excess of 12% of the approved final estimate ("Final Estimate") of the total construction costs or portions thereof, the Design Team, if so required and at no extra cost, shall revise all or any parts of the Project that the Corporation, in consultation with the Design Team, shall deem necessary to bring the total construction costs of the Project within the approved Final Estimate.

The Design Team’s duties, responsibilities and limitations of authority for the procurement and construction administration work shall not be restricted, modified or extended unless made by written agreement by the Corporation and Design Team.

The Design Team may advise and consult with the Corporation beginning on the Commencement Date and until final completion of the Project. The Design Team may have authority to act on behalf of the Corporation only to the extent provided in this Contract unless otherwise made by written agreement by the Corporation and Design Team.

The Design Team shall visit the Project Area at intervals appropriate to the stage of construction, no less than bi-weekly during active construction or as otherwise agreed by the Corporation and Design Team in writing, to become generally familiar with the progress and quality of the construction work completed and to determine in general if the construction work is being performed in accordance with the Contract Documents. The Design Team shall identify list of mock-up and benchmark activities and participate in all mock-up and benchmark activities to obtain Project Team approvals and sign-offs. However, the Design Team shall not be required to make exhaustive or continuous on-site observations or inspections to check the quality or quantity of the construction work. On the basis of on-site observations, the Design Team shall keep the Corporation informed of the observed progress and quality of the construction work, and shall endeavor to guard the Corporation against observable defects and deficiencies in the construction work.

The Design Team shall not have control over, or charge of, and shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the construction work, since these services are solely the Construction Manager’s responsibility. The Design Team shall not be responsible for the Construction Manager’s schedules or failure to carry out the construction work in accordance with the Contract Documents. The Design Team shall not control or be responsible for any acts or omissions of the Construction Manager, or the Construction Manager’s contractors or

Appendix B-15
subcontractors, or their agents or employees, or any other persons performing construction work.

The Design Team shall have access at all reasonable times to the construction work in preparation or progress.

Communications by and among the Design Team shall be through the Consultant with the Corporation being copied with same when communications are relevant to Project schedule, cost and construction. Copies of all significant communications between the Corporation and Construction Manager shall be provided to the Consultant in a timely manner.

The Design Team shall have authority to reject construction work that does not conform to the Contract Documents upon consultation with and approval by the Corporation. The Design Team’s decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents and if approved by the Corporation.

The Design Team shall have authority to require additional inspection or testing of the construction work in accordance with the Contract Documents, whether or not such construction work is fabricated, installed or completed, however such additional work must be approved in advance by the Corporation. The cost of such additional inspection or testing shall be borne by the Construction Manager. However, this authority shall not give rise to a duty or responsibility of the Design Team to the Construction Manager, its subcontractors, material and equipment suppliers, their agents or employees or other persons performing the construction work.

The Design Team shall review and approve or take other appropriate action upon the Construction Manager’s submittals such as shop drawings, BIM inputs, product data and samples, but only for the limited purpose of checking for conformance with information given and the design intent expressed in the Contract Documents. The Design Team’s actions shall be taken with reasonable promptness while allowing sufficient time in the Design Team’s professional judgment to permit adequate review. The review of shop drawings shall be limited to three (3) submissions under this Scope of Services and will be conducted only after the Construction Manager has coordinated said documents to indicate field conditions, proposed Construction Manager deviations from the Contract Documents, and other requirements which affect design intent; all submissions shall indicate that the required coordination has been performed. Review of submittals is not conducted for the purpose of determining the accuracy and completeness of details such as dimensions and quantities or for substantiating instructions for installation or performance of equipment or systems designed by the Construction Manager, all of which remain the responsibility of the Construction Manager to the extent required by the Contract Documents, all of which the Design Team shall be entitled to rely upon. The Design Team’s review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Design Team, of construction means, methods, techniques, sequences or procedures. The Design Team’s approval of a specific item shall not indicate approval of an assembly of which the item is a component. When the professional certification of performance characteristics of materials, systems or equipment is required by the Contract Documents, the Design Team shall be entitled to rely
upon such certification to establish that the materials, systems or equipment meet the performance criteria required by the Contract Documents.

The Design Team may authorize minor changes in the construction work that are consistent with the intent of the Contract Documents for the purposes of facilitating construction or resolving minor field conditions so that construction may proceed unimpeded.

The Design Team shall conduct a reasonable number of observations of the construction work to determine the date or dates of substantial completion and, upon the Construction Manager’s compliance with the requirements of the Contract Documents, determine the date of final completion of the Project.

The Design Team shall furnish assistance and aid at conferences with involved parties as may be required to resolve design issues during construction. The Design Team shall interpret and decide matters concerning the Contract Documents upon written request by the Corporation or the Construction Manager. The Design Team’s written response to such requests shall be made with reasonable promptness and within any time limits agreed upon.

Interpretations and decisions of the Design Team shall be consistent with the intent reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and initial decisions, the Design Team shall endeavor to secure faithful performance by both the Corporation and Construction Manager, shall not show partiality to either, and shall not be liable for results of interpretations or decisions so rendered in good faith.

Change orders may be issued only by the Corporation. The Design Team shall make recommendations in connection with change orders as requested by the Corporation or the Construction Manager.

IV. SPECIFIC SERVICES

The Design Team Services shall consist of the specific Services described below and shall apply to all Services described in Section IV and V. The Consultant will provide the overall design management, leadership and coordination for the Design Team.

1. Architectural Design (Lead Project Consultant)

The Architectural Design/Lead Project Consultant shall begin immediate execution and documentation of Tasks 1-4, prepare relevant Contract Documents and provide the Services described in the summary below:

a) Prepare Contract Documents as provided in Section III.B above;
b) Conduct Project programming and program monitoring;
c) Update and monitor Design schedule;
d) Prepare and coordinate phasing plans throughout the duration of the Project;
e) Distribute base sheets;
f) Prepare Project signage for the Site, fencing, and way finding system;
g) Prepare, and oversee as applicable, all design drawings which shall be in conformance with all Agency regulations and Legal Requirements;
h) Review and comments on updated cost estimates;
i) Attend bi-weekly design meetings; alternate week conference calls if necessary and issue meeting summaries to the Project Team for all such meetings;
j) Provide renderings as required to illustrate the Project as reasonably required;
k) Assist the Corporation in seeking required approvals and permits, including presentations to the community boards, Agencies, with a limit of two meetings per sub project with each entity; should additional meetings be required, the Consultant shall be additionally compensated for its time;
l) Provide other presentations that may include presentations to the HHC, the Brooklyn Borough President, the Mayor’s Office, FEMA, Community Board, and Agencies with a limit of two meetings with each entity; should additional meetings be required, the Consultant shall be additionally compensated for its time;
m) Prepare monthly payment requisitions for the Design Team in accordance with the requirements of the Corporation, review and approve Subcontractor submissions for payment to assure accuracy and appropriate documentation referencing to each Contract Task to substantiate billings;
n) Review meetings separately with the NYPD & FDNY (a limit of two per sub project; should additional meetings be required, the Consultant shall be additionally compensated for its time);
o) Incorporate LL 86 design requirements into the Contract Documents;
p) List any energy incentive programs, such as NYSERDA programs, that could be practicably implemented as an alternative energy fuel source or result in energy efficiency for this Project;
q) Coordinate and act as main liaison with the Corporation’s LEED Commissioning Consultant and Program Manager;
r) The Project anticipates a co-location project office space to be shared between members of the Project Team, Design Team and Construction Manager during the Design and Construction phases of the Project. It is anticipated that there will be two co-location offices, one during Design and one on-Site location during Construction. The cost for the co-location spaces will be borne by the Corporation (e.g.: leasing of space, computers, printers, furniture, etc.).

During the Design phase, the Design Team shall provide a full time staff member(s) who will be situated at the co-location project office to review / present / obtain approval of designs with the Project Team, and work through design issues and coordinate information between the Design Team members in a timely manner. The Consultant shall make available, full time, staff member(s) at the co-location site during the Design phase. It is anticipated that the design phase will be approximately eighteen (18) calendar months. The timing of staff at the co-location office shall be at the discretion of the Corporation.

During the Construction phase, the Design Team shall provide full time on-Site staff member(s) that will address all requests for information, shop drawings, field conditions, unforeseen conditions, and change orders in a timely manner for the Design Team members, the Corporation and the Construction Manager. The on-Site
staff member(s) will be made available on-Site during the construction phase for a total number of days equal to three (3) calendar years with the timing of those on-Site days to be at the discretion of the Corporation.

The co-location and on-Site staff member will work concurrently on all areas of the Project. During the co-location and on-Site time work days, the Corporation and the Design Team will review work load schedules and adjust staffing as required to adequately staff the Project. When full time on-Site presence is not required, the Architectural Design/Lead Project Consultant shall provide adequate resources so that all requests for information, field conditions, unforeseen conditions, shop drawings, and change orders will be reviewed and responded to in a timely and expeditious manner.

s) Prepare and coordinate phasing plans throughout the duration of the Project;
t) Generally, the Construction Manager is responsible for bidding and procurement of the construction subcontracts and holds such subcontracts. The Consultant may not hold other construction or consultant Subcontracts except as expressly provided in the Contract;
u) Prepare Contract Documents that are in compliance with: ICC/ANSI A117.1-2009: Accessible and Usable Buildings and Facilities. The Corporation acknowledges that the ADA is not a detailed building code and that its requirements are general in nature and open to differing interpretations. The Design Team shall use their professional judgment to interpret applicable ADA requirements and to advise Corporation as to what is recommended for compliance and the associated order of magnitude costs. However, the Design Team does not warrant or represent that Services provided under the Contract will result in full Project compliance with the ADA or all interpretations of ADA requirements by regulatory bodies or court decisions;
v) Coordinate and act as main liaison with the Corporation’s LEED Commissioning Consultant and Program Manager; and
w) Provide and coordinate base BIM information between Design Team members; refer to “Section V: Specific Tasks” of the Project Scope of Services, for specifics.
x) The Design Team shall deliver a project that is compliant with all codes and regulations within the City of New York, and capable of obtaining a Final Certificate of Occupancy for the entire Coney Island Hospital campus.

2. Flood Risk Management

The Design Team Flood Risk Management Consultant shall prepare the relevant Contract Documents and provide the following Services:

a) Develop flood protection and risk assessment strategies which meet the approval requirements of federal, state and local authorities (i.e.: FEMA, HUD);
b) Prepare flood wall design to meet 100-year (at Main Building) and 500-year (remaining areas of the CIH campus) flood event levels for the flood protection system;
c) Provide services to perform the Hydrologic and Hydraulic Analysis as described in this RFP;
d) Provide all necessary subsurface exploration for the purpose of developing design criteria and assessing the type of structures to be rehabilitated, built, or repaired, for new and existing structures and substructures as it pertains to the Project. The Consultant shall
prepare and provide boring logs, technical reports, and drawings as may be required. The Consultant shall be paid through an Allowance for test borings as indicated in the Fee and Cost Schedule;
e) The Consultant shall perform a visual examination of the structures within the Project Area. The Consultant shall indicate any portion of the Project Area that requires additional or more detailed inspections.
f) The Consultant shall obtain copies of all existing surveys relevant to the Project Area and the proposed Services and utilize this information in the evaluation of the Hydrologic and Hydraulic Analysis.
g) Provide recommendation and coordination with other disciplines for any pumps, electrical, structural or other MEPS requirements to implement the design.
h) Consultant shall prepare a flood risk assessment report (the "Flood Risk Assessment Report") in a form acceptable to the Corporation incorporating the results and conclusions from the inspection and structural analysis as they affect the Project's contemplated design.

3. Civil Engineer

The Design Team Civil Engineer shall prepare relevant Contract Documents and provide the following Services:

a) Prepare Contract Documents as provided in Section III.B above;
b) Assist with the preparation of demolition Contract Documents;
c) Prepare Contract Documents for Site connections and related utility work;
d) Prepare drainage design for site drainage systems;
e) Prepare Utility plans and details, including water, sanitary sewer, and storm drain connections at the Project Area and any upland areas as may be required for the Project design;
f) Relocate existing Utilities as required;
g) Coordinate with DEP, Utilities and FDNY;
h) Provide limited construction administration work as may be needed by the Construction Manager for specific demolition and Site utility connections subcontracts;
i) Provide “Builders Pavement” plans in conformance with all DOT and/or DOB regulations;
j) Provide bi-weekly design meetings and alternate week conference calls if necessary;
k) Assist the Corporation in seeking required approvals and permits, including presentations to community boards, Agencies, with a limit of two meetings per sub project with each entity; should additional meetings be required, the Consultant shall be additionally compensated for its time;
l) Attend review meetings (a limit of two per sub project; should additional meetings be required, the Consultant shall be additionally compensated for its time) with the FDNY representatives to discuss standards and details, with review comments to be incorporated into the design;
m) Attend review meetings with the NYPD (a limit of two per sub project; should additional meetings be required, the Consultant shall be additionally compensated for its time);
n) Incorporate LL 86 design requirements into the Contract Documents;
o) List any energy incentive programs, such as NYSERDA programs, that could be practicably implemented as an alternative energy fuel source or result in energy efficiency for the Project;
p) Provide all required BIM information and designs; refer to “Section V: Specific Tasks” of the Project Scope of Services, for specifics.

4. Landscape / Site Architectural Design

The Design Team Landscape and Site Architectural Design Consultant shall prepare relevant Contract Documents and provide the Services described in the summary below:

a) Prepare Contract Documents as provided in Section III.B above;
b) Provide layout, fine grading, material selection and surface drainage of exterior pavements and planting areas and irrigation of planted areas;
c) Provide Project Area work and open space design;
d) Provide exterior planting layout, species selection and identification of special planting accommodation and appurtenances for unique planting conditions;
e) Design exterior pavements, steps, walls, curbing and related site specialty elements including the design of “site architectural” elements such as fences, free-standing walls, railings, bollards, fountain and any other special site features;
f) Design Project Area furniture, including planting urns/pots, trash and recycling receptacles, bicycle racks, drinking fountains or other fixtures as required;
g) Attend bi-weekly design meetings; alternate week conference calls if necessary;
h) Assist the Corporation in seeking required approvals and permits, including presentations to community boards, Agencies with a limit of two meetings per sub project with each entity; should additional meetings be required, the Consultant shall be additionally compensated for its time;
i) Attend review meetings (a limit of two per sub project; should additional meetings be required, the Consultant shall be additionally compensated for its time) with the FDNY representatives to discuss standards and details, with review comments to be incorporated into the design;
j) Attend review meetings with the NYPD (a limit of two per sub project; should additional meetings be required, the Consultant shall be additionally compensated for its time);
k) Incorporate LL 86 design requirements into the Contract Documents; and
l) Provide all required BIM information and designs; refer to “Section V: Specific Tasks” of the Project Scope of Services, for specifics.

Appendix B-21
5. LEED/Integrated Green Design

The Design Team LEED/Integrated Green Design Consultant shall prepare Contract relevant Documents and provide the Services described in the summary below:

- Prepare Contract Documents as provided in Section III.B above;
- Advise on LL 86 issues and develop strategies to ensure that the Project meets all LL 86 requirements. Identify and prioritize high-performance goals and/or develop green guidelines. Determine the applicable LEED standard or other rating systems that could be utilized for this Project based upon Site constraints, proposed use, development goals, budget, etc.;
- Review and evaluate green building techniques and strategies and LEED credits proposed by the Design Team;
- Facilitate and participate in green building design charrettes to identify appropriate green building/high performance goals and develop a strategy to achieve those goals;
- Review the selected green building strategy at appropriate project milestones, and if necessary, refine the strategy to ensure green building/high performance goals are met;
- Review and evaluate development Project Area plans, building designs, modeling analyses and/or energy audits and provide recommendations for cost-effective high-performance techniques and strategies, or propose design alternatives to maximize green design potential;
- Perform energy performance modeling and building optimization;
- Assist in the development or modification of specifications and/or designs to meet LEED credit requirements;
- Attend meetings with Agencies, community groups and other stakeholders as required by the Corporation;
- Review all reports related to the Project as required by the Corporation;
- Coordinate meetings and presentations, as requested by the Corporation, provide necessary data for these meetings, and prepare written minutes of the meetings.
- Maintain accurate, up-to-date, accessible and thorough records of all documentation and correspondence associated with the Projects;
- Provide technical support in the development of educational and outreach materials;
- Advise on strategies or opportunities that relate to sustainable infrastructure;
- Provide assistance and guidance with LEED certification, including scheduling, task management, documentation, and submittal preparations;
- Register, upload and track the project with the United States Green Building Counsel ("USGBC");
- Prepare all file submissions and uploads to USGBC and coordinate all responses to USGBC inquiries;
- Obtain LEED certification from USGBC;
- Provide assistance with various state and federal green building incentive applications;
- Liaise with the Corporation’s separately held commissioning consultant during the commissioning of the building and LEED process; and
- Provide all required BIM information and designs; refer to “Section V: Specific Tasks” of the Project Scope of Services, for specifics.
6. Structural Engineer

The Design Team Structural Engineer shall prepare relevant Contract Documents and provide the Services described in the summary below:

a) Prepare Contract Documents as provided in Section III.B above;
b) Review existing façade conditions;
c) Prepare all Local Law 11 (1998) of the City of New York (“LL 11”) reports for the next consecutive inspection cycle (i.e. Cycle 9);
d) Prepare designs for all on-Site retaining walls, stairs, ramps, flood walls and other exterior improvements;
e) Prepare designs for parking structure;
f) Design foundation systems including embedded items, including coordination with the Flood Risk Management Plan and design considerations;
g) Structural Engineer and Geotechnical Engineer to coordinate in the development of the boring requirements and any underpinning of adjacent buildings (e.g. Hammett Pavilion, Tower Building, Building 6 – FDNY EMS portion);
h) Design all superstructure building elements, slabs and systems;
i) Design pre-cast structural elements;
j) Design structured ramps, stairs, etc.;
k) Design elevator pits;
l) Design cast-in-place concrete walls including embedded items;
m) Prepare seismic design of the building structure and systems
n) Design freestanding flagpole foundations not attached to building frames;
o) Design elevator rails support (if required), hoist beam and sill;
p) Design all connections/interfaces with existing and new structures;
q) Design all foundation and enclosures for any onsite, exposed MEP equipment;
r) Comply with LL 86;
s) Review / prepare demolition drawings; and
t) Provide all required BIM information and designs; refer to “Section V: Specific Tasks” of the Project Scope of Services, for specifics.

7. Mechanical/Electrical/Plumbing / Fire Protection / Life Safety (“MEP”) Engineer

The Design Team MEP Engineer shall provide design engineering services for plumbing, heating, ventilating, air conditioning (“HVAC”), low voltage, gas systems, electrical power and electrical lighting systems, emergency power, UPS and conditioned power systems, fire alarm and fire protection systems, and building management system (“BMS”), for the Project. Tasks to be performed by the MEP Engineer shall include, but not be limited to, the following for each phase and portion of the Project:

a) Provide Existing Conditions Assessment Survey and Data Review; refer to “Section V. Specific Tasks” of the Project Scope of Services for specifics.
b) Prepare Contract Documents as provided in Section III.B above;
c) Provide design and layout of the electrical system lighting and HVAC services;
d) Provide design and layout of the electrical systems required for any DOT Division of
Street Lighting street lighting approvals;
e) Provide design and layout of the emergency, UPS and conditioned power systems which may be required;
f) Provide design and layout of building fire protection systems in accordance with all Legal Requirements;
g) Provide design and layout of conduit, junction and various associated device boxes for security system, telephone systems, computer and television systems, with the systems to be provided by other contractors;
h) Provide design of a new BMS, and plan coordination with existing BMS. Designs shall also be in coordination with the IT/AV/Security Consultant scope work;
i) Plan coordination with Utilities, including coordination with the Flood Risk Management Plan and other resiliency measures for locating utility and building systems;
j) Provide design and layout associated with all plumbing and HVAC work in compliance with all Legal Requirements;
k) Comply with LL 86;
l) Perform energy modelling and provide life cycle cost analysis with estimates for new system selection on the CSS during Schematic Design;
m) Provide design and layout of all new and rehabilitated low voltage, medical gas, and other related services;
n) Provide design and layout of electrical service, transformers, and vaults, if not provided by public utilities;
o) Provide design and layout of all new and rehabilitated HVAC, lighting, electrical, plumbing, fire protection, and other existing systems to conform with the planned renovation and expansion;
p) Provide design, investigation, and layout of shared services between existing and new structures both during phased construction and in a final layout;
q) Provide design and layout of all interior lighting and associated photometric calculations;
r) Provide design and layout of all onsite, exposed MEP equipment;
s) Provide appropriate staff onsite during Project construction to quickly resolve design, RFI’s and submittals;
t) Coordinate with the Corporation’s LEED Commissioning Consultant; and
u) Provide all required BIM and designs; refer to “Section V: Specific Tasks” of the Project Scope of Services, for specifics.
v) Provide on-site presence including at the co-location project offices during design and construction to facilitate approvals and the progress of work for specific disciplines as directed by the Corporation.

8. Existing Condition/Laser Survey

The Design Team Existing Condition/Laser Survey Consultant shall prepare relevant Contract Documents and provide the Services described in the summary below:
a) Prepare Contract Documents as provided in Section III.B above;
b) Provide all services required for the completion of items in Section V. Specific Tasks; and
c) Provide all required information to be utilized in the BIM model; refer to “Section V: Specific Tasks” of the Project Scope of Services, for specifics.

9. Cost Estimator

The Design Team Cost Estimator shall prepare relevant Contract Documents and provide the Services described in the summary below:

a) Prepare and assist with Contract Documents as provided in Section III.B above;
b) Provide cost estimating and value engineering services for the Project throughout the development of the plans and associated documents for the Project; and
c) Coordinate with the Construction Manager.


The Code Expeditor shall provide the Services set forth below, to the extent directed by the Corporation. The Code Expeditor may provide certain code consulting and permit expediting Services for the Project. The Code Expeditor will review and develop necessary exiting diagrams and code compliance outline. The Code Expeditor shall review the Contract Document submittals and advise the Design Team through a design review memo of any issues relating to compliance with the DOB and FDNY codes. The Code Expeditor shall identify any variances required by the design. All paperwork and applications to the DOB and DSBS shall be coordinated and submitted by the Code Expeditor. The Code Expeditor shall list all necessary application forms for a public assembly permit, fire protection plan, petroleum bulk storage or oxygen tank storage permitting, etc. that may be required.

The Code Expeditor shall also identify fire protection and life safety issues and work with the Design Team to develop effective and compliant approaches and solutions for these code issues. Additionally, the Code Expeditor shall be a resource to assist the Design Team to:

a) Explain code issues to the regulatory authorities; and
b) Respond to fire protection and DOB code related questions from the Design Team by telephone and/or letter.

The Code Expeditor shall assess fire protection and life safety issues as follows:

a) **Use and Occupancy:** Determine if the changing nature of the functions may affect the occupancy classification of the buildings and the resulting code requirements.

b) **Structural Fire Resistance:** Ensure that various areas of the building’s structure that may be exposed or unprotected structural steel meet the structural fire resistance requirements of the code.
c) **Interior Finishes:** Display materials such as those typically used for exhibition functions are typically not regulated in the same way as building materials. The building design must address the nature and quantity of combustibles that may be introduced into the building as displays.

d) **Means of Egress:** The buildings’ egress system must anticipate changes in occupant load and exit paths that will occur as different functions occur in the buildings.

e) **Fire Protection Systems:** The fire protection systems must recognize the nature of the various functions and have sufficient capacity to accommodate changes in use. The integration, configuration and zoning of various fire protection systems, fire alarm system, and voice communication system with other building systems and operations must meet the code requirements.

f) **Smoke Management:** Smoke management strategies will be required to restrict smoke to the general area of fire origin and to maintain the existing system in a condition that is safe for exiting. The extent to which smoke management is necessary in the service level must be determined.

11. **Environmental Engineer**

The Design Team Environmental Engineer shall prepare relevant Contract Documents and provide the Services described in the summary below:

a) Prepare Contract Documents as provided in Section III.B above;
b) Develop conceptual plans and reports on various issues with graphics for presentations.
c) **Operations Analysis:** Analysis of operations and interoperability of highways, road networks, and public transportation (surface, commuter rail, subway rail, waterborne).
d) Prepare, revise, submit and refine EAS, EA and forms and Environmental Impact Statements (“EIS”) in accordance with CEQR, SEQRA, and NEPA. If an EIS is required, the Consultant shall be compensated for these Services as an Allowable Additional Cost.
e) Provide technical expertise related to travel conditions, traffic flow and pedestrian and vehicular safety, including:
   1) Traffic analysis of facilities, projects, and proposed development
   2) Identification of traffic impacts
   3) Identification of planning and traffic management alternatives
f) Provide traffic data collection and prepare baseline impact analyses and assess project impacts in accordance with appropriate guidelines;
g) Provide assessments and strategies for site access and circulation;
h) Provide traffic signal design and roadway signage, as may be required for the Project;
i) Assist the Corporation in seeking required approvals and permits, including Agency and public reviews as required by the project;
j) Prepare design documents for new roadways / entrances to the CIH campus, intersection modifications and/or access improvement studies;
k) Provide parking demand estimates / projections for the Project in addition to
evaluation of circulation, parking access and egress issues; and
l) Provide designs for surface and structured parking facility, in coordination with the
Design Team consultants;
m) Prepare an inventory of existing conditions including, but not limited to, automated
and manual traffic counts, curbside parking regulations and off-street parking
availability in study network, origin-destination studies, and speed runs and vehicle
classification counts, if needed. The data collection shall be provided within the
timeframe specified by Corporation, including the delivery of provisions of various
reports to the Corporation that describes the existing conditions.
n) Provide traffic analysis of existing, no-build and future conditions per methodologies
approved by DOT or any applicable Agency.
o) Develop shadow studies via 3D modeling.
p) Review transportation studies as required by the Corporation.

12. Geotechnical / Asbestos / Environmental Remediation Engineer

The Design Team Geotechnical / Asbestos / Environmental Remediation Engineer shall
prepare relevant Contract Documents and provide the Services described in the summary
below:

a) Prepare Contract Documents as provided in Section III.B above;
b) Provide an air quality monitoring firm to perform third party surveying,
monitoring, sampling / assessment of air quality before, during and post- building
demolition; the Design Team shall also provide Specifications related to the
aforementioned services. The cost for the Design Team’s air quality monitoring
firm and testing Subcontractor(s) shall be paid as an Allowance as indicated in the
Fee and Cost Schedule.
c) Coordinate with the Construction Manager regarding asbestos removal, mold, lead
and / or other environmental remediation activities;
d) Inspect for asbestos, universal waste and other regulated materials and prepare
reports, drawings, and specifications for the subsequent remediation activities
required by all Legal Requirements. For any hazardous materials found on the
project the Consultant shall provide a Hazardous Materials Management Plan,
which shall include without limitation:
1. Identification of the material(s) to be remediated;
2. Procedures and Work Plan: summary of the remedial work; remediation
action plan and procedural requirements that includes the removal, control,
handling and disposal / manifesting of various hazardous materials in
accordance with all sections of the project specifications, and applicable
federal, state and local regulations.
3. Checklist of submittals, including pre-job submittals, periodic submittals,
and project close-out submittals.
4. Final project clean-up and re-occupancy clearance criteria procedures,
including certificate of completion certifying the removal of the
material(s);
e) Prepare a thorough analysis and summary of all Site investigation activities and their results, indicating the relationships between the various investigative efforts, data sufficiency and validation, and the quantities and concentrations of specific contaminants to the extent that can be supported by the available data;

f) Structural Engineer and Geotechnical Engineer to coordinate in the development of the boring requirements and any underpinning of adjacent buildings (e.g. Hammett Pavilion, Tower Building, Building 6 – FDNY EMS portion);

g) Provide description of typical field logs, equipment lists, procedures for all samplings, and quality assurance and quality control measures;

h) Provide construction oversight services for removal and transportation of underground storage tanks, contaminated soil and other hazardous wastes.

i) Prepare draft and final reports, health and safety plans, soil management plans and cost estimates for remediation;

j) Attend meetings with regulatory Agencies and community representatives as required by the Corporation;

k) Design, implement and monitor remediation systems for groundwater, vapor, soil, sediment and aquatic habitat contamination as warranted and directed by the Corporation and/or regulatory Agencies; and

l) Provide electronic copies of all final reports and project drawings in formats as requested by the Corporation and/or regulatory Agencies.

m) Conduct air quality monitoring during building demolition and provide an air quality monitoring report.

13. Survey Engineer

The Design Team Survey Engineer shall prepare relevant Contract Documents and provide the Services described in the summary below:

a) Prepare Contract Documents as provided in Section III.B above;

b) Provide all required BIM information and designs; refer to “Section V: Specific Tasks” of the Project Scope of Services, for specific; and

c) Provide all surveys required under “Section V: Specific Tasks” of the Project Scope of Services.

14. Medical Planner, Equipment and Technologies

The Design Team Medical Planner, Equipment and Technologies Consultant shall prepare relevant Contract Documents and provide the Services described in the summary below:

a) Prepare Contract Documents as provided in Section III.B above;

b) Lead the Design Team in review on CON programs and layouts;

c) Liaise with existing facility staff during the planning process;

d) Review any data provided by relevant clinical user group studies; technologies may include: nurse call systems, physiological monitoring systems, telemetry, PACs, medical records system, infant security, patient wandering tracking systems, etc.;

e) Coordinate all solutions with all other Design Team consultants (e.g.: MEPS
f) During construction, provide construction support services including troubleshooting assistance to commission Project-related medical equipment and technology systems;
g) Provide designs based on collected information and analysis;
h) Prepare data sheet, catalogue cuts, equipment and installation quotations, and support documentation;
i) Prepare meeting note and agendas, and participate in conference calls and in-person meetings to review the scope as scheduled and requested;
j) Track critical path items through project schedule;
k) Assist separately contracted Program Manager and its subconsultants to coordinate all vendor efforts with HHC / HHC IT;
l) Obtain approvals from HHC on medical equipment and technologies related to the Project;
m) Prepare a Major Medical Selection Design Basis / Procurement Set;
n) Maintain medical equipment master database relating to the Project, including changes, additions and deletions;
o) Coordinate the medical equipment master database with the Purchase Order control status reports;
p) Request quotations from vendors and request vendors to complete the required HHC forms so Design Team can submit a Purchase Order to HHC for processing; evaluate selected equipment to assure compliance with intended use, space requirements and utilities.
q) Prepare and submit preliminary Purchase Orders to HHC for review and approval;
r) Add HHC codes to the approved Purchase Orders and prepare final Purchase Order with support documentation to HHC for approval;
s) Issue copies of the approved Purchase Order;
t) Provide support to HHC for CP packages, associated quotations and supporting documentation;
u) Provide industry data and standards to Design Team; and
v) Provide all required BIM and designs; refer to “Section V: Specific Tasks” of the Project Scope of Services, for specifics.

15. Signage and Graphics Design

The Design Team Graphics and Signage Consultant shall prepare relevant Contract Documents and provide the Services described in the summary below:

a) Prepare Contract Documents as provided in Section III.B above;
b) Design interior signage as required to obtain a Certificate of Occupancy from DOB;
c) Design basic room identification and program signage as required by the Project Team within an overall consistent visual package;
d) Design new signage program throughout the CIH campus, including multiple language signs where required by HHC and associated copy, editing, translation services, internal way finding signage to direct visitors, patients, and staff throughout the campus;
e) Design temporary signage based on approved campus standard for use during various
construction phases of the project;

f) Design exterior building identification and perimeter signs as required by the Project Team;

g) Design exterior pedestrian, parking and vehicular way finding signage as required by the Project Team; and

w) Provide all required BIM information and designs; refer to “Section V: Specific Tasks” of the Project Scope of Services, for specifics.

16. Exterior Envelope Engineer

The Design Team Exterior Envelope Engineer shall prepare relevant Contract Documents and provide the Services described in the summary below:

a) Prepare Contract Documents as provided in Section III.B above.

b) Provide all required BIM information and designs; refer to “Section V: Specific Tasks” of the Project Scope of Services, for specifics.

c) Laboratory Mock-Up and Test Services
   Ensure that the Construction Manager's test program is properly planned and conducted according to the specified ASTM guidelines in collaboration with the Architect/Lead Project Consultant. Review and comment on mockup drawings for technical merit, calculations, samples and other product information related to mockup components.

d) Field Testing
   Provide field testing services, as required, for water infiltration in compliance with ASTM guidelines.

e) Peer Review Services for Building Enclosures Architectural Drawings
   • Provide thermal analysis of typical details; includes condensation analysis and determine R and U values of composite sections.
   • Review and comment on the architect's details of the exterior facade including the interface of different elements.
   • Provide evaluation on material and finishes, sealants, code requirements, acoustical performance, snow and ice accumulation, wind and water penetration considerations, inclusive of any secondary barriers and subsequent discharge to the exterior.
   • Review and comment on technical details and specifications, lateral force and building frame movement factors, incorporation of thermal requirements.
   • Consult on maintenance issues associated with the exterior wall and incorporation of window washing attachments.
   • Review and provide analysis on wind tunnel studies.

f) Show Drawings and Submittals
• Provide a technical review and comments.
• Review and comment on subcontractor submittals to determine general conformance with the design intent set forth in the Contract Documents.
• Review and comment on structural calculations submitted by construction contractors to support their submittals.
• Provide a structural review and interpretation of “as built” conditions.
• Review for provisions for internal drainage of water infiltration, thermal movement, building deflections, construction tolerances, fastening devices, sealing methods, fire resistance, and other pertinent information as necessary.
• Review and comment on subcontractors job specific quality control checklist for shop assemblies and field installation.

g) Site Observations
• Attend preconstruction meetings.
• Perform observations during installation and report on conformance with the Architect's design intent, construction contractor submittals, and manufacturer's recommendations.
• Maintain an on-going list of deficiencies.
• Provide field testing services on witness testing provided by others.
• Provide written photographic reports of observations and testing.
• Review and comment on procedures.

h) Condition Survey Services
• Provide serviced related to the review and evaluation of the condition of the exterior building enclosure system and components installed, as required in “Section 5: Specific Tasks” of the Project Scope of Services.

17. Vertical Transportation

The Design Team Vertical Transportation Consultant shall prepare relevant Contract Documents and provide the Services described in the summary below:

a) Preliminary Elevator Evaluation Report (Main Building and Tower Building)
1. Provide the necessary supervision, labor, material and equipment to perform the existing elevator systems testing and assessment work for the Main Building and Tower Building, as described in “Section V: Specific Tasks” of the Project Scope of Services;
2. Work shall include the operation and testing of existing building elevator equipment, assessment of code compliance, preparation of a report of engineering analysis to assess the remaining useful life of the equipment, and recommendations for repair and/or upgrading of equipment based upon the program re-alignment;
3. Prepare a report with the findings from the preliminary work;
4. Provide telephone consultation subsequent to issuance of the report; and
5. Attend two (2) meetings at the Project Area and /or otherwise consult with the Client and/or their representatives to review preliminary findings.
b) **Elevator Modification Design for Main Building and Tower Building**

1. Provide elevator modification designs at the conceptual/program, SD, DD and CD phases of the Project. Based on a study of the program layout, advise Architect and Design Team members of electrical, mechanical, structural and space requirements;
2. Prepare Contract Documents as provided in Section III.B above;
3. Obtain and review all available facility documentation that is related to the elevator modifications such as reports, studies, surveys, equipment manuals, as-built drawings, maintenance records, utility data, etc. It shall be the responsibility of the Consultant to verify the contents and assume full responsibility for any determination or conclusion drawn from the materials used. If the information provided is insufficient, the Consultant shall take the appropriate actions necessary to obtain the additional information required for the design at no additional cost.
4. The Consultant shall conduct a survey that includes field observations, photographs, measurements, tests, calculations, etc. of the existing elevator system, controls and related equipment. A prioritized list of final equipment upgrades with cost estimates shall be prepared by the Consultant based on program requirements, applicable code requirements, handicap accessibility, age and physical condition of the existing equipment, availability of parts, equipment performance, maintenance records, warranties and guarantees, available project funding, etc.
5. Elevator upgrade design criteria shall include without limitation: operators and controls, cars, interior finishes, communication, electrical, miscellaneous components (e.g. hoist-ways and pit areas, ventilation, etc.), fire protection systems, signage, maintenance and warranties, testing and inspections, and training sessions.
6. Provide CA services, review shop drawings, monitor the work to insure adherence to plans and specifications and quality performance.
7. The Consultant shall identify special inspections required under this task for the Project.
8. Develop an estimated schedule of work and description of phasing as needed for uninterrupted service of the facilities;
9. Prepare a draft report which includes the recommended upgrades, materials and labor costs, and proposed draft construction schedule. Based on any edits / comments by the Project Team, make corrections to the draft report and submit a final report for record which shall include all back-up information gathered in the aforementioned tasks.
10. Consultant shall assist in the inspections to meet all requirements of the acceptance testing.
11. The Consultant shall review the final test reports and provide written recommendation of the acceptance / rejection of the material, products or equipment testing within seven (7) calendar days of receipt of report.

c) **Elevator Design for CSS Building**
1. Provide elevator modification designs at the conceptual/program, SD, DD and CD phases of the Project;
2. Prepare Contract Documents as provided in Section III.B above;
3. Based on a study of the program layout, advise Architect and Design Team members of level of service electrical, mechanical, structural and space requirements.
4. A schedule of final equipment with cost estimates shall be prepared by the Consultant based on program requirements, applicable code requirements, handicap accessibility, equipment performance, warranties and guarantees, available project funding, etc.
5. Develop and provide elevator design criteria and requirements and generate all drawings and specifications necessary to bid the work and for construction.
6. Elevator design criteria shall include without limitation: operators and controls, performance specifications, cars, interior finishes, communication, electrical, miscellaneous components (e.g. hoist-ways and pit areas, ventilation, etc.), fire protection systems, signage, maintenance and warranties, testing and inspections, and training sessions.
7. Provide CA services, review shop drawings, monitor the work to insure adherence to plans and specifications and quality performance.
8. Develop an estimated schedule of work and description of phasing as needed for uninterrupted service of the facilities;
9. Prepare a draft report which includes the recommended design level of service, materials and labor costs, and proposed draft construction schedule. Based on any edits / comments by the Project Team, make corrections to the draft report and submit a final report for record which shall include all back-up information gathered in the aforementioned tasks.
10. The Consultant shall identify special inspections required under this task for the Project.
11. Provide all required BIM information and designs; refer to “Section V: Specific Tasks” of the Project Scope of Services, for specifics.

d) Elevator Inspection Test Witnessing - Category 1 and 5 Testing (for Modification and New)
   1. Provide a "Third-Party" inspection and/or "Witness" testing services as related to New York City local law requirements at the referenced property.
   2. Provide "Third Party" witnessing and certifications for inspections and testing performed by an approved non-affiliated "Performing - Agency", engaged by the Purchaser (Client), in accordance with the New York City Administrative Code, Chapter 3 of Title 28-304.6 and the applicable Periodic Tests required under category ONE and FIVE as specified in Table 8.11.1.3 N1 of ASME A17.1-2003 amended under N.Y.C. IBC, Section 3012.1 and Appendix "K" of the Building Code.

All tools, items, subconsultants or subcontractors necessary for the inspection / survey shall be provided by the Consultant as a part of this Task.
18. **IT / AV / Security**

The Design Team IT/ AV/ Security Consultant shall prepare relevant Contract Documents and provide the Services described in the summary below:

a) Prepare Contract Documents as provided in Section III.B above.

b) Identify structural, MEPS, electrical requirements and space needs as necessary for the Project.

c) Provide all required BIM information and designs; refer to “Section V: Specific Tasks” of the Project Scope of Services, for specifics.

d) **IT General Infrastructure Services**

1. Meet with HHC Corporate, CIH and HHC IT to define the telecommunications and information technology infrastructure, systems and services to be implemented on the Project.
2. In concert with HHC Corporate, CIH and HHC IT, develop an understanding of HHC's IT infrastructure design standards and develop a preliminary recommendations report.
3. Develop design and prepare relevant drawings and documentation required to support voice and data systems (e.g. VOIP), carrier services, overhead paging, patient wandering system, physiological monitoring systems, medical records system, infant security, telemetry, PAC’s and applications support. Information should include IT Infrastructure Distribution plan drawings, Technology room space layouts that can be transferred to electrical construction documents, and base building design drawings for the telecommunications distribution system.
4. Systems shall be designed to be fully integrated with other communications devices assumed for this Project and also fully integrated with all related existing HHC systems;
5. Prepare a cable and wireless specification package(s) that will be for competitive procurement. This specification package(s) will provide technical installation methodology and contract drawings to enable cabling and wireless systems contractors to provide bids for the provision and installation of a cabling and wireless system(s). The specification package will include:
   - Complete specifications for the telecommunications cabling and wireless systems including products, installation procedures and test/acceptance requirements;
   - IT Infrastructure Distribution Plan Drawings;
   - IT Infrastructure Risers/Backbone diagrams; and
   - IT Infrastructure details, including MDF and IDF termination block assignments and mounting, outlet configurations, and station cable distribution hardware.
6. Obtain HHC Corporate, CIH and HHC IT approval on design.
7. Prepare General Specifications, Detailed Specifications, and Equipment lists for all systems.
8. Provide bid procurement support services, including bid review and scoping services necessary for award.
9. Provide construction administration services, including shop drawing and submittals review / approval, construction oversight and coordination with HHC Corporate, CIH and HHC IT for acceptance and turnover of the systems.
10. Provide on-site presence including at the co-location project offices during design and construction to facilitate approvals and the progress of work.

d) Audio Visual Services
1. Review and understand existing audiovisual system standards currently deployed at the CIH campus.
2. Generate a list of needs, system types and functionalities, for each space to be used as a guideline for Contract Documents.
3. Use construction documents to develop design and drawings of the electrical system.
4. Prepare systems block drawings for all audio, video, and control devices showing the interconnections amongst all components.
5. Develop design and prepare relevant drawings and documentation required to support television system / patient entertainment and education system, overhead paging and applications support. Information should include AV Infrastructure Distribution plan drawings, Technology room space layouts that can be transferred to electrical construction documents, and base building design drawings for the telecommunications distribution system.
6. Prepare concept drawings for all control and command desks, projection tables, conference and meeting rooms, community / general purpose areas, waiting areas, lobbies and public corridors, custom control panels, connection panels and plates, and mounting devices.
7. Obtain HHC Corporate, CIH and HHC IT approval on design.
8. Prepare General Specifications, Detailed Specifications, and Equipment lists for all systems.
9. Provide bid procurement support services, including bid review and scoping services necessary for award.
10. Provide construction administration services, including shop drawing and submittals review / approval, construction oversight and coordination with HHC Corporate, CIH and HHC IT for acceptance and turnover of the systems.
11. Provide on-site presence including at the co-location project offices during design and construction to facilitate approvals and the progress of work.

e) Security Consultant Services
1. Review and understand HHC security system needs, programmatic materials, current standards, and guidelines to prepare preliminary program guidelines for the scope of the security system. Security systems should include: Access Control System, Video Surveillance System (including parking structure), and Alarm Monitoring and Notification System.
2. Develop a security design criteria outline, describing the basic concepts for security and monitoring systems in the building.
3. Prepare a drawing and specification package, which will include technical product descriptions, installation methodology, and contract drawings.

19. **Food Services**

The Design Team Food Services Consultant shall prepare relevant Contract documents and provide the Services described in the summary below:

a) Meet with administrative and food services personnel to establish and determine client goals and objectives and conduct regular design progress meetings.

b) Develop food service design criteria area calculations and operational requirements based on project goals and objectives and menu style and format. The facility will function as a cook chill system, with meals prepared offsite.

c) Prepare concept sketches to indicate spatial requirements, traffic patterns and flow diagrams.

d) Conduct studies and provide parking location and flow pattern for offsite cook chill carts delivery.

e) Prepare a continuously updated food service equipment budget estimate.

f) Work shall include on site surveys of the existing facility to determine design and code issues, inventory of existing food service equipment for potential re-use.

g) Prepare ACAD design concept drawings indicating functional aspect of food service equipment, and working drawings with a full schedule of food service equipment.

h) Prepare a utility matrix indicating the electrical and mechanical requirements of the food service equipment.

i) Assist in the preparation of the health department plan review form and/or review of food service plans with governing health agency if required (this does not include the actual submission of application required for plan review or any related plan review fees).

20. **Acoustical and Vibration**

The Design Team Acoustical and Vibration Consultant shall prepare relevant Contract documents and provide the Services described in the summary below:

a) Work with Design Team to ensure that the acoustic environment for CIH is appropriate and properly isolated from adjacent spaces.

b) Determine in conjunction with the project design team the appropriate noise and vibration control specifications for the new and existing facility.

c) Set maximum permissible background noise and vibration levels for various space types within the facility, including: patient treatment areas, exam rooms, medical offices, and other occupancies as required.

d) Review and mitigate potential sources of mechanical vibration and noise.

e) Conduct a thorough noise and vibration survey at the site to evaluate vibration impact for any sensitive equipment or activities and noise impact for façade and window designs and selections.

f) Establish special low vibration criteria for vibration sensitive spaces such as diagnostic and treatment. Special consideration will need to be given to the design of structural floor for these criteria.
21. **Healthcare Transition Planning and Management**

The Design Team Healthcare Transition Planning and Management Consultant(s) shall prepare relevant Contract documents and provide the Services described in the summary below:

a) Responsible for the day-to-day management of transition and activations, building clinical continuity and operational planning efforts.
b) Responsible for updating hospital emergency disaster plans to reflect facility and campus changes / modifications.
c) Collaborate with HHC leadership at multiple organizational levels in planning for the preparation and orderly transition activities relating to the activation and occupancy of the new hospital building and parking structure.
d) Establish effective working relationships with key service physicians and medical directors.
e) Collaborate with HHC and CIH leadership in working through NYSDOH approvals for the activation of the facility and patient moves.
f) Develop Transition Plan which shall include tasks, timeframes and responsibilities for every activity required for successful activation and transition to operations and work in synergy with the project construction schedule.
g) Develop and manage procurement strategies, activation committee facilitation, activation team guidelines and facilitation, facilitation activation / logistics, warehouse receiving and installation contractors, and move management.
h) Develop and manage processes with HHC and CIH leadership, user groups, and other team members to identify hospital move and transition needs and develop the overall mission, policies, guidelines and standards related to the move, transition and activation of the new hospital or new areas within existing facilities.

22. **Healthcare Patient Safety and Risk Management**

The Design Team Healthcare Patient Safety and Risk Management Consultant shall prepare relevant Contract documents and provide the Services described in the summary below:

b) Provide a detailed survey and inspection of all aspects of life safety compliance with most specific attention given to items listed in the Joint Commission and Centers for Medicare and Medicaid standards.
c) Assume 8 different surveys, four preliminary and 8 upon substantial completion of various phases of the project.

23. **Building Information Modeling (BIM)**

The Design Team BIM Consultant shall provide the BIM Services and deliverables described in “Section V: Specific Tasks” of the Project Scope of Services, for specifics.
24. Materials Management

The Design Team Materials Management Consultant shall analyze material and patient, staff and visitor flow to determine the best systems and equipment for maximum efficiency, safety and patient experience. The Consultant shall coordinate with Design Team to prepare relevant Contract documents and provide the Services described in the summary below:

a) Analyze the transportation and material delivery systems required for efficient, cost-effective, and timely movement of people, equipment, materials, and related materials-management functions;

b) The Consultant shall work closely with the design team and users to develop its recommendation for state-of-the-art equipment and systems to accomplish this objective;

c) The Consultant shall create flow diagrams, staffing plans, and space requirements for the analysis of recommended systems;

d) Materials handling, transportation and storage shall include but not be limited to:
   1. Sterile Supplies
   2. Clean Supplies
   3. Soiled material
   4. Contaminated material
   5. Infectious material
   6. Specimens
   7. Pharmaceuticals
   8. Clean and soiled linen
   9. Trash
   10. Recyclables
   11. Equipment

e) Materials systems shall include but not be limited to:
   1. Elevators
   2. Pneumatic Tube systems
   3. Pneumatic Chute systems
   4. Conveyors
   5. Food Service
   6. Building Maintenance services
   7. Automated Guided Vehicle systems
   8. Autonomous Mobile Robotics
V. SPECIFIC TASKS

The specific Services are organized into the following Tasks:

Task No. 1.0 Physical Assessment Survey and Data Review
   1.1: Main Building
   1.2: Tower Building – limited renovations
   1.3: Building 3 – FDNY EMS portion only

Task No. 2.0 BIM Requirements and Deliverables
   2.1: Pre-Design
   2.2: Schematic Design
   2.3: Design Development
   2.4: Contract Documents
   2.5: Construction Administration & Project Close-out

Task No. 3.0 Technical Surveys

Task No. 4.0 User Group Meetings and Development of Final Program Requirements

Task No. 5.0 Environmental Studies and Surveys

Task No. 6.0 Conceptual Design
   6.1: CSS
   6.2: Tower Building – limited renovations
   6.3: Parking Structure
   6.4: Site Improvements
   6.5: Flood Wall
   6.6: Main Building – re-program spaces
   6.7: Main Building – programmatic master plan

Task No. 7.0 Certificate of Need (“CON”) Process

Task No. 8.0 Schematic Design
   8.1: CSS
   8.2: Tower Building – limited renovations
   8.3: Parking Structure
   8.4: Site Improvements
   8.5: Flood Wall
   8.6: Main Building – re-program spaces

Task No. 9.0 Design Development
   9.1: CSS
   9.2: Tower Building – limited renovations
   9.3: Parking Structure
   9.4: Site Improvements
   9.5: Flood Wall
9.6: Main Building – re-program spaces

Task No. 10.0 Contract Documents
  10.1: CSS
  10.2: Tower Building– limited renovations
  10.3: Parking Structure
  10.4: Site Improvements
  10.5: Flood Wall
  10.6: Main Building – re-program spaces

Task No. 11.0 Review and Analysis of Bids
  11.1: CSS
  11.2: Tower Building– limited renovations
  11.3: Parking Structure
  11.4: Site Improvements
  11.5: Flood Wall
  11.6: Main Building – re-program spaces
  11.7: Demolition of Structures

Task No. 12.0 Shop Drawing Review / Construction Contract Administration
  12.1: CSS
  12.2: Tower Building– limited renovations
  12.3: Parking Structure
  12.4: Site Improvements
  12.5: Flood Wall
  12.6: Main Building – re-program spaces
  12.7: Demolition of Structures

Task No. 13.0 Maintenance and Operations Manual
  13.1: CSS
  13.2: Tower Building – limited renovations
  13.3: Parking Structure
  13.4: Site Improvements
  13.5: Flood Wall
  13.6: Main Building – re-program spaces

  14.1: CSS
  14.2: Tower Building – limited renovations
  14.3: Parking Structure
  14.4: Main Building – re-program spaces

Task No. 15.0 Demolition of Structures
  15.1: Hammett Pavilion
  15.2: Building 3 – Selective Demolition (Shops / MER portion only)
  15.3: Building 6
15.4: Main Building – Selective Demolition

Task 1.0: Physical Assessment Survey and Data Review

Under this Task, the Consultant shall provide professional physical assessment survey of the Main Building, Tower Building and Building 3 (FDNY EMS portion), and data review services for the Project.

A. **Existing Conditions / Laser Survey and Data Review:** The Consultant shall inspect the building and the Site and become familiar with its general condition. The Consultant shall collect, organize, verify and review all pertinent information necessary to prepare the design including, but not limited to:

1. Existing topographic and utility surveys, zoning requirements, reports and proposals for improvements in or adjacent to the Project Area. The Consultant shall verify the accuracy of the existing survey information.

2. Document and submit all floor plans, reflected ceiling plans and exterior elevations of the existing Main Building and Tower Building structures and its apertures as directed by the Corporation. Specific to Building 3- FDNY EMS portion, only the exterior elevations and structural / foundation conditions shall be surveyed.

3. Create accurate and comprehensive existing condition drawings with an accuracy of within 1/2” of actual conditions. The Consultant may utilize multiple technologies and means and methods to construct the drawings.

4. Prepare drawings in CAD, constructed with layers in industry standards.

5. All existing and available materials relating to the Project provided and/or directed by the Project Team; refer to all Exhibit documents listed and provided in this RFP (Exhibits A through L). Specifically on the Tower Building, verify accuracy of the existing CAD drawings provided by the Project Team.

6. The OMB Value engineering reports for the Project.

7. Specific information and data about the Project Area which may impact the development of the design including: historic background, existing tenants, adjacent community’s concerns, land use, commercial activity, spatial quality, site relationships and linkages, pedestrian/vehicular circulation and street character.

8. The standards, guidelines and requirements of community, governmental, public and private organizations with jurisdiction over various aspects of the Project Area.
B. **Exterior and Roof Conditions Report**: The Design Team shall review and evaluate the condition of the existing exterior building enclosure system, roof, sub-grade waterproofing and related components installed on the Main Building and Tower Building. The report shall provide a comprehensive overview of observed defects, based upon:

1. Observations at the Site from the ground and any accessible roof levels;
2. Investigation of sub-grade conditions in the Main Building and Tower Building, with specific attention to observed leaks in the Main Building;
3. Architectural drawings and shop drawing documents if available;
4. Review of any previous studies, reports, or other relevant documents;
5. Examination of the exterior facade including curtain wall, windows, storefronts, panels, precast granite, marble, brick, caulking and other building elements for deterioration and performance issues;
6. Examination of the roof, including roofing system, flashing, copings, parapet and other building elements for deterioration and performance issues;
7. Written photographic report of observations;
8. Analyze the underlying causes of the observed defects, and alternatives where applicable;
9. Written recommendations and specifications for repair; prioritize required repairs in order of urgency and importance; and
10. Present estimated costs and time frames associated with required repairs.

C. **MEP/FP Equipment and Systems Assessment Report**: The Design Team shall perform a detailed MEPS investigation and assessment study of the existing Main Building and Tower Building. The Design Team shall also perform a detailed MEPS investigation and assessment study of Hammett Pavilion and Building 6 mechanical and electrical systems zoning / segmentation to the extent that it enables and/or is required to identify enclosure, addition or demolition of parts of the buildings as may be related for phasing / segmentation on the Project.

1. The investigation and assessment study shall include testing of MEP/FP service and utilities serving and supplying the Main Building, Tower Building, Hammett Pavilion and Building 6 including but not limited to, the following:
   a) Electrical services (normal and emergency power)
   b) Fire Alarm
   c) Nurse Call
d) Telephone and Data  
e) Cable TV  
f) Natural Gas  
g) Hot and Cold Domestic Water  
h) Sanitary and Storm Sewers  
i) Compress Air for Sewage Ejectors  
j) Steam  
k) Heating Hot Water  
l) Chilled Water  
m) Air Handling Systems and Water-Cooled Air Conditioners  
n) Exhaust Fans  
o) Fire Protection System  
p) Medical Gas  
q) Pumps  
r) Piping  
s) Supply / Exhaust Ducts  

2. The Design Team shall provide an existing systems assessment firm to perform third party testing and assessment of the existing mechanical systems and equipment as outlined by the Design Team; the Design Team shall also provide Testing Specifications. The cost for the specification, report, and completion shall be included in this task. However, the Design Team’s existing systems assessment firm Subcontractor(s) shall be paid as an Allowance as indicated in the Fee and Cost Schedule.

3. The field survey shall establish existing conditions of the MEP/FS systems, analysis of original design documents, performance of load calculations, and comparisons of expected versus actual energy use.

4. Establish the inspection and testing plan, listing specific systems within and limitations of the study/assessment with final approval from the Corporation.

5. Define support requirements for the inspections including:
   
a) Any materials that may be needed;

b) Assess operation (e.g.: shut downs, data gathering to evaluate performance of auxiliary equipment, etc.); and
c) Implement inspection and testing plan; may include sampling and analysis for basic condition assessment analysis.

6. Perform preliminary life estimates and provide recommendations for immediate action as needed. Critical components or systems can be prioritized by the impact they have in the following categories: Mission Critical; Mission Dependent, Not Critical; and Not Mission Dependent. Life estimates shall include: Evaluated Remaining Useful Life, Economic Remaining Useful Life, Replacement Value, Repair Cost, and Repair and Replacement Rationale.

7. A preliminary Repair and Replacement Project List shall be developed and updated in the Schematic Design phase to inform the Basis of Design.

8. Evaluate past operating and maintenance history. In addition review the component systems / equipment lists data and history through: manufacturer’s operating specifications, manufacturer’s recommended preventative maintenance, actual preventative maintenance history, recorded performance history, repair history.

9. Identify any critical components on basis of history, experience with similar components, and objectives for future of unit. This is of importance when utilizing this information for future reliability and performance of the systems and equipment in concert with the Project’s proposed program and designs.

10. Perform complete visual inspections of all accessible areas and/or auxiliaries - photo-document problem areas or areas of concern as needed.

11. Identify the root cause of damage found to the limits of survey.


D. **Preliminary Elevator Evaluation Report:** The Design Team shall perform a study and evaluation of the passenger, service and freight elevators at the Main Building and Tower Building, including the operation and testing of existing building elevator equipment, assessment of code compliance, preparation of a report of engineering analysis to assess the remaining useful life of the equipment, and recommendations for repair and/or upgrading of equipment based upon the program re-alignment.

1. The Design Team shall collect, organize, verify and review all pertinent information necessary to prepare the design including, but not limited to:
   a. An Executive / Overview Summary of the findings of the report;
   b. Condition Assessment of Existing Elevator Systems and Equipment;
   c. Vertical Transportation Systems’ Profile: An identification and evaluation of the major vertical transportation equipment and/or system components;
   d. Description of the existing systems, number of elevators, uses (e.g.: freight, general public, building staff, etc.), type (e.g. overhead geared
traction, hydraulic, etc.), maximum capacity, operational rate of speed (fpm), and floor landings. Include photo documentation and descriptions;

e. Preliminary Traffic Analysis and Engineering Analysis of the current configuration to determine if the grouping could be altered and if the speed of the elevators could be increased and ROM costs associated with such alterations. The preliminary traffic analysis shall confirm capabilities of existing equipment with regards to support of proposed program;

f. Codes and Standards Compliance Evaluation / Review, including an ADA compliance survey to determine if the systems comply with the Americans with Disabilities Act;

g. Maintenance Evaluation, including listing of deficiencies for corrective action;

h. Performance Evaluation, including recorded chart of acceptable standards, and performance criteria / itemization;

i. Recommendations for Immediate / Short Term / Long Term Improvements, and major remedial options, including applicable modernization and/or upgrading alternatives;

j. Budget Estimates, for all recommended actions;

k. Life Cycle Analysis Matrix, including machine room, hoistway and pit, car equipment, operating / signal equipment.

Task 2: BIM Process and Deliverables

The Consultant shall provide the following services relating to the responsibilities and deliverables associated with managing the coordination and incorporating BIM into the project workflow including, without limitation:

A. BIM Authoring Software. The Design Team is required to use BIM authoring software for the creation of models that include all geometry, physical characteristics and product data needed to develop Project designs and create accurate construction documents to the level of detail specified herein and in the Contract Documents. All members of the Design Team shall provide models and data in the format necessary to support the model level of detail required for the Project. The model shall be developed in accordance with the National Building Information Model Standards (NBIMS).

B. IFC Compliance. BIM authoring software and applications shall be compliant with the latest release of the Industry Foundation Classes (“IFC”) as certified by the buildingSMART alliance.

C. Open Architecture. The Design Team is encouraged to use products based upon or using
open architecture standards for greatest interoperability between consultants, the Project Team and the Construction Manager.

**D. Project Collaboration.** The Design Team shall provide the Project Team with model reviewing tools (readers) that support the collaborative review environment for design and construction work.

**E. Geo-reference.** The Design Team shall geo-reference building information models, Site plans and associated construction drawings to provide projection and coordinate system information necessary to ensure interoperability with existing geographic information systems.

**F. Conformed Documents.** The Design Team shall provide electronic files to the Construction Manager and each of its subcontractors, as requested, for the purpose of preparing submittals, including, but not limited to, shop drawings and coordination drawings. The Design Team shall provide such electronic files at no additional cost to the Corporation.

**G. Model Manager.** The Architectural/Lead Project Consultant will be responsible for management of the models throughout the design and construction phases of the Project, and will coordinate all updates for the individual and specialized models and databases to insure completeness and accuracy of the overall Project model. The Architectural/Lead Project Consultant shall establish protocols and assume the responsibilities for the models as described in the model content criteria established by AIA Document E202 Building Information Modeling Protocol Exhibit, sections 2.4.2 and 2.4.5.

**H. BIM Execution Plan.** The Architectural/Lead Project Consultant, in consultation with the project participants, shall develop a “BIM Execution Plan”, such as the “BIM Project Execution Planning Guide” developed by The Computer Integrated Construction (CIC) Research Group of The Pennsylvania State University, or similar tool to develop a detailed plan for development and management of the BIM throughout the design process and construction phase. The plan shall incorporate the requirements specified for the Project and be reviewed and approved by the Corporation.

**I. Ownership of the Model.** BIM model and Facility Data (as defined below) developed for the Project are the property of the Corporation.

**J. Model Components:**

1. **Facility Data.** The Consultant shall develop the associated data created by the BIM software (“Facility Data”) consisting of a set of intelligent elements for the BIM (e.g., doors, air handlers, electrical panels). This Facility Data shall include all material definitions and attributes that are necessary for the Project facility design and construction.

2. **BIM Model Content.** The BIM and Facility Data shall include, at a minimum, the requirements of subsection O below.
3. **BIM Model Granularity.** Models may vary in level of detail for individual elements within a model, but at a minimum must include all features that would be included on a quarter inch (1/4” = 1’0”) scaled drawing (e.g. at least 1/16th, 1/8th and 1/4th), or appropriately scaled civil drawings.

4. **Output.** Submitted CAD drawings (e.g., plans, elevations, sections, schedules, details, etc.) shall be derived (commonly known as extractions, views or sheets) and maintained from the submitted models and Facility Data.

K. **Quality Control.** The Consultant shall implement quality control (“QC”) parameters for the models, including:

1. **Model Standards Checks.** QC validation used to ensure that the Facility Data set has no undefined, incorrectly defined or duplicated elements. Report non-compliant elements and corrective action plan to correct non-compliant elements. Provide the Corporation with detailed justification and request the Corporation’s acceptance for any non-compliant element that the Consultant proposes to be allowed to remain in the models.

2. **CAD Standards Checks.** QC checking performed to ensure that the fonts, dimensions, line styles, levels and other construction document formatting issues are followed per the A/E/C (Architecture Engineering and Construction) CAD Standard.

3. **Other Parameters.** Develop such other QC parameters as Consultant deems appropriate for the Project and provide to the Corporation for concurrence.

L. **Design and Construction Reviews.** The Consultant shall perform design and construction reviews at each submittal stage to test the models, including:

1. **Visual Checks.** Check to ensure the design intent has been followed and that there are no unintended elements in the models.

2. **Interference Management Checks.** Locate conflicting spatial data in the models where two elements are occupying the same space. Log hard interferences (e.g., mechanical vs. structural or mechanical vs. mechanical overlaps in the same location) and soft interferences, (e.g., conflicts regarding equipment clearance, service access, fireproofing, insulation, etc.) in a written report and resolve same.

The Design Team shall conduct a “clash detection” workshop with consultants, the Construction Manager and its subcontractors once those trades have inputted their information into the model. Such workshops shall be held until all major clashes are reasonably resolved.

M. **Level of Development for Model Components.** The level of development for each model component shall be based upon the model content criteria established by AIA Document E202, Building Information Modeling Protocol Exhibit, sections 3.2 to 3.6. The content for each level of development is described as follows:
Level 100: Overall building massing indicative of area, height, volume, location and orientation.
Level 200: Generalized systems or assemblies with approximate quantities, size, shape, location and orientation.
Level 300: Specific assemblies accurate in terms of quantity, size, shape, location and orientation.
Level 400: Specific assemblies accurate in terms of quantity, size, shape, location and orientation with complete fabrication, assembly and detailing information.
Level 500: Constructed assemblies that are actual and accurate in terms of size, shape, location, quantity and orientation.

N. Deliverables.

1. The Consultant shall provide an IFC2x3 Coordination View\(^1\), IFC2x3 Structural Analysis View\(^2\), IFC2x3 Quantity Take-off View\(^3\), and IFC2x3 FM HandOver View\(^4\), each in IFC Express format for all deliverables, and provide exported property set data for all IFC supported named building elements.

2. The BIM deliverables indicated below are required to be submitted with the standard phase deliverables for each design phase. The BIM Execution Plan should establish primary and secondary responsibility for each deliverable. The level of development for each BIM deliverable should be sufficient to produce traditional two-dimensional deliverables required for that particular stage.

Pre-Design
BIM Execution Plan (within thirty (30) days after Contract execution)
Feasibility Models
Data Base of Programs/Spaces
Massing/Volume/Area
Relationships/Functions
Responsibility Matrix
Data Organization Outline
Restatement of Owner Requirements
AIA E202 Refinements

Schematic Design
BIM Execution Plan Update

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1 No application software implements the whole IFC specification. IFC data exchange is achieved with subsets -called views- of the whole IFC specification. Each view is designed to satisfy one or several data exchange scenarios. The IFC Coordination View subset is for coordinating the architectural, building service and structural disciplines during the design phase of a construction project.
2 The IFC subset to exchange the structural analysis model from a structural modeling to a structural analysis application.
3 The IFC subset to hand over the quantities of a building information model to cost estimation and calculation.
4 The IFC subset to handover the facility management relevant information of spaces, furniture, fixture and equipment to Computer-Aided Facility Management CAFM software.
Preliminary Energy Model
Concept Model (3 scheme concept)
Architectural Model (based upon approved concept model)
Preliminary Systems Model (structural, MEP, civil or other systems required by the Project)
Clash Detection Report

**Design Development**
Energy Model
Architectural Model
Structural Model
MEP Model
Site/Civil Model
Systems Model
Detailed Clash/Collision Report
Code Review Model

**Construction Documents**
Energy Model
Architectural Model Structural Model
MEP Model
Site/Civil Model
Systems Model
Detailed Clash/Collision Report
Code Review Model

**Construction Administration & Project Close-out**
Energy Model
Architectural Model Structural Model
MEP Model
Site/Civil Model
Systems Model
Detailed Clash/Collision Report
Code Review Model

Note: All Project Close-out final models and reports shall be updated to reflect construction modifications / changes.

**O. BIM Model Minimum Requirements and Output.**

1. **General Provisions.** The models shall be developed to include the systems described below as they would be built and the processes of installing them, and to reflect final as-built conditions. The deliverable model at the interim design stage and at the final design stage (“released for construction”) shall be developed to include as many of the systems described below as are necessary and appropriate at that design stage.

2. **Architectural/Interior Design.** The architectural systems model may vary in level of detail
for individual elements, but at a minimum must include all features that would be included on a quarter inch (1/4”=1’0”) scaled drawing. Additional minimum model requirements include:

2.1 **Spaces.** The model shall include spaces defining accurate net square footage and net volume, and holding data for the room finish schedule for including room names and numbers. Include programmatic information provided by HHC or validated program to verify design space against programmed space, using this information to validate area quantities.

2.2 **Walls and Curtain Walls.** Each wall shall be depicted to the exact height, length, width and ratings (thermal, acoustic, fire) to properly reflect wall types. The model shall include all walls, both interior and exterior, and the necessary intelligence to produce accurate plans, sections and elevations depicting these design elements.

2.3 **Doors, Windows and Louvers.** Doors, windows and louvers shall be depicted to represent their actual size, type and location. Doors and windows shall be modeled with the necessary intelligence to produce accurate window and door schedules.

2.4 **Roof.** The model shall include the roof configuration, drainage system, penetrations, specialties, and the necessary intelligence to produce accurate plans, building sections and generic wall sections where roof design elements are depicted.

2.5 **Floors.** The floor slab shall be developed in the structural model and then referenced by the architectural model for each floor of the Project building(s).

2.6 **Ceilings.** All heights and other dimensions of ceilings, including soffits, ceiling materials, or other special conditions shall be depicted in the model with the necessary intelligence to produce accurate plans, building sections and generic wall sections where ceiling design elements are depicted.

2.7 **Vertical Circulation.** All continuous vertical components (i.e., non-structural shafts, architectural stairs, handrails and guardrails) shall be accurately depicted and shall include the necessary intelligence to produce accurate plans, elevations and sections in which such design elements are referenced.

2.8 **Architectural Specialties and Woodwork.** All architectural specialties (i.e., toilet room accessories, toilet partitions, grab bars, lockers, and display cases) and woodwork (i.e., cabinetry and counters) shall be accurately depicted with the necessary intelligence to produce accurate plans, elevations and sections in which such design elements are referenced.

2.9 **Signage.** The model shall include all signage and the necessary intelligence to produce accurate plans and schedules.

2.10 **Schedules.** Provide door, window, hardware sets, flooring, wall finish, and signage schedules from the model, indicating the type, materials and finishes used in the design.
3. **Furniture.** The furniture systems model may vary in level of detail for individual elements within a model, but at a minimum must include all features that would be included on a quarter inch (1/4"=1’0") scaled drawing, and have necessary intelligence to produce accurate plans. Representation of furniture elements is to be 2D. The Consultant may provide a minimal number of 3D representations as examples. Examples of furniture include, but are not limited to, desks, furniture systems, seating, tables, and office storage.

3.1 **Furniture Coordination.** Furniture that makes use of electrical, data or other features shall include the necessary intelligence to produce coordinated documents and data.

4. **Equipment.** The model may vary in level of detail for individual elements within a model. Equipment shall be depicted to meet layout requirements with the necessary intelligence to produce accurate plans and minimum schedules depicting their configuration. Examples of equipment include but are not limited to copiers, printers, refrigerators, ice machines and microwaves.

4.1 **Schedules.** Provide furniture and equipment schedules from the model indicating the materials, finishes, mechanical, and electrical requirements.

5. **Structural.** The structural systems model may vary in level of detail for individual elements, but at a minimum must include all features that would be included on a quarter inch (1/4"=1’0") scaled drawing. Additional minimum model requirements include:

5.1 **Foundations.** All necessary foundation and/or footing elements, with necessary intelligence to produce accurate plans and elevations

5.2 **Floor Slabs.** Structural floor slabs shall be depicted, including all necessary recesses, curbs, pads, closure pours, and major penetrations accurately depicted.

5.3 **Structural Steel.** All steel columns, primary and secondary framing members, and steel bracing for the roof and floor systems (including decks), including all necessary intelligence to produce accurate structural steel framing plans and related building/wall sections.

5.4 **Cast-in-Place Concrete.** All walls, columns, and beams, including necessary intelligence to produce accurate plans and building/wall sections depicting cast-in-place concrete elements.

5.5 **Expansion/Contraction Joints.** Joints shall be accurately depicted.

5.6 **Stairs.** The structural model shall include all necessary openings and framing members for stair systems, including necessary intelligence to produce accurate plans and building/wall sections depicting stair design elements.

5.7 **Shafts and Pits.** The structural model shall include all necessary shafts, pits, and
openings, including necessary intelligence to produce accurate plans and building/wall sections depicting these design elements.

6. Mechanical. The mechanical systems model may vary in level of detail for individual elements, but at a minimum must include all features that would be included on a quarter inch (1/4”=1’0”) scaled drawing. Small diameter (less than 1-1/2” NPS) field-routed piping is not required in the model. Additional minimum model requirements include:

6.1 HVAC. All necessary heating, ventilating, air-conditioning and specialty equipment, including air distribution ducts for supply, return, and ventilation and exhaust ducts, including control system, registers, diffusers, grills and hydronic baseboards with necessary intelligence to produce accurate plans, elevations, building/wall sections and schedules.

6.2 Mechanical Piping. All necessary piping and fixture layouts, and related equipment, including necessary intelligence to produce accurate plans, elevations, building/wall sections, and schedules.

6.3 Plumbing. All necessary plumbing piping and fixture layouts, floor and area drains, and related equipment, including necessary intelligence to produce accurate plans, elevations, building/wall sections, riser diagrams, and schedules.

6.4 Equipment Clearances. All HVAC and plumbing equipment clearances shall be modeled for use in interference management and maintenance access requirements.

6.5 Elevator Equipment. The model shall include the necessary equipment and control system, including necessary intelligence to produce accurate plans, sections and elevations depicting these design elements.

7. Electrical/Telcommunications. The electrical systems model may vary in level of detail for individual elements, but at a minimum must include all features that would be included on a quarter inch (1/4”=1’0”) scaled drawing. Small diameter (less than 1-1/2”Ø) field-routed conduit is not required in the model. Additional minimum model requirements include:

7.1 Interior Electrical Power and Lighting. All necessary interior electrical components (i.e., lighting, receptacles, special and general purpose power receptacles, lighting fixtures, panel boards, cable trays and control systems), including necessary intelligence to produce accurate plans, details and schedules. Lighting and power built into furniture/equipment shall be modeled.

7.2 Special Electrical Systems. All necessary special electrical components (i.e., security, mass notification, public address, nurse call and other special occupancies, and control systems), including necessary intelligence to produce accurate plans, details and schedules.

7.3 Grounding Systems. All necessary grounding components (i.e., lightning protection
systems, static grounding systems, and communications grounding systems, bonding), including necessary intelligence to produce accurate plans, details and schedules.

7.4 Communications. All existing and new communications service controls and connections, both above ground and underground with necessary intelligence to produce accurate plans, details and schedules. Cable tray routing shall be modeled without detail of cable contents.

7.5 Exterior Building Lighting. All necessary exterior lighting with necessary intelligence to produce accurate plans, elevations and schedules. The exterior building lighting model shall include all necessary lighting, relevant existing and proposed support utility lines and equipment required with necessary intelligence to produce accurate plans, details and schedules.

7.6 Equipment Clearances. The model shall incorporate and define all electrical and communications working spaces, clearances, and required access.

8. Fire Protection. The fire protection system model may vary in level of detail for individual elements, but at a minimum must include all features that would be included on a quarter inch (1/4”=1’0”) scaled drawing. Additional minimum model requirements include:

8.1 Fire Protection System. All relevant fire protection components (i.e., branch piping, sprinkler heads, fittings, drains, pumps, tanks, sensors, control panels) with necessary intelligence to produce accurate plans, elevations, building/wall sections, riser diagrams, and schedules. All fire protection piping shall be modeled.

8.2 Fire Alarms. Fire alarm/mass notification devices and detection system shall be indicated with necessary intelligence to produce accurate plans depicting them.

9. Civil. The civil model may vary in level of detail for individual elements, but at a minimum must include all features that would be included on a one inch (1”=100’) scaled drawing. Additional minimum model requirements include:

9.1 Terrain (Digital Terrain Model). All relevant Site conditions and proposed grading, including necessary intelligence to produce accurate Project Area topographical plans and cross sections.

9.2 Drainage. All existing and new drainage piping, including upgrades thereto, including necessary intelligence to produce accurate plans and profiles for the Project Area.

9.3 Storm Water and Sanitary Sewers. All existing and new sewer structures and piping, including upgrades thereto, on the Project Area with necessary connections to mains or other distribution points as appropriate, including necessary intelligence to produce accurate plans and profiles for the Project Area.

9.4 Utilities. All necessary new utilities connections from the Project building(s) to the
existing or newly created utilities, and all existing above ground and underground utility conduits, including necessary intelligence to produce accurate plans and site-sections.

9.5 Roads and Parking. All necessary roadways and parking lots or parking structures, including necessary intelligence to produce accurate plans, profiles and cross-sections.

Task 3: Technical Surveys

A. Topographic Survey

The Consultant shall prepare topographic surveys of the Project Area and upland street intersections as needed to produce a comprehensive final survey (“Topographic Survey”) which shall be prepared within the following parameters.

1. The Consultant shall submit the names and experience portfolios of all persons and Subcontractors proposed for the Topographic Survey for approval prior to start of work.

2. The Topographic Survey shall be referenced by station and offset to a centerline baseline which has been established/coordinated/tied into existing borough monument lines, in accordance with current DOT standards. All elevations shall be referenced to established borough benchmarks, or to benchmarks set from established borough benchmarks through the use of independent bench runs. The reference points, including bench runs and all tie-ins to the centerline baseline, shall be clearly documented so that they may be re-established at any time during the course of the work by the Consultant, or in the future by any other surveyor.

3. The Topographic Survey shall locate all physical features within the Project Area needed to produce a comprehensive design, including, but not limited to, the following:

   a. Established building and home line lengths, including interior angles.
   b. Established legal grades of all streets and access roads (vehicular and pedestrian).
   c. Legal widths of all pavements, sidewalks and sidewalk areas.
   d. Actual widths of all pavements, sidewalks and sidewalk areas.
   e. Identification of all streets, including "paper" streets by name.
   f. Identification of all public areas (e.g.: access roads, plazas, sidewalks, roadways, etc.).
   g. Location, by station and offset, of all roadways, edges of pavements, headers, curbs, drop curbs, pedestrian ramps, sidewalks, driveways, distinctive/special sidewalk areas, bus stops, traffic islands and traffic channels (permanent and temporary), trees (including caliper and edge...
distance to existing curb), monitoring well heads, and survey monuments. The conditions of each shall be noted. Existing curbs, sidewalks and pavements shall be identified by condition and type of materials.

h. Location, by station and offset, and identification of all street hardware including, but not limited to, manhole cover castings, valve box cover castings, catch basins, utility chamber covers, and gratings. The conditions of each shall be noted.

i. Location, by station and offset, and identification of all sidewalk hardware including, but not limited to, coal chutes, oil fills, cellar doors, under-sidewalk drains, sidewalk elevators, building sidewalk ventilation gratings, subway ventilation gratings, hydrants (high pressure, low pressure), street lights, traffic signal poles, parking signs, parking meters, traffic control boxes, traffic controllers, traffic detectors, fire call boxes, police call boxes, subway entrances and emergency exits, traffic stanchions, structural columns, monuments, news stand kiosks, sidewalk retail areas, areaways, decorative fences and railings, steps, walls, stoops, planting areas, and cellar windows at grade. The conditions of each shall be noted.

j. Location, by station and offset, of all street encroachments including, but not limited to, hedges, fences, grass areas, retaining walls, steps and stoops.

k. Location, by station and offset, of all fronts of abutting buildings, including identification by house numbers, story height, entranceways, building type and use.

l. Direction of traffic, and the location and type of all lane and crosswalk markings, including school crossing markings.

m. Location, by station and offset, of all materials or equipment, etc. related to industrial or other uses in the area of the survey, easements and property lines.

n. Location and identification of all abutting tax lots by Block and Lot numbers (including those encroaching into the mapped right-of-way), as well as existing frontage lengths.

4. Horizontal locations shall be taken to the nearest tenth (1/10) of a foot.

5. Vertical locations (elevations) shall be taken to the nearest hundredth (1/100) of a foot (or as specified by the Corporation) longitudinally at fifty (50) foot stations, as measured along the centerline baseline, and at all street intersections, breaks in grade, building lines at intersections, and other locations required to fully define the existing topography; transversely, elevations shall be taken at the building lines, top and bottom of curbs, centerline of street and front and back edges or ribbon sidewalk.
6. Spot elevations shall be taken at all street surface hardware locations, steps/platforms, building entrances, first floors, parking structure floors, back of sidewalk at all entranceways, ground elevations at building entrances, traffic islands, parking aprons, intersections (as required), corner (with crosswalk) sidewalk quadrants, storm/combined sewer inverts, at points giving the clearance from the roadway to the underside of overhead structures, and as otherwise required for design purposes.

7. All trees located within the Project Area shall be located by station and offset. The size in caliper inches and condition of each shall be noted, and the results presented in a tabular format to be included as a section of the technical supplement.

8. The Topographic Survey shall include the full Project Area.

9. Datum plane and coordinate system shall be NAVD 88.

10. All measurements shall be in the United States Standard of Measurements except as follows: legal mapped dimensions, base line dimensions and stationing shall be shown in United States Standard of Measurements with metric equivalents shown in parentheses.

11. All field notes shall be permanently bound, sharp, clear, crisp, cleaned and "fixed", dated, signed and sealed, and in a format approved by the Corporation.

12. The Consultant shall submit to the Corporation original survey notes, summary of survey procedures/instruments employed, survey control data, discussion of survey accuracy, summary or survey control data, survey tie-ins, computer digitizer tapes and survey computations, which shall become the property of the Corporation.

13. The Consultant shall identify and provide the Corporation with copies of all survey source material.

14. The Topographic Survey shall be plotted within the framework of the following parameters:

   a. All plotting and drafting work shall conform to currently applicable DOT department standards including drawing in ink on an approved 24" X 36" reproducible drafting film, to a scale of 1" = 20', unless otherwise specified by the Corporation.

   b. All topographic drawings shall utilize standard DOT format(s), notes and symbols.

   c. All printing and line work shall conform to current DOT standards for the microfilming and drafting of drawings.
d. The format for plotting the topographic surveys shall be limited to two plan views per sheet depending upon width of right way and whether a street is straight, skewed or curvilinear.

e. The Topographic Survey shall be plotted in the following manner: from the original notes, the Consultant shall prepare a "clean" base map, which shall be a pictorial representation of the Project Area suitable for final design, indicating such elements, including, but not limited to, building lines, lot lines and street/sidewalk hardware as may be appropriate in light of the Project, and omitting such elements as elevations, lane lines, and other redundant/extraneous information. Upon completion of the "clean" base map, the Consultant shall photographically reproduce the base map and complete the plot of all existing topographic information.

f. The topographic plans shall contain, but not be limited to, the following information: building lines, including lengths and interior angles; key existing elevations; street names; baseline sketch/layout; north arrow; existing curb lines and/or edges of pavement; street/sidewalk hardware; and catch basins.

15. Working profiles, conforming to applicable DOT standards, shall be plotted within the framework of the following parameters:

a. The plotting of working profiles shall conform to currently applicable DOT standards. In general, this shall include drawings in ink on approved standard cut size sheets (24" X 36") to a scale of 1" = 20' horizontal and 1" = 2' vertical, unless otherwise specified by the Corporation.

b. Match lines and horizontal scales shall coincide with those utilized for the plotted topographic surveys. In addition, profiles shall be extended beyond match lines in either direction to include the adjacent intersection.

c. All printing and line work shall conform to current DOT standards for the microfilming and drafting of drawings.

d. Legends and labels shall be so spaced along the length of the working profile to ensure its clarity.

e. Profiles shall contain the following numerical elevation values plotted and drafted: building lines, including first floor elevations of all dwellings, buildings, doorways, parking structure, loading bays; front and back edges of ribbon sidewalks; tops of curb; centerline of roadway, including elevations of all manholes; and legal curb lines and/or center line grades, and overhead structures.

f. Numerical values for elevations of the respective profile shall be plotted longitudinally at fifty (50) foot stations, as measured along the centerline baseline, and at all street intersections, breaks in grade, and other locations required to fully define the existing topography.
g. All profiles shall be clearly labeled and stationed with numerical axis values shown.

h. Datum plane and coordinate system shall be NAVD 88.

16. Cross sections conforming to applicable DOT standards shall be plotted within the framework of the following parameters:

a. Cross sections shall be plotted in ink, on approved standard cut size sheets (24" X 36") to a scale of 1" = 20' horizontal and 1" = 1' vertical, unless otherwise specified by the Corporation.

b. All printing and line work shall conform to current DOT standards for the drafting of drawings.

c. All cross sections shall be clearly labeled and stationed.

d. Cross sections shall be plotted at fifty foot (50') stations as measured along the centerline baseline, and at all intersections and breaks in grade. The cross sections shall include the elevations at the building line, curbs, centerline of roadway, and all other essential locations, including, but not limited to, ramps, drive ways, building entrances, malls and traffic islands.

e. Cross sections shall indicate existing legal grade and shall be plotted to show elevations at the property line, curb line, opposite curb line and opposite property line for each intersection.

17. All original topographic information shall be dated, signed and certified to by a licensed surveyor. The license seal of the surveyor and/or registered professional engineer shall be shown on all plans, tracing and tabulation sheets.

18. The Consultant shall submit a draft report, in an 11”x17” format to the Corporation for review and comment by the Corporation and other interested parties. After incorporation of all comments and revisions, the Consultant shall prepare four (4) copies of the Topographical Survey in final form with all final documents to be submitted to the Corporation. An electronic file shall be submitted as well. The Consultant shall incorporate the Topographical Survey, the Utility Survey, and the Sewer Investigation (as such terms are hereinafter defined) into one complete package if requested by the Corporation.
B. Metes and Bounds: Existing Survey

The Design Team shall review existing documentation that identifies the Project Area’s metes and bounds and of adjacent affected areas. The limits of the area of the data gathering and analysis shall be reviewed and approved by the Corporation prior to the start of this sub-task.

The Design Team shall submit a draft survey and report to the Corporation for review/comment prior to finalizing as a permanent record. Electronic and four (4) hard copies of the permanent record shall be submitted to the Corporation.

C. Utility Survey

The Consultant shall prepare and plot a utility survey (the “Utility Survey”) for the Project Area and adjacent upland street intersections as determined by the Corporation. Where possible, recent existing surveys may supersede the need for a new survey and/or can be updated or enhanced and drawn compatible so as to create a complete set of utility survey drawings at one scale. The Utility Survey shall be in a form acceptable to the Corporation and shall be prepared within the framework of the following parameters.

1. The Utility Survey shall identify and locate all existing surface and subsurface utilities, facilities and systems (both public and private) within the Project Area and upland street intersections as needed to produce a comprehensive final design. The Utility Survey shall identify, but not be limited to, the identification and location of the following:

   a) Storm, sanitary, combined and interceptor sewers showing size, elevation and material.
   b) Water mains, gas mains and steam mains showing material and size.
   c) Electric, data, cable and telephone conduits.
   d) Fire and police communications conduits and protection facilities.
   e) Subway tunnels, station areas, access stairs and ventilator structures.
   f) Utility chambers and vaults.
   g) Basin and inlet connections.
   h) Vehicular, pedestrian and utility tunnels.
   i) Traffic Signals, light poles, utility poles and overhead utility and electric facilities.
   j) Railroad and trolley tracks, rails, ties and other foundations.
   k) Highway support structures.
   l) Other surface and subsurface facilities and appurtenances.
2. The Consultant shall review all data obtained from Agencies, Utilities, and others, and shall coordinate/reconcile such data with the Utility Survey.

3. The Consultant shall reconcile all discrepancies in the location and identification of all subsurface elements between the Topographic Surveys and the utility records.

4. All field notes shall be permanently bound, sharp, clear, crisp, clean and "fixed", dated, signed and sealed, and in a format as approved by the Corporation.

5. The Consultant shall submit to the Corporation original survey notes, together with all public and private utility drawings, plans and plates which shall become the property of the Corporation.

6. The Consultant shall plot the Utility Survey within the framework of the following parameters:
   a) The Utility Survey will be plotted on base maps that have been photographically reproduced from the "clean" topographic base maps. All Utilities shall be clearly delineated and identified.
   b) All plotting and drafting work shall conform to currently applicable DOT standards, including drawing in ink on an approved 24" X 36" reproducible drafting film, to a scale of 1" = 10' unless otherwise specified by the Corporation.
   c) All utility drawings shall utilize standard DOT format(s), notes and symbols.
   d) All printing and line work shall conform to current DOT standard for the drafting drawings.
   e) The format for plotting the Utility Survey shall be limited to two plan views per sheet, depending upon width or right way, and whether street is straight, skewed or curvilinear. There shall be no overlapping of street plotting for the Utility Survey.
   f) The Utility Survey shall be plotted with utilities indicated by double lines with "to scale" width.

7. The Consultant shall prepare a brief narrative report of findings of the Utility Survey, which report, together with the utility drawings and any other necessary or appropriate supporting documents shall constitute the Utility Survey. The report shall contain a discussion of any/all existing surface and subsurface utilities, facilities and systems that may impact proposed Project Area improvements.

8. The Consultant shall submit a draft report in an 11"x17" format to the Corporation and other interested parties for review and comment. After
incorporation of all comments and revisions, the Consultant shall prepare four (4) copies of the Utility Survey in final form with all final documents to be submitted to the Corporation. An electronic file shall be submitted as well. The Consultant shall incorporate the Topographical Survey, Metes and Bounds Existing Survey, the Utility Survey, and the Sewer Survey (as such terms are hereinafter defined) into one complete package if requested by the Corporation.

D. **Sewer Investigation**

The Consultant shall prepare a video inspection of sewers to document the condition of existing sewers, inventory existing DEP structures (condition, size, and type of catch basins, manholes, etc.) and identify substandard structures that should be replaced within the Project Area and upland street intersections as needed to produce a comprehensive final design.

The Consultant shall submit a draft report in an 11”x17” format to the Corporation and other interested parties for review and comment. After incorporation of all comments and revisions, the Consultant shall prepare four (4) copies of the Sewer Investigation in final form with all final documents to be submitted to the Corporation. An electronic file shall be submitted as well. The Consultant shall incorporate the Topographical Survey, Metes and Bounds Existing Survey, the Utility Survey, and the Sewer Survey (as such terms are hereinafter defined) into one complete package if requested by the Corporation.

E. **Hazardous Materials Survey**

The Consultant shall inspect for asbestos, mold, lead and other regulated materials and prepare reports, drawings and specifications for the subsequent remediation activities required by all Legal Requirements. For any hazardous materials found on the project the Consultant shall provide a Hazardous Materials Management Plan, which shall include without limitation:

a. Survey and Identification of the hazardous material(s) to be remediated within the interior and exterior of the Project Area;
b. Procedures and Work Plan: summary of the remedial work; remediation action plan and procedural requirements that includes the removal, control, handling and disposal / manifesting of various hazardous materials in accordance with all sections of the project specifications, and applicable federal, state and local regulations. The procedures shall also include workplace preparation and procedures, materials and equipment, notifications / permitting / recordkeeping requirements, oversight requirements and any specific applicable rules and laws which regulate the removal of the found hazardous materials;
c. Collecting representative samples of building materials to determine their composition. Specifically, asbestos sampling will be performed by experienced, New York City-certified asbestos investigators and New York
State-certified asbestos inspectors. Laboratory analysis of representative asbestos samples of each material shall use polarized light microscopy (PLM) and transmission electron microscopy (TEM) methods at a New York State Department of Labor-accredited laboratory.

d. Checklist of submittals, including pre-job submittals, periodic submittals, and project close-out submittals;

e. Final project clean-up and re-occupancy clearance criteria procedures, including certificate of completion certifying the removal of the material(s);

The Consultant shall attempt to gain full access to the structures. The Consultant will not be responsible for any repairs to the structure resulting from the performance of the survey, however, temporary roof patches shall be applied to affected areas immediately after sampling. Suspect ACM area that are expected to be present in the on-site structures include, but are not limited to: roofing materials, thermal system insulation (pipe and boiler insulation), plaster, sheetrock, joint compound, floor tiles and associated mastics, cove base, ceiling tiles, window caulk/putty, and waterproofing.

The Consultant shall review and confirm information included in “Exhibit L: Existing Conditions – Asbestos” of this RFP which seeks to identify areas that have been renovated and abated in addition to identifying the systems where asbestos has been found in existing areas. The Consultant shall confirm the information in Exhibit L via such methods as sampling.

The number of samples collected of each of these materials will be based on DEP, NYS Department of Labor, and US Environmental Protection Agency regulations and guidelines.

Task 4: User Group Meetings and Development of Final Program Requirements

A. The Consultant shall confirm the Project scope with the Project Team to develop and finalize the program objectives and requirements prior to commencing Task 6: Conceptual Design;

B. Review and assess the existing design documents and materials as developed by the FEMA Pre-Design Team, and the OMB VE findings report / recommendations, and make any required adjustments to finalize the program requirements;

C. The Consultant shall lead meetings/ interviews with staff and user groups to confirm the Program requirements. The Consultant will then ascertain and/or verify the accuracy of the current needs for the facility and exterior spaces, including space survey, work flow information, inventory of equipment and other data collection. The meetings are expected to involve intense study / review process with all individuals / groups assigned to the Project.
D. The Consultant shall develop a preliminary program and adjacency charts, review the preliminary program with the Project Team, prepare a final program, and obtain program approval by the Project Team.

E. The Consultant shall utilize the final program requirements and explore concepts for site, functional program block diagrams and adjacencies along with budget and time frame.

F. The Consultant shall also work with HHC to finalize program requirements for artwork scope and budget.

G. Given the nature of the proposed New Critical services Building and the impact that it will have on clinical operations, respondents will be expected to engage with clinical, program and other staff in validating the program scope and size, developing designs that reflect corporate values, and defining work flows to maximize patient and staff satisfaction and efficiency.

H. HHC will assist in convening representative user teams. Similar team(s) will be developed for the MEP and materials elements of the project to provide input into the maintenance and operation of the hospital. Firms are asked to indicate how they would manage, deploy and ensure comprehensive application of this requirement in their Plan of Operation and Implementation, including any proposed use of evidence based design and lean design, i.e., 2P/3P, approaches. It should be noted that the HHC employs lean as the principle means of planning and improving operations and outcomes and expects the project design will be similarly influenced.

Task 5: Environmental Studies and Surveys

A. Environmental Review(s)

The Consultant shall determine the level of environmental review required for the Project and shall prepare the appropriate environmental review documents and/or reports pursuant to federal statute and recipients of FEMA—Public Assistance funds and state / local statute and recipients of HUD—CDBG-DR funds. The environmental review shall satisfy the requirements of NEPA in accordance with FEMA’s regulations for NEPA implementation at 44 CFR Part 10, New York State Environmental Quality Review Act pursuant to 6 NYCRR 617.8 (“SEQRA”) and New York City Environmental Quality Review, pursuant to Sections 6-08 and 6-12 of Executive Order No. 91 of 1977 (“CEQR”). These statutes require that state and local government agencies consider the environmental consequences of projects over which they have discretionary authority before starting such projects.

a. FEMA will likely serve as “Lead Agency” for environmental review and generally take the lead in resource agency consultation unless FEMA delegates
that responsibility to the applicant. The Consultant shall assist with gathering any correspondence, meetings, permits, or other interactions that may have occurred as part of the review or coordination of the Project.

b. The Consultant shall attend any relevant public meetings in order to complete this Task. Permits may be required from the following non-exhaustive list of Agencies: USACOE, DEC, DPR, DOT, DOB, DCP and DEP. Since FEMA and CDBG-DR are the funding sources for the Project, there may be additional environmental investigations and permitting required. Such permits/plans/other deliverables could include Stormwater Pollution Prevention Plan (“SWPPP”), Construction Health and Safety Plan (“CHASP”), and Remedial Action Plan (“RAP”) among others. If required, these shall be considered a part of the base cost of this Task and are not an additional cost.

c. The Consultant shall prepare a NEPA checklist (FEMA’s Record of Environmental Consideration or “REC”), the SEQRA Environmental Assessment Form (“EAF”) and/or the CEQR Environmental Assessment Statement (“EAS”), and any supplemental studies, as applicable and as required for federal, State and local, or portions thereof, as directed by the Corporation. The CEQR EAS shall be in accordance with the New York City Environmental Quality Review Act (“CEQR”), the CEQR Technical Manual, 2014 Edition, and any other relevant law, rule or regulation. The Consultant shall prepare the EAS in sufficient detail to enable HHC or another lead agency to issue a negative declaration for the Project. The Consultant shall complete a draft EAS in consultation with the Project Team that will describe the reasonable worst-case development scenario of the proposed Project. The Consultant shall conduct a screening analysis to determine whether any impact caused by the implementation of the Project would need a detailed analysis in the EAS. The Consultant shall also prepare a draft scope of work for the EAS that shall describe the Project in detail and identify the studies that the EAS will include.

d. The Consultant shall complete a REC form for the Project to effectively assess the level of NEPA documentation required for the proposed Project.

e. It is anticipated that a NEPA Environmental Assessment (“EA”) will be required for the Project with environmental mitigation identified in the NEPA process and incorporated into project design and implementation. The Consultant will prepare draft and Final EAs and coordinate public involvement requirements related to NEPA compliance efforts.

f. The Consultant shall prepare a draft scope of work for a draft Environmental Impact Statement (“DEIS”) if the Lead Agency determines that an Environmental Impact Statement (“EIS”) under CEQR or other statutory authority is required. The EIS shall describe the proposed Project in detail and identify the studies that the DEIS will include. The Consultant shall then
prepare a DEIS and the final Environmental Impact Statement ("FEIS"). Prepare, revise, submit and refine an EIS (CEQR, SEQRA and NEPA) including all relevant sections (hazardous materials site history searches, socioeconomics, urban design, historic resources, natural resources, among other sections). Coordinate and present at public scoping meetings; attend review agency meetings as necessary. If an EIS is required, the Consultant shall be paid through an Allowable Additional Cost.

g. If requested, prepare, revise, submit and refine City of New York Urban Land Use Review Procedure ("ULURP") and/or EIS applications. Develop associated site plans, surveys, and other necessary drawings and maps. Attend preliminary and subsequent review agency meetings. Present to the relevant community board and other ULURP approving entities. The ULURP and EIS application, if required, will be paid as an Allowable Additional Cost.

h. Collect land use and environmental data of sufficient quantity and quality to determine if any existing or future environmental impacts are present or likely as a result of the Project. Develop Site-specific planning studies and zoning analyses for the Project Area, including environmental assessments for area-wide zoning changes.

i. Review transportation and other studies and mitigation measures prepared by HHC’s consultants.

j. Create an inventory of existing traffic conditions including but not limited to automated and manual traffic counts as per CEQR standards, curbside parking regulations and off-street parking availability in the study area network, origin-destination studies, and speed runs and vehicle classification counts, as needed.

k. Provide traffic analysis of existing, no-build and future conditions per methodologies approved by DOT and related air quality and noise analyses as required by DEP. The Consultant shall identify any adverse impacts.

l. Provide circulation studies, parking inventories and studies, and other traffic related studies as needed on a site specific and project-by-project basis.

m. Develop mitigation measures including operational changes and physical improvements to ameliorate traffic and parking impacts, including preparation of cost estimates for proposed measures and engineering designs as directed by the Corporation.

n. Assess infrastructure needs assessment for Site development, including storm water management and BEST management practices and DEP processes to determine infrastructure adequacy and upgrades including hydraulic studies and amended drainage plans. Provide cost estimating for required infrastructure upgrades.

o. Prepare conceptual bulk diagrams and massing studies for urban design
analyses and translate same into more detailed renderings for possible use for the public approvals process.

p. Provide Tier 1-3 screening assessment for shadow analysis including 3-D computer modeling.

q. Provide estimated emissions (operations, mobile or construction) for a greenhouse gas analysis per guidelines as applicable.

r. Present the findings on a timely basis in a well-organized and defensible report, environmental assessment study or application pursuant to ULURP and/or EAS.

B. Geotechnical Survey

The Design Team shall prepare a geotechnical survey (the "Geotechnical Survey") and provide a geotechnical investigation that shall include all work required to address the design and construction of the Project.

1. The Design Team shall assemble and review available information on subsurface conditions from previous investigations taken at or near the Project Area. Where possible, recent existing surveys may supersede the need for a new survey and/or can be updated or enhanced and drawn compatible so as to create a complete Geotechnical Survey.

2. The Consultant shall use the verified topographic survey information as a base to prepare a boring/test pit plan for the Project Area, or portion thereof as determined with the Corporation, for the purpose of bidding, and Project control and coordination. The boring/test pit plan shall indicate the required number and type of borings. The boring/test pit plan must address all areas of work that require subsurface investigation and require coordination with Utilities. The boring/test pit plan shall be presented to the Corporation for its review and approval. Thereafter, the boring/test pit plan shall be revised by the Consultant as required. The Consultant shall retain a qualified Subcontractor to obtain the required borings, together with 2-1/2 inch split spoon sampling to the depth of the water table and continuing at 5-foot intervals. Soil borings to be done typically to a 20-foot depth, but to be determined by the Environmental Remediation Engineer. The cost for the Consultant’s test boring Subcontractors shall be paid as an allowance as indicated in the Fee and Cost Schedule.

3. The Design Team shall obtain all approvals and make all necessary arrangements to retain a qualified Subcontractor for the required test borings and to perform the work.
4. The Design Team shall administer, coordinate and continuously supervise the work of the boring Subcontractor. The Design Team shall assign a qualified inspector from the Design Team who shall be present at the Project Area at all times while borings are being taken. A photographic record shall be made of each core/boring.

5. The Design Team shall retain the services of a qualified soils laboratory Subcontractor to classify the soil in accordance with the unified soil classification system, to perform permeability tests every five (5) feet along a minimum (30) foot boring depth, or as determined by the Environmental Remediation Engineer, and to ascertain the down-gradient and up-gradient quality and elevations of the existing groundwater table. The cost for the Design Team’s qualified soil borings and soil testing laboratory Subcontractors shall be paid as an allowance as indicated in the Fee and Cost Schedule.

6. All cores and borings shall become the property of the Corporation, but shall, at the sole cost and expense of the Design Team, be stored by the Design Team in a secure location for a period of two (2) years from the date of completion of the Contract, following which the title to any cores and borings still in the possession and control of the Design Team shall revert to the Design Team, who may dispose of such cores and borings as the Design Team sees fit.

7. Investigate land-use history of site for potential hazardous waste generators to determine probable locations of samplings including review of any regulatory Agencies’ records – including FDNY, DOB, DEP, and any other available databases;

8. Develop a work plan, schedule outlining the proposed technical approach, rationale and generic descriptions of the various study elements and activities to be conducted during the investigation and modify to reflect the Corporation’s comments;

9. Identify all physical parameters and sampling locations on a site map drawn to engineering scale. The site map may include the following information: water features, drainage patterns, utilities, right-of-way and easements, and locations of monitoring walls and boreholes;

10. Perform surface and subsurface soils and sediments investigations to determine the horizontal and vertical extent of contamination;

11. Collect and temporarily store soil residuals on-site in discrete piles, covered with heavy-mill plastic sheeting pending results of analytical data in determination of their appropriate disposition, and conduct toxic characteristic leaching procedure tests (“TCLP”) as warranted. If the soils are found to be
hazardous, soil residuals will be stored and disposed of in accordance with all Legal Requirements and as specific in the Contract;

12. Conduct a soil boring program in conjunction with the installation of groundwater monitoring wells based on the configuration of the water table (if appropriate). Coordinate installation of the wells with the Corporation.

13. Conduct quantitative chemicals analysis of all soil samples collected. Parameters will include, as necessary, organic carbon, permeability, grain-size, bulk density and particle-specific gravity tests. Conduct soil gas sampling at 50-foot intervals to measure volatile organics and methane;

14. Conduct electromagnetic geophysical study with readings at 50-foot intervals (perpendicular and parallel to grid lines) to determine if conductive objects are present in the subsurface and if so, produce a contour conductivity map of the measurements;

15. Perform hydrological investigation to assess the degree of hazard, the mobility of pollutants identified as present, the soils’ attenuating capacity and mechanisms, discharge and recharge areas, regional flow direction and quality and effects of any pumping;

16. Collect and analyze soil, sediment, vapor and ground water samples per U.S. Environmental Protection Agency Target Compound List and/or TCLP purposes; conduct metals analyses for filtered and unfiltered samples, and determine the presence of light and heavy-phased non-aqueous liquids. Conduct well-purging upon completion of the sampling;

17. Conduct slug and pump testing of hydraulic properties of any impacted aquifer to determine extent of transmissivity, storativity, hydraulic conductivity, porosity, groundwater flow velocity and permeability so as to ascertain the direction, rate of mitigation, dispersion and extent of any contaminants;

18. Collect and analyze appropriate quality assurance (“QA”) samples (blind duplicates, field blanks, trip blanks) at a rate of one set of QA samples per 20 field samples;

19. Upon completion of the boring logs and test pit data, the Design Team shall evaluate the raw test data and establish subsurface design criteria for the development of new waterfront structures and any necessary repair or modification of existing structures. Data obtained from the boring program shall be recorded in a format approved by the Corporation and shall indicate thickness of all material encountered.

20. The Design Team shall prepare a report incorporating the results and conclusions from the subsurface exploration as they affect the Project. The
report shall be stamped and sealed by a licensed New York professional engineer and shall include such information as existing pavement thickness, blow count, boring logs, soil strata, soil classification and soil parameters.

21. Based upon all subsurface information acquired, the Design Team shall perform the following geotechnical engineering services:
   a. Characterization of subsurface and groundwater conditions at the Project Area based upon the geology of the area, the result of subsurface investigations and data available from previous investigations;
   b. Preparation of logs which shall include soil description, blow counts, field testing information, groundwater locations, elevations and any other information necessary or desirable for design purposes; and
   c. Development of subsurface profiles indicating elevations, groundwater locations, boring locations and soil interfaces, such profiles to be accurate and suitable for preliminary foundation recommendations and pavement designs.

22. The Design Team shall prepare a brief narrative report of findings of the Geotechnical Survey which, together with the drawings and any other necessary or appropriate supporting documents, with accompanying cost estimates for any required and proposed remediation scope, shall constitute the Geotechnical Survey.

23. The Design Team shall submit a draft report, in an 11" x 17" format to the Corporation for review and comment by the Corporation and other interested parts as determined by the Corporation. After incorporation of all comments and revisions, the Design Team shall prepare four (4) copies of the Geotechnical Survey in final form with all final documents and submit same to the Corporation. An electronic file shall be submitted as well. The Design Team shall incorporate the Topographical Survey, the Utility Survey, the Sewer Survey and the Geotechnical Survey into one complete package if requested by the Corporation.

C. Hydrologic and Hydraulic Survey

The Design Team shall prepare a hydrologic and hydraulic survey and analysis (the “Hydrologic and Hydraulic Survey”) and provide a survey of existing conditions and necessary follow-on analysis that shall include all work required to address the design and construction of the Project.

1. The Design Team shall provide hydrology and hydraulics analysis of the existing conditions of the Project Area and adjacent areas, including but not limited to existing ground water hydrology, estimating driving forces and boundary conditions, understanding tide forces, runoff and drainage, and current storm surge conditions.
2. The Design Team shall perform hydrologic and hydraulic analysis of the Flood Mitigation System and include the following analysis, at a minimum:
   a) Analysis and description of the existing site hydrology and flood hazard risks;
   b) Analysis and confirmation that the flood hazard risks are effectively mitigated and addressed by the proposed design of the Design Team, including within and around existing and new structures and flood mitigation systems;
   c) Address the hydraulic impact of the proposed Flood Mitigation System on the Project Area and adjacent areas/communities (such as potential flood elevation increase, etc.); and
   d) Analysis and summary of the results after implementation of the Flood Mitigation System on the Project Area and adjacent areas/communities, including but not limited to residual risks and required flood map revisions.

D. Flood Risk Assessment Report

The Design Team shall prepare a Flood Risk Assessment Report that shall include all work required to address the design and construction of the Project.

1. The Flood Risk Assessment Report shall include, without limitation, such information as: type of flood wall, foundation and subgrade requirements, effects on existing structures within the Project Area, need for further study, estimates (including operation costs), implementation and maintenance requirements.

2. The Flood Risk Assessment Report shall be submitted to and approved by FEMA, HUD and/or any other requisite agencies.

3. The Flood Risk Assessment Report shall be in an 11" x 17" format or as otherwise determined by the Corporation. The Design Team shall submit a draft Flood Risk Assessment Report to the Corporation and other interested parties as determined by the Corporation. An electronic file should be submitted as well. After incorporation of all comments and revisions, the Consultant shall provide the Corporation with four (4) hard copies and an electronic file of the Flood Risk Assessment Report in final form with all necessary supporting documents.

Task 6: Conceptual Design

A. The Design Team shall utilize the research from Tasks 1-5 to confirm and finalize the Pre-Design team documents and materials (including physical floor plan layout and plans) for Project Team sign-off and approval based on the user groups established in Task 4. The Design Team shall review, develop and utilize the agreed to visualization tool(s) necessary for presenting the Conceptual Design based on Project Team approval.

B. The Design Team shall provide a Project cost estimate at this phase of the Project.
C. Main Building:

1. Specific to Task 6.6: The Design Team shall provide an evaluation and recommendation for program realignment that removes all inpatient care and inpatient support from the Main Building and reallocates to the new CSS Building and/or Tower Building.

2. Specific to Task 6.7: The Design Team shall provide Conceptual Design of the areas vacated within the Main Building, as a result of the program realignment.

D. The Design Team shall assist in the process of obtaining Conceptual Design approval from FEMA and other regulatory agencies required for Project to progress to the next phase.

Task 7: Certificate of Need (“CON”) Process

A. The Design Team shall provide assistance HHC to obtain CON approval from the New York State Department of Health (“NYS DOH”), as necessary. Such assistance may include, without limitation:

1. Preparation / support documentation for sections of the application and filing, determination reviews (including public need review, financial feasibility review, character and competence and programmatic review, architectural and engineering review, and legal review), and appeals process for a Full review;
2. Meetings with the Regional and main DOH office to inquire about local issues to take into account on the CON application;
3. Attendance and participation during the Public Comment period of the CON review, if applicable;

Task 8: Schematic Design

A. The Design Team shall utilize the research from all aforementioned Tasks and obtain Project Team sign-off and approval based on the user groups established in Task 4. The Design Team shall utilize the agreed to visualization tool(s) necessary for presenting the Schematic Design based on Project Team approval.

B. The Consultant shall review and analyze the data and program requirements collected in the previous Tasks as a basis for developing alternative design schemes. The Project Area design should be based on the “Final Program” referenced in the CON exhibits.

C. The Consultant shall assess various basic design alternatives for the Project with the Project Team and applicable Agencies as soon as feasible in the design process to evaluate the viability of the alternative designs.
D. The Consultant shall investigate repair alternatives and make recommendations for any areas of the existing structure requiring repair or modification as necessary.

E. The Consultant shall determine basic architectural, landscape architectural and engineering design criteria for the Project and develop the schemes with respect to the Project requirements, taking into account overall impact, cost, maintenance, staffing and other relevant considerations, including the impact of construction on the operations of the existing tenant.

F. The Consultant shall develop a maximum of three alternative design solutions to the programmatic Project requirements to provide the Corporation with a wide range of solutions and to respond to zoning and building code compliance and/or other applicable laws. Aesthetics and context considerations should include, but not be limited to: efficient and functional space layout; heating, HVAC, plumbing, electrical, lighting and fire protection requirements; building code compliance; mechanical conveyance needs; security, interior and exterior finishes and furnishings; and ADA requirements. The Consultant shall develop a cost estimate for each design alternative and present each design alternative to the Project Team and any interested parties, including applicable Agencies and the community as requested by the Corporation.

G. The Consultant shall perform energy modelling in order to provide life cycle cost analysis with estimates for new system selection on the CSS.

H. The Consultant shall identify and list any elements of the alternative designs that require special maintenance and provide an estimate of anticipated costs to maintain such elements.

I. The Consultant shall prepare alternative schematic design documents for the Project Team’s approval, including roof/Site plan, floor plans, building sections as required, building elevations, schematic specifications and cost estimates in line with the Project’s available funding. The Consultant shall verify that the designs comply with all applicable Legal Requirements including but not limited to, zoning and DOB requirements and identify if any variances will be required for any of the proposed design alternatives.

J. The Project Team, in consultation with the Consultant, shall select a single approach to proceed to design development following review, presentation and discussion of the schematic design alternatives.

K. The Consultant shall identify in writing all Agency and Utility approvals, regulations, ordinances, codes and permits required for approval and construction of the selected design and develop a schedule noting the timeframe for submissions and review.

L. The Consultant shall make all initial contracts and obtain all necessary plan approvals for the selected design from all necessary Agencies and Utilities, including approvals for any special surface treatments, light fixtures, drainage and any other design features requiring such approvals. The Consultant shall present the selected schematic design to community groups and any other groups as deemed appropriate by the
Upon completion of Task 8, the Consultant shall submit the selected schematic design, together with initial cost estimates, to the Project Team for written approval prior to the rendering of the Task 9 Services.

The Consultant shall prepare drawings, narratives, and any other related documents and submit same to the City to petition for any zoning waivers including overrides.

Task 9: Design Development

A. The Consultant shall prepare design development documents (the “Design Development Documents”) for the Project after the Corporation’s approval of the schematic designs referenced in Task 8. The Design Development Documents for the Project, once approved in final form by the Corporation, are final design documents (the “Final Design”). The Design Development Documents shall consist of, but not be limited to, the following:

1. Designs for all necessary demolition and removal of existing structures and rehabilitation or reinforcement of any existing structures. All demolition and removal work must be designed in accordance with applicable Legal Requirements and must be coordinated with other construction, parking and business activities in and surrounding the Project Area.

2. Designs for all new or rehabilitated substructure elements of the Project, if required. All substructure and building elements must be designed in accordance with the design standard loadings and expected life of the Project as approved by the Corporation and other required Agencies.

3. Designs for utilities, which shall include, but not be limited to new or relocated lighting, drainage and water service.

4. Site design for curbs, sidewalks, accessible ramps, lighting, planting, as well as any appropriate amenities, such as seating, plantings, or other elements on the Site. Drainage shall be accommodated as necessary.

5. Signage designs which shall include all interior signage as required to obtain a Certificate of Occupancy from DOB, as well as basic room identification and program signage as required by the Project Team and the existing building tenant. It is also anticipated that exterior building identification signs will be required. The lay-out of the signage shall include information provided by the Corporation (or proposed to the Corporation by the Consultant); proposed materials; colors; and letter type. Materials shall be evaluated on the basis of durability, maintenance and cost. All layouts shall be subject to the approval of the Corporation and shall be revised as required by the Corporation, the
Project Team, and any regulatory Agency.

6. Preparation of drawings, including but not limited to: Site plan, demolition plans, foundation plans, floor plans, roof plans, building elevations, building sections, interior elevations, typical and special sections, typical and special details, conveying systems plans and schedules, mechanical and HVAC plans and schedules, low voltage, IT/ AV/ Security plans and schedules, gas and vacuum, equipment plans and schedules, specialties plans and schedules, furnishings plans and schedules, fixture plans and schedules, plans and schedules, finish schedule, major medical selection design basis / procurement set, major kitchen selection design basis / procurement set, artwork schedule and plans, typical and special details, sections, structural plans, electrical plans including lighting, communications, utilities, safety / security, power and signal systems, drainage plans, plumbing plans and paving details. The plans shall be at a scale approved by and acceptable to the Corporation.

7. Preparation of preliminary specifications for the work in a format approved by the Corporation.

8. Preparation of a preliminary cost estimate of the Project. The estimate shall indicate item numbers, item descriptions, unit quantities, unit prices based on the best available information, sub-totals and totals.

B. The Consultant shall identify and list any elements of the Design Development Documents that require maintenance and provide an estimate of the anticipated costs to maintain each element.

C. The Consultant shall consider alternative materials, systems and equipment for the Project based on their appropriateness, cost, ease of maintenance and esthetics and with regard to the design objectives of the Project Team and other Agency requirements.

D. The Consultant shall provide Design Development Documents that optimize energy conservation and conform to the New York State Energy Conservation Code, latest edition, and to the United States Occupational Safety and Health Act (“OSHA”).

E. The Design Development Documents shall conform to NYSDEC and DEP guidelines for storm water discharge.


G. The Design Development Documents shall comply with the 2010 AIA Healthcare Guidelines and NFPA 2000, and all noted guidelines and requirements under Section III.B. Contract Documents of this RFP.
H. The Consultant shall process the Design Development Documents for review or approval by all required Agencies.

I. The Consultant shall submit four (4) half size sets of plans, cost estimates and draft specifications to the Project Team for review and comments. Additional sets shall be submitted to all applicable Agencies, Utilities and community groups as directed by the Corporation.

J. The Consultant shall make formal presentations of the Design Development Documents to all applicable Agencies and Utilities pursuant to notice from the Corporation. The Consultant shall make presentations to community groups as directed by the Corporation.

K. The Consultant shall retain a professional architectural renderer to produce two (2) perspective renderings of the principal elevation of the building of the approved preliminary design if requested by the Corporation. The renderings shall become property of the Corporation.

L. The Consultant shall retain a professional architectural model maker to produce a professional physical model of the final campus design, including a display case.

Task 10: Contract Documents

A. The Consultant shall prepare the Contract Documents in a manner and form that enables the Corporation to award the necessary contracts for construction of the Project following approval by the Corporation of the Final Design and after the Consultant has acquired the required written approvals from all required Agencies and Utilities. The Contract Documents shall include final designs, specifications, estimates, and other related documents for each separate contract. The final drawings and specifications shall include, but shall not be limited to, drawings and specifications for all Project elements including any necessary equipment.

B. The Contract Documents shall be coordinated so as to preclude, insofar as possible, the necessity for design changes, adjustments or change orders during construction. It shall be the responsibility of the Consultant to fully coordinate the design of the architectural, landscape architectural (if any), structural, HVAC, low voltage, gas and vacuum, plumbing and electrical work so that construction conflicts among and within the trades will be avoided. The coordination shall ensure the maintenance of the integrity of the Final Design. Composite drawings shall be produced to show the work of each trade in areas involving the work of more than one trade where necessary for clarity.

C. The Contract Documents shall include all fixtures and/or appliances that are essential for the Project’s intended use. The Contract Documents may also include moveable equipment and all necessary connections thereto, and all furnishings and finishes.

Appendix B-75
These items shall be fully scheduled in the drawings and specifications.

D. The Contract Documents shall include a color schedule, including paint color chips (the “Color Schedule”). The Consultant shall provide the Corporation with sufficient copies of the Color Schedule as determined by the Corporation.

E. The Consultant shall consolidate the Contract Documents into one fully developed and fully coordinated contract package that will contain all information required to construct the Project, including all addenda and bid sheets. The Consultant may be directed by the Corporation to develop early bid packages and issue separate interim drawing sets at no additional cost to the Corporation.

F. Drawings and specifications for hazardous material management plan and removal, including without limitation, asbestos removal, mold removal, lead removal and/or contaminated soil removal (if required) will be provided to the Consultant by the Corporation and incorporated by the Consultant into the Final Contract document package.

G. The Consultant shall prepare all Local Law 11 (1998) of the City of New York (“LL 11”) reports for the next consecutive inspection cycle (i.e. Cycle 9) for the Main Building and Tower Building.

H. The Consultant shall prepare and submit to the Corporation a pre-final and final estimate (the “Final Estimate of Costs”) of the total construction cost of the Project based upon the final drawings and specifications for all work necessary to complete the Project, including quantities, unit prices and amounts for all items required for construction of the Project in a format approved by the Corporation. The pre-final estimate shall be submitted to the Corporation approximately six (6) weeks prior to the securing of all final approvals by applicable Agencies and Utilities. The pre-final estimate shall include all elements included in the Final Estimate of Costs and represent approximately 95% completion of the Contract Documents.

I. The Consultant shall make all modifications required by the Corporation and shall submit the consolidated Contract Documents for approval in writing to all applicable Agencies.

J. The Consultant shall submit the following items to the Corporation for signature after incorporation of all modifications as may be required and written approval of the Contract Documents by the Corporation and all applicable Agencies:

1. the original of the design title sheet, signed by the Consultant, prepared in a format as approved by the Corporation;

2. a set of paper prints of the contract drawings;

3. a copy of the Final Estimate of Costs; and

Appendix B-76
4. a set of specifications, including addenda and bid sheets.

K. The Consultant shall submit all materials necessary for any required permit applications to all regulatory Agencies on a timely basis and at the proper time for such submissions.

Task 11: Review and Analysis of Bids

A. The Consultant shall assist the Construction Manager in the review and analysis of the bids, including answering questions from prospective bidders, preparing required addendum to any construction contracts, attending the contractor de-scoping meetings, analyzing the received bids and recommending the award of any contract and related matters.

B. The Consultant shall assist the Construction Manager, to the satisfaction of the Corporation, to ensure that questions from prospective bidders are answered in a uniform/timely fashion.

C. The Corporation and the Consultant shall advise each other of any ambiguities or inconsistencies in the consolidated Contract Documents. The Consultant shall investigate same and provide the Corporation with its analysis and/or recommendations.

D. The Consultant shall assist the Construction Manager in the preparation and delivery of any addendum where the Corporation deems that an addendum to the consolidated Contract Documents is necessary.

E. The Consultant shall assist the Construction Manager in the review and analysis of the bids, including: providing a breakdown of all items into proper budget codes, analyzing unit prices to determine the appropriateness of costs with respect to the associated work items, determining apparent imbalances and any related matters.

F. The Consultant shall issue a conformed set of drawings to the Construction Manager at the completion of the bidding process which shall include any information that was issued via addendum during the bidding process, or via any Agency comments.

G. The Consultant shall attend initial de-scoping meeting with the initial bidders for each package.

Task 12: Shop Drawing Review/Construction Contract Administration

The Consultant shall work with the Construction Manager to ensure that construction work conforms to the Contract Documents. In connection therewith, the Consultant shall perform the following Services:

Appendix B-77
A. The Consultant shall become familiar with the submission dates of shop drawings and samples upon the award of construction contracts by the Construction Manager.

B. The Consultant shall assist the Construction Manager to begin and advance the construction work and shall also attend a pre-construction conference, bi-weekly construction meetings, and other conferences as may be required to resolve design issues that may arise during the construction of the Project.

C. The Consultant shall assist the Construction Manager in reviewing and revising, if necessary, the list of shop drawings and samples prepared by each contractor. The Consultant shall advise the Corporation with regards to the testing of materials. The Consultant shall indicate the required changes for shop drawing or samples that do not conform to the contract drawings or specifications. The Consultant shall inform the Corporation of any delays in the submission of shop drawings or samples. The Corporation shall have the right to review the shop drawings and samples, including any color schedules, prior to acceptance by the Consultant.

D. The Consultant shall make periodic inspections of the Project, supplementing the inspections made by the Construction Manager, and where required, ascertain that the construction work complies with the intended designs.

E. The Consultant shall issue interpretations and clarifications of the Contract Documents if requested by the Corporation, and if so required, coordinate any work changes with the Construction Manager.

F. The Design Team shall provide shop drawing review and construction contract administration services as provided in Section III.C of the Project Scope of Services.


A. To facilitate future maintenance, the Consultant shall identify and list any and all elements of the design requiring maintenance, including, without limitation, flood wall, equipment, furnishings, signage, special lighting, paving, site furniture, landscaping, plantings, irrigation, and substructure elements (the “Maintenance Items”). The Consultant shall prepare maintenance and operations manual for all Maintenance Items (the “Maintenance and Operations Manual”), which shall be organized in an easily comprehensible manner and include, without limitation, the following items:

1. Specifications for materials and installation specifications;
2. Resources for replacement parts;
3. A list, with all appropriate contact information, of the manufacturer for each Maintenance Item;
4. Catalog cuts, shop drawings, samples or other items, as appropriate, that illustrate the selected materials and/or means and method of construction;
5. All applicable warranties;
6. “As-built” drawings as supplied by the contractor;
7. Information (from the manufacturer and based on the Consultant’s experience) regarding the upkeep of Maintenance Items, such as graffiti removal, landscaping guidelines, sealants (and schedule of application of sealants), and cleaning methods and schedules;
8. Annual maintenance schedules and estimates of maintenance costs. The estimates of maintenance costs shall be separated into cost categories of (1) a minimum level of maintenance service, (2) good maintenance service, and (3) excellent maintenance service.

B. The Consultant shall submit the Maintenance and Operations Manual to the Corporation for approval. Following approval, the Consultant shall prepare three (3) final copies (in both hard and electronic formats) of the Maintenance and Operations Manual and deliver same to the Project Team.

C. The Consultant shall prepare the Maintenance and Operations Manual at the commencement of the Project and submit it to the Corporation and all involved parties for review at the completion of the various stages of design. At the end of each phase, the Maintenance and Operations Manual must be submitted to the Corporation and approved by the Corporation. At each level of design completion, the Maintenance and Operations Manual shall address operating, security, maintenance requirements and associated budgets for maintaining the Project Area at a conceptual level of care, including overall quantities, costs per unit, the identification of the entity responsible for such maintenance, and a list of proposed supplies, component replacements and staffing requirements.

D. The Consultant shall interview appropriate personnel from DPR, DOT, DEP and any other parties as may be appropriate to determine maintenance, security and operations requirements and update the Maintenance and Operations Manual accordingly.


A. Review compliance related to issues such as the presence of required devices, signage, blocking of access, etc. Consultant is not responsible for reviewing for such things as engineering design, proper installation, workmanship, product quality, installation, and defects in equipment.

B. Provide an extensive evaluation of above-ceiling issues, such as fire, smoke and corridor wall penetrations in those areas where the LSC may require smoke barrier and/or fire rated walls. Evaluation should include extensive checks for smoke and fire dampers as well as penetrations in smoke, fire-rated, and corridor walls where required by NFPA 101 2000 edition.

C. Review the following documentation (where it exists):
   1. LS.01.01.01
2. EC.02.03.05
   i. Tests of fire system initiating devices, fire detection and alarm equipment
   ii. Automatic smoke detection shutdown device testing for air handler equipment: Annual
   iii. Tests of all horizontal and vertical sliding and rolling fire doors: Annual
   iv. Off premises emergency notification transmission equipment testing: Quarterly
   v. Fire pump annual flow testing: Annual
   vi. Fire-extinguishing system water storage tank high/low water level alarm testing: Semi-annual
   vii. Fire extinguishing system water storage tank high/low water temperature alarm testing: Annual (Where applicable)
   viii. Water based automatic fire-extinguishing system main drain test all riser: Annual
   ix. Kitchen automatic fire-extinguishing system inspections: Semi annual
   x. Carbon dioxide and other gaseous automatic fire-extinguishing system tests: Annual
   xi. Monthly portable fire extinguisher inspections
   xii. Annual fire extinguisher maintenance
   xiii. Standpipe occupant hoses hydrostatic testing (NFPA 25)
   xiv. Fire and smoke damper testing: Four years

b. LS.01.02.01
   i. Policy for Interim Life Safety Measures (ILSM)
   ii. Documentation of ILSM implementation

c. EC.02.05.07
   i. Emergency generator tests
   ii. Automatic transfer switch test
   iii. Battery powered lighting required for egress tests
   iv. Test of Stored Emergency Power Supply Systems (SEPPS)
   v. Emergency generator test

d. EC.02.05.09
   i. Piped medical gas system inspections and testing
   ii. Medical gas and vacuum system installation or modification tests for cross connection, purity and pressure
   iii. Labeled main supply valve and area shut off valves for piped medical gases and vacuum systems

D. Provide AutoCAD drawings that should include basic floor plans, room labels, existing fire/smoke barriers, partitions, separations, sprinklered areas, suite locations, and hazardous area locations.

E. Prepare final report which shall establish scope of survey, survey findings with support photo or illustrative documentation, notations and regulation references as needed to effectively communicate issues, path of action for issue resolution based on

Appendix B-80
Task 15: Demolition of Structures

A. The Consultant shall review and analyze the data and program requirements for the Project and develop separate building demolition plans and Contract Documents for the demolition of each of the following structures:
   1. Hammett Pavilion
   2. Shops / MER Building only (Portion of Building 3)
   3. Building 6
   4. Main Building (Selective one and/or two story level areas only)

B. The Consultant shall assist the Corporation and HHC in the process of declaring and determining that the structure obtains approval as a surplus building by the necessary authorities / Agencies and is approved for demolition.

C. The Consultant shall review and obtain any required SHPO approvals before the commencement of Hammett Pavilion demolition.

D. The Consultant shall perform site investigation, analysis of site condition, and provide regulatory analysis of the structure(s) intended for demolition.
   1. Site investigation: The Consultant shall perform a site visit(s) to investigate, evaluate and document the site conditions and review all available documents regarding the site and structures on it, such as facility surveys, as-built drawings, soil reports, and meetings with the facility director. The Consultant shall develop a Site Investigation Checklist which identifies the parameters of the investigation.
   2. Analysis of site conditions: Analyze site investigation findings to determine demolition work requirements and appropriate approaches for accomplishing the work.
   3. Regulatory analysis: The Consultant must account for local regulations regarding required permits, disposal sites, recycling requirements, etc. Whenever possible, a demolition site shall be isolated from public access.

E. The Consultant shall include in the Contract Documents any hazardous material testing requirements, particularly with regard to asbestos, mold and lead. Refer to “Section V: Specific Tasks” of the Project Scope and Services for details on Consultant services relating to hazardous materials.

F. The Consultant shall also include in the Contract Documents consideration of the following:
   1. Salvageable Materials:
      a) Determination of what items HHC wants to be salvaged, if any;
      b) Identification of items to be removed by the Facility prior to demolition;
c) Identification of items to be removed by the CM and turned over to HHC;

2. Utilities:
   a) Determination must be made relative to utilities serving the structure to be demolished or affected by its removal. The work required for each individual utility must be specified (e.g.: cut and plug, remove, abandon, etc.)
   b) Buried heating and fuel storage petroleum tanks should be removed;

3. Site Access:
   a) All issues or restrictions related to accessing the demolition site and measures to be taken for protection of CIH campus population and/or general public must be identified.

4. Scope of Work:
   a) Demolition method shall not be specified unless there are specific requirements. The Consultant should however include the identification of specific restrictions (e.g.: such as no burning, no explosives, etc.) shall be included in the Contract Documents.

5. Foundations:
   a) Procedure for removal of foundations and backfilling basements shall be reviewed with the re-use of the site as a major determining factor.

6. Backfilling and Site Work:
   a) Review and provide recommendation to the Project Team on the responsibility for critical backfilling and site work delineations (e.g.: new building contractor vs. demolition contractor).
   b) Final approved work plan to be included in the Contract Documents.

7. Recycling:
   a) Demolition debris should be identified and its disposition specified whenever practicable.

G. Schedule
   1. The Consultant shall provide a demolition schedule that outlines the sequence of demolition and its placement within the overall Project schedule. This shall incorporate Project discussion on phasing requirements in order to sequence the work. The Consultant shall provide a schedule at the following levels of completion: Conceptual, 25%, 70% and 100% Contract Documents.

H. Cost Estimate
   1. The Consultant shall provide a cost estimates at the following levels of completion: Conceptual, 25%, 70% and 100% Contract Documents.

I. Shop Drawings / Construction Contract Administration
1. The Design Team shall provide shop drawings review and construction contract administration services as fully described under Task 11: “Review and Analysis of Bids” and Task 12: “Shop Drawing Review / Construction Contract Administration” of this Project’s Scope of Services.
Site Location

Borough: Brooklyn
Neighborhood: Brighton Beach
Block: 7239; Lot: 1
Community Board: 13

Legend

☐ Project Area
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;
(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.
APPENDIX C

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
EXHIBIT 2 TO APPENDIX C

EFT 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/EFT COORDINATOR’S NAME:

8. TELEPHONE NUMBER:

SECTION III - VENDOR SIGNATURE

VENDOR SIGNATURE: ____________________________
PRINT NAME: ____________________________
DATE: ____________________________
## 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.
EXHIBIT 3 TO APPENDIX C
### PAYROLL REPORT

**The City of New York • Office of the Comptroller • Bureau of Labor Law**

**Appendix C - 9**

**Contract No. 61620001**

**NAME OF PRIME CONTRACTOR**

**AGENCY**

**PAYROLL REPORT**

TO BE SUBMITTED WITH REQUISITION FOR PAYMENT

**NAME OF CONTRACTOR/SUBCONTRACTOR**

**ADDRESS**

**PHONE #**

**PAYROLL #**

**TAX I.D. #**

**CONTRACT REGISTRATION #**

**JOB CODE**

**WEEK ENDING DATE**

**PROJECT NAME & LOCATION**

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**NAME**

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**LAST FOUR DIGITS OF SOCIAL SECURITY NUMBER**

**LIST TRADE & CHECK CLASSIFICATION**

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**BASE RATE PER HOUR**

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**TOTAL BASE PAY**

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**SUPPLEMENTAL BENEFITS**

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**PAYED TO (CLASS/FRINGE BENS)**

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**GROSS PAY**

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**TOTAL TAX & OTHER DEDUCTIONS**

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**NET PAY**

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### INSTRUCTIONS ON REVERSE SIDE

**FALSIFICATION OF THIS STATEMENT IS A PUNISHABLE OFFENSE**

This certified payroll has been prepared in accordance with the instructions contained on the reverse side of this form. I certify that the above information represents wages and supplemental benefits paid to all persons employed by my firm for construction work on the above project during the period shown. I understand that falsification of this statement is a punishable offense.

**SIGNATURE**

**NAME (Print)**

**TITLE**

**DATE**

---

**FORM 6/2014**

**Appendix C - 9**
Instructions for the Preparation and Submission of a Payroll Report

1. All persons who performed any on-site construction activity, during the period of the requisition, shall be listed on the Payroll Report.

2. Separate Payroll Reports shall be submitted by the prime contractor and each subcontractor who performed any on-site construction activity during the period of the requisition.

3. Failure to provide the required Payroll Report may result in the requisition for payment being returned unpaid or the payment being reduced.

4. PAYROLL REPORT HEADING: The Payroll Report Heading shall require the following information:

   NAME OF PRIME CONTRACTOR: Enter the name of the firm that has entered into the contract with the New York City government agency.

   NAME OF CONTRACTOR / SUBCONTRACTOR: The legal name of the firm submitting the Payroll Report shall be placed immediately below this designation. Circle either the word CONTRACTOR or SUBCONTRACTOR as applicable.

   ADDRESS: Insert the current address (i.e., street, city, state and zip code) of the firm submitting the Payroll Report.

   PHONE NO.: Enter the telephone number of the firm submitting the Payroll Report in the space provided.

   AGENCY: Enter the name of the New York City government agency that has the contract with the Prime Contractor.

   PAYROLL NO.: In the space provided, enter the Payroll Number of the Contractor or Subcontractor.

   CONTRACT REG. NO.: Enter the Contract Registration Number here. This may be obtained from the "Notice of Award" and/or the "Order to Commence Work" letters.

   JOB CODE: In the space provided, enter the Contractor/ Subcontractor's in-house labor distribution code or job number where applicable.

   WEEK ENDING DATE: In the space provided, enter the last date of the pay-week (i.e., month, day, year).

   PROJECT NAME & LOCATION: In this space, enter the Project Name and Location where contract work is being performed.

   TAX ID NO.: Enter in this space the Federal Tax Identification Number of the firm submitting the Payroll Report.

5. For every employee who performed any on-site construction activity during the period of the Payroll Report, the following information shall be provided:

   1) NAME, ADDRESS, LAST FOUR DIGITS OF THE SOCIAL SECURITY NO.: The legal name, current address and the last four digits of the social security number of each employee. (Employers must keep the full social security number on file for each of their covered workers.) If the employee has no social security number, please list their IRS Individual Taxpayer Identification Number and mark it "ITIN".

   2) LIST TRADE & CHECK WORK CLASSIFICATION: Specify and insert the trade applicable to the work performed by each employee. The Trade Identified must be one listed on the Prevailing Wage & Supplemental Benefits Schedule of the Comptroller, i.e., Electrician, Laborer, etc. Check next to the letter T if the individual is a Journeyman. Check next to the letter H if the person is a Helper in a trade classification that has Helper rates listed in the Comptroller's Schedule of Prevailing Wages.

   3) TIME: RT indicates Regular Time, and OT indicates Overtime.

   4) DAY AND DATE: Below this heading, in the first row, enter the appropriate sequence of the contractor's pay records. MTWTFSS, for example, is the sequence to use if the work week ends on a Sunday, and SSMTWTF is the sequence if the work week ends on a Friday. In the second row, below each letter representing the day of the workweek, insert the corresponding date. Below the heading HOURS WORKED EACH DAY, at the intersection of the column of the particular day and date and the horizontal row of the employee's name, insert the hours worked each day in the appropriate box either for RT (Regular Time) and/or OT (Overtime). If an employee worked Shift Time, the RT (Regular Time) row shall be used and adjusted accordingly.

   5) TOTAL HOURS: Add the hours worked for Regular and/or Shift Time with the hours worked for Overtime, and enter separate totals in this column.

   6) BASE RATE OF PAY PER HOUR: Specify the actual base rate of pay per hour paid to the employee. Do not include supplemental benefits in this amount.

   7) TOTAL BASE PAY: Total amount earned by the employee, not including benefits.

SUPPLEMENTAL BENEFITS:

8) RATE PER HOUR: Amount of supplemental benefits paid / provided per hour.

9) PAID TO: Place a check mark in the appropriate box: U for Union if benefits paid to a Union, E for Employee if benefits paid in cash (or check) directly to the Employee, or O for Other if benefits are otherwise paid / provided to the employee. If U is checked, you must insert the "Local" number of the union in that box.

10) TOTAL BENEFITS PAID: Total amount of supplemental benefits paid / provided for the workweek to the employee.

11) GROSS PAY: Total amount earned for workweek. This amount comprises the Total Base Pay plus any benefit paid in cash (or check) directly to the employee (i.e., column 7 + column 9). If Box E is checked and payment made directly to employee, no other type of benefit should be included in this column's total.

12) TOTAL TAX AND OTHER DEDUCTIONS: Enter the sum total of all deductions in this column (including FICA, Federal, State and City Taxes, etc.). This does not include any tax and other deductions required by law.

13) NET PAY: Total amount of pay after all deductions (i.e., the actual Take-Home Pay).
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 )
COUNTY OF ) ss.: 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

Appendix D - 2
# LIST OF RIGHTS, LIMITATIONS AND REQUIREMENTS REGARDING THE USE AND DISPLAY OF NON-ORIGINAL MATERIALS INCLUDED IN CONSULTANT’S WORK PRODUCT

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

INSURANCE REQUIREMENTS

1. Required Policies and Amounts
2. Additional Insureds
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: 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


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 as soon as practicable 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 as soon as practicable after such claim has been filed with the Comptroller of the City and notice of claim from the Corporation, as soon as practicable 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 thirty (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
# Certificate of Liability Insurance

**Date (INSURED):** 11/11/2011

**Certificate Holder Cancellation Number:**

**Revision Number:**

## Coverages

<table>
<thead>
<tr>
<th>ReIns. INSURER</th>
<th>Type of Insurance</th>
<th>Policy Number</th>
<th>Policy Eff.</th>
<th>Policy Exp.</th>
<th>Limits</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>A</strong> General Liability</td>
<td>Commercial General Liability</td>
<td>Y Y Insurance Policy #</td>
<td>11/11/2011</td>
<td>11/11/2012</td>
<td>$1,000,000</td>
</tr>
<tr>
<td></td>
<td>Additional Insureds - City of New York</td>
<td>Y Y Apple Industrial Development Corp.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Additional Insureds - City of New York</td>
<td>Y Y Building Risk Corporation</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Additional Insureds - City of New York</td>
<td>Y Y Professional Liability</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Additional Insureds - City of New York</td>
<td>Y Y Umbrella Liability</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Important:** If the certificate holder is an ADDITIONAL INSURED, the policy(s) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights upon the certificate holder in lieu of such endorsement(s).

## Certificate Holder

**New York City Economic Development Corporation**

110 William Street, 6th Floor

New York, NY 10038

Attention: Contract Administration

**Authorized Representative**: Signature

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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 nonresponsive.

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 SUBCONTRACTORS PARTICIPATION PLAN

[INSERT CONSULTANT’S COMPLETED PLAN; IF NOT APPLICABLE INSERT “INTENTIONALLY DELETED”]
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 REQUIREMENTS
**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>
<thead>
<tr>
<th>1. Type of Federal Action:</th>
<th>2. Status of Federal Action:</th>
<th>3. Report Type:</th>
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<tbody>
<tr>
<td>A. contract</td>
<td>A. bid/offer/application</td>
<td>A. initial filing</td>
</tr>
<tr>
<td>B. grant</td>
<td>B. initial award</td>
<td>B. material change</td>
</tr>
<tr>
<td>C. cooperative agreement</td>
<td>C. post-award</td>
<td>For Material Change Only: year_____ quarter_____ date of last report__________</td>
</tr>
<tr>
<td>D. loan</td>
<td></td>
<td></td>
</tr>
<tr>
<td>E. loan guarantee</td>
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<td>F. loan insurance</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>4. Name and Address of Reporting Entity.</th>
<th>5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:</th>
</tr>
</thead>
<tbody>
<tr>
<td>□ Prime</td>
<td>Congressional District, if known:</td>
</tr>
<tr>
<td>□ Subawardee</td>
<td>Congressional District, if known:</td>
</tr>
<tr>
<td>Tier _____, if known:</td>
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</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>6. Federal Department/Agency</th>
<th>7. Federal Program Name/Description:</th>
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<tbody>
<tr>
<td></td>
<td>CFDA Number, if applicable:</td>
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</table>

<table>
<thead>
<tr>
<th>8. Federal Action Number, if known:</th>
<th>9. Award Amount, if known:</th>
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</thead>
<tbody>
<tr>
<td>$</td>
<td>$</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>10. a. Name and Address of Lobbying Registrant: (If individual, last name, first name MI):</th>
<th>b. Individuals Performing Services (including address if different from No. 10a) (last name, first name, MI)</th>
</tr>
</thead>
</table>

| 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. | |

<table>
<thead>
<tr>
<th>Signature: ___________________________</th>
<th>Print Name: ___________________________</th>
</tr>
</thead>
<tbody>
<tr>
<td>Title: ______________________________</td>
<td>Telephone No: _________________________</td>
</tr>
<tr>
<td>Date: ________________________________</td>
<td></td>
</tr>
</tbody>
</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)
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.


________________________________________
Signature and Title of Authorized Official

______________
Date
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 an explanation to this proposal.


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 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
SUBRECIPIENT AGREEMENT

Between

THE CITY OF NEW YORK
Acting by and through its Office of Management and Budget

And

THE NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION
as Subrecipient,

Related to

Repair/Restoration and Hazard Mitigation of HHC Hospitals

Dated as of May ___, 2015
# TABLE OF CONTENTS

1. DEFINITIONS AND INTERPRETATION ................................................................. 4
2. EFFECTIVE DATE AND TERM ......................................................................... 9
3. SCOPES OF WORK .......................................................................................... 9
4. BUDGETS ....................................................................................................... 10
5. PROGRAM FUNDS .......................................................................................... 10
6. GENERAL OBLIGATIONS OF SUBRECIPIENT ............................................. 14
7. ADMINISTRATIVE OBLIGATIONS ................................................................. 15
8. CONTRACTORS .............................................................................................. 17
9. PERSONNEL AND PARTICIPANT CONDITIONS ......................................... 22
10. ENVIRONMENTAL CONDITIONS ................................................................. 23
11. EVENTS OF DEFAULT AND TERMINATION .............................................. 23
12. MISCELLANEOUS ......................................................................................... 29

Schedules and Appendices

- Schedule I  Scope of Work
- Schedule I-A  Budget
- Appendix A  General Provisions Governing Contracts For Consultants, Professional, Technical, Human and Client Services
- Appendix B  Supplementary General Conditions (U.S. Department of Housing and Urban Development Requirements)
  - Fed. Exhibit I
  - Fed. Exhibit II
- Appendix C  Hurricane Sandy CDBG-DR Appendix
- Appendix D  Required Program Records.
- Appendix E  Whistleblower Protection Expansion Act (Local Law Nos. 30 and 33)
  - Rider and Notice
SUBRECIPIENT AGREEMENT

This SUBRECIPIENT AGREEMENT, dated as of May ___, 2015 (this “Agreement”) by and between the CITY OF NEW YORK, a New York municipal corporation (the “City”), acting by and through its Office of Management and Budget (“NYCOMB”) 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 U.S. Department of Housing and Urban Development (“HUD”) Community Development Block Grant Disaster Recovery (“CDBG-DR”) program;

WHEREAS, HUD approved the City’s CDBG-DR Action Plan, which addresses the City’s housing, business, resiliency, and infrastructure needs;

WHEREAS such needs include the repair/restoration and hazard mitigation of the New York Health and Hospital Corporation (“HHC”) hospital facilities (the “Program”), which will be identified in an approved Action Plan and are described in the Scope of Work (Schedule I, and any other Schedules containing scopes of work added to this Agreement by amendment);

WHEREAS, the City will comply with all requirements concerning the use of CDBG-DR Funds and Subrecipient will also be required to meet all requirements;

WHEREAS, the City, acting by and through DSBS, and the Subrecipient entered into an agreement dated June 30, 2014 (as amended, the “Master Agreement”), which provides that the Subrecipient shall assist the City in fostering economic development in the City and the funds to be provided under this Agreement shall be funded pursuant to such Master Agreement;

WHEREAS, the City, wishes to engage the services of the Subrecipient to assist the City in administering the Program to be funded with Program Funds (as defined below);

WHEREAS, the Subrecipient has agreed to undertake such Program and administrative services, among other responsibilities on behalf of the City to benefit HHC;

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 for administrative fees consistent with all CDBG rules and regulations; and
WHEREAS, such requisitions, approved by the City, will be funded with Program Funds on the terms set forth below.

WHEREAS, HHC and the Mayor’s Office of Resiliency and Recovery (“ORR”) will be advising on Subrecipient’s implementation of the Program;

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.

“Administrative Services” means the administrative services to be provided by the Subrecipient as described in the Scopes of Work.

“Agreement” means this Subrecipient Agreement including the Schedules and Appendices attached hereto.

“Budgets” means the budget of Subrecipient attached hereto at Schedule I-A, and any other budgets added to this Subrecipient Agreement as a Schedule. Budgets shall be revised by mutual agreement between NYCOMB and Subrecipient, as required, to provide additional details of the specific budget requirements for each phase of implementation of each Program and which may include reallocation of such amounts to other City agencies or contractors providing services in connection with each such 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-DR Funds” means the funds provided by the HUD CDBG-DR program and designated by the City for the Program.

“CDBG Rules” means Title 24 of the Code of Federal Regulations, Part 570 (24 CFR Part 570), as the same may be modified by the HUD Notices, and 2 CFR Part 200.
“City” has the meaning given in the preamble to this Agreement.

“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 CDBG-DR Funds.

“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.

“Disbursement” has the meaning given in Section 5.2.

“DSBS” has the meaning given in the preamble to this Agreement.

“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 and the Administrative Services, including any payments, funding or disbursements made by Subrecipient to any Contractors; provided, that such costs and expenses: (a) were incurred by the Subrecipient 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; (c) are incurred in connection with any activity described in the Scopes of Work which is eligible under the 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 2 CFR Part 200, Subpart E; (e) are otherwise eligible for reimbursement or payment with CDBG-DR Funds under this Agreement; (f) are items identified in the Budgets; and (g) are not “Indirect Costs” as such term is defined in 2 CFR Part 200, Subpart E.

“Eligible Purposes” means the purposes described in the Scope of Work.

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

“Grant Funds” means CDBG-DR Funds.
“Grantee” means the City.

“HHC” has the meaning given in the recitals to this Agreement.

“HUD” has the meaning given in the recitals to this Agreement.

“HUD Grant Agreement” means the grant agreement between HUD and the City for CDBG-DR Funds allocated pursuant to the Act.

“HUD Notices” means Federal Register Notices published by HUD as follows:

- “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 (March 5, 2013);
- “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 (April 19, 2013);
- “Allocations, Waivers, and Alternative Requirements for Grantees Receiving Community Development Block Grant Disaster Recovery Funds in Response to Disasters Occurring in 2011 or 2012,” Federal Register, Volume 78, No. 103 (May 29, 2013);
- “Additional Waivers and Alternative Requirements for Hurricane Sandy Grantees in Receipt of Community Development Block Grant Disaster Recovery Funds,” Federal Register, Volume 78, No. 149 (August 2, 2013);
- “Second Allocation, 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. 222 (November 18, 2013);
- “Clarifying Guidance, Waivers, and Alternative Requirements for Grantees in Receipt of Community Development Block Grant Disaster Recovery Funds Under the Disaster Relief Appropriations Act, 2013,” Federal Register, Volume 79, No. 59 (March 27, 2014);
- “Second Allocation, Waivers, and Alternative Requirements for Grantees Receiving Community Development Block Grant (CDBG) Disaster Recovery Funds in Response to Disasters Occurring in 2013,” Federal Register, Volume 79, No. 106 (June 3, 2014); and
- “Additional Clarifying Guidance, Waivers, and Alternative Requirements for Grantees in Receipt of Community Development Block Grant Disaster Recovery Funds Under the Disaster Relief Appropriations Act, 2013,” Federal Register, Volume 79, No. 115 (June 27, 2014).
“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.

“ORR” has the meaning given in the recitals.

“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” means CDBG-DR Funds and funds from any other source designated by the City for the Program.
“Program Income” means gross income generated from the use of Program Funds, or pro-rata 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 funds held in a revolving fund account; (i) interest earned on program income pending disposition of the income; (j) funds collected through special assessments made against nonresidential properties and properties owned and occupied by households not of low and moderate income, if the special assessments are used to recover all or part of the CDBG-DR portion of a public improvement; (k) gross income paid to the City or subgrantee of the City from the ownership interest in a for-profit entity acquired in return for the provision of CDBG-DR assistance; (l) income from fees for services performed; (m) the sale of commodities or items fabricated under an award; and (n) license fees and royalties on patents and copyrights.

“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 Appendix D attached hereto.

“Required Reports” means the reports to be prepared by Subrecipient in connection with the Program and Subrecipient’s performance of the Scopes 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 § 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 Requirements of 2 CFR Part 200 (also referred to as the “Super Circular”);
• the provisions of Appendices A, B, C, D and F attached to this Agreement, including the Exhibits thereto,
• and all other applicable Federal, state and local laws, regulations, policies and policy memoranda, guidelines, and guidance documents, 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).

“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 Scopes of Work.

“Scopes of Work” means the scope of work attached hereto as Schedule I, and any other Scopes of Work added as a Schedule(s) to this Subrecipient Agreement, which may be supplemented from time to time as provided therein, and shall otherwise be revised by mutual agreement between NYCOMB and Subrecipient from time to time, as required, to provide additional details for each phase of implementation of the Program.

“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. This Agreement shall become effective and the Parties shall become bound by provisions applicable to them pursuant to this Agreement on _____ , 2015 (the “Effective Date”).

2.2. Term; Effect of New Uniform Administrative Requirements

(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) the date on which the Subrecipient no longer has control over any Program Assets or other CDBG-DR funds, as such date shall be set forth in the Scope of Work; (ii) 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 (iii) such later date as the Parties may agree to in a signed writing.

3. SCOPES OF WORK

(a) The Subrecipient shall administer the Program and perform the activities detailed in the Scopes 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, and any other Scopes of Work added to this Agreement as a Schedule pursuant to an amendment.

(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 Scopes 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. BUDGETS

(a) The Budget allocations for the Program are attached hereto as Schedule I-A, and any other Schedules added by amendment to this Agreement that contain budgets. Any subsequent modifications to the Budgets shall otherwise be in a form and substance satisfactory to NYCOMB and consistent with applicable Requirements of Law. NYCOMB will, as required by the CDBG Rules, require a more detailed or supplementary Budget breakdown for one or more of the Budgets attached hereto, and the Subrecipient shall provide such detailed or supplementary Budget information in a timely fashion in the form and content prescribed by NYCOMB.

(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 to effectively 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 funds to be disbursed under this Agreement to the Subrecipient by the City shall not exceed the amount of Program Funds identified in the Budgets. 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 Budgets.

(b) Subrecipient shall use all Program Funds disbursed hereunder solely for Eligible Costs incurred for Eligible Purposes and in the amounts specified in the Budgets and otherwise in accordance with this Agreement and the applicable Requirements of Law.

(c) Subrecipient shall be reimbursed, subject to the CDBG Rules, for general administrative and management costs and planning costs.

5.2. Disbursements of Program Funds.

(a) During the Term, the Subrecipient may draw disbursements (each, a “Disbursement”) of the Program Funds as reimbursement to Subrecipient for Eligible Costs when (i) total funds requested will be paid, transferred or disbursed pursuant to the time requirements in subdivision (e) of this section and (ii) total funds requested to cover Subrecipient costs are identified by line item from the Budget. Notwithstanding the foregoing, the City intends to use its own funds to make advances to Subrecipient, upon receipt of a payment request certified by NYCOMB as eligible and in compliance with the CDBG Rules and the applicable Subcontract, that will be subsequently reimbursed to the City with Program Funds. Upon execution of contracts associated with the Program, NYCOMB will allocate the total amount of contract funds to the appropriate active project budget codes in FMS and Subrecipient shall not be expected to incur costs until such funds have been allocated. 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. Disbursement Requests shall be deemed to be a certification that:
- the payments requested are for Program expenditures made in accordance with the items contained in the applicable Budget and during the Term;
- the payments requested do not duplicate reimbursement from other sources of funding; and
- the funds provided do not replace funds that would have been made available to the Subrecipient for this program from another source.

(d) With respect to any specific allocation of Program Funds, 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, after the dates identified in each Schedule to this Agreement.

(e) Upon receipt of each Disbursement of Program Funds, Subrecipient shall endeavor to cause such funds to be paid, transferred or otherwise disbursed to Contractors within three (3) business days of the time such Program Funds are deposited into Subrecipient’s accounts. For each instance in which the Subrecipient is not able to pay, transfer or disburse Program Funds to Contractors within three (3) business days of receipt, the Subrecipient shall pay, transfer or disburse such funds as soon as is practicable and maintain a record that states the time it took to pay, transfer or disburse the funds and provides a justification for why such payment, transfer or disbursement took more than three (3) business days from receipt. 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 Scopes 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, and if the proposed travel is to locations outside of the State, no expenses shall be incurred unless and until the City receives approval from the State for such expenses.

6. GENERAL OBLIGATIONS OF SUBRECIPIENT

6.1. Legal and Other Requirements Generally. 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. 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. **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. 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 Subrecipient is an independent contractor.

6.4. **Insurance.**

(a) Subject to the requirements of Section 6.4(b) and Article 7 of Appendix A, Subrecipient shall procure and maintain during the Term insurance in such amounts and covering such risks as are commercially reasonable given the Subrecipient’s business and its performance of the Scopes 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 2 CFR §§ 200.310 and 200.325;

(ii) provide Workers’ Compensation Insurance coverage for all of its employees involved in performing the Scopes 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 B hereto; and

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

7. **ADMINISTRATIVE OBLIGATIONS**

7.1. **Financial Management.** Without limiting the other terms of this Agreement, Subrecipient shall undertake the obligations concerning financial management set forth in the
Scope of Work. Subrecipient shall comply with 2 CFR §§ 200.302 -200.309 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.** 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 and 2 CFR Part 200, Subpart E.

7.3. **Documentation and Record Keeping.**

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

(b) **Retention Period.** Subrecipient shall retain all Program Documents commencing on the effective date of this Agreement and ending on the sixth (6th) anniversary of 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 to HUD for the final time; 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. **Close-outs.** 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.

7.5. **Audits & Inspections.**

(a) Subrecipient shall have an annual agency audit conducted in accordance with current City policy concerning subrecipient audits and 2 CFR Part 200, Subpart F.

(b) All Program Documents shall be made available to the City, HUD, HHC 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 Subrecipient within thirty (30) days after receipt by the Subrecipient. Failure of
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, HHC, 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 Subrecipient, and (ii) discussing the affairs, finances and business of 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 Subrecipient that is reasonably related to the Program.

7.6. Required Reports.

(a) Subrecipient shall deliver to NYCOMB 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. CONTRACTORS

8.1. 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 Subrecipient uses Program Funds to purchase any Program Equipment from Contractors, 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) Contracts with Commercial Organizations. Subrecipient shall comply with the Federal Acquisition Regulations Subpart 31.2.

(c) U.S. OMB Standards. If Subrecipient procures any Program Equipment, property or services from any Contractors with Program Funds, unless specified otherwise within this
Agreement, Subrecipient shall undertake such procurement in accordance with the requirements of 2 CFR §§ 200.318 – 200.326.

8.2. “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 Part 135, as may be further amended during the Term, and all applicable rules and orders issued shall be a condition of the Federal financial assistance provided under this Agreement and binding upon the City, Subrecipient and any of Subrecipient’s Contractors. Failure to fulfill these requirements shall subject the City, Subrecipient and any of the Contractors, their successors and assigns, to sanctions provided for in Law. Subrecipient hereby certifies to the City and agrees that no contractual or other disability exists that would prevent compliance with these requirements.

(b) Subrecipient shall comply with these “Section 3” requirements (as further set forth in Article 2 of Appendix B) and shall include the Section 3 clause in 24 CFR 135.58, as may be amended, in all Subcontracts.

(c) Subrecipient shall further 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) 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, 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.** Subrecipient shall include the Section 3 clause set forth at 24 CFR 135.38, as may be amended, 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. 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.

8.3. **Subcontracts.**

(a) **Approvals.** Subrecipient shall not enter into any Subcontract to assist with Subrecipient’s performance of its obligations under this Agreement without the written approval of the City prior to the execution of such agreement. 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, Subrecipient shall monitor all subcontracted services on a regular basis with respect to 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.** 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 3.02 of Appendix A; provided, that if any such provisions conflict with any provisions of the Master Agreement, then the provisions of the Master Agreement shall take precedence.

(d) **Selection Process.** 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.** Subrecipient shall incorporate performance standards and liquidated damages provisions into each relevant procured contract or agreement.

(f) **Local Resources.**
The City encourages Subrecipient to understand the local community and use local resources where appropriate. 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.** 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, the New York City Health and Hospitals 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, the New York City Health and Hospitals 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, the New York City Health and Hospitals 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, the New York City Health and Hospitals 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, New York City Health and Hospitals Corporation and the City of New York from being completely indemnified by the Contractor, the New York City Economic Development Corporation, New York City Health and Hospitals 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, New York City Health and Hospitals 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, New York City Health and Hospitals 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, New York City Health and Hospitals 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, New York City Health and Hospitals Corporation and the City of New York from being completely indemnified by the Contractor, the New York City Economic Development Corporation, New York City Health and Hospitals 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. 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.

8.4. Access to Records. 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, HHC, HUD or their agents, other authorized Federal officials for purposes of investigation to ascertain compliance with the rules, regulations and provisions stated herein.

8.5. Subcontract Provisions. Subrecipient shall include the provisions of Sections 9.1 and 9.2 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.

9. PERSONNEL AND PARTICIPANT CONDITIONS

9.1. Civil Rights, Affirmative Action and Other Requirements. 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.

9.2 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.

9.2. Conflict of Interest. Subrecipient shall comply with all applicable Requirements of Law concerning conflicts of interest (including the provisions of 2 CFR § 200.318 and 24 CFR §570.611).

9.3. Lobbying Certification. 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.

10. ENVIRONMENTAL CONDITIONS

10.1. General. Subrecipient shall comply with all environmental requirements imposed under applicable Requirements of Law. Pursuant to 24 CFR section 570.503(b)(5)(i), 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.

10.2. 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.

10.3. 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).

10.4. 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.

10.5. **Historic Preservation.**


(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.

11. **EVENTS OF DEFAULT AND TERMINATION**

11.1. **Events of Default.**

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

(i) pursuant to 2 CFR § 200.388, if Subrecipient for any reason materially fails to comply in a timely manner with any terms of this Agreement; or

(ii) if 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 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 their 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.
11.2. **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 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 terminated or temporarily suspended.

(b) **Termination of Commitment.** To declare the City’s obligations to make Disbursements hereunder immediately terminated and, at all times thereafter, any Disbursement made by the City shall be in the City’s sole and absolute discretion.

11.3. **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.

11.4. **Termination for Convenience.** This Agreement is subject to the termination for convenience provisions set forth in 2 CFR section 200.339(a)(3).

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

(a) 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 Subrecipient, and all accounts receivable attributable to the use of Program Funds under this Agreement;

(b) all Program Income held or controlled by 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 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 Scopes of Work.

11.6 Acquired or Improved Real Property. The Parties do not anticipate that Subrecipient will have control over any real property acquired with Program Funds upon the end of the Term. 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 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, 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. 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.

12. MISCELLANEOUS.

12.1. 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: NYC Office of Management and Budget
255 Greenwich Street
New York, New York 10007
Attn.: General Counsel
12.2. 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.

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

(a) 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) 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 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 Subrecipient of this Agreement does not and will not contravene or (i) any of Subrecipient’ articles or certificate of incorporation or organization and bylaws or similar organizational documents.
12.4. **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.

12.5. **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, 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.

12.6. **Waiver.** No failure on the part of the City to exercise, and no delay in exercising, any right hereunder shall operate as a waiver 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.

12.7. **Assignability.** 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.

12.8. **Entire Agreement.** This Agreement constitutes the entire agreement between the City and 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 Subrecipient with respect to this Agreement.

12.9. (a) **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, 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 HUD Grant Agreement; and

(c) all other Program Documents.
12.10. **Service of Process.** SUBRECIPIENT IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS OUT OF ANY OF THE COURTS DESCRIBED IN SECTION 12.11 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.

12.11. **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, NYCOMB 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.

12.12. **Further Assurances.** Without cost or expense to the City or HHC, from time to time Subrecipient shall, promptly upon the request of the City or HHC: (a) deliver to the City, HHC, DSBS, and ORR such other non-confidential additional documents that are in 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 and HHC in connection with the foregoing.

12.13. **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.

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

12.15 **Amendments.** No provision of this Agreement may be amended, amended and restated, supplemented or otherwise modified except by written instrument signed by the Parties.  

[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: The City of New York, acting by and through its Office of Management and Budget

By: __________________________  By: _______________________________
   Acting Corporation Counsel  Name:
   Title:

New York City Economic Development Corporation

By: __________________________
   Name: Kim Vaccari
   Title: Chief Financial Officer
Scope of Work, Repair / Restoration and Hazard Mitigation of HHC Hospitals: CDBG-DR Funded Projects

Project Overview:

The goal of the CDBG-DR Funded Repair / Restoration and Hazard Mitigation of HHC Hospitals Projects is to provide recovery and reconstruction on agreed upon damages caused as a direct result of Hurricane Sandy, as well as hazard mitigating scope work for the following Facilities listed below, within the City of New York (the “Program”):

- Bellevue Hospital Center, located at 462 First Avenue, New York, New York 10016 (“Bellevue”);
- Metropolitan Hospital Center, located at 1901 First Avenue, New York, New York 10029-7404 (“Metropolitan”);
- Coler-Goldwater Specialty Hospital and Nursing Facility (as named at the time of Hurricane Sandy), located at 900 Main Street, Roosevelt Island, New York, New York 10044 (“Coler”); and
- Coney Island Hospital, located at 2601 Ocean Parkway, Brooklyn, New York 11235 (“Coney Island”).

Upon receiving the Parties’ signed confirmation of the essential elements of this undertaking, FEMA will generate a Project Worksheet(s) resulting in a fixed, capped Public Assistance Grant for the agreed-upon total of $1,722,705,384, 10% of which must be local match funds.

All scope shall follow the approved respective FEMA Project Worksheet(s).

The Program will incorporate professional design and construction management consultant services to provide the Scope of Work outlined below.

Subrecipient understands that the environmental and historic preservation (“EHP”) compliance review required under applicable EHP laws, regulations, and executive orders will be conducted by others. If the City and HHC choose to perform an alternate project scope of work, appropriate EHP compliance review shall be required by others to perform upon receipt of that scope(s) of work. The Parties further acknowledge that Subrecipient will notify the Grantee, HHC, FEMA and State of any proposed changes in the scope(s) of work (including without limitation a proposed improved project) prior to initiating any work to ensure compliance with applicable EHP laws, regulations, executive orders, and policy.
All scopes work must be submitted to FEMA and State for prior approval in consultation with the City and HHC.

**Activities to be Performed by Subrecipient**

Subrecipient shall manage and oversee the CDBG-DR Funded Repair / Restoration and Hazard Mitigation of HHC Hospitals Projects, including the procurement and oversight of a qualified professional services firm (the “Consultant”) and construction management firm (the “CM”). Such Consultant and CM shall provide the aforementioned services and all other necessary related services relating to the Program. Specifically, Subrecipient shall:

- Procure the Consultant and CM (which may retain a consultant team(s)) to provide services outlined in the Project Worksheet(s) issued by FEMA and per the requirements of the CDBG-DR funds, setting forth conditions for approval of the Project;
- Make payments to the Consultant and CM for its services but only to the extent that the Consultant and CM each provide appropriate requisitions and only to the extent that funding is made available to Subrecipient by the City and/or HHC;
- Meet and coordinate with the Consultant and CM to prepare a timeframe for the services to be completed;
- Ensure that the services of Subrecipient, the Consultant and CM are provided in compliance with all Federal, State and Local laws, rules and regulations including but not limited to, obtaining all necessary permits and approvals;
- Regularly update its cost estimates and expenditures and keep the relevant parties apprised of the total cost of the Program and the balance of the funding during the progress of the services;
- Provide the relevant parties with all the final Program deliverables as may be outlined per the conditions of approval letter for the Program; and
- Maintain records of all Program costs and expenditures and promptly provide copies of same to relevant parties upon request.

In order to implement the foregoing, Subrecipient will carry out the activities described in the Project Worksheet and the CDBG-DR Action Plan and shall prepare the following deliverables:

- a scope of work with benchmark timelines
- any needed RFPs for Consultant services
- a line item budget to support this Scope of Work

Each of the above deliverables shall constitute a supplement to this Schedule I upon submission of each such deliverable by Subrecipient to NYCOMB and NYCOMB’s written approval, which shall not be withheld based on programmatic preferences. If NYCOMB does not provide its
approval, it will work in good faith with Subrecipient to modify the deliverable, on terms mutually acceptable to Subrecipient and NYCOMB, in order to implement the Program.

**Time for Completion**
The finalized Project Worksheet(s) shall identify the timeline for completion.
SCHEDULE I-A

Budget, Repair / Restoration and Hazard Mitigation of HHC Hospitals:
CDBG-DR Funded Projects

The following represents the CDBG-DR Funded Repair / Restoration and Hazard Mitigation of HHC Hospitals Project. Consistent with the requirements of this Agreement, Subrecipient shall be reimbursed for any Eligible Costs incurred in carrying out program activities within eligible budget amounts. Upon request of NYCOMB, Subrecipient shall provide a line item budget to sufficiently delineate proposed expenditures to be consistent with any applicable FEMA and DHSES requirements and, if applicable, 24 CFR § 570.503 and HUD Rules, for measurable audit standards to assure eligibility of such expenses approved by NYCOMB. Upon written approval of a line item budget by NYCOMB, it shall constitute a supplement to and a part of this Agreement authorizing Subrecipient to incur Program costs to carry out the element of the Scope of Work covered by such line item budget.

<table>
<thead>
<tr>
<th>Facility</th>
<th>Description</th>
<th>Estimated Construction Cost</th>
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<tbody>
<tr>
<td>Bellevue</td>
<td>Generator replacement</td>
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<td></td>
<td>Emergency power expansion</td>
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<td>Existing elevator mitigation</td>
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<td>Domestic water mitigation</td>
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<td><strong>Coler PMP, Subtotal</strong></td>
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### Coney Island
- Main Building repairs at 1st floor: $4,860,000
- Radiology move to 5th floor: $8,748,000

**Coney Island PMP, Subtotal**: $13,608,000

### Metropolitan
- Switchgear (one set): $2,916,000
- Duct bank replacement: $5,832,000

**Metropolitan PMP, Subtotal**: $8,748,000

**PMP (Early Work), Total**: $90,882,000

### II. Major Projects

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<th>Facility</th>
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<th>Estimated Design Cost</th>
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<td><strong>Bellevue</strong></td>
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<td>Mitigation (flood wall, pumping systems, etc)</td>
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<td>Raise electrical service and air make-up mitigation</td>
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<tr>
<td></td>
<td><strong>Coney Island Major Projects, Subtotal</strong></td>
<td><strong>$42,930,000</strong></td>
</tr>
</tbody>
</table>
The Scope of Work shall include both Priority Mitigation Projects (Early Work) as well as Major Projects, as outlined in these charts. The CDBG-DR local match utilization plan includes estimated construction costs under the Priority Mitigation Projects and estimated design costs under the Major Work; certain item costs have been apportioned to adhere to timeline of the CDBG-DR funding requirements.

The Parties agree that the CDBG-DR funds will be based upon a cost estimate and capped at 10% of the FEMA capped grant or $172,270,538.
APPENDIX A

NOTICE

SHOULD ANY PROVISIONS OF THIS APPENDIX A CONFLICT WITH THE PROVISIONS OF NYCEDC’S MASTER CONTRACT WITH THE CITY, THEN THE PROVISIONS OF NYCEDC’S MASTER CONTRACT WITH THE CITY SHALL TAKE PRECEDENCE.

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

TABLE OF CONTENTS

1. DEFINITIONS ...................................................................................................................... 1
2. REPRESENTATIONS AND WARRANTIES ................................................................... 2
3. ASSIGNMENT AND SUBCONTRACTING ..................................................................... 5
4. LABOR PROVISIONS ........................................................................................................ 8
5. RECORDS, AUDITS, REPORTS, AND INVESTIGATIONS ...................................... 12
6. COPYRIGHTS, PATENTS, INVENTIONS, AND ANTITRUST ..................................... 19
7. INSURANCE ....................................................................................................................... 20
8. PROTECTION OF PERSONS AND PROPERTY AND INDEMNIFICATION ...... 25
9. CONTRACT CHANGES................................................................................................... 27
10. TERMINATION, DEFAULT, AND REDUCTIONS IN FUNDING ............................ 28
11. PROMPT PAYMENT AND ELECTRONIC FUNDS TRANSFER ......................... 33
12. CLAIMS............................................................................................................................... 34
13. APPLICABLE LAWS ....................................................................................................... 41
14. MISCELLANEOUS PROVISIONS.................................................................................. 48
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 A, that constitute the contract between the Contractor and the City.

C. “City” shall mean The City of New York.

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

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

F. “Comptroller” shall mean the Comptroller of the City of New York.

G. “Contractor” shall mean the entity entering into this Agreement with the Department.

H. “Days” shall mean calendar days unless otherwise specifically noted to mean business days.

I. “Department” or “Agency” shall mean the City agency that has entered into this Agreement.

J. “Law” or “Laws” shall mean the New York City Charter (“Charter”), the New York City Administrative Code (“Admin. Code”), a local rule of the City of New York, the Constitutions of the United States and the State of New York, a statute of the United States or of the State of New York and any ordinance, rule or regulation having the force of law and adopted pursuant thereto, as amended, and common law.
K. “Procurement Policy Board” or “PPB” shall mean the board established pursuant to Charter § 311 whose function is to establish comprehensive and consistent procurement policies and rules which have broad application throughout the City.

L. “PPB Rules” shall mean the rules of the Procurement Policy Board as set forth in Title 9 of the Rules of the City of New York (“RCNY”), § 1-01 et seq.

M. “State” shall mean the State of New York.

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 A and specifically agrees that the City may enforce such provisions directly against the subcontractor as if the City were a party to the subcontract.

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

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

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

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

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

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 A, the terms books, records, documents, and other data refer to electronic versions as well as hard copy versions.

Section 5.07 Investigations Clause

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

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

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

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

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

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

1. The disqualification for a period not to exceed five (5) years from the date of an adverse determination for any person, or any entity of which such person was a member at the time the testimony was sought, from submitting bids for, or transacting business with, or entering into or obtaining any contract, lease, permit or license with or from the City; and/or
2. The cancellation or termination of any and all such existing City contracts, leases, permits or licenses that the refusal to testify concerns and that have not been assigned as permitted under this Agreement, nor the proceeds of which pledged, to an unaffiliated and unrelated institutional lender for fair value prior to the issuance of the notice scheduling the hearing, without the City incurring any penalty or damages on account of such cancellation or termination; monies lawfully due for goods delivered, work done, rentals, or fees accrued prior to the cancellation or termination shall be paid by the City.

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

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

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

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

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

F. Definitions

1. The term “license” or “permit” as used in this Section shall be defined as a license, permit, franchise, or concession not granted as a matter of right.
2. The term “person” as used in this Section shall be defined as any natural person doing business alone or associated with another person or entity as a partner, director, officer, principal or employee.

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

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

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

Section 5.08 Confidentiality

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

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

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

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

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

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

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 2010.

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 A or copies of all policies referenced in the Certificate of Insurance. If complete policies have not yet been issued, binders are acceptable, until such time as the complete policies have been issued, at which time such policies shall be submitted.
C. Certificates of Insurance confirming renewals of insurance shall be submitted to the Commissioner prior to the expiration date of coverage of policies required under this Article. Such Certificates of Insurance shall comply with the requirements of Section 7.08 (A) and Section 7.08(B), as applicable.

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

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

F. In the event the Contractor receives notice, from an insurance company or other person, that any insurance policy required under this Article shall expire or be cancelled or terminated for any reason, the Contractor shall immediately forward a copy of such notice to both the Commissioner, 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

34

LDCMT-30-746
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
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 A.

Section 14.03 Headings

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

Section 14.04 Notice

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

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

C. Nothing in this Section shall be deemed to serve as a waiver of any requirements for the service of notice or process in the institution of an action or proceeding as provided by Law, including the New York Civil Practice Law and Rules.
AFFIRMATION
The undersigned proposer or bidder affirms and declares that said proposer or bidder is not in arrears to the City of New York upon debt, contract or taxes and is not a defaulter, as surety or otherwise, upon obligation to the City of New York, and has not been declared not responsible, or disqualified, by any agency of the City of New York, nor is there any proceeding pending relating to the responsibility or qualification of the proposer or bidder to receive public contract except ___________________________________________________________.

Full name of Proposer or Bidder [below]
____________________________________________________________________________
Address_____________________________________________________________________
City___________________________ State_____________________ Zip Code____________

CHECK ONE BOX AND INCLUDE APPROPRIATE NUMBER:

A - Individual or Sole Proprietorships
SOCIAL SECURITY NUMBER  ___________________________

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

C - Corporation
EMPLOYER IDENTIFICATION NUMBER  _________________________

By_____________________________
Signature__________________________
Title______________________________

If a corporation place seal here

Must be signed by an officer or duly authorized representative.

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

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

CERTIFICATION BY BROKER

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

______________________________________________
[Name of broker (typewritten)]

______________________________________________
[Address of broker (typewritten)]

______________________________________________
[Signature of authorized officer of broker]

______________________________________________
[Name of authorized officer (typewritten)]

______________________________________________
[Title of authorized officer (typewritten)]

______________________________________________
[Contact Phone Number for Broker (typewritten)]

______________________________________________
[Email Address of Broker (typewritten)]

Sworn to before me this

_____ day of ____________, 201_

__________________________________________
NOTARY PUBLIC
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
NOTICE

This rider contains supplementary general conditions for use with procurement contracts and subrecipient agreements that provide for an eligible activity funded in whole or in part under Title I of the Housing and Community Development Act of 1974 (Pub. L. 93-383) as amended. Along with the Uniform Federal Contracts Rider, this CDBG Rider must be annexed to all such contracts and agreements, and expressly made a part of, and incorporated by reference into those contracts and agreements.
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>ARTICLE</th>
<th>TITLE</th>
<th>PAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>ARTICLE 1</td>
<td>DEFINITIONS</td>
<td>3</td>
</tr>
<tr>
<td>ARTICLE 2</td>
<td>HOUSING AND COMMUNITY DEVELOPMENT ACT AND NATIONAL ENVIRONMENTAL POLICY ACT</td>
<td>4</td>
</tr>
<tr>
<td>ARTICLE 3</td>
<td>LABOR REQUIREMENTS</td>
<td>4</td>
</tr>
<tr>
<td>ARTICLE 4</td>
<td>FEDERAL NON-DISCRIMINATION LAWS</td>
<td>6</td>
</tr>
<tr>
<td>ARTICLE 5</td>
<td>ENVIRONMENTAL PROTECTION; ENERGY EFFICIENCY; HISTORIC PRESERVATION; FLOOD PROTECTION; LEAD-BASED PAINT</td>
<td>8</td>
</tr>
<tr>
<td>ARTICLE 6</td>
<td>UNIFORM RELOCATION ASSISTANCE</td>
<td>9</td>
</tr>
<tr>
<td>ARTICLE 7</td>
<td>UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS</td>
<td>9</td>
</tr>
<tr>
<td>ARTICLE 8</td>
<td>UNEARNED PAYMENTS; INCOME; DOCUMENTATION OF COSTS; ACCOUNTING SYSTEM; FIDELITY BONDS; DISBURSEMENT RESTRICTIONS</td>
<td>9</td>
</tr>
<tr>
<td>ARTICLE 9</td>
<td>RECORDS AND AUDITS</td>
<td>10</td>
</tr>
<tr>
<td>ARTICLE 10</td>
<td>SUBCONTRACTORS</td>
<td>11</td>
</tr>
<tr>
<td>ARTICLE 11</td>
<td>CONFLICTS; EXHIBITS</td>
<td>11</td>
</tr>
<tr>
<td>ARTICLE 12</td>
<td>REVERSION OF ASSETS</td>
<td>12</td>
</tr>
<tr>
<td>ARTICLE 13</td>
<td>SMALL FIRMS, M/WBE FIRMS, AND LABOR SURPLUS AREA FIRMS</td>
<td>12</td>
</tr>
<tr>
<td>ARTICLE 14</td>
<td>INTANGIBLE PROPERTY</td>
<td>13</td>
</tr>
<tr>
<td>ARTICLE 15</td>
<td>HATCH ACT; LOBBYING; CONFLICTS OF INTEREST</td>
<td>14</td>
</tr>
<tr>
<td>ARTICLE 16</td>
<td>SUSPENSION AND TERMINATION</td>
<td>14</td>
</tr>
<tr>
<td>ARTICLE 17</td>
<td>ADDITIONAL FEDERAL CONDITIONS FOR CONSTRUCTION</td>
<td>15</td>
</tr>
</tbody>
</table>

**ARTICLE 1. DEFINITIONS**

As used in this Agreement:

(b) “Agency” means the entity, or entities, executing this Agreement on behalf of the City of New York.

(c) “Agreement” means either the “contract” (as defined by 2 CFR § 200.22) between the City and the Contractor or the agreement between the City and “Subrecipient” as defined by 2 CFR § 200.93 as the context requires.

(d) “City” means the City of New York.

(e) “Construction” means the building, rehabilitation, alteration, conversion, extension, demolition, painting or repair of any improvement to real property.

(f) “Contractor” and/or “Subrecipient” means the entity or entities executing this Agreement, other than the Agency.

(g) “Grant” means Community Development Block Grant Program funds provided to the City of New York by the Federal Department of Housing and Urban Development or a pass-through entity.

(h) “HUD” means the Secretary of Housing and Urban Development or a person authorized to act on his or her behalf.

(i) “Program” means the New York City Community Development Block Grant Program approved by HUD as the same may from time to time be amended.

(j) “Subcontractor” means any person, firm or corporation, other than employees of the Contractor or the Subrecipient, or another Subcontractor who is engaged by the Contractor or the Subrecipient to furnish (i) services, (ii) labor or (iii) services and/or labor and materials at the site of the work performed under this Agreement.
ARTICLE 2. HOUSING AND COMMUNITY DEVELOPMENT ACT AND NATIONAL ENVIRONMENTAL POLICY ACT

[Applicable to Contractors and Subrecipients]

This Agreement is subject to 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 or Subrecipient. In this regard, the Agency is under no obligation to make any payments to the Contractor or Subrecipient, and shall not make any such payment, and the Contractor or Subrecipient shall not commence performance, until:

(a) 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

(b) the Contractor or Subrecipient has been notified of such instructions by the Agency. Furthermore, the Contractor or Subrecipient and the City mutually agree that the Contractor or Subrecipient 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 or Subrecipient for any costs incurred in violation of this provision.

ARTICLE 3. LABOR REQUIREMENTS

[Applicable to Contractors and Subrecipients; must be included in all subcontracts]
(a) **Section 3.** This Agreement is subject to Section 3 of the Housing and Urban Development Act of 1968 (P.L. 90-448) and implementing regulations at 24 CFR Part 135, as may be amended during the term of this Agreement.\(^1\) Pursuant to 24 CFR § 135.38, the Contractor or Subrecipient agrees to the following:

1. 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. § 1701u (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.

2. 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.

3. The Contractor or Subrecipient agrees to send to each labor organization or representative of workers with which the Contractor or Subrecipient has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers’ representative of the Contractor’s or Subrecipient’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.

4. The Contractor or Subrecipient 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 or Subrecipient will not subcontract with any Subcontractor where the Contractor or Subrecipient has notice or knowledge that the Subcontractor has been found in violation of the regulations in 24 CFR Part 135.

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\(^1\) On March 27, 2015 and April 1, 2015, HUD issued proposed amendments to the Section 3 requirements in 24 CFR Part 135. The proposed amendments and an explanation of what will potentially change may be viewed in the Federal Register, Volume 80, Nos. 59 and 62. It is anticipated that HUD will finalize and promulgate the amendments to 24 CFR Part 135 during the term of this Agreement. When the amendments become effective, the Contractor or Subrecipient will be required to adhere to the amended 24 CFR Part 135.
5. The Contractor or Subrecipient will certify that any vacant employment positions, including training positions, that are filled (1) after the Contractor or Subrecipient 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 or Subrecipient’s obligations under 24 CFR Part 135.

6. 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.

7. 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).

(a) 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, the Contractor shall pay and the Subrecipient shall cause its contractors to pay all laborers and mechanics 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. This provision supersedes section D(1)(a) of the Uniform Federal Contract Provisions Rider for Federally Funded Procurement Contracts.

(b) Overtime. In Construction contracts involving an excess of $2000, and subject to the exception in 24 CFR section 570.603 (regarding the rehabilitation of residential property containing less than 8 units), Contractor shall comply and the Subrecipient shall cause its contractor to comply with 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. 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. This provision supersedes section D(1)(b) of the Uniform Federal Contract Provisions Rider for Federally Funded Procurement Contracts.
ARTICLE 4. FEDERAL NON-DISCRIMINATION LAWS

[Applicable to Contractors and Subrecipients]

This Agreement is subject to:

(a) Section 109 of the Act, which requires that no person in the United States shall on the grounds of race, color, national origin, religion, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance made available pursuant to the Act. Section 109 also directs that the prohibitions against discrimination on the basis of age under the Age Discrimination Act and the prohibitions against discrimination on the basis of disability under Section 504 shall apply to programs or activities receiving Federal financial assistance under Title I programs. The Contractor or Subrecipient agrees to comply with provisions of 24 CFR Part 6, 8, and 146.

(b) 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.

(c) 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.

(d) 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.

(e) Consistent with 24 CFR § 570.614, the Contractor or Subrecipient 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

(f) If the Contractor or Subrecipient 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 or Subrecipient 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).

The non-discrimination provisions in this Article shall be incorporated in and made a part of all subcontracts executed in connection with this Agreement.
ARTICLE 5. ENVIRONMENTAL PROTECTION; ENERGY EFFICIENCY; HISTORIC PRESERVATION; FLOOD PROTECTION; LEAD-BASED PAINT

[Applicable to Contractors and Subrecipients]

(a) For agreements, subcontracts, and subgrants of amounts in excess of $150,000, the Contractor or Subrecipient 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). Violations must be reported to the Federal Agency and the Regional Office of the Environmental Protection Agency (EPA).

(b) The Subrecipient and Contractor shall comply with mandatory standards and polices 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).

(c) This Agreement is subject to laws and authorities listed in 24 CFR section 58.5, including 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.

(d) This Agreement is subject to the 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 provision is to be included in all subcontracts, for work in connection with this Agreement, which relate to residential structures.

(e) 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.

ARTICLE 6. UNIFORM RELOCATION ASSISTANCE

[Applicable to Contractors and Subrecipients]
This Agreement is subject to 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 and 24 CFR section 570.606.

**ARTICLE 7. UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS**

(Subdivision (a) is applicable to Contractors and Subrecipients; subdivision (b) is applicable to Contractors only)

(a) Pursuant to 2 CFR §2400.101 and 24 CFR § 85.1, Subrecipients and Contractors are subject to the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at 2 CFR Part 200 (commonly referred to the “Super Circular”), as applicable.

(b) Contractors are subject to the Uniform Federal Contract Provisions Rider, attached to this Agreement.

**ARTICLE 8. UNEARNED PAYMENTS; INCOME; DOCUMENTATION OF COSTS; ACCOUNTING SYSTEM; FIDELITY BONDS; DISBURSEMENT RESTRICTIONS**

(Applicable to Contractors and Subrecipients)

(a) 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 or Subrecipient will be returned to the City. All interest on funds advanced to the Contractor or Subrecipient will be returned to the City.

(b) The Contractor or Subrecipient agrees that if any income is generated from the Community Development Block Grant Program funded activities, Contractor or Subrecipient 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 Grant 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).

(c) 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.

(d) The Contractor or Subrecipient 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 or Subrecipient, other provisions of the Agreement notwithstanding.

(e) If required by the Federal awarding agency or elsewhere in this Agreement, the Agency must receive a statement from the Contractor’s or Subrecipient’s chief fiscal officer or its insurer assuring that all persons handling funds received or disbursed under this Agreement are covered by fidelity insurance in an amount equal to cash advances from the City. If the bond is cancelled or coverage is substantially reduced, the Contractor or Subrecipient 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 or Subrecipient until it has received assurance that adequate coverage has subsequently been obtained.

(f) No money under this Agreement shall be disbursed by the Agency to any Contractor or Subrecipient except pursuant to a written contract which incorporates the applicable Supplementary General Conditions and unless the Contractor or Subrecipient 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 Part 58.

**ARTICLE 9. RECORDS AND AUDITS**

*[Applicable to Contractors and Subrecipients]*
(a) Records shall be maintained in accordance with requirements prescribed by or in 2 CFR section 200.333, 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, subject to the exceptions in 2 CFR 200.333.

(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 or Subrecipient 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 10. SUBCONTRACTORS

(Applicable to Contractors and Subrecipients)

(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 or Subrecipient. The Contractor or Subrecipient 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 or Subrecipient.

(b) Employees of the Subcontractor shall be subject to the same provisions as employees of the Contractor or Subrecipient.

(c) The services furnished by Subcontractors shall be subject to the provisions hereof as if furnished directly by the Contractor or Subrecipient, and the Contractor or Subrecipient shall remain responsible therefor.

(d) Any subcontracts entered into pursuant to this Agreement shall include Exhibit 3 (Investigations Clause, Conflicts of Interest Clause; and Executive Order No. 50 provisions, which shall be binding on every Subcontractor.

ARTICLE 11. CONFLICTS; EXHIBITS

[Applicable to Contractors and Subrecipients]

(a) If any provision in this Appendix B directly conflicts with any other provision in the Contract, the provision in Appendix B shall be controlling.

(b) Federal Exhibits 1 and 2, are attached to, and made a part of this Appendix B.

ARTICLE 12. REVERSION OF ASSETS

[Applicable to Subrecipients]

(a) At the Agreement’s expiration, the Subrecipient 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 Subrecipient’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 Subrecipient’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 13. SMALL FIRMS, M/WBE FIRMS, AND LABOR SURPLUS AREA FIRMS

[Applicable to Subrecipients. A similar provision for Contractors is included in the Uniform Federal Contract Provisions Rider for Federally Funded Procurement Contracts at section C(11).]

Subrecipient 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 and 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 14. INTANGIBLE PROPERTY

[Applicable to Subrecipients. A similar provision for Contractors is included in the Uniform Federal Contract Provisions Rider for Federally Funded Procurement Contracts at section C(12).]

(a) Pursuant to 2 CFR § 200.315(d), the federal Government reserves a royalty-free, non-exclusive, and irrevocable right to obtain, reproduce, publish, or otherwise use, and to authorize others to use, for Government purposes: (a) the copyright in any work developed under the Agreement or subcontract; and (b) any rights of copyright to which a Subrecipient purchases ownership with grant support.

(b) Any reports, documents, data, photographs, deliverables, and/or other materials produced pursuant to the Agreement (“Copyrightable Materials”), and any and all drafts and/or other preliminary materials in any format related to such items produced pursuant to the contract, shall upon their creation become the exclusive property of the City. The 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 Subrecipient 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 Subrecipient shall retain no copyright or intellectual property interest in the
Copyrightable Materials. The Copyrightable Materials shall be used by the Subrecipient for no purpose other than in the performance of this Agreement without the prior written permission of the City. The City may grant the Subrecipient a license to use the Copyrightable Materials on such terms as determined by the City and set forth in the license.

(c) The Subrecipient 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 Subrecipient shall fully cooperate in this effort, and agrees to provide any and all documentation necessary to accomplish this.

(d) The Subrecipient 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 Subrecipient has obtained all necessary permissions and clearances, in writing, for the use of such non-original material under this Contract, copies of which shall be provided to the City upon execution of this Contract.

(e) The Subrecipient 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 and the Subrecipient shall promptly and fully report to the 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.

(f) If the Subrecipient 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 15. HATCH ACT; LOBBYING; CONFLICTS OF INTEREST

[Applicable to Subrecipients.]

(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 2 CFR sections 200.112 and 200.318(c) and 24 CFR section 570.611.

ARTICLE 16. SUSPENSION AND TERMINATION

[Applicable to Subrecipients.]

(a) The City may take enforcement action against a Subrecipient for non-compliance, as described in 2 CFR §§ 200.338 and 200.339(a)(1) & (2), including suspension or termination.

(b) The City may terminate for convenience pursuant to 2 CFR § 200.339(a)(3).

ARTICLE 17. ADDITIONAL FEDERAL CONDITIONS FOR CONSTRUCTION

[Applicable to Subrecipients. A similar provision for Contractors is included in the Uniform Federal Contract Provisions Rider for Federally Funded Procurement Contracts at section D(1)(c)-(d) and (2).]

If this Agreement involves Construction work, design for Construction, or Construction services, all such work or services performed by the Subrecipient and its Subcontractors shall be subject to the following requirements:

(a) **Impermissible Salary Deductions.** In Construction contracts of any amount, the Subrecipient shall cause its Subcontractor to comply with 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.
(b) **Federal Labor Standards.** In Construction contracts of any amount, the Subrecipient shall cause its Subcontractors to comply with the more detailed statement of Federal Labor Standards annexed hereto as FEDERAL EXHIBIT 2.

(c) **Equal Employment Opportunity.** In Construction contracts or subcontracts in excess of $10,000, the Subrecipient shall cause its Subcontractors to comply with Executive Order 11246, as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR chapter 60). Subrecipient shall include the following Specifications, which are required pursuant to 41 CFR section 60-4.3) in all federally assisted contracts and subcontracts.

**Standard Federal Equal Employment Opportunity Construction Contract Specifications for Contracts and Subcontracts in Excess of $10,000. (Federal Notice Required by 41 CFR 60-4.3)**

1. As used in these specifications:
   a. “Covered area” means the geographical area described in the solicitation from which this contract 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;
   
   
   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
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.
1. 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).
Investigations Clause

1. 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.

2. (a) 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;

(b) 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;

3. (a) 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.

(b) 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.

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

(a) 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

(b) 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.

5. 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 (a) and (b) below. He or she may also consider, if relevant and appropriate, the criteria established in Paragraphs (c) and (d) below, in addition to any other information that may be relevant and appropriate:

(a) 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.

(b) 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.

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

(d) 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.

6. Definitions

(a) 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.
(b) 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.
(c) 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.
(d) 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.
(e) 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.

Conflicts of Interest

1. 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.

2. 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.
3. 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.

**Executive Order 50**

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.
UNIFORM FEDERAL CONTRACT PROVISIONS RIDER
FOR FEDERALLY FUNDED PROCUREMENT CONTRACTS

Instructions to Agencies: This Rider must be attached to all federally funded procurement contracts (of any dollar amount) that are subject to 2 CFR Part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards), except contracts funded by the U.S. Department of Housing and Urban Development CDBG Program (to which City Appendix B must be attached). This Rider should not be attached to subrecipient or subaward agreements.

A. Definitions. As used in this Rider:

1. “Awarding Entity” means the entity awarding the Contract. The Awarding Entity may be the City or a contractor at any tier.

2. “City” means the City of New York.

3. “Commissioner” means the head of the City agency entering into this Contract.

4. “Construction” means the building, rehabilitation, alteration, conversion, extension, demolition, painting or repair of any improvement to real property.

5. “Contract” refers to the contract or the agreement between the Awarding Entity and the Contractor.

6. “Contractor” means the entity performing the services pursuant to a Contract.

7. “Federal Agency” means the U.S. agency or agencies funding this Contract in whole or in part.


B. *Termination and Remedies for Breach of Contract.* The following provisions concerning remedies for breach of contract and termination apply to Contracts between the City and the City’s Contractor.

(1) **Remedies for Breach of Contract.** If the Contractor violates or breaches the Contract, the City may avail itself of any or all of the remedies provided for elsewhere in this Contract. If there are no remedies provided for elsewhere in this Contract, the City may avail itself of any or all of the following remedies.

After declaring the Contractor in default pursuant to the procedures in paragraph (a) of subdivision (2) of this section (B) below, the City may (i) withhold payment for unsatisfactory services, (ii) suspend or terminate the Contract in whole or in part; and/or (iii) have the services under this Contract completed by such means and in such manner, by contract procured with or without competition, or otherwise, as the City may deem advisable in accordance with all applicable Contract provisions and law. After completion of the services under this Contract, the City shall certify the expense incurred in such completion, which shall include the cost of procuring that contract. Should the expense of such completion, as certified by the City, exceed the total sum which would have been payable under the Contract 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 City may be charged against and deducted out of monies earned by the Contractor.

(2) **Termination.** The City shall have the right to terminate the Contract in whole or in part for cause, for convenience, due to force majeure, or due to reductions in federal funding. If the Contract does not include termination provisions elsewhere, the following termination provisions apply:

a. **Termination for Cause.** The City shall have the right to terminate the Contract, in whole or in part, for cause upon a determination that the Contractor is in default of the Contract. Unless a shorter time is determined by the City to be necessary, the City shall effect termination according to the following procedure:

i. **Notice to Cure.** The City shall give 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 Contract pending the outcome of the default proceedings pursuant to this section.

ii. *Opportunity to be Heard.* 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. Before the Commissioner may exercise his or her right to declare the Contractor in default, the Contractor must be given 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.

iii. *Notice of Termination.* After an opportunity to be heard, the Commissioner may terminate the Contract, in whole or in part, upon finding the Contractor in default. The Commissioner shall give the Contractor written notice of such termination ("Notice of Termination"), specifying the applicable provision(s) under which the Contract is terminated and the effective date of termination. If no date is specified in the Notice of Termination, the termination shall be effective either 10 calendar days from the date the notice is personally delivered or 15 calendar days from the date Notice of Termination is sent by another method. The Notice of Termination shall be personally delivered, 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.

iv. *Grounds for Default.* 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 Contract, 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 Contract 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 Contract 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.

v. **Basis of Settlement.** The City shall not incur or pay any further obligation pursuant to this Contract beyond the termination date set by the City in its Notice of Termination. The City shall pay for satisfactory services provided in accordance with this Contract prior to the termination date. In addition, any obligation necessarily incurred by the Contractor on account of this Contract 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 Contract. 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.
b. **Termination for Convenience.** The City shall have the right to terminate the Contract for convenience, by providing written notice ("Notice of Termination") according to the following procedure. The Notice of Termination shall specify the applicable provision(s) under which the Contract is terminated and the effective date of termination, which shall be not less than 10 calendar days from the date the notice is personally delivered or 15 days from the date the Notice of Termination is sent by another method. The Notice of Termination shall be personally delivered, 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. The basis of settlement shall be as provided for in subparagraph (iv) of paragraph (a) of subdivision (2) of this section (B), above.

c. **Termination due to Force Majeure**

i. For purposes of this Contract, a force majeure event is an act or event beyond the control and without any fault or negligence of the Contractor ("Force Majeure Event"). Force Majeure 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.

ii. In the event the Contractor cannot comply with the terms of the Contract (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 Contract. If the Commissioner, in his or her reasonable discretion, determines that the Contractor cannot comply with the terms of the Contract because of a Force Majeure Event, then the Commissioner shall excuse the nonperformance and may terminate the Contract. Such a termination shall be deemed to be without cause.

iii. If the City terminates the Contract due to a Force Majeure Event, the basis of settlement shall be as provided for in subparagraph (iv) of paragraph (a) of subdivision (2) of this section (B), above.

d. **Termination due to Reductions in Federal Funding**
i. This Contract is funded in whole or in part by funds secured from the Federal government. Should the Federal government reduce or discontinue such funds, the City shall have, in its sole discretion, the right to terminate this Contract in whole or in part, or to reduce the funding and/or level of services of this Contract caused by such action by the Federal government, 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 Contract and in the total amount payable under this Contract. Any reduction in funds pursuant to this paragraph shall be accompanied by an appropriate reduction in the services performed under this Contract.

ii. In the case of the reduction option referred to in subparagraph (i), 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 30 calendar days from the date of such notice. Prior to sending such notice of reduction, the City shall advise the Contractor that such option is being exercised and afford the Contractor an opportunity to make within seven calendar 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 City shall not be bound to utilize any of the Contractor’s suggestions and that the City shall have sole discretion as to how to effectuate the reductions.

iii. If the City reduces funding pursuant to this paragraph (c), the basis of settlement shall be as provided for in subparagraph (iv) of paragraph (a) of subdivision (2) of this section (B), above.

C. Standard Provisions. The Contractor shall comply with, include in its subcontracts, and cause its subcontractors to comply with the following provisions, as applicable:

(1) Reporting. Contractor shall be required to produce and deliver such reports relating to the services performed under the Contract as may be required by the Awarding Entity, City or any other State or Federal governmental agency with jurisdiction.
(2) **Non-Discrimination.** Contractor shall not violate any Federal, State, or City law prohibiting discrimination concerning employment, the provision of services, and, if applicable, housing, funded by this Contract.

(3) **Environmental Protection.** If the Contract is in excess of $150,000, the Contractor shall comply with all applicable standards, orders, or regulations issued under the Clean Air Act (42 U.S.C. § 7401-7671q), Federal Water Pollution control Act (33 U.S.C. §§ 1251-1387) 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). Violations must be reported to the Federal Agency and the Regional Office of the Environmental Protection Agency (EPA).

(4) **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).

(5) **Debarment.** 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 Contract if knowledge of debarment, suspension or other ineligibility has been withheld by the Contractor.

(6) **Byrd Anti-Lobbying Amendment (31 USC §1352).** Contractor certifies that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any Federal agency, a member of Congress, officer or employee of Congress, or any employee of a member of Congress in connection with obtaining this Contract. If the Contract is $100,000 or more, the Contractor shall disclose to the City any lobbying with non-Federal funds that took place in connection with obtaining this Contract.

(7) **Solid Waste Disposal Act.** Pursuant to 2 CFR § 200.322, Contractor must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired during the preceding fiscal year exceeded $10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

(8) **Documentation of Costs.** All costs shall be supported by properly executed payrolls, time records, invoices, 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 regularly accessible.
(9) **Records Retention.** The Contractor shall retain all books, documents, papers, and records relating to the services performed under the Contract for three years after final payment under the Contract is made and all other pending matters are closed.

(10) **Records Access.** The Contractor shall grant access to the City, State or any other pass-through entity, the Federal Agency, Inspectors General, and/or the Comptroller General of the United States, or any of their duly authorized representatives, to any books, documents, papers, and/or records of the Contractor that are pertinent to the Contract for the purpose of making audits, examinations, excerpts, and transcripts. The right also includes timely and reasonable access to the Contractor’s personnel for the purpose of interview and discussion related to such documents. The rights of access in this section are not limited to the required retention period but last as long as the records are retained.

(11) **Small Firms, M/WBE Firms, and Labor Surplus Area Firms.** 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 and 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.

(12) **Intangible Property.**
a. Pursuant to 2 CFR § 200.315(d), the Government reserves a royalty-free, non-exclusive, and irrevocable right to obtain, reproduce, publish, or otherwise use, and to authorize others to use, for Government purposes: (a) the copyright in any work developed under the Contract or subcontract; and (b) any rights of copyright to which a Contractor purchases ownership with grant support.

b. Any reports, documents, data, photographs, deliverables, and/or other materials produced pursuant to the Contract (“Copyrightable Materials”), and any and all drafts and/or other preliminary materials in any format related to such items produced pursuant to the contract, shall upon their creation become the exclusive property of the City. The 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 Contract without the prior written permission of the City. The City may grant the Contractor a license to use the Copyrightable Materials on such terms as determined by the City 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 Contract, copies of which shall be provided to the City upon execution of this Contract.

e. 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 Contract and the Contractor shall promptly and fully report to the 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.

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.

D. Special Provisions for Construction Contracts. If this Contract involves Construction work, design for Construction, or Construction services, all such work or services performed by the Contractor and its subcontractors shall be subject to the following requirements in addition to those set forth above in paragraphs (A), (B), and (C):

(1) Federal Labor Standards. The Contractor will comply with the following:

a. The Davis-Bacon Act (40 U.S.C. §§ 3141-3148): If required by the federal program legislation, in Construction contracts involving an excess of $2000, and subject to any other federal program limitations, 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 City. 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.
b. **If required by the federal program legislation and subject to any other federal program limitations**, Sections 103 and 107 of the Contract Work Hours and Safe Standards Act (40 U.S.C. §§ 3701-3708), 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 contract 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.

c. 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.

d. If this Contract involves Construction work, design for Construction, or Construction services, a more complete detailed statement of Federal Labor Standards annexed hereto as FEDERAL EXHIBIT 2.

(2) **Equal Employment Opportunity.** 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. The Contractor shall include the notice found at FEDERAL EXHIBIT I in all Construction subcontracts.

**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 Contract 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;
   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 Contract 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 Contract 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).

E. Rights to Inventions. [Special Provisions For Contracts Involving Experimental, Developmental, or Research Work.]

(1) If this Contract involves the performance of experimental, developmental, or research work by the Contractor or its subcontractors, and the entity performing such work is a Nonprofit Organization or Small Business Firm as defined below, the following provisions apply in addition to those set forth above in paragraphs (A), (B), and (C), unless the Contract specifically states that this provision is superseded:

a. Definitions. The following definitions apply to this section (D).

i. “Invention” means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code, or any novel variety of plant which is or may be protected under the Plant Variety Protection Act (7 U.S.C. § 2321 et seq.).

ii. “Subject invention” means any invention of the Contractor conceived or first actually reduced to practice in the performance of work under this Contract, provided that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) must also occur during the period of Contract performance.

iii. “Practical Application” means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or government regulations, available to the public on reasonable terms.

iv. “Made” when used in relation to any invention means the conception or first actual reduction to practice of such invention.
v. “Small Business Firm” means a small business concern as defined at section 2 of Pub. L. 85-536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this clause, the size standards for small business concerns involved in government procurement and subcontracting at 13 CFR 121.3-8 and 13 CFR 121.3-12, respectively, will be used.

vi. “Nonprofit Organization” means a university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c) and exempt from taxation under section 501(a) of the Internal Revenue Code (25 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.

b. Allocation of Principal Rights. The Contractor may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this clause and 35 U.S.C. 203. With respect to any subject invention in which the Contractor retains title, the Federal government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.


i. The Contractor will disclose each subject invention to the City and the Federal Agency within two months after the inventor discloses it in writing to Contractor personnel responsible for patent matters. Such disclosure shall be in the form of a written report and shall identify the contract under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition,
after such disclosure, the Contractor will promptly notify the City and the Federal Agency of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the Contractor.

ii. The Contractor will elect in writing whether or not to retain title to any such invention by notifying the City and the Federal Agency within two years of disclosure to the City and the Federal Agency. However, in any case where publication, on sale or public use has initiated the one year statutory period wherein valid patent protection can still be obtained in the United States, the period for election of title may be shortened by the Federal Agency to a date that is no more than 60 days prior to the end of the statutory period.

iii. The Contractor will file its initial patent application on a subject invention to which it elects to retain title within one year after election of title or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use. The Contractor will file patent applications in additional countries or international patent offices within either ten months of the corresponding initial patent application or six months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

iv. Requests for extension of the time for disclosure, election, and filing under subparagraphs (1), (2), and (3) may be granted at the discretion of the Federal Agency.

d. Conditions When the Government May Obtain Title

The Contractor will convey to the Federal Agency, upon written request, title to any subject invention --

i. If the Contractor fails to disclose or elect title to the subject invention within the times specified in (c), above, or elects not to retain title; provided that the
Federal Agency may only request title within 60 calendar days after learning of the failure of the Contractor to disclose or elect within the specified times.

ii. In those countries in which the Contractor fails to file patent applications within the times specified in (c) above; provided, however, that if the Contractor has filed a patent application in a country after the times specified in (c) above, but prior to its receipt of the written request of the Federal Agency, the Contractor shall continue to retain title in that country.

iii. In any country in which the Contractor decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceeding on, a patent on a subject invention.

e. Minimum Rights to Contractor and Protection of the Contractor Right to File

i. The Contractor will retain a nonexclusive royalty-free license throughout the world in each subject invention to which the Government obtains title, except if the contractor fails to disclose the invention within the times specified in (c), above. The Contractor’s license extends to its domestic subsidiary and affiliates, if any, within the corporate structure of which the Contractor is a party and includes the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the Contract was awarded. The license is transferable only with the approval of the Federal Agency except when transferred to the successor of that party of the Contractor’s business to which the invention pertains.

ii. The Contractor’s domestic license may be revoked or modified by the funding Federal Agency to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions at 37 CFR Part 404 and agency licensing regulations (if any). This license will not be revoked in that field of use or the geographical areas in which the Contractor has achieved practical application.
and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the funding Federal Agency to the extent the Contractor, its licensees, or the domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

iii. Before revocation or modification of the license, the funding Federal Agency will furnish the Contractor a written notice of its intention to revoke or modify the license, and the Contractor will be allowed thirty calendar days (or such other time as may be authorized by the funding Federal Agency for good cause shown by the Contractor) after the notice to show cause why the license should not be revoked or modified. The Contractor has the right to appeal, in accordance with applicable regulations in 37 CFR Part 404 and Federal Agency regulations (if any) concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of the license.

f. Contractor Action to Protect the Government’s Interest

i. The Contractor agrees to execute or to have executed and promptly deliver to the Federal Agency all instruments necessary to (i) establish or confirm the rights the Government has throughout the world in those subject inventions to which the contractor elects to retain title, and (ii) convey title to the Federal Agency when requested under paragraph (d) above and to enable the Government to obtain patent protection throughout the world in that subject invention.

ii. The Contractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Contractor each subject invention made under contract in order that the Contractor can comply with the disclosure provisions of paragraph (c), above, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government’s rights in the subject inventions. This disclosure format should require, as a minimum, the information required by (c)(1), above. The
Contractor shall instruct such employees through employee agreements or other suitable educational programs on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

iii. The Contractor will notify the Federal Agency of any decisions not to continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than thirty calendar days before the expiration of the response period required by the relevant patent office.

iv. The Contractor agrees to include, within the specification of any United States patent applications and any patent issuing thereon covering a subject invention, the following statement, “This invention was made with government support under (identify the contract) awarded by (identify the Federal Agency). The government has certain rights in the invention.”

g. Subcontracts

i. The Contractor will include this clause, suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental or research work to be performed by a small business firm or domestic nonprofit organization. The subcontractor will retain all rights provided for the Contractor in this clause, and the Contractor will not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor’s subject inventions.

ii. The Contractor will include in all other subcontracts, regardless of tier, for experimental developmental or research work the patent rights clause required by 2 CFR § 200.315(c) and Appendix II to 2 CFR Part 200.

h. Reporting on Utilization of Subject Inventions. The Contractor agrees to submit on request periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the contractor or its licensees or assignees. Such reports shall include
information regarding the status of development, date of first commercial sale or use, gross royalties received by the Contractor, and such other data and information as the Federal Agency may reasonably specify. The Contractor also agrees to provide additional reports as may be requested by the Federal Agency in connection with any march-in proceeding undertaken by the Federal Agency in accordance with paragraph (j) of this clause. As required by 35 U.S.C. § 202(c)(5), the Federal Agency agrees it will not disclose such information to persons outside the Government without permission of the Contractor.

i. **Preference for United States Industry.** Notwithstanding any other provision of this clause, the Contractor agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject inventions in the United States unless such person agrees that any products embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by the Federal Agency upon a showing by the Contractor or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

j. **March-in Rights.** The Contractor agrees that with respect to any subject invention in which it has acquired title, the Federal Agency has the right in accordance with the procedures in 37 CFR § 401.6 and any supplemental regulations of the Federal Agency to require the Contractor, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the Contractor, assignee, or exclusive licensee refuses such a request the Federal Agency has the right to grant such a license itself if the Federal Agency determines that:

i. Such action is necessary because the Contractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use.
ii. Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Contractor, assignee or their licensees;

iii. Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Contractor, assignee or licensees; or

iv. Such action is necessary because the agreement required by paragraph (i) of this clause has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

k. *Special Provisions for Contracts with Nonprofit Organizations.* If the Contractor is a nonprofit organization, it agrees that:

i. Rights to a subject invention in the United States may not be assigned without the approval of the Federal Agency, except where such assignment is made to an organization which has as one of its primary functions the management of inventions, provided that such assignee will be subject to the same provisions as the Contractor;

ii. The Contractor will share royalties collected on a subject invention with the inventor, including Federal employee co-inventors (when the Federal Agency deems it appropriate) when the subject invention is assigned in accordance with 35 U.S.C. § 202(e) and 37 CFR § 401.10;

iii. The balance of any royalties or income earned by the Contractor with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions, will be utilized for the support of scientific research or education; and

iv. It will make efforts that are reasonable under the circumstances to attract licensees of subject invention that are Small Business Firms and that it will give a
preference to a Small Business Firm when licensing a subject invention if the Contractor determines that the Small Business Firm has a plan or proposal for marketing the invention which, if executed, is equally as likely to bring the invention to practical application as any plans or proposals from applicants that are not Small Business Firms; provided, that the Contractor is also satisfied that the Small Business Firm has the capability and resources to carry out its plan or proposal. The decision whether to give a preference in any specific case will be at the discretion of the Contractor. However, the Contractor agrees that the Secretary may review the Contractor’s licensing program and decisions regarding Small Business Firm applicants, and the Contractor will negotiate changes to its licensing policies, procedures, or practices with the Secretary when the Secretary’s review discloses that the Contractor could take reasonable steps to implement more effectively the requirements of this paragraph (k)(iv).

*Communication.* The central point of contact at the Federal Agency for communications on matters relating to this clause may be obtained from the City upon request.
NOTICE TO BIDDERS

NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY (EXECUTIVE ORDER 11246, as amended) FOR ALL 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:


<table>
<thead>
<tr>
<th>Trade</th>
<th>Goal (percent)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Electricians</td>
<td>9.0 to 10.2</td>
</tr>
<tr>
<td>Carpenters</td>
<td>27.6 to 32.0</td>
</tr>
<tr>
<td>Steamfitters</td>
<td>12.2 to 13.5</td>
</tr>
<tr>
<td>Metal Lathers</td>
<td>24.6 to 25.6</td>
</tr>
<tr>
<td>Painters</td>
<td>28.6 to 26.0</td>
</tr>
<tr>
<td>Operating Engineers</td>
<td>25.6 to 26.0</td>
</tr>
<tr>
<td>Plumbers</td>
<td>12.0 to 14.5</td>
</tr>
<tr>
<td>Iron Workers (structural)</td>
<td>25.9 to 32.0</td>
</tr>
<tr>
<td>Elevator Constructors</td>
<td>5.5 to 6.5</td>
</tr>
<tr>
<td>Bricklayers</td>
<td>13.4 to 15.5</td>
</tr>
</tbody>
</table>
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
Glaziers ....................................................... 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 Contract, the “covered area” is the City of New York.

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. Minimum Wage. 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 to 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 (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 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 contained under 29 CFR 5.5(a)(1)(iv) 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.

III (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 any 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 withing 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 subparagraph (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 I(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)(v) 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 I(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/whaforms/wa347nstr.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)(i), the appropriate information is being maintained under 29 CFR 5.5(a)(3)(i), and that such information is correct and complete;
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 5.

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.

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. (III) [b].

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.

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.

Apprentices will be permitted to work at a rate not 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 pursuant to a State Apprenticeship Training, Employer and Labor Services or with a State Apprenticeship Agency recognized by the Office. If a person is employed in an apprenticeship program, he is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or with a State Apprenticeship Agency (where appropriate) to be eligible for on-the-job training 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 force under the registered program. Any worker listed on a payroll at an apprentice 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 outside of 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 journeyman 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 classification, the ratio and wage rates 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 rates less than the predetermined rate for the work performed until an acceptable program is approved.

Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at a rate 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 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 as 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 1001. 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, utter 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 files 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 responsibletherefor 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 subparagraph (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. 40 U.S.C. 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 C
To Subrecipient Agreement

HURRICANE SANDY CDBG-DR APPENDIX

ARTICLE 1. DEFINITIONS
The definitions in Article 1 of Appendix B 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)(33) 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 B, 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 B 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-56960-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 B 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-56960-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

APPENDIX D

REQUIRED CDBG-DR PROGRAM RECORDS

As applicable to the specific activities contemplated in the Scopes 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 2 CFR sections 200.318-200.326);
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 E

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, OMB Chief Contracting Officer (“OMB ACCO”) or OMB 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 OMB ACCO or OMB 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 L

WHISTLEBLOWER POSTER

Appendix L – 3
APPENDIX M

RESERVED