



Department of
Design and
Construction

Request for Proposals

**Project
HWDCRW07,
Requirements Contracts
for Project Management
and Construction
Management Services for
Coastal Resiliency
Projects, Citywide**

**PIN
8502019HW0020P**

**Pre-Proposal Conference
March 4, 2019**

**Submission Deadline
March 26, 2019**

**Bill de Blasio
Mayor**

**Lorraine Grillo
Commissioner**

**Eric Macfarlane, P.E.
Deputy Commissioner
Infrastructure**



**DEPARTMENT OF DESIGN AND CONSTRUCTION
DIVISION OF INFRASTRUCTURE**

**REQUEST FOR PROPOSALS
REQUIREMENTS CONTRACTS FOR PROJECT MANAGEMENT AND CONSTRUCTION
MANAGEMENT SERVICES FOR COASTAL RESILIENCY PROJECTS, CITYWIDE**

**FMS ID: HWDCRW07
PIN: 8502019HW0020P
EPIN: 85019P0009**

TABLE OF CONTENTS

- I. TIMETABLE
- II. SUMMARY OF REQUEST FOR PROPOSALS
- III. SCOPE OF WORK AND CONTRACT CONDITIONS
- IV. FORMAT AND CONTENT OF THE PROPOSAL
- V. PROPOSAL EVALUATION AND CONTRACT AWARD PROCEDURES
- VI. GENERAL INFORMATION TO PROPOSERS

ATTACHMENTS AND ENCLOSURES

- ATTACHMENT 1 – PROPOSAL CHECKLIST
- ATTACHMENT 2 – STATEMENT OF UNDERSTANDING AND CERTIFICATION
- ATTACHMENT 3 – ACKNOWLEDGEMENT OF ADDENDA
- ATTACHMENT 4 – PROJECT REFERENCE FORM
- ATTACHMENT 5 – IDENTIFICATION OF SUBCONSULTANTS
- ATTACHMENT 6 – SUMMARY PROJECT MATRIX
- ATTACHMENT 7 – ESCR STAFFING PLAN FORM
- ATTACHMENT 8 – FEE PROPOSAL FORM
- ATTACHMENT 9 – SCHEDULE B: M/WBE PARTICIPATION REQUIREMENTS FOR MASTER SERVICE AGREEMENTS
- ATTACHMENT 10 – SCHEDULE B: M/WBE UTILIZATION PLAN FOR INDEPENDENTLY REGISTERED TASK ORDER
- ATTACHMENT 11 – IRAN DIVESTMENT ACT COMPLIANCE RIDER FOR NYC CONTRACTORS
- ATTACHMENT 12 – DOING BUSINESS DATA FORM
- ATTACHMENT 13 – WHISTLEBLOWER PROTECTION EXPANSION ACT RIDER
- ATTACHMENT 14 – SUBCONTRACTOR REPORTING
- ATTACHMENT 15 – DISPLACEMENT DETERMINATION FORM

- APPENDIX 1 – CONTRACT DOCUMENT
- APPENDIX 2 – NEW YORK CITY STANDARD CONSTRUCTION CONTRACT (REFERENCE ONLY)
- APPENDIX 3 – REFERENCE DOCUMENTS FOR COASTAL RESILIENCY



SECTION I. TIMETABLE**A. RFP Issuance**Pre-Proposal Conference

A **pre-proposal conference** will be held on **Monday, March 4th, 2019 at 10:00AM** at DDC Headquarters, located at 30-30 Thomson Avenue, Atrium, Long Island City, New York 11101 (entrance on 30th Place). Attendance is strongly encouraged, but not mandatory, to propose on the contract described in this RFP.

B. Submission Deadline

The proposer shall deliver the Proposal, on or before **4:00 P.M. on Tuesday, March 26, 2019**, in a clearly marked envelope or package. Proposers must utilize the Proposal Checklist included with this RFP as Attachment 1 to assure completeness prior to submitting their proposals. Incomplete Proposals will be deemed non-responsive.

C. Proposal Contents

The Proposal must consist of FOUR separate clearly marked, sealed packages containing the following:

- 1) Technical Proposal (1 original and 6 copies, and 1 electronic version saved as a single, appropriately bookmarked PDF on a clearly marked compact disk (CD) or a clearly marked USB Flash Drive with the name of the firm). The PDF must be text-searchable.
- 2) Doing Business Data Form (Attachment 12) (1 original),
- 3) Schedule B: M/WBE Participation Requirements for Master Service Agreement (Attachment 9) (1 original) AND Schedule B: M/WBE Utilization Plan for Independently Registered Task Order (Attachment 10) (1 original).
- 4) Fee Proposal (Attachment 8) (1 original and 2 electronic versions on a clearly labeled compact disc (CD) or USB flash drive, saved as (a) a single, appropriately bookmarked PDF and (b) an excel file showing all calculations).

D. Proposal Submission Location

Proposals shall be hand-delivered to the contact person at the location listed below. Proposals received after the applicable due date and time prescribed in the RFP are late and will not be accepted except at the discretion of DDC pursuant to the applicable section of the City Procurement Policy Board Rules.

**Department of Design and Construction
30-30 Thomson Avenue, 1st Floor, Contracts Section
Long Island City, NY 11101**

NOTE: Proposers are held responsible for ensuring that the Professional Contracts Section receives the RFP response package by the Submission Deadline noted above. Proposers are warned not to rely on signed delivery slips from their messenger services. Occasionally packages are delivered to the School Construction Authority ("SCA"), which is located in the same building as DDC and the packages are not forwarded to the DDC Professional Contracts Section in a timely manner. Entrance to DDC is on 30th Place. DDC's entrance is NOT on Thomson Avenue, despite the fact that DDC's address has a Thomson Avenue street address.

E. Inquiries

All inquiries must be directed ONLY to the contact person(s) listed below.

Contract Manager: Peter Cabrera **AND** Hemwattie Roopnarine
Email: CabreraPe@ddc.nyc.gov **AND** Ramnarah@ddc.nyc.gov

The deadline to submit queries regarding this RFP is **4:00PM on Tuesday, March 12, 2019.**

In the event a proposer desires any explanation regarding the meaning or interpretation of this RFP, such explanation must be requested in writing, no later than **4:00PM on Tuesday, March 12, 2019.**

In the event DDC determines that it is necessary to respond to the inquiry in writing, such response will be furnished as an addendum to the RFP to all potential proposers known to have downloaded the RFP. All addenda will be available on DDC's website at <http://ddcftp.nyc.gov/rfpweb/>. It is the proposer's responsibility to check the website regularly for any updates and addenda to this solicitation. In order to receive email notifications regarding this solicitation, proposers must register and download this RFP at <http://ddcftp.nyc.gov/rfpweb/>

Addenda responding to inquiries submitted by the Deadline for Inquiries indicated on the Estimated Procurement Times will be published no later than one (1) week prior to the proposal submission deadline.

F. Proposer/Subconsultant Restrictions

Vendors that have been involved as a consultant or subconsultant for the planning or design of one or more of the currently anticipated Coastal Resiliency Projects (i.e., the East Side Coastal Resiliency, Two Bridges, Red Hook and/or Breezy Point Projects) may be precluded from proposing, as set forth below or as later determined by the Agency Chief Contracting Officer. Consultants and their subconsultants that have performed, or are performing, planning and/or design services, other than community engagement activities, for any aforementioned Project will be precluded from proposing a prime for this PM/CM contract. Such design consultants and subconsultants may be subconsultants to the prime proposer, except that such consultants and/or subconsultants, other than those performing community engagement activities, will not be permitted as subconsultants to the prime proposer on any Project for which they performed services.

- A full list of all consultants and subconsultants that have performed services on each known project is set forth below.
- A list of consultants/subconsultants that are precluded from proposing as a prime proposer due to prior involvement is set forth below.
- A list of consultants/subconsultants that are precluded from participating as a subconsultant to the prime proposer for the East Side Coastal Resiliency Project is also set forth below.

Design services for the Red Hook Project will be awarded simultaneously with, or prior to, this PM/CM Contract pursuant to a mini-RFP issued to DDC's existing design requirements contract. The design consultant selected for the Red Hook design contract will not be precluded from proposing as either a consultant or subconsultant for this RFP. If the same consultant is awarded both the Red Hook Project design task order and this PM/CM Contract, PM/CM services for the Red Hook Project will be procured by DDC through alternative means other than this PM/CM Contract.

Vendors interested in proposing as a prime or subconsultant that have performed any service for the anticipated Projects are encouraged to contact the agency contact person(s) listed above as soon as possible to confirm their eligibility to participate in this solicitation.

In addition, any firm that submits a proposal for this contract may not be included as a subconsultant to any other firm that is submitting its own separate proposal.

Precluded as Prime Proposer	Precluded as Subconsultant on ESCR Project
AECOM	AECOM
Aquifer Drilling and Testing, Inc.	Aquifer Drilling and Testing, Inc.
AIA Engineers	AIA Engineers
AKRF	AKRF
ARCADIS	ARCADIS
Bjarke Ingels Group (BIG)	Bjarke Ingels Group (BIG)
Boomi Environmental	Boomi Environmental
Catherine Seavitt Studio	CH2M/Jacobs
CH2M/Jacobs	Hardesty & Hanover, LLC
Craignolin	Hazen & Sawyer Engineers
Dewberry Engineering	KSE
Gedeon	Mathews Nielsen Landscape Architects
Nasco Construction Services, Inc.	Munoz
Guy Nordenson Associates	One Architecture
Hardesty & Hanover, LLC	SiteWorks
Hazen & Sawyer Engineers	Wesler-Cohen Associated Consulting Engineers, PLLC
ILC Dover	
Jersey Boring & Drilling	
Keenan Climate Consulting	
KSE	
Local Office Land & Urban Design	
Louis Berger	
Matrix New World	
Mathews Nielsen Landscape Architects	
MJ Engineering	
Munoz	
One Architecture	
SiteWorks	
Wesler-Cohen Associated Consulting Engineers, PLLC	

G. Acknowledgement of Addenda

Receipt of an addendum to this RFP by a proposer must be acknowledged by attaching an original signed copy of the addendum to the Technical Proposal. All addenda shall become a part of the requirements of this RFP. In addition to the individual signed addenda, proposals submissions should also contain a signed copy of Attachment 3, Acknowledgement of Addenda.

H. Procurement Timeline

The following is the estimated timetable for receipt, evaluation, and selection of proposals. This is only an estimate and is provided to assist responding firms in planning. Please note that the dates and times may be changed at DDC's discretion, as the needs of DDC change.

Estimated Procurement Timeline	
RFP Issued	February 19, 2019
Pre-Proposal Conference	March 4, 2019
Deadline for Inquiries	March 12, 2019 at 4:00PM
Addenda Responding to Inquiries	March 19, 2019
Proposal Due	March 26, 2019 at 4:00PM
Top Ranked Firms Notified of Proposal Presentations, if required	On or about May 1, 2019
Proposal Presentations Date, if required	May 8 – May 10, 2019
Fee Negotiations Commence with Top Ranked Firm	On or about May 16, 2019, if Proposal Presentations are scheduled On or about May 7, 2019, if no Proposal Presentations are scheduled
Expected Notice of Contract Award	June 2019

SECTION II. SUMMARY OF THE REQUEST FOR PROPOSALS

A. General

The New York City Department of Design and Construction (“DDC”), Division of Infrastructure, is seeking a qualified Project Management/Construction Management (PM/CM) firm (the “PM”) to provide: (1) comprehensive project and construction management services, inclusive of resident engineering inspection services, for various coastal resiliency projects, and (2) provide consulting services in connection with DDC’s coastal resiliency projects. The projects for which services are required will be specified by the Commissioner on a Task Order basis. Such projects may involve any division of DDC and may be located in any of the five New York City boroughs.

Since 2015, the City has advanced numerous coastal defense projects from initial feasibility analysis, through conceptual design, and toward final design. In coordination with community stakeholders, the City has sought to deliver cutting-edge flood risk mitigation solutions that are integrated into the urban fabric of our neighborhoods and provide community benefits such as recreational space wherever possible.

The PM/CM will be hired to provide its expertise in project and construction management services for each Project. The design and construction of Coastal Resiliency Projects is an extremely complex undertaking requiring experienced and creative professionals skilled in a variety of disciplines.

DDC intends to enter into a requirements contract with a single qualified firm (the PM/CM) to provide comprehensive project and construction management services, inclusive of resident engineering inspection services, for various coastal resiliency projects with a total estimated construction cost of more than **\$1,200,000,000**. DDC is seeking a PM with extensive project management experience and experience managing construction projects funded by the United States Department of Housing and Urban Development (“HUD”) and the Federal Emergency Management Agency (“FEMA”).

Currently, DDC anticipates issuing Task Orders for at least four (4) large Coastal Resiliency Projects that are being developed through preliminary and final design under different design consultants. Additional projects may be planned at a future date for which DDC may issue Task Order(s) hereunder.

For each project, DDC anticipates at least some federal grant funding, with grant monies being received from both Federal and State sources. This contract will be subject to federal grant provisions on a Task Order basis. Copies of provisions that may be applicable to each category of funding are included with the form of contract attached to this RFP. Provisions may be revised from time to time to reflect applicable grant rules. All Task Orders will include the Uniform Federal Contract Provision Rider for Federally Funded Procurement Contracts. The most current version of grant provisions will be utilized at the time of the Task Order. The currently anticipated funding sources, not including City funds, are as follows:

- Community Development Block Grant (“CDBG”) from HUD
- CDBG Disaster Recovery (“CDBG-DR”) from HUD
- CDBG National Disaster Resilience (“CDBG-NDR”) from HUD
- New York Department of Homeland Security and Emergency Services (“DHSES”) Hazard Mitigation Grant Program (“HMGP”) from New York State, which has received funding from FEMA

B. Coastal Resiliency Projects

Prior to 2013, the City had never adopted a comprehensive coastal protection plan to reduce the risk of coastal flooding and sea level rise. With the release of “A Stronger, More Resilient New York”, the City now has a comprehensive coastal protection plan in place and has already taken steps to implement its first phase, which includes a \$3.7 billion program of infrastructure investments, natural area restorations, and design and governance upgrades. The City will, as funds continue to be identified, make progress on the entire plan.

Over the next decade, the City will strengthen its coastal defenses by completing many vital projects in all five boroughs. DDC’s anticipated coastal resiliency portfolio is currently estimated to exceed \$1.2 billion in construction project.

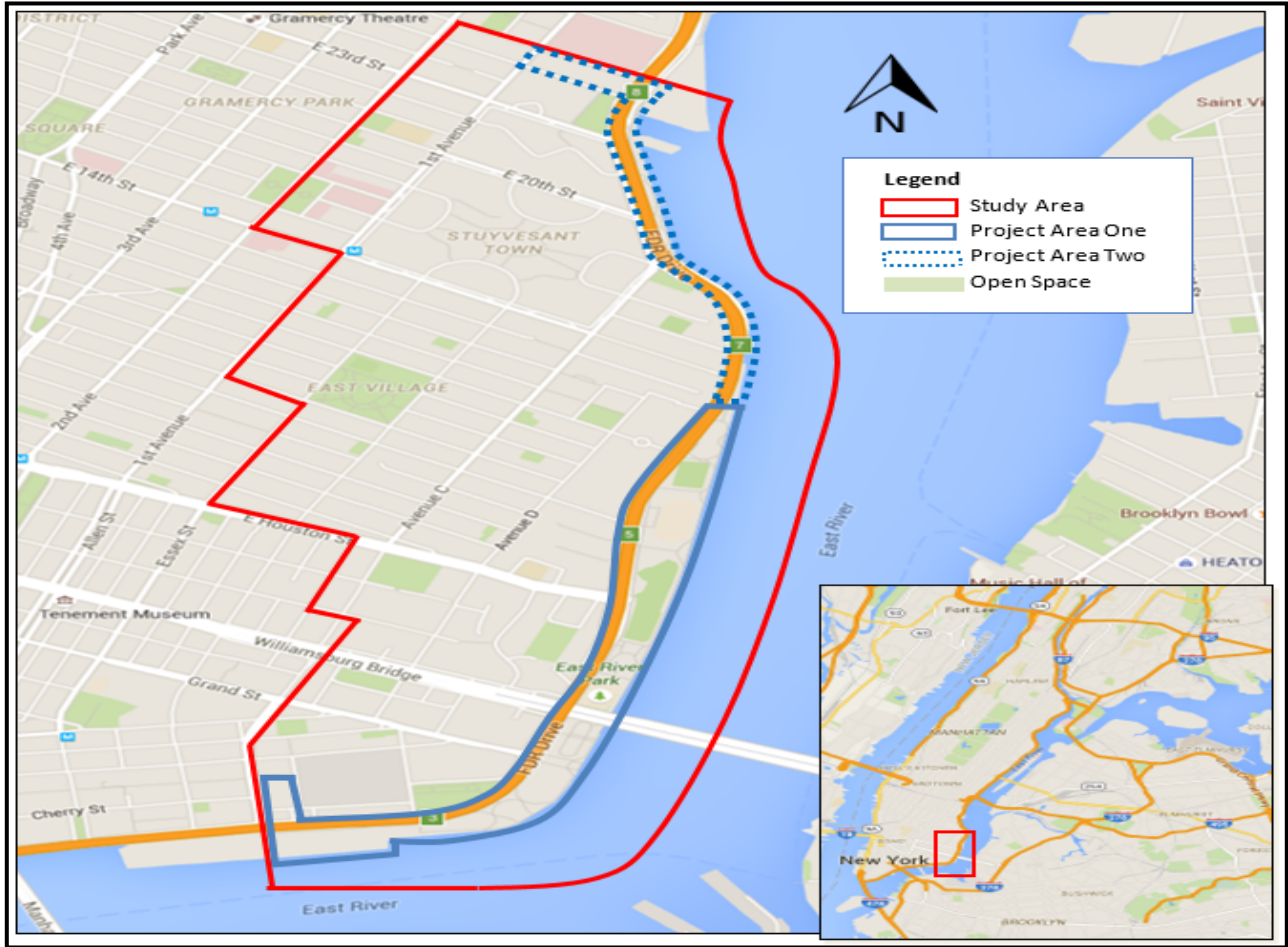
The East Side Coastal Resiliency Project

Currently, the biggest and the most ambitious project in DDC’s coastal resiliency portfolio is the East Side Coastal Resiliency Project (“ESCR”). ESCR is designed to protect both residents and vital public infrastructure in Manhattan’s Lower East Side from the effects of major storm surge and rising sea levels by creating an integrated coastal protection system. This flood protection system will reduce the risk of flooding and facilitate access to the waterfront, creating improved public spaces and enhanced natural areas from Montgomery Street to East 25th Street (approx. 2.4 miles).

Currently, DDC anticipates issuing Task Orders for at least four (4) large coastal resiliency project that are being developed through preliminary and final design under different design consultants. Additional Projects may be planned at a future date for which DDC may issue Task Orders(s) hereunder for PM/CM and consulting services. For each Project, DDC anticipates a mixture of City and federal grant funding, with grant monies being received from both Federal and State sources.

The project is partially funded with CDBG-DR funds provided by HUD. This Task Order will be subject to Section 3 Requirements and must include liquidated damages. Liquidated damages provisions for inclusion in the Task Order will be negotiated in accordance with Article 7.

DDC anticipates issuing a Task Order/NTP for ESCR immediately upon registration of this Agreement. Therefore, proposers must submit proposal materials for the ESCR Project with their proposals, as set forth in Section IV of this RFP. The proposed All Inclusive Hourly Rates for the Contract will be used to negotiate the ESCR Task Order.

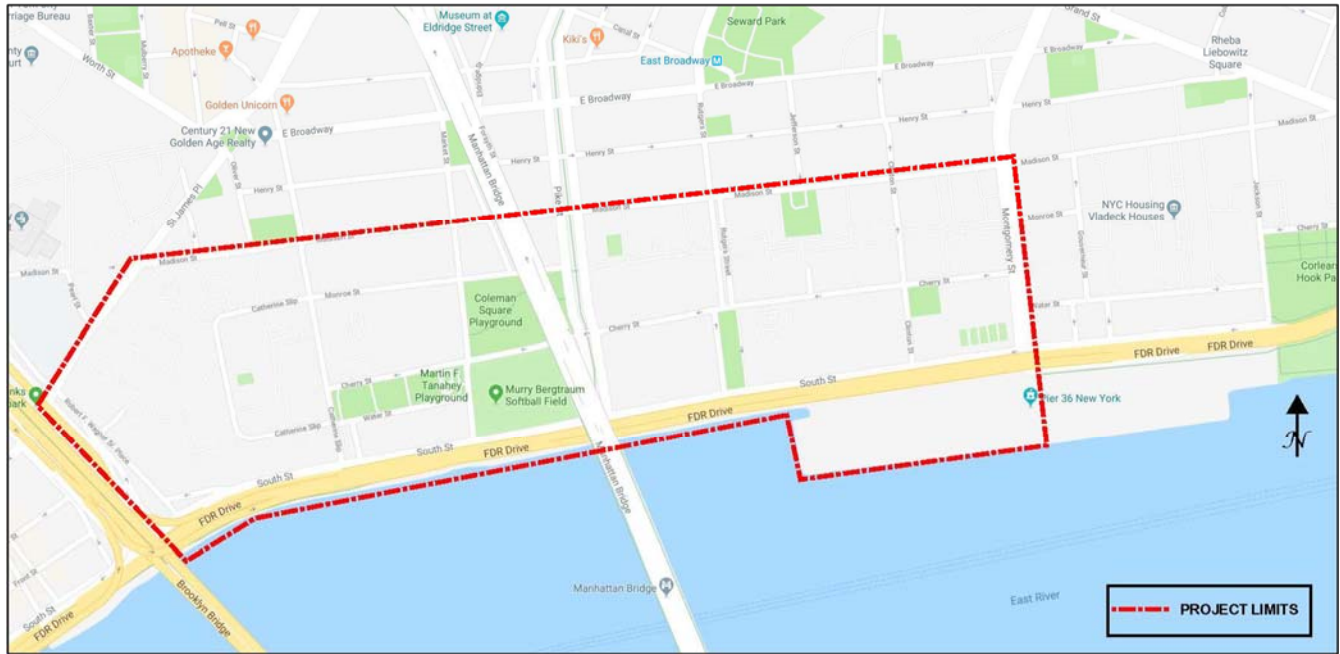


ESCR Project Diagram, above.

Lower Manhattan – Two Bridges Coastal resiliency Project (“LMCR”)

The Two Bridges Project (LMCR) is nestled into a low-lying area between the Brooklyn and Manhattan Bridges and Pearl Street and Montgomery Street. The LMCR Project is an integrated coastal protection initiative aimed at reducing flood risk due to coastal storms and sea level rise in Lower Manhattan. The LMCR Project seeks to improve access to the waterfront and enhance public spaces in the community. This is the second phase of the flood protection system to be implemented by the ESCR Project.

This Project is anticipated to be partially funded with CDBG-NDR funds provided by HUD. This Task Order will be subject to Section 3 Requirements and must include liquidated damages. Liquidated damages provisions for inclusion in the Task Order will be negotiated in accordance with Article 7.



LMCR Project Diagram, above.

The Red Hook Coastal Resiliency Project (“RHCR”)

This project is located on a peninsula in southwest Brooklyn. Red Hook, named for its native red clay, has a long history to the working waterfront and New York Harbor. The Red Hook Integrated Flood Protection System will reduce flood risks.

The conceptual proposal currently consists of mitigation in the Atlantic Basin area, including reconstruction of an existing bulkhead along Clinton Wharf and portions of Pier 11, new high-level storm sewers, drainage improvements, and a tide gate at the existing outfall. The conceptual design along Beard Street consists of a pile structure along the waterfront portion of Beard Street and a floodwall type configuration. Additionally, the conceptual design includes raising the roadway and sidewalk of Beard Street to an elevation of 8 feet-NAVD.

The City, through the New York City Economic Development Corporation, has completed a feasibility study for the RHCR Project. DDC is in the process of procuring full design services for the RHCR Project through a task order contract. If the same prime consultant is selected to provide both the PM/CM services for this Contract and design services for the Red Hook Project, DDC will procure PM/CM services for the RH Project through alternative means.

This Project is anticipated to be partially funded with HMGP funds provided by New York State. The Task Order for RHCR will be subject to New York State MWBE requirements in accordance with NY Executive Law Article 15-A.

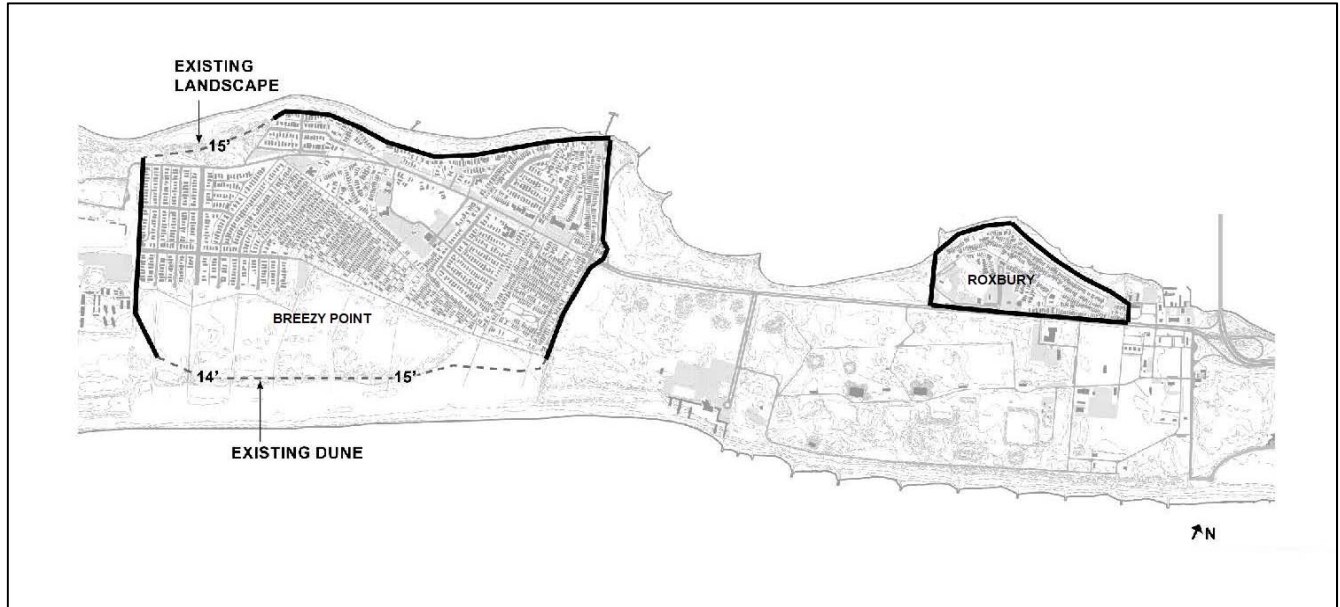


RHCR Project Diagram, above.

Breezy Point Coastal Resiliency Project (“BP”)

The Breezy Point Project is to provide protection from flood events to major infrastructure within the area of Breezy Point and Roxbury, a neighborhood located on the western end of Rockaway Peninsula, between Rockaway Inlet and Jamaica Bay on the landward side, and the Atlantic Ocean in Queens, New York.

The project is anticipated to be funded by a combination of FEMA HMGP funds and CDBG-DR funds. This Task Order will be subject to Section 3 requirements and liquidated damages will be negotiated for inclusion of the Task Order if HUD funds are utilized.



Breezy Point Project Diagram, above.

Anticipated Projects Summary Table

Project Currently in Development	Anticipated Construction NTP*	Current Estimated Construction Duration*	Current Estimated Construction Cost*
ESCR	Spring 2020	>3 Years	1.1B
Breezy Point	Spring 2020	1 year	50M
LMCR	Summer 2021	4 Years	TBD
RHCR	Spring 2022	3 years	87M

*These dates and estimates are anticipated to change, in some cases significantly, as design and environmental review processes progress for each Project. For each Project, the City has engaged or will engage separate design and environmental review consultants.

The number and timing of Projects may be reduced or otherwise altered. The City may pursue management and oversight for any Project through its own forces or by utilizing another Consultant. Additional Projects may arise throughout the term of this Contract.

C. Task Order Process

The Task Order process shall be in accordance with Article 3 of the attached contract. Proposers are advised to review this section carefully to ensure full understanding of the process. The PM will have no right: (a) to decline to respond to a Task Order RFP (b) to reject a Task Order issued hereunder, or (c) to refuse to perform services pursuant to a Task Order. Violation of the requirements set forth herein will be grounds for termination for cause.

D. Joint Ventures and Other Consultant Relationships

Proposals may be submitted by joint ventures. There is no minimum requirement for the proportion of work by either of the two joint venture parties. Joint ventures must carry the required insurance either as policies written specifically for the joint venture entity, or by using their existing single entity policies with endorsements written for the joint venture activity.

DDC does not recognize the corporate configuration wherein one company is "in association with" or is "an affiliate of" another. Relationships between two or more firms shall be either as joint venture or prime consultant/subconsultant. In the event that a proposal is received wherein two or more firms are described as being "in association with" each other, DDC will treat the relationship as one of prime consultant/subconsultant (s). The RFP evaluation will be handled accordingly, and if chosen as a winner, the contract documents will show only the prime firm on the signature page, and all other firms will be relegated to Exhibit O, which lists any subconsultants.

SECTION III. SCOPE OF WORK AND CONTRACT CONDITIONS**A. Scope of Service**

The PM will be required to provide comprehensive PM/CM services and consulting services necessary and required for the Projects, in accordance with Task Orders issued by the Commissioner. The services to be provided by the consultant shall include without limitation the services set forth in Article 6 and Exhibit B of the attached contract. The consultant shall provide such services through its own employees and/or through its Subconsultants.

The prime objective of these projects is to construct an integrated coastal protection system that will reduce the risk of flooding and facilitate access to the waterfront, creating improved public spaces and enhance natural areas, by creating a series of berms and flood walls.

1. The PM/CM will be required to provide services throughout the duration of each Project (i.e., pre-construction, construction and post-construction services). The selected firm will provide all services necessary from commencement through construction completion, final acceptance and project close-out.
2. The PM/CM services will generally consist of providing expert professional project and construction management, and related services, for each Coastal Resiliency Project. The project and construction management services will include but are not limited to: program and project management support, construction management, management of multi-disciplined professional and technical staff; documentation and reporting; design review, scheduling, program status and progress monitoring, cost analysis, construction administration, value engineering, constructability analysis, contract purchasing and project controls.
3. The PM/CM will create consistent policies, procedures, and reports among all parties, providing comprehensive management of all Project activities, including management of Consultant and construction contractor Project activities. This role includes, without limitation, grant compliance and document management. The required services are described in the attached form of Contract (see Article 6 and Exhibit B). Firms are invited to submit a proposal for undertaking the work described in this RFP.
4. The PM/CM must be the preliminary driver and facilitator of the Project activities.
5. In addition to compliance with all local laws, State and Federal laws, rules and regulations, the PM/CM will be tasked with ensuring Project compliance with various grant criteria.

B. Task Order 001 Request for Proposals – The East Side Coastal Resiliency (“ESCR”) Project**General**

The first Task Order under the master agreement will be the ESCR Project, which is the largest and most ambitious project in DDC coastal resiliency program portfolio. Information about the ESCR Project is included with this RFP. Additional information can be found at <https://www1.nyc.gov/site/escr/index.page>.

DDC anticipates issuing the ESCR Task Order as soon as possible after registration of this Contract. Therefore, this RFP is inclusive of the Task Order Request for Proposals for the ESCR Project. Proposers must submit all the materials set forth in Section IV of this RFP, including, but not limited to, a proposed Staffing Plan and separate Schedule B: M/WBE Utilization Plan for Independently registered Task Order for the ESCR Project.

The ESCR Project is partially funded through a grant from the United States Department of Housing and Urban Development (“HUD”) Community Development Block Grant Disaster Recovery Program (“CDBG-DR”).

Project Background

The City was awarded \$335 million to evaluate and develop integrated coastal protection for the 2.4 mile stretch from East 25th Street to Montgomery Street. The boundaries of this project correspond with the natural "pinch-points" in the 100-year floodplain: areas where the land is higher along the coastline, making it easier to close the system off from water entering from the north and south. This will create a stand-alone "compartment" designed to address coastal flooding from three sides.

The site is further divided into two "Project Areas" to respond to the very different technical and urban challenges of each section. Project Area 1 is a 1.5 mile stretch characterized primarily by East River Park, extending from Montgomery Street to East 13th Street, and Project Area 2 is a roughly 0.9 mile stretch comprised of the East 13th Street Con Edison Complex, Patrick J. Brown Walkway, Stuyvesant Cove Park and Asser Levy Park.

The ESCR Project area covers a significant portion of East Side Park, as well as the Franklin Delano Roosevelt (FDR) Drive, and borders or connects to Con Edison facilities located along the FDR Drive at East 14th and 15th Street. The project also borders and is expected to provide significant flood protection to the Jacob Riis Houses, a New York City Housing Authority (“NYCHA”) development.

DDC clients and significant stakeholders for the ESCR Project include, but are not limited to, several NYC agencies and offices (DOT, DEP, Parks, ORR), the CB3/CB6 Joint Waterfront Taskforce, NYCHA, ConEdison, and HUD.

This is Phase 1 of a multi-phase initiative. Phase 2 is the Two Bridges Project.

ESCR PM/CM Scope of Services

The PM will provide comprehensive PM/CM services, inclusive of all tasks set forth in Article 6 and Exhibit B.

This Task Order is subject to Section 3 of the HUD Act of 1968, as amended, 12 U.S.C § 1701u. This Task Order is subject to the CDBG-DR Rider attached to the Contract as Exhibit K.

The PM will be required to comply with Section 3. The PM will also be tasked with providing Section 3 reporting and compliance services for Consultants and construction contractors procured by the City for this Project.

Project Schedule

A preliminary project schedule prepared by DDC’s design consultant is annexed to this RFP as Appendix 3.

Time for Performance

DDC anticipates issuing a Task Order with an immediate notice to proceed date as soon as possible after contract registration. The PM’s will provide comprehensive PM/CM services through completion of construction activities and project closeout.

Required Titles for ESCR Task Order

Required titles and minimum requirements for each title are set forth in Attachment 7 of this RFP. Proposers are required to identify all personnel for the ESCR Project as set forth in Section IV(B)(4)(c) as part of proposers’ Technical Proposal for the contract. A form for submission of proposer’s staffing plan for the ESCR Project is set forth in Attachment 7. Staffing information submitted as part of the Technical Proposal should not include any information about fees.

ESCR Fee Proposal

Staffing Expenses for the ESCR Project will be billable on a timecard basis in accordance with Article 7 of the attached form of contract. Proposers are not required to submit a separate fee proposal for the ESCR Project at this time. A fee proposal for Task Order 001 will be solicited after award of the Contract and will utilize the All Inclusive Hourly Rates set forth in the Contract.

In accordance with Article 7, the Task Order will include provisions for liquidated damages. Types and amounts of liquidated damages will be negotiated. DDC anticipated including liquidated damages be included as follows: for timely submission of a Task Order Proposal in response to a Task Order Request for Proposal per Article 3, timely review of construction contractor’s payment requisitions, timely response to construction contractor requests for information, failure to appear or to timely appear for site visits and/or inspections, failure to notify DDC of accident or injury within two (2) hours, failure to timely submit a Construction Accident Report within forty-eight (48) hours after an accident or injury.

C. Contract Provisions

The services to be provided by the Consultant and all standards of performance applicable to the required services are set forth in the form of contract, attached hereto and incorporated herein as part of this RFP. Any firm awarded a contract as a result of this RFP will be required to sign this form of contract. The proposer is advised to carefully review the contract in its entirety before submitting a proposal.

- (1) Total Not to Exceed Amount: The total value of all Task Orders that may be issued pursuant to this contract shall be governed by the chart below:

FMS ID Number	Total Not to Exceed Amount	Total Not to Exceed Renewal Amount
HWDCRW07	\$120 Million	\$20 Million

- (2) Term of Contract: The term of the contract shall commence as of the date of registration by the Comptroller and shall remain in effect for a period of 1,095 consecutive calendar days (CCDS). At the Commissioner’s sole option, the term of the contract may be renewed once for a period of up to 730 CCDS. The contract may also be extended for up to one (1) year in accordance with applicable Law.

D. Certain Task Orders Subject to Section 3 Requirements

Some Task Orders issued under this Agreement will be funded, in whole or in part, with HUD-assistance. The work to be performed under those Task Orders will be subject to Section 3 of the United States Housing and Urban Development Act of 1968, as amended, 12 U.S.C § 1701u. 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 will, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

Proposers are advised to carefully read the Section 3 contract requirements in the contract riders included as Exhibits K and L to the form of contract annexed to this RFP.

E. PM’s Personnel

The terms and conditions regarding the PM’s obligation to provide personnel for the performance of services for the Project specified in the Task Order are set forth in Article 5 of the attached Contract. The PM agrees, throughout the term of this Contract, to provide personnel for the performance of

all required services for the Project, as directed by the Commissioner. The PM shall provide such personnel through its own employees and/or through its Subconsultants.

Proposers are required to submit a proposed Staffing Plan for Task Order 001 (the East Side Coastal Resiliency Project, "ESCR" Project). The requirements for the ESCR Staffing Plan are set forth in Section IV, below. The PM will be required to provide the specific individuals identified in the Staffing Plan, as approved by the Commissioner, for ESCR for the duration of the ESCR Task Order.

F. Insurance

Requirements for insurance that must be provided by the Consultant and its subconsultants are specified in Article 7 of Appendix A, which is included as an Exhibit to the attached contract. The types and amounts of insurance that must be provided by the Consultant throughout the term of the Agreement is set forth in Exhibit A. Additional and/or alternative types and amounts may be required as set forth in a Task Order. The Proposer is advised to review such insurance requirements carefully.

G. Payment Provisions

Payments for all required services for the Project shall be in accordance with Article 7 of the attached contract.

H. Labor Law Requirements

The Consultant shall strictly comply with all applicable provisions of the New York State Labor Law, as amended. Such compliance is a material term of the Contract. Such compliance shall include, but is not limited to, payment of the prevailing rate of wages, as described below.

Certain categories of labor for Surveying Services are included in the Section 220 Prevailing Wage Schedule. In accordance with the Labor Law, for any category of labor included in such Schedule, the wages to be paid for a legal day's work to such laborers shall not be less than the "prevailing rate of wages" as defined in Labor Law Section 220, and as fixed by the Comptroller in the Prevailing Wage Schedule and in any updates thereof. The prevailing wage rates and supplemental benefits to be paid are those in effect at the time the work is being performed.

I. Compliance with Iran Divestment Act of 2012

Pursuant to State Finance Law Section 165-a, and General Municipal Law Section 103-g, the City is prohibited from entering into contracts with persons engaged in investment activities in the energy sector of Iran. Each proposer is required to complete the attached Proposer's Certification of Compliance with the Iran Divestment Act, certifying that it is not on a list of entities engaged in investments activities in Iran created by the Commissioner of the NYS Office of General Services. If a proposer appears on that list, the Agency/Department will be able to award a contract to such proposer only in situations where the proposer is taking steps to cease its investments in Iran or where the proposer is a necessary sole source. Please refer to Attachment 11 for information on the Iran Divestment Act required for this solicitation and instructions on how to complete the required form and to <http://www.ogs.ny.gov/About/regs/ida.asp> for additional information concerning the list of entities.

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

J. Participation by Minority Owned and Women Owned Business Enterprises in City Procurement

If the Master Services Agreement awarded pursuant to this solicitation will be subject to Minority and Women-Owned Business Enterprises (M/WBE) participation requirements established under Section 6-129 of the Administrative Code of the City of New York, as indicated by the inclusion of

Schedule B – M/WBE Participation Requirements for Master Service Agreements That Will Require Independently Registered Task Orders (Attachment 9), proposers must complete such Schedule B and submit it with their proposal.

Depending on the scope of work and the availability of M/WBEs to perform such work, agencies may set M/WBE participation goals on each individual task order issued pursuant to such Master Services Agreement. If M/WBE participation goals are established for an individual task order, Prime Contractors will be required to submit a completed Schedule B – M/WBE Utilization Plan For Independently Registered Task Orders That are Issued Pursuant to Master Service Agreements (MSA) unless a full waiver is obtained. If Prime Contractors submit a Schedule B, they will be required to fulfill the M/WBE participation goals on each individual task order, except to the extent that a full or partial waiver is obtained or such goals are modified by the agency. Please refer to the Schedule B – M/WBE Participation Requirements for Master Service Agreements That Will Require Independently Registered Task Orders and the Notice to All Prospective Contractors (Attachment 9) for information on the M/WBE requirements established for this solicitation and instructions on how to complete the required forms.

This contract is subject to Minority and Women-Owned Business Enterprises (M/WBE) participation requirements. The MWBE goals will be set at the Task Order level. Proposers should anticipate, generally, that goals will be set at 30%, subject to the scope and availability of MWBEs to perform such work.

Proposers will be required to submit two (2) Schedule B forms:

- i. M/WBE Participation Requirements for Master Service Agreements That Will Require Independently Registered Task Orders**
- ii. M/WBE Utilization Plan for Independently Registered Task Order (East Side Coastal resiliency Project)**

K. Compliance with Local Law 34 of 2007

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

L. Whistleblower Protection Expansion Act Rider

Local Law Nos. 30 and 33 of 2012, codified at sections 6-132 and 12-113 of the New York City Administrative Code, the Whistleblower Protection Expansion Act, protect employees of certain City contractors from adverse personnel action based on whistleblower activity relating to a City contract and require contractors to post a notice informing employees of their rights. Please read Attachment 13, the Whistleblower Protection Expansion Act Rider, carefully.

M. Subcontractor Compliance Notice

The selected vendor will be required to utilize the City's web based system to identify all subcontractors in order to obtain subcontractor approval pursuant to PPB Rule section 4-13, and will also be required to enter all subcontractor payment information and other related information in such system during the contract term. Please read Attachment 14, the Subcontractor Compliance Notice as it relates to competitive solicitations.

N. Compliance with HireNYC and Reporting Requirements

The Hiring and Employment Rider shall apply to contracts valued at \$1 million or more for all goods, services and construction except human services contracts that are subject to the Public Assistance Hiring Commitment Rider. The Rider describes the Hire NYC process and obligations, including reporting requirements throughout the life of the contract. The Hire NYC process requires contractors to enroll with the HireNYC system within thirty days after the registration of the contract subject to this solicitation, to provide information regarding all entry to mid-level job opportunities arising from this contract and located in New York City, and to agree to interview qualified candidates from HireNYC for those opportunities. The Rider also includes reporting requirements unrelated to HireNYC. A copy of the HireNYC Rider is attached to the Contract included with this RFP. Please read the HireNYC Rider carefully.

O. Paid Sick Leave Law Rider

The Earned Sick Time Act, also known as the Paid Sick Leave Law ("PSLL"), requires covered employees who annually perform more than 80 hours of work in New York City to be provided with paid sick time. Contractors of the City of New York [or of other governmental entities] may be required to provide sick time pursuant to the PSLL. The Paid Sick Leave Law Rider, will be included in any contract awarded from this RFP and will incorporate the PSLL as a material term of such a contract. Please read Appendix A of the contract carefully.

SECTION IV. FORMAT AND CONTENT OF THE PROPOSAL

A. Proposal Subdivision Instructions

Proposers should provide all information required in the format below. The proposal should be typed on both sides of 8½" X 11" paper. The City of New York requests that all proposals be submitted on paper with not less than 30% post-consumer material content, i.e., the minimum recovered fiber content level for reprographic paper recommended by the United States Environmental Protection Agency (for any changes to that standard please consult: <https://www.epa.gov/smm/comprehensive-procurement-guidelines-paper-and-paper-products>). Pages should be paginated. The proposal will be evaluated on the basis of its content, not its length. Failure to comply with any of these instructions will not make the proposal non-responsive.

Submit the proposal in a clearly labeled, sealed package as follows:

1. Technical Proposal (1 original, 6 copies, and 1 electronic version saved as a single, appropriately bookmarked PDF on a clearly labeled compact disc (CD) or USB flash drive). The PDF must be text-searchable. The Technical Proposal shall contain all the information requested in Subsection B below, including a completed Standard Form 330 for proposer and each its subconsultant(s). (Standard Form 330 is available at <https://www1.nyc.gov/assets/ddc/downloads/SF330-16e.pdf>). **Standard Forms 254 and 255 will no longer be accepted.**
2. Fee Proposal (1 original and 2 electronic versions on a clearly labeled compact disc (CD) or USB flash drive, saved as (a) a single, appropriately bookmarked PDF and (b) an excel file). Fee proposal shall include all elements requested in the Subsection D below. Form for the submission of Fee Proposal is included as Attachment 8 of the RFP. The PDF must be text-searchable.

B. Technical Proposal

Respondents must submit 1 original, 6 copies, and 1 electronic version of their proposal.

- Paper copies of the proposal must be bound and include clear pagination and tabs marking each section and sub-section.
- The electronic version must be in PDF, as a single file, and must be appropriately bookmarked. The electronic version must be on a clearly labeled compact disc (CD) or USB flash drive with the proposer's name and marked as the technical proposal. The PDF must be text-searchable.

Respondents are instructed to limit the information included in their technical proposals to the information necessary to demonstrate its qualifications for the Project in accordance with Section V, below, and any other information specifically requested in this RFP. DDC is not interested in receiving marketing brochures or generic narratives or other generic/marketing materials. Such materials will not be considered when evaluating the proposals.

The Technical Proposal shall contain the information described below:

1. Table of Contents.

The Technical Proposal must include a Table of Contents as the first item in the Technical Proposal. The Table of Contents must include the items set forth in this Sub-section B.

2. Cover Letter.

Submit a maximum one-page cover letter, indicating: (a) company name and address; (b) name, address and telephone number of the person authorized to represent the firm; and (c) total number of full-time technical staff. **(Be sure to include the DDC project number and title on the cover letter.)**

Include a statement indicating whether the proposer is proposing as a single entity, or as a joint venture. If a joint venture submits a proposal, all participants in the joint venture shall be bound jointly and severally and each participant shall execute the proposal. If a single entity proposer cannot demonstrate that it meets all of the referenced qualifications, then the single entity proposer may, with others, form a joint venture and request that the joint venture be deemed to be the proposer (i.e. members of the joint venture may meet the qualification requirement collectively). If the proposer is a joint venture, including a consortium, partnership or any other form of a joint venture, or an association that is not a legal entity, the proposal must include a letter signed by an authorized representative of each member indicating a willingness to accept joint and several liability.

3. Past Performance and Experience of Firm & Subconsultants:

(a) **Demonstration Projects.**

(1) The proposing firm shall demonstrate that the firm and/or sub-consultants have experience in providing project and construction management services for various construction projects. Provide examples of up to five (5) substantially completed projects, for which the proposer has provided direct project management and/or construction management and oversight services within the last ten (10) years. The submitted projects must demonstrate the proposer's project management and/or construction management experience in each of the categories listed below. Of the projects submitted:

- (i) Include at least one (1) construction project involving a flood protection/mitigation system/measure;
- (ii) Include at least two (2) large construction projects. The definitions for the purposes of this RFP shall mean a project with a construction cost of at least One Hundred Million (\$100,000,000.00) Dollars. One of these projects must have been performed in a high-density urban/metropolitan environment and both of these projects should demonstrate experience in at least one (1) of the following areas:
 - a. Horizontal construction;
 - b. Complex civil construction;
 - c. Large scale project with challenging existing conditions such as traffic, underground utilities or above ground infrastructure.

(2) Proposers must submit the **Project Reference Form** included with this RFP as **Attachment 4** with all fields filled out for each demonstration project.

- (3) Proposers are advised to select demonstration projects that demonstrate the ability of the proposer, working with its proposed Key Subconsultants and Key Personnel, to competently provide the services required for this contract.
 - (4) For each demonstration project, the proposer must provide the information/items listed below. There is a 3-page (1.5 sheet) limit for each demonstration project, exclusive of item (iv) (recommendation letters and performance evaluations), below, and the Project Reference Form (RFP Att. 4).
 - (i) Information identifying role of the proposer in the project and its Key Subconsultants,
 - (ii) Up to one (1) page of visual materials (i.e., photographs, drawings, brochures),
 - (iii) Project owner's contact information, including name, title, phone number, and email; and
 - (iv) A recommendation letter from the owner of the project on the owner's letterhead or, if a recommendation letter is unavailable for any reason, a copy of the proposer's final performance evaluation for the project on the owner's letterhead or official form. Proposer is not required to submit a copy of the final performance evaluation for a City project, provided that the final performance evaluation for the project is available through PASSPort.
 - (5) Firms proposing as a joint venture may meet the demonstration project submission collectively (i/e, a joint venture may rely on the experience of its other joint venturer(s) in order to meet the minimum experience requirements set forth in this RFP).
 - (6) No more than five (5) demonstration projects will be accepted, regardless of whether the proposer is a single firm or a joint venture. In the event that a proposer attempts to submit more than five (5) projects, only the first five (5) projects will be evaluated and the remaining projects will be discarded without evaluation.
- (b) Subconsultants.
- (1) The proposer must submit **Attachment 5** for the **ESCR Project**. **Attachment 5** should identify by name the subconsultants the proposer intends to provide for the duration of the ESCR Project, as well as the type of services to be provided by each subconsultant.
 - (2) The proposer must also submit, on Standard Form 330 submitted per Section IV(B)(6), below, prior relevant projects completed by each subconsultant, clearly stating the role of the subconsultant on the submitted project as well as their proposed role in management of the projects stated in this RFP. Highlight any heavy civil construction project experience of the subconsultants.
- (c) Summary Project Matrix.
- (1) Proposers are required to submit a **Summary Project Matrix** as **Attachment 6** to the proposal. The purpose of the Summary Project Matrix is to summarize the extent to which the proposed personnel, particularly Key Personnel, and Subconsultants proposed for the ESCR Project worked together on successful completed projects.

- (2) Demonstration projects with less involvement, or no involvement, of the Key Personnel and Subconsultants proposed for the ESCR Project as part of this RFP will be given less weight than demonstration projects that include currently proposed Key Personnel and Subconsultants.

4. Strategic Approach.

- (a) **Narrative.** Provide a narrative, of no more than ten (10) pages, describing the respondent's strategic approach for performance of the required services. The following must be addressed in the narrative:

- (1) Proposer's understanding of the technical issues and complexities involved in large infrastructure projects;
- (2) Proposed organizational structure
- (3) for delivery of the projects;
- (4) Proposed organizational structure for the delivery of the ESCR Project specifically, including proposer's approach to maximizing Section 3 employment and economic opportunities for low and very low-income persons;
- (5) Proposed approach to ensuring the quality and timeliness of the required services and deliverables;
- (6) Proposed approach for keeping DDC apprised of the project status;
- (7) Proposed approach to ensuring compliance with federal grant rules;
- (8) Proposed methodology for tracking and maintaining each project's budget and schedule;
- (9) Proposed methodology for ensuring complete and effective documentation of project activities and for document control throughout each project; and
- (10) Proposer's techniques for problem solving.

(b) **Contract Executive and Potential Staffing Roster – All Projects.**

- (1) Identify the Contract Executive. The Contract Executive shall serve as the respondent's principal representative with respect to its obligations under this contract. The Contract Executive will be responsible for providing, on an as needed basis, executive or management expertise and oversight with respect to all Task Orders/Projects.
- (2) Provide information about the Contract Executive's anticipated time commitment to this Contract and highlight the Contract Executive's years of relevant experience and qualifications meeting or exceeding the minimum title requirements listed in Attachment 7 to this RFP.
- (3) Submit a resume detailing the Contract Executive's managerial and technical qualifications, as well as experience with relevant projects. The resume may not exceed two (2) pages.
- (4) Demonstrate the respondent's ability to provide qualified personnel.
 - (i) Submit an organization chart indicating all potential Key Personnel available for Task Orders, other than for the ESCR Project, that may be issued under this Contract ("General Organization Chart"). Do not include any personnel that the respondent has submitted as full-time personnel for the ESCR Project, below. Key Personnel include the titles marked as Key Personnel in Attachment 7 to this RFP. to this RFP.
 - (ii) The proposer may identify multiple individuals per title, provided, however, that the respondent may only identify those individuals that the respondent or its subconsultant(s) have the ability to provide.

(iii) DDC reserves the right to request, at any time during the evaluation of proposals and in a form acceptable to DDC, proof that individuals listed in the General Organization Chart are employees of the proposer or of subconsultants that have agreed to make such individuals available. If the respondent cannot promptly provide acceptable proof, DDC may evaluate the General Organization Chart as if such individual were not listed.

(5) For all individuals listed in the General Organization Chart, the respondent must submit the individual's resume and any other information demonstrating the individual's number of years of experience, as well as technical and professional qualifications. Any proposed individual must satisfy the minimum requirements per title set forth in Attachment 7 to this RFP.. All individuals performing services for any Task Order must be approved in advance by the Commissioner.

(c) Staffing Plan and Organization Chart in Support of the Strategic Approach – East Side Coastal Resiliency.

Submit a Staffing Plan (“ESCR Staffing Plan”) and Organization Chart (“ESCR Organizational Chart”) in support of the respondent's Strategic Approach specified in paragraph (a) above for the ESCR Project. The ESCR Staffing Plan shall include all personnel for comprehensive PM/CM services, including resident engineering inspection services. The ESCR Staffing Plan shall not include any personnel who perform overhead and/or home office functions. A form for the submission of the ESCR Staffing Plan is included as **Attachment 7** to this RFP. As described in Attachment 7, the proposer shall identify the following:

- (1) **Key Personnel:** This means the team of specific Personnel determined by the proposer to be necessary for successful execution of and completion of the Strategic Approach for the ESCR Project, including but not limited to the specific Key Personnel titles listed in Attachment 7 and the Contract Executive referenced in Subsection B(4)(b), above. Key Personnel shall provide services for the entire duration of the ESCR Project. Minimum requirements for individuals assigned to the Program as Key Personnel are set forth in Attachment 7 to this RFP..
- (2) **Non-Key Personnel:** Identify by title non-Key personnel for the ESCR Project. This means personnel who will provide services that are supportive or ancillary to the services provided by the Key Personnel. Minimum title requirements are set forth in Exhibit 7 of the attached Contract.
- (3) **Minimum Time Commitment:** For all Personnel, specify the percent of time each individual will dedicate to the ESCR Project during each phase (e.g., pre-construction, construction, post-construction).
- (4) **Relevant Experience:** For each individual, highlight that individual's years of relevant experience and qualifications meeting or exceeding the minimum title requirements listed in Attachment 7 to this RFP.. For individuals with relevant NY licenses, include the name of the license (e.g., “PE”, “RA”, “RLA”) and the individual's license number.
- (5) **Resumes:** For all personnel included in the ESCR Staffing Plan, submit resumes detailing managerial and technical qualifications, as well as experience with relevant projects. Each resume must not exceed two (2) pages.
- (6) **Organization Chart for the ESCR Project.**

(d) Proposed ESCR Project Schedule. For evaluation purposes only, submit a proposed Project Schedule for the ESCR Project, including time line for required deliverables. The Proposed Schedule shall not include any hours other than regular business hours (i.e., no evening, weekend or holiday hours).

5. Organizational Capability.

Demonstrate the organizational capability and capacity of the proposer.

(a) Part 1, Section H, of each Standard Form 330, submitted per Subsection (6), below, should provide information concerning the proposer and each subconsultant:

- (1) the number of full-time people currently employed by the respondent, broken down by technical staff and non-technical staff,
- (2) the projects on which the firm is currently working,
- (3) up to 10 projects that the proposer has completed in any scope that demonstrates the proposer's organizational capacity, and
- (4) future projects to which the firm is committed.

All project information must include the dollar value, start date, and completion date. Please note that both prime and subconsultants must submit a separate SF330.

(b) Financial Information. The proposer must submit General Purpose Financial Statements for the proposer's most recent fiscal year. The Financial Statement (Balance Sheet and Income Statement) must be audited, reviewed, or compiled by an independent public accountant or certified public accountant (CPA). If the proposer provides audited Final Statements, each audited Financial Statement must have been audited by an independent auditor licensed to practice as a CPA and it must include the auditor's standard report. If the proposer does not have an audited Financial Statement, it must submit an affidavit attesting to the fact that the proposer does not have such a Financial Statement. In addition, the proposer must submit either a reviewed or compiled Financial Statement for the proposer's most recent fiscal year, which statement must be accompanied by either an "Independent Accountant's Review Report" signed by a CPA or an "Independent's Accountant's Compilation Report" signed by a CPA.

6. Standard Form 330 ("SF 330").

The Proposer must submit a completed Standard Form 330 for itself and each of its subconsultants. The proposer and subconsultants must complete all sections of the form and must include the information requested in Section IV(B)(3)(b) and Section IV B(5), above.

Please note that Standard Form 330 must be completed by the proposer and its subconsultants even if the proposer or its subconsultants will not be directly providing any design services.

The form is available at <https://www1.nyc.gov/assets/ddc/downloads/SF330-16e.pdf>

7. Statement of Understanding and Certification.

The Statement of Understanding and Certification form (Attachment 2) shall be signed by the proposer and submitted with the Technical Proposal.

8. Acknowledgement of Addenda.

The Acknowledgement of Addenda form (Attachment 3) shall be completed by the proposer and submitted with the Technical Proposal.

C. Technical Proposal Presentations

The Agency may schedule a presentation with top ranked proposers. The purposes of the presentation are as follows:

1. to allow the Selection Committee and Proposer's Key Personnel to meet;
2. to discuss aspects of the Technical Proposal, including the Past Experience and Performance of the proposer and its subconsultants, Experience of Key Personnel and proposed ESCR

Staffing Plan, proposer's Strategic Approach, Proposed Schedule, and Organizational Capacity; and

3. to allow the proposer to present its Technical Methodology and use sufficient visual aids to convey the team's approach.

D. Fee Proposal

A form for submission of the Fee Proposal is included as Attachment 8 to the RFP. The proposer must complete the Fee Proposal as per instructions on Attachment 8 and submit the Fee proposal in a separate clearly labeled envelope.

E. Proposal Package Contents Checklist

The proposer must submit a completed copy of the Proposal Checklist included with this RFP as Attachment 1.

SECTION V. PROPOSAL EVALUATION AND CONTRACT AWARD PROCEDURES

A. Selection Process

The selection process will be **price per technical point**. All proposals accepted by DDC will be reviewed to determine whether they are responsive or non-responsive to the requisites of this RFP. Proposals that are determined by DDC to be non-responsive will be rejected. A DDC evaluation committee will review, evaluate and score all technical proposals pursuant to the criteria described below. This evaluation will determine each proposer's technical score. DDC reserves the right to interview proposers and visit their offices for the purpose of clarifying their proposals, after which their initial technical scores may be re-evaluated.

Note: Each proposer is required to submit a Fee Proposal for the project simultaneously with its Technical Proposal; however, DDC will only open the Fee Proposals of the highest ranked firms, as set forth below.

B. Proposal Evaluation Criteria:

The proposal evaluation criteria are as follows:

Past Performance of Proposer	25%
Experience of Proposer & Key Subconsultants	20%
Qualifications of Key Personnel	15%
Strategic Approach	25%
Organizational Capacity	15%

C. Basis of Award

The Department of Design and Construction will award a single contract to the responsible Proposer whose proposal represents the best value to the City by optimizing quality, cost and efficiency and is determined to be the most advantageous to the City, taking into consideration the price and such other factors or criteria set forth in this RFP.

Price will be considered as follows:

1. Based on the final technical scores of the proposals, DDC will establish a shortlist. The proposers selected for the shortlist will be determined either through a natural break in scores or technically viable cut off score.
2. Once the shortlist is established, Technical scores may be re-evaluated if presentations are required.
3. DDC will review price proposals for the shortlisted firms and the proposals will be ranked in the order of lowest price per technical point.
4. The Contract award shall be subject to the timely completion of contract negotiations between DDC and the selected Proposer. Should negotiations fail with the lowest price per technical point ranked firm, the ACCO or designee will authorize fee negotiation with the next highest ranked firm.

D. Supply and Service Report

Upon selection, the successful proposer will be required to submit one original copy of the Department of Business Services Supply and Service Report, a copy of which can be downloaded from <https://www1.nyc.gov/site/sbs/businesses/contract-compliance.page>. Upon written notification; the proposer must submit the Service and Supply Report within ten days of such notification.

E. PASSPort:**Procurement and Sourcing Solutions Portal (PASSPort) Disclosure Filing (formerly known as Vendor Information Exchange System (VENDEX) Forms or Certificate of No Change)**

All organizations intending to do business with the City of New York should complete an online disclosure process to be considered for a contract. This disclosure process was formerly completed using Vendor Information Exchange System (VENDEX) paper-based forms. In anticipation of awards, proposers for the Project Management and Construction Management Services for Coastal Resiliency Projects, Citywide create online accounts in the new Procurement and Sourcing Solutions Portal (PASSPort) and file all disclosure information. **Paper submissions, including certifications of no changes to existing VENDEX packages will not be accepted in lieu of complete online filings.**

For more information about PASSPort, please visit nyc.gov/passport

F. Contract Finalization

Upon selection, each successful proposer will be asked to finalize a contract with DDC subject to the conditions specified in the RFP and to the agency's standard contract provisions. The contents of the selected proposal, together with this RFP and any addendum(s) provided during the proposal process, may be incorporated into the final contract to be developed by the agency.

SECTION VI. GENERAL INFORMATION TO PROPOSERS**A. Complaints**

The New York City Comptroller is charged with the audit of contracts in New York City. Any proposer who believes that there has been unfairness, favoritism or impropriety in the proposal process should inform the Comptroller, Office of Contract Administration, 1 Centre Street, Room 835, New York, NY 10007; the telephone number is (212) 669-3000. In addition, the New York City Department of Investigation should be informed of such complaints at its Investigations Division, 80 Maiden Lane, New York, NY 10038; the telephone number is (212) 825-5959.

B. Applicable Laws

This Request for Proposals and the resulting contract award(s), if any, unless otherwise stated, are subject to all applicable provisions of New York State Law, the New York City Administrative Code, New York City Charter and New York City Procurement Policy Board (PPB) Rules. A copy of the PPB Rules may be obtained by contacting the PPB at (212) 788-7820.

C. General Contract Provisions

Contracts shall be subject to New York City's general contract provisions, in substantially the form that they appear in "Appendix A-General Provisions Governing Contracts for Consultants, Professional and Technical Services" or, if the Agency utilizes other than the formal Appendix A, in substantially the form that they appear in the Agency's general contract provisions. A copy of the applicable document is available through the Authorized Agency Contact Person.

D. Contract Award

Contract award is subject to each of the following applicable conditions and any others that may apply: New York City Fair Share Criteria; New York City MacBride Principles Law; submission by the proposer of the requisite New York City Department of Business Services/Division of Labor Services Employment Report and certification by that office; submission by the proposer of the requisite Procurement and Sourcing Solutions Portal (PASSPort) online disclosure process and review of the information contained therein by the New York City Department of Investigation; all other required oversight approvals; applicable provisions of federal, state and local laws and executive orders requiring affirmative action and equal employment opportunity; and Section 6-108.1 of the New York City Administrative Code relating to the Local Based Enterprises program and its implementation rules.

Procurement and Sourcing Solutions Portal (PASSPort) Disclosure Filing (formerly known as Vendor Information Exchange System (VENDEX) Forms or Certificate of No Change)

All organizations intending to do business with the City of New York should complete an online disclosure process to be considered for a contract. This disclosure process was formerly completed using Vendor Information Exchange System (VENDEX) paper-based forms. In anticipation of awards, proposers must create online accounts in the new Procurement and Sourcing Solutions Portal (PASSPort) and file all disclosure information. Paper submissions, including certifications of no changes to existing VENDEX packages will not be accepted in lieu of complete online filings. For more information about PASSPort, please visit nyc.gov/passport.

E. Proposer Appeal Rights

Pursuant to the PPB Rules, proposers have the right to appeal Agency non-responsiveness determinations and Agency non-responsibility determinations and to protest an Agency's determination regarding the solicitation or award of a contract.

F. Multi-Year Contracts

Multi-year contracts are subject to modification or cancellation if adequate funds are not appropriated to the Agency to support continuation of performance in any City fiscal year succeeding the first fiscal year and/or if the contractor's performance is not satisfactory. The Agency will notify the contractor as soon as is practicable that the funds are, or are not, available for the continuation of the multi-year contract for each succeeding City fiscal year. In the event of cancellation, the contractor will be reimbursed for those costs, if any, which are so provided for in the contract.

G. Prompt Payment Policy

Pursuant to the New York City's Procurement Policy Board Rules, it is the policy of the City to process contract payments efficiently and expeditiously.

H. Prices Irrevocable

Prices proposed by the proposer shall be irrevocable until contract award, unless the proposal is withdrawn. Proposals may only be withdrawn by submitting a written request to the Agency prior to contract award but after the expiration of 90 days after the opening of proposals. This shall not limit the discretion of the Agency to request proposers to revise proposed prices through the submission of best and final offers and/or the conduct of negotiations.

I. Confidential, Proprietary Information or Trade Secrets

Proposers should give specific attention to the identification of those portions of their proposals that they deem to be confidential, proprietary information or trade secrets and provide any justification of why such materials, upon request, should not be disclosed by the City. Such information must be easily separable from the non-confidential sections of the proposal. All information not so identified may be disclosed by the City.

J. RFP Postponement/Cancellation

The Agency reserves the right to postpone or cancel this RFP in whole or in part, and to reject all proposals.

K. Proposer Costs

Proposers will not be reimbursed for any costs incurred to prepare proposals.

L. VENDEX/ PASSPort Fees

Pursuant to PPB Rule 2-08(f)(2), the contractor will be charged a fee for the administration of the VENDEX/PASSPort system, including the Vendor Name Check Process, if a Vendor Name Check review is required to be conducted by the Department of Investigation. The contractor shall also be required to pay the applicable fees for any of its subcontractors for which Vendor Name Check reviews are required. The fee(s) will be deducted from payments made to the contractor under the contract. For contracts with an estimated value of less than or equal to \$1,000,000, the fee will be \$175. For contracts with an estimated value of greater than \$1,000,000, the fee will be \$350. The estimated value for each contract resulting from this RFP is estimated to be (less than or equal to \$1 million) (above \$1 million).

M. Charter Section 312(a) Certification

- The Agency has determined that the contract(s) to be awarded through this Request for Proposals will not result in the displacement of any New York City employee within this Agency. See attached Displacement Determination Form.

- The Agency has determined that the contract(s) to be awarded through this Request for Proposals will result in the displacement of New York City employee(s) within this Agency. See attached Displacement Determination Form.

- The contract to be awarded through this Request for Proposal is a task order contract that does not simultaneously result in the award of a first task order; a displacement determination will be made in conjunction with the issuance of each task pursuant to such task order contract. Determination for any subsequent task orders will be made in conjunction with such subsequent task orders.

Agency Chief Contracting Officer

Date

ATTACHMENT 1 - PROPOSAL CHECKLIST

CONTENTS TO BE INCLUDED IN EACH SEALED PACKAGE BY PROPOSERS		Yes	No
PKG 1 - Technical Proposal (RFP §IV(B))			
(A)	1 Original; 6 Copies, and 1 electronic version of entire technical proposal saved as a single PDF on a CD or USB Flash Drive included in package.	_____	_____
(B)	Technical Proposal Table of Contents [IV(B)(1)]	_____	_____
(C)	Cover Letter [IV(B)(2)]	_____	_____
(D)	Demonstration Project Information [IV(B)(3)(a)(1)]	_____	_____
(E)	Project Reference Form [IV(B)(3)(a)(2)] (RFP Att. 4)	_____	_____
(F)	Subconsultant Information (ESCR) [IV(B)(3)(b)] (RFP Att. 5)	_____	_____
(G)	Summary Project Matrix [IV(B)(3)(c)] (RFP Att. 6)	_____	_____
(H)	Strategic Appr. Narrative [IV(B)(4)(a)]	_____	_____
(I)	Contract Executive Resume and Expected Time Commitment [IV(B)(4)(b)(1-3)]	_____	_____
(J)	General Organization Chart in Support of Strategic Approach [IV(B)(4)(b)(4)]	_____	_____
(K)	Resumes for Individuals Listed in General Organization Chart [IV(B)(4)(b)(5)]	_____	_____
(L)	Staffing Plan in Support of Strategic Approach for ESCR [IV(B)(4)(c)] (RFP Att. 7)	_____	_____

ATTACHMENT 1 - PROPOSAL CHECKLIST (Continued)

(M)	Resumes for Individuals Listed in Staffing Plan in Support of Strategic Approach for ESCR [IV(B)(4)(c)(5)]	_____	_____
(N)	Organization Chart for ESCR Project [IV(B)(4)(c)(6)]	_____	_____
(O)	ESCR Proposed Schedule [IV(B)(4)(d)]	_____	_____
(P)	General Purpose Financial Statements with Report Signed by CPA [IV(B)(5)(b)]	_____	_____
(Q)	Stand Form 330 for Proposer and Each Subconsultants, inclusive of info requested in IV(B)(3)(b)(2), IV(B)(5)(a) and IV(B)(6)]	_____	_____
(R)	Statement of Understanding and; Certification (RFP Att. 2);	_____	_____
(S)	Certification of Compliance with Iran Divestment Act (RFP Att. 11)	_____	_____
(T)	Acknowledgement of Addenda (RFP Att. 3)	_____	_____
		Yes	No
<hr/>			
PKG 2 - Doing Business Data Form (RFP Att. 12)			
(A)	Doing Business Data Form (RFP Att. 12).	_____	_____
		Yes	No
<hr/>			
PKG 3 - Fee Proposal (RFP Att. 8)			
(A)	Fee Proposal Form (RFP Att. 8).	_____	_____

ATTACHMENT 1 - PROPOSAL CHECKLIST (Continued)

		Yes	No
<hr/>			
PKG 4 - Schedule B: M/WBE (RFP Att.9 and 10)			
(A)	Schedule B: M/WBE Participation Requirements Form for Master Service Agreements (RFP Att. 9).	_____	_____
(B)	Schedule B: M/WBE Utilization Plan for Independently Registered Task Order (RFP Att. 10).	_____	_____

ATTACHMENT 2 – STATEMENT OF UNDERSTANDING AND CERTIFICATION

STATEMENT OF UNDERSTANDING: By signing in the space provided below, the undersigned certifies that the proposer: (i) has read and understands the scope and requirements of this project, as described in the RFP and all attachments; (ii) has the capacity to execute this project, (iii) agrees to accept payment in accordance with the requirements of this RFP and the standard Construction Management contract, attached hereto, (iv) will, if its proposal is accepted, enter into the attached standard contract with the New York City Department of Design and Construction, and (v) will carry all types of insurance specified in the contract. The undersigned further certifies that the information in this proposal is, to the best of his/her knowledge, true and accurate.

Is the proposal printed on both sides, on recycled paper containing the minimum percentage of recovered fiber content as requested by the City in the instructions to this solicitation?

Yes No

CERTIFICATION FOR M/WBE PARTICIPATION REQUIREMENTS: By signing in the space below, the proposer agrees to the Vendor Certification and Required Affirmations set forth below. The Vendor Certification and Required Affirmations will be deemed to satisfy the requirement to complete Section V of Part II of Schedule B: M/WBE Participation Requirements.

Section V: Vendor Certification and Required Affirmations:

I hereby:

- 1) acknowledge my understanding of the M/WBE participation requirements as set forth herein and the pertinent provisions of Section 6-129 of the Administrative Code of the City of New York and the rules promulgated thereunder;
- 2) affirm that the information supplied in support of this Subcontractor Participation Plan is true and correct;
- 3) agree, if awarded this Contract, to comply with the M/WBE participation requirements of this Contract as established on each individual Task Order, the pertinent provisions of Section 6-129, and the rules promulgated thereunder, all of which shall be deemed to be material terms of this Contract;
- 4) agree and affirm that it is a material term of this Contract that the Vendor will award the total dollar value of the M/WBE Participation Goals that are established on each individual Task Order issued pursuant to this Contract, unless a full waiver is obtained or such goals are modified by the Agency; and
- 5) agree and affirm, if awarded this Contract, to make all reasonable, good faith efforts to meet the M/WBE Participation Goals established on each individual Task Order issued pursuant to this Contract, or if a partial waiver is obtained or such goals are modified by the Agency, to meet the modified Participation Goals by soliciting and obtaining the participation of certified MBE and/or WBE firms.

Name of Proposer
(Full Business Name)

By: _____
Signature of Partner or Corporate Officer

Date

Print Name

Title

Telephone #

EIN #

Address

Email Address

ATTACHMENT 3 – ACKNOWLEDGEMENT OF ADDENDA

TITLE OF THE REQUEST FOR PROPOSALS: Requirements Contracts for Project Management and Construction Management Services for COASTAL RESILIENCY PROJECTS, CITYWIDE	PIN: 8502019HW0020P EPIN: 85019P0009
---	--

Instructions: The proposer is to complete Part I or Part II of this form, whichever is applicable, and sign and date this form. This form serves as the proposer’s acknowledgement of the receipt of Addenda to this Request for Proposals (RFP) which may have been issued by the Agency prior to the Proposal Due Date and Time.

 Part I

Listed below are the dates of issue for each Addendum received in connection with this RFP.

Addendum # 1, dated _____

Addendum # 2, dated _____

Addendum # 3, dated _____

Addendum # 4, dated _____

Addendum # 5, dated _____

Addendum # 6, dated _____

Addendum # 7, dated _____

Addendum # 8, dated _____

Addendum # 9, dated _____

Addendum #10, dated _____

All addenda must be signed and also included in the Technical Proposal.

 Part II

No Addendum was received in connection with this RFP.

Proposer Name

Proposer’s Authorized Representative:

Name: _____

Title: _____

Signature: _____

Date: _____

ATTACHMENT 4 – PROJECT REFERENCE FORM

Using the Project Reference Form on the next page, list each demonstration project submitted in accordance with RFP Section IV(B)(3)(a). Do not include any additional projects. Do not include more than five (5) projects.

ATTACHMENT 4

	Project Name and Location	Project Type per RFP Section IV(B)(3)(a)	Contract Type (e.g., PM, CM-Managed, CMAR, PrgmM)	Role of Proposer (e.g., "Prime consultant providing comprehensive CM services")	Construction Value of Project	Date Completed	Owner Reference (name, title, phone number, and email)
1							
2							
3							
4							
5							

ATTACHMENT 7 – ESCR STAFFING PLAN FORM

TECHNICAL PROPOSAL – FORM FOR ESCR STAFFING PLAN AND IDENTIFICATION OF KEY PERSONNEL

Submission: The proposer shall submit Attachment 7 as part of its Technical Proposal.

Staffing Plan: The proposer shall submit the ESCR Staffing Plan in support of its Strategic Approach. The Staffing Plan shall only include personnel for the execution of and completion of the Strategic Approach for the East Side Coastal Resiliency Project (“ESCR Project”). The ESCR Staffing Plan in support of the Strategic Approach must not include any information about the proposer’s fees, including but not limited to salaries or hourly rates for any proposed personnel.

Resumes: For all personnel included in the Staffing Plan, the proposer shall submit resumes detailing managerial and technical qualifications, as well as experience with similar projects

Contract Executive: The proposer shall identify the Contract Executive. The Contract Executive shall serve as the Contractor’s principal representative with respect to its obligations for all Task Orders under this contract (not just the ESCR Project). The Contract Executive shall be responsible for providing, on an as needed basis, executive or management expertise and oversight with respect to all Task Orders, including the ESCR Project. The Contract Executive must, at all times throughout the Contract, be a principal or officer of the PM.

Contract Executive: _____

Project Manager: The proposer shall identify the Project Manager for the ESCR Project. **The Project Manager will be dedicated exclusively to the ESCR Project** and will be responsible for day-to-day management of the ESCR Project. The Project Manager will be responsible for the successful planning, execution, oversight, control and completion of the Project. This includes the overall responsibility for payments, quality, progress, budget, public interaction, agency interactions, permits, claims, strategy, process improvement, performance and operations. The Project Manager will ensure that the Project is effectively resourced and is responsible for allocating and utilizing resources in an efficient manner and maintaining a cooperative, motivated and successful Project team. The Project Manager must be an employee, officer, or principal of the proposer.

Project Manager: _____

Other Personnel: The proposer shall identify other Personnel, including Key Personnel, for the ESCR Project who possess the minimum requirements set forth below.

- Key Personnel means the team of specific Personnel determined by the proposer to be necessary for successful execution of and completion of the Strategic Approach for the Program and Projects. Key Personnel shall provide services for the entire duration of the Program. The titles marked with an asterisk (*) are titles of required Key Personnel.

ATTACHMENT 7 (continued)

- Non-Key Personnel are Personnel who will provide services that are supportive or ancillary to the services provided by the Key Personnel.

All Personnel should be identified using the format set forth below.

Name	Title	Qualifications (E.g., years of relevant experience, education, licenses/certifications, ASCE/NICET grade)	Minimum Time Commitment to ESCR Project (%)		
			Pre-Constr-uction	Constr-uction	Post-Constr-uction
(Ex. "John Smith")	(Ex. "Project Manager")	(Ex. "20 years of construction management exp.; BS; CCM, PMP")	(Ex. "100%")	(Ex. "100%")	(Ex. "100%")

Minimum Requirements for Personnel are set forth below. The titles marked with an asterisk (*) are titles of Key Personnel.

Titles	ASCE (A) NICET (N) GRADE	License or Certification and Number of Years of Experience
Contract Executive*		15 years
Project Manager*		15 years
Resident Engineer*	A-IV	Professional License / 7 years; see Note 7
Office Engineer*	A-III / N-III	5 years; see Note 7
Senior Inspector*	A-III / N-III	10 years; see Note 7
Inspector*	A-I / N-III	5 years; see Note 7
Safety Officer*		
Quality Officer*		
Claims Analyst*		
Project Engineer/ENV SP*	A-IV	Professional License / ENV SP/ 7 years; see Note 7
Project Scheduler*		
Senior Structural – Marine/Waterfront Engineer*	A-VI	Professional License/ 10 years
Senior Traffic Engineer*	A-V	Professional License / 8 years
Environmental Engineer*	A-IV	Professional License / 5 years
Grant Compliance Officer*		5 years
Community Relations Specialist*		
Constructability Manager*		
Construction Monitor / Restoration Specialist*		See Note 7
Estimator*		
Senior Bridge Engineer/Senior Structural Engineer	A-II	Professional License / 8 years
Senior Geotechnical Engineer/Manager	A-VI	Professional License / 10 years
Senior Landscape Architect/Urban Design Manager, RLA		Professional License / 10 years
Senior Environmental Engineer / Manager	A-VI	Professional License / 10 years
Senior Traffic Engineer	A-V	Professional License / 8 years

Senior Mechanical Engineer	A-V	Professional License / 8 years
Senior Civil Engineer	A-V	Professional License / 8 years
Senior Project Architect		Professional License / 10 years
Senior Electrical Engineer/Lighting Designer	A-V	Professional License / 8 years
Senior Archeologist/Historian/Conservator		See Note 4
Senior CAD Operator	N-IV	7 Years
Senior Construction Manager		10 years
Structural Engineer	A-IV	Professional License / 5 years
Senior Project Controls Manager		
Architect		Professional License / 5 years
Civil Engineer	A-IV	Professional License / 5 years
Geotechnical Engineer	A-IV	Professional License / 5 years
Landscape Architect/Urban Designer		5 years
Traffic Engineer	A-IV	Professional License / 5 years
Electrical Engineer/Lighting Designer	A-IV	Professional License / 5 years
Mechanical Engineer	A-IV	Professional License / 5 years
Diving Engineer/Inspector	A-V	Professional License / 8 years
Junior Structural Engineer	A-II	2 years
Junior Architect		2 years
Junior Civil Engineer	A-II	2 years
Junior Geotechnical Engineer	A-II	2 years
Junior Landscape Architect/Urban Designer		3 years
Junior Traffic Engineer- Technician	A-II	2 years
Junior Environmental Engineer	A -II	2 years
Junior Structural – Marine/Waterfront Engineer	A-V	Professional License/ 8 years
Junior Archeologist/Historian/Conservator		3 years
Junior CAD Operator	N-II	2 years
CAD Operator	N-III	5 years
Survey Manager, R.L.S.		Professional License/ 10 years
Party Chief/Foreman	N-III	5 years
Instrument Person	N-II	3 years
Rod Person	N-I	
Assistant Office Engineer	A-II / N-III	
Certified Industrial Hygienist		Professional License / 7 years, See Note 6
Industrial Hygienist		4 Years
Project Scientist		See Note 6
Arborist/ Forester		See Note 5
Project Controls Manager		
Procurement Manager		
Document Control Manager		
Logistic Support Specialist		
Administrative Specialist		
Risk Manager		
Community construction liaisons		5 Years / See Note 8
Invoice Manager		
Records Aide		3 Years

Notes:

- (1) The minimum requirements for the specified titles will be the requirements established for the various grade levels by the American Society of Civil Engineers (ASCE). The applicable requirements for the title in question will be the most current requirements promulgated by the ASCE for that title as of the date on which the PM submitted its Proposal for the Contract.
- (2) The minimum requirements for the specified titles will be the requirements established for the various grade levels by the National Institute For Certification In Engineering Technologies (NICET). The applicable requirements for the title in question will be the most current requirements promulgated by the NICET for that title as of the date on which the PM submitted its Proposal for the Contract.
- (3) If a title requires a professional license, such license must be issued by the State of New York.
- (4) The minimum requirements for the specified titles in Archeology will be the requirements established by the National Park Service (NPS), as set forth below.

A graduate degree in archeology, anthropology, or closely related field plus:

- (a) At least one year of full-time professional experience or equivalent specialized training in archeological research, administration or management;
- (b) At least four months of supervised field and analytical experience in general North American archeology; and,
- (c) Demonstrated ability to carry research to completion.

In addition to these minimum qualifications, the professional in historic archeology will have at least one year of full-time professional experience at a supervisory level in the study of archeological resources of the historic period (36 CFR Part 1: Appendix A).

- (5) The minimum requirements for the specified title of Arborist/Forester will be the requirements established by the New York City Department of Parks and Recreation, as set forth below.
 - (a) Associate degree in forestry, arboriculture, horticulture, or related plant science field, and five years of full-time professional experience in landscape design and the field supervision of techniques to mitigate damage to existing trees from the negative impacts of construction; or
 - (b) B.S. in forestry, arboriculture, horticulture, or related plant science field, and three years of full-time professional experience in landscape design and the field supervision of techniques to mitigate damage to existing trees from the negative impacts of construction; or
 - (c) M.S. in forestry, arboriculture, horticulture, or related plant science field, and one year of full-time professional experience in landscape design and the field supervision of techniques to mitigate damage to existing trees from the negative impacts of construction; or
 - (d) Arborist certification from the N.Y.S. Arborists/International Society of Arboriculture Chapter, Inc., and three years of full-time professional experience in landscape design and the field supervision of techniques to mitigate damage to existing trees from the negative impacts of construction; or
 - (e) Other state arborist certification recognized by the International Society of Arboriculture or the National Arborist Association, and three years of full-time professional experience in landscape design and the field supervision of techniques to mitigate damage to existing trees from the negative impacts of construction.

- (6) The minimum requirements for the specified Environmental Job Titles will be the requirements set forth below:
- (a) **Certified Industrial Hygienist (CIH)** - will possess a CIH license granted by the American Board of Industrial Hygiene (ABIH) for at least five (5) years. An advanced degree (M.S., M.E., and PhD) in science or engineering is preferred. This individual will demonstrate at least seven (7) years of experience in this field of expertise with not less than 5 years practical experience in the environmental engineering / science fields.
- Duties:** The CIH will act as the lead and provide expert opinion on matters of industrial hygiene, site safety, and environmental compliance. This individual will review and interpret data, author environmental reports and site specific health and safety plans; and will be responsible for all aspects, including execution and monitoring, of the health and safety program.
- (b) **Project Scientist** – will possess at a minimum a Bachelor’s degree from an accredited university in the respective field of study and have six (6) years of practical experience in construction and/or design of building/infrastructure systems, building codes, fire/life–safety issues, and other topics related to general project design and development. Postgraduate education may supplement up to two (2) years of work experience. The individual will be required to demonstrate proficiency in understanding drawings, specifications, standards, codes regulations, etc. as they pertain to general construction practices and the environmental fields.
- Duties:** The Project Scientist will participate in a project from a hydro/geotechnical perspective, and will be called upon to provide expertise in, fire detection/suppression, life-safety and all other systems that are impacted by the environmental project. Also included are responsibilities for environmental report writing controlled inspections and most other activities that their education and background would dictate.
- (7) Additional Minimum Requirements for the following titles:
- (a) RESIDENT ENGINEER:
- i) Qualified for ASCE Grade IV
 - ii) Baccalaureate degree in engineering from an accredited college
 - iii) Valid NYS P.E. License
 - iv) Seven (7) years of experience in construction inspection or management of infrastructure construction projects (highway/sewer/water)
- (b) OFFICE ENGINEER:
- i) Qualified for ASCE Grade III, or NICET Grade III
 - ii) Baccalaureate degree in engineering from an accredited college
 - iii) Five years of experience in construction inspection or management of infrastructure construction projects (highway/sewer/water)
- (c) SENIOR INSPECTOR:
- i) Qualified for ASCE Grade III, or NICET Grade III
 - ii) Ten (10) years of experience in construction inspection or management of infrastructure construction projects (highway/sewer/water)
- (d) INSPECTOR:
- i) Qualified for ASCE Grade I, or NICET Grade III
 - ii) Five (5) years of experience in construction inspection or management of infrastructure construction projects (highway/sewer/water)

- (e) CONSTRUCTION MONITOR / RESTORATION SPECIALIST: The Engineer will only be directed to provide a Construction Monitor / Restoration Specialist if the project involves BMP work.
 - i) Registered Landscape Architect (RLA), Certified Ecologist (CE), Certified Professional in Erosion and Sediment (CPESC), or equivalent experience.
 - ii) Five (5) years of experience in NYSDEC wetland permit compliance, including familiarity with all NYSDEC wetland regulations and requirements, plus familiarity with all other permit requirements, including without limitation, permits from the United States Army Corps of Engineers (USACE), New York City Department of Parks and Recreation, and the New York City Department of City Planning
 - iii) Five (5) years of experience in supervising the construction and restoration of storm water best management practices (BMP) work and/or wetland restoration projects
 - iv) Proficiency in identifying plant species that are native to the New York City region, as well as invasive plant species

- (f) PROJECT ENGINEER
 - i) Qualified for ASCE Grade IV
 - ii) Seven (7) years of experience as an engineer on infrastructure projects (highway/sewer/water)
 - iii) Certified Envision Sustainability Professional (ENV SP) and experience on at least one (1) prior project providing assessment and reporting on the project's sustainability rating in accordance with the Envision™ Sustainability Infrastructure Rating System.

- (8) The minimum requirements for the specified Community Construction Liaisons Job Titles for East Side Coastal Resiliency Project only will be the requirements set forth below:
 - (a) Proficiency in a second language (eg. Spanish, Chinese) is preferred

ATTACHMENT 7 (continued)

Certification: By signing in the space provided below, the proposer certifies that if the proposer is selected for the Project, it will assign such individuals to the ESCR Project as Key Personnel.

The proposer understands that if it is selected, the City was induced to make such selection based upon the proposer's certification that it will assign to the ESCR Project the individuals proposed as Key Personnel. The proposer further understands that failure to provide such individuals as Key Personnel shall be considered a material breach of the Contract and grounds for termination for cause.

If the proposer is unable to make the certification set forth above, it shall attach a signed statement indicating why it is unable to make the certification.

Name of Proposer

By: _____
Signature of Partner or Corporate Officer

Date

Print Name

Title

Firm

EIN #

ATTACHMENT 8 – FEE PROPOSAL FORM

SUBMISSION: The proposer shall submit Attachment 8 (Fee Proposal) in a clearly marked, sealed envelope. The Fee Proposal shall consist of the addition of Total Amount Per Title for all titles listed below. The Total Amount per Title shall consist of Total Hours per Title (Column B) multiplied by All Inclusive Hourly Rates per Title (Column C). The Total Hours per Title is being used for proposal purposes only. The titles, quantity of each title, and hours per title per Task Order will be determined for each Task Order in accordance with Article 3 of the Contract.

Negotiation: DDC may negotiate the All Inclusive Hourly Rate listed below on a fair and reasonable basis with the proposer with the highest ranked proposer (i.e., the proposer with the lowest price per technical point). The Contract award shall be subject to the timely completion of contract negotiations between DDC and the selected Proposer. If negotiations are not successful, DDC will enter into negotiations with the next highest ranked firm.

PART 1: ALL INCLUSIVE HOURLY RATES

A	B	C	D (=BxC)	E	F
TITLES	Total Hours/Title (For Contract Proposal Purposes Only)	All Inclusive Hourly Rate	Total Amount Per Title	ASCE (A) NICET (N) GRADE	License or Certification and Number of Years of Experience
Contract Executive*	300				15 Years
Project Manager*	14,645				15 years
Resident Engineer*	102,476			A-IV	Professional License / 7 years; See Note 7 of Contract Ex. D
Office Engineer*	104,747			A-III / N-III	5 years; See Note 7 of Contract Ex. D
Senior Inspector*	94,869			A-III/N-III	10 years; See Note 7 of Contract Ex. D
Inspector*	263,355			A-I/N-III	5 years; See Note 7 of Contract Ex. D
Safety Officer*	125				
Quality Officer*	125				
Claim Analyst*	125				
Project Engineer/ENV SP*	255			A-IV	Professional License / ENV SP/ 7 years; see Note 7 of Contract Ex. D
Project Scheduler*	1465				
Senior Structural – Marine/Waterfront Engineer*	1,099			A-VI	Professional License/ 10 years
Senior Traffic Engineer*	1,135			A-V	Professional License / 8 years
Environmental Engineer*	1,245			A-IV	Professional License / 5 years

ATTACHMENT 8 (Continued)

Grant Compliance Officer*	720				5 Years
Community Relations Specialist*	107				
Constructability Manager*	96				
Construction Monitor / Restoration Specialist*	1,172				See Note 7 of Contract Ex. D
Estimator*	1,172				
Senior Bridge Engineer/Senior Structural Engineer	1,172			A-II	Professional License / 8 years
Senior Geotechnical Engineer/Manager	1,172			A-VI	Professional License / 10 years
Senior Landscape Architect/Urban Design Manager, RLA	1318				Professional License / 10 years
Senior Environmental Engineer / Manager	1,172			A-VI	Professional License / 10 years
Senior Traffic Engineer	1,172			A-V	Professional License / 8 years
Senior Mechanical Engineer	1,099			A-V	Professional License / 8 years
Senior Civil Engineer	1,099			A-V	Professional License / 8 years
Senior Project Architect	1,135				Professional License / 10 years
Senior Electrical Engineer/Lighting Designer	1,099			A-V	Professional License / 8 years
Senior Archeologist/Historian/Conservator	1,099				See Note 4 of Contract Ex. D
Senior CAD Operator	1,135			A-IV	7 Years
Senior Construction Manager	147				10 years
Structural Engineer	147			A-IV	Professional License / 5 years
Senior Project Controls Manager	1,135				
Architect	1,172				Professional License / 5 years
Civil Engineer	500			A-IV	Professional License / 5 years
Geotechnical Engineer	733			A-IV	Professional License / 5 years
Landscape Architect/Urban Designer	733				5 years
Traffic Engineer	733			A-IV	Professional License / 5 years
Electrical Engineer/Lighting Designer	147			A-IV	Professional License / 5 years
Mechanical Engineer	147			A-IV	Professional License / 5 years
Diving Engineer/Inspector	733			A-V	Professional License / 8 years
Junior Structural Engineer	1,318			A-II	2 years
Junior Architect	1,465				2 years
Junior Civil Engineer	1,318			A-II	2 years

ATTACHMENT 8 (Continued)

Junior Geotechnical Engineer	1,392			A-II	2 years
Junior Landscape Architect/Urban Designer	4,394				3 years
Junior Traffic Engineer-Technician	1,465			A-II	2 years
Junior Environmental Engineer	1,465			A-II	2 years
Junior Structural – Marine/Waterfront Engineer	1,318			A-V	Professional License/ 8 years
Junior Archeologist/Historian/Conservator	1,465				3 years
Junior CAD Operator	1,465			N-II	2 years
CAD Operator	3,205			N-III	5 years
Survey Manager, R.L.S.	732				Professional License/ 10 years
Party Chief/Foreman	732			N-III	5 years
Instrument Person	1,585			N-II	3 years
Rod Person	1,656			N-I	
Assistant Office Engineer	732			A-II/N-III	
Certified Industrial Hygienist	107				Professional License / 7 years, See Note 6 of Contract Ex. D
Industrial Hygienist	586				4 Years
Project Scientist	586				See Note 6 of Contract Ex. D
Arborist/ Forester	996				See Note 5 of Contract Ex. D
Project Controls Manager	6,297				
Procurement Manager	10,617				
Document Control Manager	1,465				
Logistic Support Specialist	394				
Administrative Specialist	10,251				
Risk Manager	14,645				
Community Construction Liaison	1,465				5 Years / See note 8 of Contract Ex. D
Invoice Manager	1,465				
Records Aide	600				3 Years
Total Proposed Cost for All Titles/Hours: Add up Column D (The Total Hours Per Title is for proposal purposes only.)					

ATTACHMENT 8 (Continued)

The proposer shall sign its Fee Proposal in the space provided below. Proposers that are selected for fee negotiations shall be required to submit Part 2: Back-Up Material for All Inclusive Hourly Rates. Part 2 is set forth on the next page. Submission of Part 2 by the proposer shall be within three (3) business days of written notice by DDC.

Name of Proposer (Full Business Name)

By: _____
Signature of Partner or Corporate Officer

Date

Print Name

Title

Telephone #

EIN #

ATTACHMENT 8 (Continued)**PART 2: BACK-UP MATERIAL FOR ALL INCLUSIVE HOURLY RATES**

If requested in writing by DDC, the proposer shall submit Part 2: Back-Up Material for All Inclusive Hourly Rates. DDC anticipates that any proposer selected for negotiation will be required to submit each item listed below.

Submission of Part 2 shall be within three (3) business days of notice by DDC. The required Back-Up Material shall consist of Sections (A) through (C) below. Failure by the proposer to timely submit the information below, may result in a determination that the proposer is non-responsive.

- (A) Actual Direct Salary Information: For each individual listed in the proposer's General Organization Chart (see Section IV(B)(4)(b) of this RFP) and Attachment 7 of this RFP (ESCR Staffing Plan), the proposer shall submit the Actual Direct Salary Rate Information described below.
- (1) Actual Annual Direct Salary: An individual's actual annual direct salary shall be the salary amount directly payable to such employee on an annual basis and shall NOT INCLUDE any amount for the following costs or payments: (a) any payments for services performed during other than regular business hours (i.e., premium for Night Differential and/or Overtime); (b) any employer payments mandated by law, including without limitation, Social Security and Medicare taxes, insurance (Worker's Compensation, Employers Liability, Unemployment); (c) any employer contributions to retirement plans, including without limitation pension and/or deferred compensation plans, and (d) any costs for any other fringe and/or supplemental benefits.
 - (2) Actual Annual Direct Salary on an Hourly Basis: To compute an individual's actual annual direct salary on an hourly basis, the individual's actual annual direct salary, as defined above, shall be divided by 2080.
- (B) Overhead Rate: In support of its All Inclusive Hourly Rates, proposer's selected for negotiation will be required to submit its most recent audited Statement of Direct Labor, Fringe Benefits and General Overhead prepared in accordance with Part 31 of the Federal Acquisition Regulation.
- (1) If the proposer has an audited overhead rate that has been accepted by a cognizant governmental agency that engages in capital construction work (city, state, or federal), it must submit such audited overhead rate, as well as a letter approving and/or accepting the firm's overhead rate. The proposer is advised that DDC has **NO OBLIGATION** to accept a submitted overhead rate, even if such overhead rate has been approved by a governmental agency.
 - (2) If the proposer does not have an "audited overhead rate" that has been accepted by a governmental agency, it must submit General Purpose Financial Statements for the three (3) most recent years. Each Financial Statement (Balance Sheet and Income Statement) must be audited, reviewed, or compiled by an independent public accountant or certified public accountant (CPA). If the proposer provides audited Final Statements, each audited Financial Statement must have been audited by an independent auditor licensed to practice as a CPA and it must include the auditor's standard report.
 - (3) If the proposer does not have audited financial statements, it must submit an affidavit attesting to the fact that the proposer does not have such statements. In addition, the proposer must submit either reviewed or compiled financial statements for the last three (3) years, which statements must be accompanied by either an "Independent Accountant's

Review Report” signed by a CPA or an “Independent’s Accountant’s Compilation Report” signed by a CPA.

- (4) In addition, DDC reserves the right to require the proposer to submit any records, documentation or accounting data in connection with its All Inclusive Hourly Rates. Such records may include, without limitation, the “CONR 385 Package”. For a description of the “CONR 385 Package”, the proposer is directed to the following website: <https://www.dot.ny.gov/main/business-center/audit/conr-385-388>
- (C)** Payroll Register: The proposer shall submit its Payroll Register for the past twelve months, as well as the Payroll Register for each subconsultant identified in Attachment 5.

ATTACHMENT 9 – SCHEDULE B: M/WBE PARTICIPATION REQUIREMENTS FOR MASTER SERVICE AGREEMENTS

SCHEDULE B: M/WBE PARTICIPATION REQUIREMENTS

M/WBE Program Requirements: The requirements for the M/WBE Program are set forth on the following pages of this RFP, in the section entitled “Notice to All Prospective Contractors”.

Schedule B: M/WBE Participation Requirements: Schedule B: M/WBE Participation Requirements is set forth in this RFP on the pages following the section entitled “Notice to All Prospective Contractors”.

Rejection of the Bid: The proposer must complete Schedule B: M/WBE Participation Requirements (Part II) set forth in this RFP on the pages following the section entitled “Notice to All Prospective Contractors”. A Schedule B submitted by the proposer which does not include the Vendor Certification and Required Affirmations (See Section V of Part II) will be deemed to be non-responsive. In the event that the City determines that the proposer has submitted a Schedule B where the Vendor Certification and Required Affirmations are completed but other aspects of the Schedule B are not complete, or contain a copy or computation error that is at odds with the Vendor Certification and Required Affirmations, the proposer will be notified by the Agency and will be given four (4) calendar days from receipt of notification to cure the specified deficiencies and return a completed Schedule B to the Agency. Failure to do so will result in a determination that the proposal is non-responsive. Receipt of notification is defined as the date notice is emailed or faxed (if the bidder has provided an email address or fax number), or no later than five (5) calendar days from the date of mailing or upon delivery, if delivered.

Participation Goals: Participation Goals will be established for each individual Task Order issued pursuant to this Contract. Prior to issuance and registration of the Task Order, the contractor will be required to submit a Schedule B: M/WBE Utilization Plan.

NOTICE TO ALL PROSPECTIVE CONTRACTORS**PARTICIPATION BY MINORITY-OWNED AND WOMEN-OWNED BUSINESS ENTERPRISES IN CITY PROCUREMENT**

ARTICLE I. 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 the program for participation in City procurement ("M/WBE Program") by minority-owned business enterprises ("MBEs") and women-owned business enterprises ("WBEs"), certified in accordance with Section 1304 of the New York City Charter. As stated in Section 6-129, the intent of the program is to address the impact of discrimination on the City's procurement process, and to promote the public interest in avoiding fraud and favoritism in the procurement process, increasing competition for City business, and lowering contract costs. The contract provisions contained herein are pursuant to Section 6-129, and the rules of the Department of Small Business Services ("DSBS") promulgated thereunder.

If this Contract is subject to the M/WBE Program established by Section 6-129, the specific requirements of MBE and/or WBE participation for this Contract are set forth in Schedule B of the Contract (entitled the "M/WBE Utilization Plan"), and are detailed below. The Contractor must comply with all applicable MBE and WBE requirements for this Contract.

All provisions of Section 6-129 are hereby incorporated in the Contract by reference and all terms used herein that are not defined herein shall have the meanings given such terms in Section 6-129. Article I, Part A, below, sets forth provisions related to the participation goals for construction, standard and professional services contracts. Article I, Part B, below, sets forth miscellaneous provisions related to the M/WBE Program.

PART A: PARTICIPATION GOALS FOR CONSTRUCTION, STANDARD AND PROFESSIONAL SERVICES CONTRACTS OR TASK ORDERS

1. The **MBE and/or WBE Participation Goals** established for this Contract or Task Orders issued pursuant to this Contract, ("**Participation Goals**"), as applicable, are set forth on Schedule B, Part I to this Contract (see Page 1, line 1 Total Participation Goals) or will be set forth on Schedule B, Part I to Task Orders issued pursuant to this Contract, as applicable.

The **Participation Goals** represent a percentage of the total dollar value of the Contract or Task Order, as applicable, that may be achieved by awarding subcontracts to firms certified with New York City Department of Small Business Services as MBEs and/or WBEs, and/or by crediting the participation of prime contractors and/or qualified joint ventures as provided in Section 3 below, unless the goals have been waived or modified by Agency in accordance with Section 6-129 and Part A, Sections 10 and 11 below, respectively.

2. If **Participation Goals** have been established for this Contract or Task Orders issued pursuant to this Contract, Contractor agrees or shall agree as a material term of the Contract that Contractor shall be subject to the **Participation Goals**, unless the goals are waived or modified by Agency in accordance with Section 6-129 and Part A, Sections 10 and 11 below, respectively.

3. If **Participation Goals** have been established for this Contract or Task Order issued pursuant to this Contract, a Contractor that is an MBE and/or WBE shall be permitted to count

its own participation toward fulfillment of the relevant **Participation Goal**, provided that in accordance with Section 6-129 the value of Contractor's participation shall be determined by subtracting from the total value of the Contract or Task Order, as applicable, any amounts that the Contractor pays to direct subcontractors (as defined in Section 6-129(c)(13)), and provided further that a Contractor that is certified as both an MBE and a WBE may count its own participation either toward the goal for MBEs or the goal for WBEs, but not both.

A Contractor that is a qualified joint venture (as defined in Section 6-129(c)(30)) shall be permitted to count a percentage of its own participation toward fulfillment of the relevant **Participation Goal**. In accordance with Section 6-129, the value of Contractor's participation shall be determined by subtracting from the total value of the Contract or Task Order, as applicable, any amounts that Contractor pays to direct subcontractors, and then multiplying the remainder by the percentage to be applied to total profit to determine the amount to which an MBE or WBE is entitled pursuant to the joint venture agreement, provided that where a participant in a joint venture is certified as both an MBE and a WBE, such amount shall be counted either toward the goal for MBEs or the goal for WBEs, but not both.

4. A. If **Participation Goals** have been established for this Contract, a prospective contractor shall be required to submit with its bid or proposal, as applicable, a completed Schedule B, M/WBE Utilization Plan, Part II (see Pages 2-4) indicating: (a) whether the contractor is an MBE or WBE, or qualified joint venture; (b) the percentage of work it intends to award to direct subcontractors; and (c) in cases where the contractor intends to award direct subcontracts, a description of the type and dollar value of work designated for participation by MBEs and/or WBEs, and the time frames in which such work is scheduled to begin and end. In the event that this M/WBE Utilization Plan indicates that the bidder or proposer, as applicable, does not intend to meet the **Participation Goals**, the bid or proposal, as applicable, shall be deemed non-responsive, unless Agency has granted the bidder or proposer, as applicable, a pre- award waiver of the Participation Goals in accordance with Section 6-129 and Part A, Section 10 below.

B. (i) If this Contract is for a master services agreement or other requirements type contract that will result in the issuance of Task Orders that will be individually registered ("Master Services Agreement") and is subject to M/WBE **Participation Goals**, a prospective contractor shall be required to submit with its bid or proposal, as applicable, a completed Schedule B, M/WBE Participation Requirements for Master Services Agreements That Will Require Independently Registered Task Orders, Part II (page 2) indicating the prospective contractor's certification and required affirmations to make all reasonable good faith efforts to meet participation goals established on each individual Task Order issued pursuant to this Contract, or if a partial waiver is obtained or such goals are modified by the Agency, to meet the modified **Participation Goals** by soliciting and obtaining the participation of certified MBE and/or WBE firms. In the event that the Schedule B indicates that the bidder or proposer, as applicable, does not intend to meet the **Participation Goals** that may be established on Task Orders issued pursuant to this Contract, the bid or proposal, as applicable, shall be deemed non-responsive.

(ii) **Participation Goals** on a Master Services Agreement will be established for individual Task Orders issued after the Master Services Agreement is awarded. If **Participation Goals** have been established on a Task Order, a contractor shall be required to submit a Schedule B – M/WBE Utilization Plan For Independently Registered Task Orders That Are Issued Pursuant to Master Services Agreements, Part II (see Pages 2-4) indicating: (a) whether the contractor is an MBE or WBE, or qualified joint venture; (b) the percentage of work it intends to award to direct subcontractors; and (c) in cases where the contractor intends to award direct subcontracts, a description of the type and dollar value of work designated for participation by MBEs and/or WBEs, and the time frames in which such work is scheduled to begin and end.

The contractor must engage in good faith efforts to meet the **Participation Goals** as established for the Task Order unless Agency has granted the contractor a pre-award waiver of the Participation Goals in accordance with Section 6-129 and Part A, Section 10 below.

C. THE BIDDER/PROPOSER MUST COMPLETE THE SCHEDULE B INCLUDED HEREIN (SCHEDULE B, PART II). A SCHEDULE B SUBMITTED BY THE BIDDER/PROPOSER WHICH DOES NOT INCLUDE THE VENDOR CERTIFICATION AND REQUIRED AFFIRMATIONS (SEE SECTION V OF PART II) WILL BE DEEMED TO BE NON-RESPONSIVE, UNLESS A FULL WAIVER OF THE PARTICIPATION GOALS IS GRANTED (SCHEDULE B, PART III). IN THE EVENT THAT THE CITY DETERMINES THAT THE BIDDER/PROPOSER HAS SUBMITTED A SCHEDULE B WHERE THE VENDOR CERTIFICATION AND REQUIRED AFFIRMATIONS ARE COMPLETED BUT OTHER ASPECTS OF THE SCHEDULE B ARE NOT COMPLETE, OR CONTAIN A COPY OR COMPUTATION ERROR THAT IS AT ODDS WITH THE VENDOR CERTIFICATION AND AFFIRMATIONS, THE BIDDER/PROPOSER WILL BE NOTIFIED BY THE AGENCY AND WILL BE GIVEN FOUR (4) CALENDAR DAYS FROM RECEIPT OF NOTIFICATION TO CURE THE SPECIFIED DEFICIENCIES AND RETURN A COMPLETED SCHEDULE B TO THE AGENCY. FAILURE TO DO SO WILL RESULT IN A DETERMINATION THAT THE BID/PROPOSAL IS NON-RESPONSIVE. RECEIPT OF NOTIFICATION IS DEFINED AS THE DATE NOTICE IS E-MAILED OR FAXED (IF THE BIDDER/PROPOSER HAS PROVIDED AN E-MAIL ADDRESS OR FAX NUMBER), OR NO LATER THAN FIVE (5) CALENDAR DAYS FROM THE DATE OF MAILING OR UPON DELIVERY, IF DELIVERED.

5. Where an **M/WBE** Utilization Plan has been submitted, the Contractor shall, within 30 days of issuance by Agency of a notice to proceed, submit a list of proposed persons or entities to which it intends to award subcontracts within the subsequent 12 months. In the case of multiyear contracts, such list shall also be submitted every year thereafter. The Agency may also require the Contractor to report periodically about the contracts awarded by its direct subcontractors to indirect subcontractors (as defined in Section 6-129(c)(22)). **PLEASE NOTE: If this Contract is a public works project subject to GML §101(5) (i.e., a contract valued at or below \$3M for projects in New York City) or if the Contract is subject to a project labor agreement in accordance with Labor Law §222, and the bidder is required to identify at the time of bid submission its intended subcontractors for the Wicks trades (plumbing and gas fitting; steam heating, hot water heating, ventilating and air conditioning (HVAC); and electric wiring), the Contractor must identify all those to which it intends to award construction subcontracts for any portion of the Wicks trade work at the time of bid submission, regardless of what point in the life of the contract such subcontracts will occur. In identifying intended subcontractors in the bid submission, bidders may satisfy any Participation Goals established for this Contract by proposing one or more subcontractors that are MBEs and/or WBEs for any portion of the Wicks trade work.** In the event that the Contractor's selection of a subcontractor is disapproved, the Contractor shall have a reasonable time to propose alternate subcontractors.

6. MBE and WBE firms must be certified by DSBS in order for the Contractor to credit such firms' participation toward the attainment of the **Participation Goals**. Such certification must occur prior to the firms' commencement of work. A list of MBE and 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 St., 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. A firm that is certified as both an MBE and a WBE may be counted either toward the goal for MBEs or the

goal for WBEs, but not both. No credit shall be given for participation by a graduate MBE or graduate WBE, as defined in Section 6-129(c)(20).

7. Where an **M/WBE** Utilization Plan has been submitted, the Contractor shall, with each voucher for payment, and/or periodically as Agency may require, submit statements, certified under penalty of perjury, which shall include, but not be limited to, the total amount the Contractor paid to its direct subcontractors, and, where applicable pursuant to Section 6-129(j), the total amount direct subcontractors paid to indirect subcontractors; the names, addresses and contact numbers of each MBE or WBE hired as a subcontractor by the Contractor, and, where applicable, hired by any of the Contractor's direct subcontractors; and the dates and amounts paid to each MBE or WBE. The Contractor shall also submit, along with its voucher for final payment: the total amount it paid to subcontractors, and, where applicable pursuant to Section 6-129(j), the total amount its direct subcontractors paid directly to their indirect subcontractors; and a final list, certified under penalty of perjury, which shall include the name, address and contact information of each subcontractor that is an MBE or WBE, the work performed by, and the dates and amounts paid to each.

8. If payments made to, or work performed by, MBEs or WBEs are less than the amount specified in the Contractor's **M/WBE** Utilization Plan, Agency shall take appropriate action, in accordance with Section 6-129 and Article II below, unless the Contractor has obtained a modification of its **M/WBE** Utilization Plan in accordance with Section 6-129 and Part A, Section 11 below.

9. Where an **M/WBE** Utilization Plan has been submitted, and the Contractor requests a change order the value of which exceeds the greater of 10 percent of the Contract or Task Order, as applicable, or \$500,000, Agency shall review the scope of work for the Contract or Task Order, as applicable, and the scale and types of work involved in the change order, and determine whether the **Participation Goals** should be modified.

10. Pre-award waiver of the **Participation Goals**. (a) A bidder or proposer, or contractor with respect to a Task Order, may seek a pre-award full or partial waiver of the **Participation Goals** in accordance with Section 6-129, which requests that Agency change one or more **Participation Goals** on the grounds that the **Participation Goals** are unreasonable in light of the availability of certified firms to perform the services required, or by demonstrating that it has legitimate business reasons for proposing a lower level of subcontracting in its **M/WBE** Utilization Plan.

(b) To apply for a full or partial waiver of the **Participation Goals**, a bidder, proposer, or contractor, as applicable, must complete Part III (Page 5) of Schedule B and submit such request no later than seven (7) calendar days prior to the date and time the bids, proposals, or Task Orders are due, in writing to the Agency by email at ZhangJi@ddc.nyc.gov or via facsimile at (718) 391-1885. Bidders, proposers, or contractors, as applicable, who have submitted requests will receive an Agency response by no later than two (2) calendar days prior to the due date for bids, proposals, or Task Orders; provided, however, that if that date would fall on a weekend or holiday, an Agency response will be provided by close-of-business on the business day before such weekend or holiday date.

(c) If the Agency determines that the **Participation Goals** are unreasonable in light of the availability of certified firms to perform the services required, it shall revise the solicitation and extend the deadline for bids and proposals, or revise the Task Order, as applicable.

(d) Agency may grant a full or partial waiver of the **Participation Goals** to a bidder, proposer or contractor, as applicable, who demonstrates—before submission of the bid, proposal or

Task Order, as applicable—that it has legitimate business reasons for proposing the level of subcontracting in its **M/WBE** Utilization Plan. In making its determination, Agency shall consider factors that shall include, but not be limited to, whether the bidder, proposer or contractor, as applicable, has the capacity and the bona fide intention to perform the Contract without any subcontracting, or to perform the Contract without awarding the amount of subcontracts represented by the **Participation Goals**. In making such determination, Agency may consider whether the **M/WBE** Utilization Plan is consistent with past subcontracting practices of the bidder, proposer or contractor, as applicable, whether the bidder, proposer or contractor, as applicable, has made efforts to form a joint venture with a certified firm, and whether the bidder, proposer, or contractor, as applicable, has made good faith efforts to identify other portions of the Contract that it intends to subcontract.

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

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

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

(b) The Agency may modify the **Participation Goals** when the scope of the work has been changed by the Agency in a manner that affects the scale and types of work that the Contractor indicated in its **M/WBE** Utilization Plan would be awarded to subcontractors.

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

13. If **Participation Goals** have been established for this Contract or a Task Order issued pursuant to this Contract, at least once annually during the term of the Contract or Task Order, as applicable, Agency shall review the Contractor's progress toward attainment of its M/WBE Utilization Plan, including but not limited to, by reviewing the percentage of work the Contractor has actually awarded to MBE and/or WBE subcontractors and the payments the Contractor made to such subcontractors.

14. If **Participation Goals** have been established for this Contract or a Task Order issued pursuant to this Contract, Agency shall evaluate and assess the Contractor's performance in meeting those goals, and such evaluation and assessment shall become part of the Contractor's overall contract performance evaluation.

PART B: MISCELLANEOUS

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

2. Pursuant to DSBS rules, construction contracts that include a requirement for an **M/WBE** Utilization Plan shall not be subject to the law governing Locally Based Enterprises set forth in Section 6-108.1 of the Administrative Code of the City of New York.

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

4. Prospective contractors are encouraged to enter into qualified joint venture agreements with MBEs and/or WBEs as defined by Section 6-129(c)(30).

5. By submitting a bid or proposal the Contractor hereby acknowledges its understanding of the M/WBE Program requirements set forth herein and the pertinent provisions of Section 6-129, and any rules promulgated thereunder, and if awarded this Contract, the Contractor hereby agrees to comply with the M/WBE Program requirements of this Contract and pertinent provisions of Section 6-129, and any rules promulgated thereunder, all of which shall be deemed to be material terms of this Contract. The Contractor hereby agrees to make all reasonable, good faith efforts to solicit and obtain the participation of MBEs and/or WBEs to meet the required **Participation Goals**.

ARTICLE II. ENFORCEMENT

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

Contract and the Agency may revoke such bidder's or proposer's prequalification status, if applicable.

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

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

- (a) Entering into an agreement with the Contractor allowing the Contractor to cure the violation;
- (b) Revoking the Contractor's pre-qualification to bid or make proposals for future contracts;
- (c) Making a finding that the Contractor is in default of the Contract;
- (d) Terminating the Contract;
- (e) Declaring the Contractor to be in breach of Contract;
- (f) Withholding payment or reimbursement;
- (g) Determining not to renew the Contract;
- (h) Assessing actual and consequential damages;
- (i) Assessing liquidated damages or reducing fees, provided that liquidated damages may be based on amounts representing costs of delays in carrying out the purposes of the M/WBE Program, or in meeting the purposes of the Contract, the costs of meeting utilization goals through additional procurements, the administrative costs of investigation and enforcement, or other factors set forth in the Contract;
- (j) Exercising rights under the Contract to procure goods, services or construction from another contractor and charge the cost of such contract to the Contractor that has been found to be in noncompliance; or
- (k) Taking any other appropriate remedy.

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

5. Whenever Agency has reason to believe that an MBE and/or WBE is not qualified for certification, or is participating in a contract in a manner that does not serve a commercially

useful function (as defined in Section 6-129(c)(8)), or has violated any provision of Section 6-129, Agency shall notify the Commissioner of DSBS who shall determine whether the certification of such business enterprise should be revoked.

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

7. The Contractor's record in implementing its **M/WBE** Utilization Plan shall be a factor in the evaluation of its performance. Whenever Agency determines that a Contractor's compliance with an **M/WBE** Utilization Plan has been unsatisfactory, Agency shall, after consultation with the City Chief Procurement Officer, file an advice of caution form for inclusion in VENDEX as caution data.

SCHEDULE B – M/WBE Participation Requirements for Master Service Agreements That Will Require Individually Registered Task Orders

Part I: M/WBE Participation Goals

Part I to be completed by contracting agency

Contract Overview

APT E- Pin #	<u>85019P0009</u>	FMS Project ID#:	<u>HWDCRW07</u>
Project Title/ Agency PIN #	<u>Requirements Contract for Project Management/Construction Management and Related Services 8502019HW0020P</u>		
Bid/Proposal Response Date	<u>March 26, 2019</u>		
Contracting Agency	<u>Department of Design and Construction</u>		
Agency Address	<u>30-30 Thomson Ave</u>	City	<u>Long Island City</u> State <u>NY</u> Zip Code <u>11101</u>
Contact Person	<u>Yamina Youb</u>	Title	<u>M/WBE Compliance Analyst</u>
Telephone #	<u>718-391-1607</u>	Email	<u>Youbya@ddc.nyc.gov</u>

Project Description *(attach additional pages if necessary)*

Project Management/Construction Management and Related Services

Citywide

M/WBE Participation Requirements for Construction, Professional and Standard Services Master Services Agreements That Will Require Individually Registered Task Orders

The Master Services Agreement awarded pursuant to this solicitation is subject to Minority and Women-Owned Business Enterprises (M/WBE) participation requirements established in Section 6-129 of the New York City Administrative Code. Depending on the scope of work and the availability of M/WBEs to perform such work, agencies may set M/WBE participation goals on each individual task order issued pursuant to such agreement. If M/WBE participation goals are established for an individual task order, Prime Contractors will be required to submit a completed Schedule B – M/WBE Utilization Plan unless a full waiver is obtained. If Prime contractors submit a Schedule B, they will be required to fulfill the M/WBE participation goals on each individual task order, except to the extent that a full or partial waiver is obtained or such goals are modified by the agency. Please refer to the Notice for Prospective Contractors for more information.

SCHEDULE B - Part II: Subcontractor Participation Plan

Section I: Prime Contractor Contact Information

Tax ID # _____ FMS Vendor ID # _____
 Business Name _____ Contact Person _____
 Address _____
 Telephone # _____ Email _____

Section II: General Contract Information

	<p><i>Enter brief description of all the type(s) of subcontracts for all/any services you plan on subcontracting if awarded this contract. Use additional sheets if necessary.</i></p> <ol style="list-style-type: none"> 1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14. 15. 16. 17.
<p>✓ Scopes of Subcontract Work</p>	

Section V: Vendor Certification and Required Affirmations

I hereby:

- 1) acknowledge my understanding of the M/WBE participation requirements as set forth herein and the pertinent provisions of Section 6-129 of the Administrative Code of the City of New York ("Section 6-129"), and the rules promulgated thereunder;
- 2) affirm that the information supplied in support of this Subcontractor Participation Plan is true and correct;
- 3) agree, if awarded this Contract, to comply with the M/WBE participation requirements of this Contract as established on each individual Task Order, the pertinent provisions of Section 6-129, and the rules promulgated thereunder, all of which shall be deemed to be material terms of this Contract;
- 4) agree and affirm that it is a material term of this Contract that the Vendor will award to certified MBEs and/or WBEs the total dollar value of the M/WBE Participation Goals that are established on each individual Task Order issued pursuant to this Contract, unless a full waiver is obtained or such goals are modified by the Agency; and
- 5) agree and affirm, if awarded this Contract, to make all reasonable, good faith efforts to meet the M/WBE Participation Goals established on each individual Task Order issued pursuant to this Contract, or if a partial waiver is obtained or such goals are modified by the Agency, to meet the modified Participation Goals by soliciting and obtaining the participation of certified MBE and/or WBE firms.

Signature _____ Date _____
 Print Name _____ Title _____

ATTACHMENT 10 – SCHEDULE B: M/WBE UTILIZATION PLAN FOR INDEPENDENTLY REGISTERED TASK ORDER

Tax ID #: _____

APT E-
PIN #: 85019P0009

SCHEDULE B – M/WBE Utilization Plan For Independently Registered Task Orders That are Issued Pursuant to Master Service Agreements (MSA)

Part I: M/WBE Participation Goals

Part I to be completed by agency issuing the Task Order

Contract Overview

MSA Contract Agency	Department of Design and Construction	MSA Contract Number	HWDCRW07
Agency Issuing Task Order	Department of Design and Construction	Task Order Number	SANDRESM1
MSA Contract Description	Requirements Contract for Project Management/Construction Management and Related Services		
Task Order Response Date	To be completed before issuance		
Agency Address	30-30 Thomson Ave	City	Long Island City
		State	NY
		Zip Code	11101
Contact Person	Yamina Youb	Title	M/WBE Compliance Analyst
Telephone #	718-391-1607	Email	Youbya@ddc.nyc.gov

Task Order Description (attach additional pages if necessary)

Project Management/Construction Management and Related Services

Borough of Manhattan

M/WBE Participation Goals for Services

Enter the percentage amount for each group or for an unspecified goal. Please note that there are no goals for Asian Americans in Professional Services.

Prime Contract Industry: Professional

Group	Percentage
Unspecified	35%
or	
Black American	Unspecified %
Hispanic American	Unspecified %
Asian American	No Goal
Women	Unspecified %
Total Participation Goals	35% Line 1

Tax ID #: _____

APT E- 85019P0009
PIN #: _____

SCHEDULE B - Part II: M/WBE Participation Plan for Individual Task Order

Part II to be completed by the bidder/proposer/vendor.

Please note: For Non-M/WBE Prime Contractors who will NOT subcontract any services and will self-perform the entire task order, you must obtain a FULL waiver by completing the Waiver Application on pages 5 and 6 and timely submitting it to the task order issuing agency pursuant to the Notice to Prospective Contractors. Once a FULL WAIVER is granted, it must be included with your task order response, bid or proposal, whichever applicable, and you do not have to complete or submit this form with your submission.

Section I: Prime Contractor Contact Information

Tax ID # _____ FMS Vendor ID # _____
 Business Name _____ Contact Person _____
 Address _____
 Telephone # _____ Email _____

Section II: M/WBE Utilization Goal Calculation: Check the applicable box and complete subsection.

PRIME CONTRACTOR ADOPTING AGENCY M/WBE PARTICIPATION GOALS

<input type="checkbox"/> For Prime Contractors (including Qualified Joint Ventures and M/WBE firms) adopting Agency M/WBE Participation Goals. Calculate the total dollar value of your total task order or task order bid or proposal if applicable, that you agree will be awarded to M/WBE subcontractors for services and/or credited to an M/WBE prime contractor or Qualified Joint Venture. Please review the Notice to Prospective Contractors for more information on how to obtain credit for M/WBE participation.	Total Bid/Proposal/Task Order Value \$	X	Agency Total Participation Goals (Line 1, Page 1)	=	Calculated M/WBE Participation Amount \$ Line 2
--	---	---	---	---	--

PRIME CONTRACTOR OBTAINED PARTIAL WAIVER APPROVAL: ADOPTING MODIFIED M/WBE PARTICIPATION GOALS

<input type="checkbox"/> For Prime Contractors (including Qualified Joint Ventures and M/WBE firms) that have obtained a partial waiver of the M/WBE Participation Goals because you will be subcontracting at a lesser percentage than the Agency Total Participation Goals. (The approved partial waiver must be submitted with this form.) Calculate the total dollar value of your total task order or task order bid or proposal if applicable, that you agree will be awarded to M/WBE subcontractors for services and/or credited to an M/WBE prime contractor or Qualified Joint Venture. Please review the Notice to Prospective Contractors for more information on how to obtain credit for M/WBE participation.	Total Bid/Proposal/Task Order Value \$	X	Adjusted Participation Goal (From Partial Waiver)	=	Calculated M/WBE Participation Amount \$ Line 3
---	---	---	---	---	--

Section III: M/WBE Utilization Plan: How Proposer/Bidder/Vendor Will Fulfill Task Order M/WBE Participation Goals. Please review the Notice to Prospective Contractors for more information on how to obtain credit for M/WBE participation. Check applicable box. The Proposer/Bidder/Vendor will fulfill the M/WBE Participation Goals:

As an M/WBE Prime Contractor that will self-perform and/or subcontract to other M/WBE firms a portion of the task order the value of which is at least the amount located on Lines 2 or 3 above, as applicable. The value of any work subcontracted to non-M/WBE firms will not be credited towards fulfillment of M/WBE Participation Goals.
Please check all that apply to Prime Contractor:
 MBE WBE

As a Qualified Joint Venture with an M/WBE partner, in which the value of the M/WBE partner's participation and/or the value of any work subcontracted to other M/WBE firms is at least the amount located on Lines 2 or 3 above, as applicable. The value of any work subcontracted to non M/WBE firms will not be credited towards fulfillment of M/WBE Participation Goals.

As a non M/WBE Prime Contractor that will enter into subcontracts with M/WBE firms the value of which is at least the amount located on Lines 2 or 3 above, as applicable.

Section IV: General Contract Information

What is the expected percentage of the total task order dollar value that you expect to award in subcontracts for services, regardless of M/WBE status? % _____

<p>✓ Scopes of Subcontract Work</p>	<p><i>Enter brief description of the type(s) and dollar value of subcontracts for all/any services that you plan on subcontracting if awarded this task order. For each item, indicate whether the work is designated for participation by MBEs and/or WBEs and the time frame in which such work is scheduled to begin and end. Use additional sheets if necessary.</i></p> <ol style="list-style-type: none"> 1. _____ 2. _____ 3. _____ 4. _____ 5. _____ 6. _____ 7. _____ 8. _____ 9. _____ 10. _____ 11. _____ 12. _____ 13. _____ 14. _____ 15. _____ 16. _____ 17. _____
--	---

Section V: Vendor Certification and Required Affirmations

I hereby:
1) acknowledge my understanding of the M/WBE participation requirements as set forth herein and the pertinent provisions of Section 6-129 of the Administrative Code of the City of New York ("Section 6-129"), and the rules promulgated thereunder;
2) affirm that the information supplied in support of this M/WBE Utilization Plan is true and correct;
3) agree, either as the only Vendor awarded the Master Service Agreement or if awarded this Task Order pursuant to a mini-competition as set forth in the Master Service Agreement, to comply with the M/WBE participation requirements of this Task Order, the pertinent provisions of Section 6-129, and the rules promulgated thereunder, all of which shall be deemed to be material terms of this Contract;
4) agree and affirm that it is a material term of this Task Order that the Vendor will award the total dollar value of the M/WBE Participation Goals to certified MBEs and/or WBEs, unless a full waiver is obtained or such goals are modified by the Agency; and
5) agree and affirm, as the only Vendor awarded the Master Service Agreement or if awarded this Task Order pursuant to a mini-competition as set forth in the Master Service Agreement, to make all reasonable, good faith efforts to meet the M/WBE Participation Goals, or If a partial waiver is obtained or such goals are modified by the Agency, to meet the modified Participation Goals by soliciting and obtaining the participation of certified MBE and/or WBE firms.

Signature _____

Date _____

Print Name _____

Title _____

SCHEDULE B – PART III – REQUEST FOR WAIVER OF M/WBE PARTICIPATION REQUIREMENT

Contract Overview	
Tax ID # _____	FMS Vendor ID # _____
Business Name _____	
Contact Name _____	Telephone # _____ Email _____
Type of Task Order	Response Due Date _____
<input type="checkbox"/> Mini Competition, or <input type="checkbox"/> Selected Vendor	
Master Service Agreement Contract Agency: _____	Master Service Agreement Contract Number: _____
Task Order Number: _____	Agency Issuing Task Order: _____

M/WBE Participation Goals as established in the Task Order Schedule B

_____ **35 %** Agency M/WBE Participation Goal

_____ % Proposed M/WBE Participation Goal as anticipated by vendor seeking waiver of the total bid/proposal/task order value anticipated in good faith by the bidder/proposer/vendor to be subcontracted for services and/or credited to an M/WBE Prime Contractor or Qualified Joint Venture

Basis for Waiver Request: Check appropriate box & explain in detail below (attach additional pages if needed)

- Vendor does not subcontract services, and has the capacity and good faith intention to perform all such work itself with its own employees.
- Vendor subcontracts some of this type of work but at a lower % than the Task Order describes, and has the capacity and good faith intention to do so on this Task Order. (Attach subcontracting plan outlining services that the vendor will self-perform and subcontract to other vendors or consultants.)
- Vendor has other legitimate business reasons for proposing the M/WBE Participation Goal above. Explain under separate cover.

References

List 3 most recent contacts/subcontracts performed for NYC agencies (if any). Add more pages if necessary.

CONTRACT NO. _____	AGENCY _____	DATE COMPLETED _____
Total Contract Amount \$ _____	Total Amount Subcontracted \$ _____	
Item of Work Subcontracted and Value of subcontract _____	Item of Work Subcontracted and Value of subcontract _____	Item of Work Subcontracted and Value of subcontract _____
CONTRACT NO. _____	AGENCY _____	DATE COMPLETED _____
Total Contract Amount \$ _____	Total Amount Subcontracted \$ _____	
Item of Work Subcontracted and Value of subcontract _____	Item of Work Subcontracted and Value of subcontract _____	Item of Work Subcontracted and Value of subcontract _____
CONTRACT NO. _____	AGENCY _____	DATE COMPLETED _____
Contract Amount \$ _____	Amount Subcontracted \$ _____	
Item of Work Subcontracted and Value of subcontract _____	Item of Work Subcontracted and Value of subcontract _____	Item of Work Subcontracted and Value of subcontract _____

List 3 most recent contracts/subcontracts performed for other entities

(complete ONLY if vendor has performed fewer than 3 NYC contracts)

TYPE OF Contract	_____	ENTITY	_____	DATE COMPLETED	_____
Manager at entity that hired vendor (Name/Phone No./Email)					
Total Contract Amount	\$ _____	Total Amount Subcontracted	\$ _____		
Item of Work Subcontracted and Value of subcontract	_____	Item of Work Subcontracted and Value of subcontract	_____	Item of Work Subcontracted and Value of subcontract	_____

TYPE OF Contract	_____	AGENCY/ENTITY	_____	DATE COMPLETED	_____
Manager at entity that hired vendor (Name/Phone No./Email)					
Total Contract Amount	\$ _____	Total Amount Subcontracted	\$ _____		
Item of Work Subcontracted and Value of subcontract	_____	Item of Work Subcontracted and Value of subcontract	_____	Item of Work Subcontracted and Value of subcontract	_____

TYPE OF Contract	_____	AGENCY/ENTITY	_____	DATE COMPLETED	_____
Manager at entity that hired vendor (Name/Phone No./Email)					
Total Contract Amount	\$ _____	Total Amount Subcontracted	\$ _____		
Item of Work Subcontracted and Value of subcontract	_____	Item of Work Subcontracted and Value of subcontract	_____	Item of Work Subcontracted and Value of subcontract	_____

VENDOR CERTIFICATION: *I hereby affirm that the information supplied in support of this waiver request is true and correct, and that this request is made in good faith.*

Signature: _____ **Date:** _____
Print Name: _____ **Title:** _____

Shaded area below is for agency completion only

AGENCY CHIEF CONTRACTING OFFICER APPROVAL

Signature: _____ **Date:** _____

CITY CHIEF PROCUREMENT OFFICER APPROVAL

Signature: _____ **Date:** _____

Waiver Determination

Full Waiver Approved:

Waiver Denied:

Partial Waiver Approved:

Revised Participation Goal: _____ %

ATTACHMENT 11 – IRAN DIVESTMENT ACT COMPLIANCE RIDER FOR NYC CONTRACTORS

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

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

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

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

- (1) The investment activities in Iran were made before the effective date of this section (i.e., April 12, 2012), the investment activities in Iran have not been expanded or renewed after the effective date of this section and the person has adopted, publicized and is implementing a formal plan to cease the investment activities in Iran and to refrain from engaging in any new investments in Iran: or
- (2) The City makes a determination that the goods or services are necessary for the City to perform its functions and that, absent such an exemption, the City would be unable to obtain the goods or services for which the contract is offered. Such determination shall be made in writing and shall be a public document.

ATTACHMENT 11 (continued)

PROPOSER'S CERTIFICATION OF COMPLIANCE WITH IRAN DIVESTMENT ACT

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

[Please Check One]

PROPOSER'S CERTIFICATION

- By submission of this proposal, each proposer and each person signing on behalf of any proposer certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief, that each proposer is not on the list created pursuant to paragraph (b) of subdivision 3 of Section 165-a of the State Finance Law.
- I am unable to certify that my name and the name of the proposer does not appear on the list created pursuant to paragraph (b) of subdivision 3 of Section 165-a of the State Finance Law. I have attached a signed statement setting forth in detail why I cannot so certify.

Dated: _____, _____
 City State

_____, _____, 20____
 Month, Date Year

SIGNATURE

PRINTED NAME

TITLE

FULL BUSINESS NAME

Sworn to before me this
 _____ day of _____, 20____

Notary Public

ATTACHMENT 12 – DOING BUSINESS DATA FORM**Questions and Answers About the
Doing Business Data Form****What is the purpose of the Doing Business Data Form (DBDF)?**

To collect accurate, up-to-date identification information about organizations that have business dealings with the City of New York in order to comply with Local Law 34 of 2007 (LL 34), a campaign finance reform law. LL 34 limits municipal campaign contributions from principal officers, owners and senior managers of entities doing business with the City and mandates the creation of a Doing Business Database to allow the City to enforce the law. The information requested in this DBDF must be provided, regardless of whether the organization or the people associated with it make or intend to make campaign contributions. No sensitive personal information collected will be disclosed to the public.

Why have I received this DBDF?

The contract, franchise, concession, grant or economic development agreement you are proposing on, applying for or have already been awarded is considered a business dealing with the City under LL 34. No proposal or application will be considered and no award will be made unless this DBDF is completed. Most transactions valued at more than \$5,000 are considered business dealings and require completion of the Doing Business Data Form. Exceptions include transactions awarded on an emergency basis or by "conventional" competitive sealed bid (i.e. bids that do not use a prequalified list or "Best Value" selection criteria.) Other types of transactions that are considered business dealings include real property and land use actions with the City.

What individuals will be included in the Doing Business Database?

The principal officers, owners and certain senior managers of organizations listed in the Doing Business Database are themselves considered to be doing business with the City and will be included in the Database.

- **Principal Officers** are the Chief Executive Officer (CEO), Chief Financial Officer (CFO) and Chief Operating Officer, or their functional equivalents. See the DBDF for examples of titles that apply.
- **Principal Owners** are individuals who own or control 10% or more of the organization. This includes stockholders, partners and anyone else with an ownership or controlling interest in the entity.
- **Senior Managers** include anyone who, either by job title or actual duties, has substantial discretion and high-level oversight regarding the solicitation, letting or administration of any contract, concession, franchise, grant or economic development agreement with the City. At least one Senior Manager must be listed or the Data Form will be considered incomplete.

NEW FOR 2018: As of January 2018, the DBDF must report organizations, as well as individuals, that own 10% or more of the entity. A DBDF with such a certification, filed as a full (never filed before) or as a change form, must be submitted before an entity can then file a DBDF that indicates no changes since the previous form. Contact DBA at 212-788-8104 or at doingbusiness@mocs.nyc.gov to inquire if DBA has received such a form.

I have already completed a Doing Business Data Form, do I have to submit another one?

Yes. An organization is required to submit a DBDF each time it enters into a transaction considered a business dealing with the City, including contract, concession and franchise proposals. However, the DBDF has both a Change option, which requires only information that has changed since the last DBDF was filed, and a No Change option. No organization should have to fill out the entire DBDF more than once.

If you have already submitted a DBDF for one transaction type (such as a contract), and this is the first time you are completing a DBDF for a different transaction type (such as a grant), please select the Change option and complete Section 4 (Senior Managers) for the new transaction type.

Will the personal information on the DBDF be available to the public?

No. The names and titles of the officers, owners and senior managers reported on the DBDF will be made available to the public, as will information about the organization itself. However, personal identifying information, such as home address and date of birth, will not be disclosed to the public, and home address will not be used for communication purposes.

I provided some of this information in PASSPort; do I have to provide it again?

Yes. Although a Doing Business Data Form and PASSPort request some of the same information, they serve entirely different purposes. In addition, the DBDF requests information concerning senior managers, which is not in PASSPort.

What organizations will be included in the Doing Business Database?

Organizations that hold \$100,000 or more in grants, contracts for goods or services, franchises or concessions (\$500,000 for construction contracts), or that hold any economic development agreement or pension fund investment contract, are considered to be doing business with the City for the purposes of LL 34. Because all of the business that an organization does or proposes to do with the City will be added together, the DBDF must be completed for all transactions valued at more than \$5,000 even if the organization doesn't currently do enough business with the City to be listed in the Database.

No one in my organization plans to contribute to a candidate; do I have to fill out this DBDF?

Yes. All organizations are required to return this DBDF with complete and accurate information, regardless of the history or intention of the entity or its officers, owners or senior managers to make campaign contributions. The Doing Business Data Form must be complete so that the Campaign Finance Board can verify whether future contributions are in compliance with the law.

My organization is proposing on a contract with another firm as a Joint Venture that does not exist yet; how should the Data Form be completed?

A joint venture that does not yet exist must submit a DBDF for each of its component firms. If the joint venture receives the award, it must then complete a form in the name of the joint venture.

How long will an organization and its officers, owners and senior managers remain listed on the Doing Business Database?

- **Contract, Concession and Economic Development Agreement holders:** generally for the term of the transaction, plus one year.
- **Franchise and Grant holders:** from the commencement or renewal of the transaction, plus one year.
- **Pension investment contracts:** from the time of presentation on an investment opportunity or the submission of a proposal, whichever is earlier, until the end of the contract, plus one year.
- **Line item and discretionary appropriations:** from the date of budget adoption until the end of the contract, plus one year.
- **Contract proposers:** for one year from the proposal date or date of public advertisement of the solicitation, whichever is later.
- **Franchise and Concession proposers:** for one year from the proposal submission date.

For information on other transaction types, contact the Doing Business Accountability Project.

How does a person remove him/herself from the Doing Business Database?

When an organization stops doing business with the City, the people associated with it are removed from the Database automatically. However, any person who believes that s/he should not be listed may apply for removal. Reasons that a person would be removed include his/her no longer being the principal officer, owner or senior manager of the organization. Organizations may also update their database information by submitting an update form. Removal Request and Update forms are available online <https://www1.nyc.gov/site/mocs/resources/forms.page> or by calling 212-788-8104.

What are the campaign contribution limits for people doing business with the City?

Contributions to City Council candidates are limited to \$250 per election cycle; \$320 to Borough President candidates; and \$400 to candidates for citywide office. Please contact the NYC Campaign Finance Board for more information at www.nycffb.info, or 212-306-7100.

The DBDF is to be returned to the City office that issued it.

If you have any questions about the Doing Business Data Form please contact the Doing Business Accountability Project at 212-788-8104 or doingbusiness@mocs.nyc.gov.

To be completed by the City agency prior to distribution

Agency Dept. of Design & Construction Transaction ID PIN 8502019HW0020P/EPIN 85019P0009

Check One

Transaction Type (check one)

- Proposal Award Concession Economic Development Agreement Franchise Grant Pension Investment Contract Contract

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

This Data Form requires information to be provided on principal officers, owners and senior managers. The name, employer and title of each person identified on the Data Form will be included in a public database of people who do business with the City of New York, as will the organizations that own 10% or more of the entity. No other information reported on this form will be disclosed to the public. **This Data Form is not related to the City's PASSPort registration or VENDEX requirements.**

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

If you are completing this form by hand, please print clearly.

Entity Information

Entity EIN/TIN _____ Entity Name _____

Filing Status

(Select One)

NEW: Data Forms submitted now must include the listing of **organizations**, as well as individuals, with 10% or more ownership of the entity. Until such certification of ownership is submitted through a change, new or update form, a no change form will not be accepted.

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

Entity is a Non-Profit Yes No

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

Address _____

City _____ State _____ Zip _____

Phone _____ E-mail _____

Provide your e-mail address in order to receive notices regarding this form by e-mail.

Principal Officers

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

Chief Executive Officer (CEO) or equivalent officer

This position does not exist

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

First Name _____ MI _____ Last _____ Birth Date (mm/dd/yy) _____

Office Title _____ Employer (if not employed by entity) _____

Home Address _____

This person replaced former CEO _____ on date _____

Chief Financial Officer (CFO) or equivalent officer

This position does not exist

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

First Name _____ MI _____ Last _____ Birth Date (mm/dd/yy) _____

Office Title _____ Employer (if not employed by entity) _____

Home Address _____

This person replaced former CFO _____ on date _____

Chief Operating Officer (COO) or equivalent officer

This position does not exist

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

First Name _____ MI _____ Last _____ Birth Date (mm/dd/yy) _____

Office Title _____ Employer (if not employed by entity) _____

Home Address _____

This person replaced former COO _____ on date _____

Principal Owners

Please fill in the required identification information for all individuals or organizations that, through stock shares, partnership agreements or other means, **own or control 10% or more of the entity**. If no individual or organization owners exist, please check the appropriate box to indicate why and skip to the **Senior Managers** section. If the entity is owned by other companies that control 10% or more of the entity, those companies must be listed. If an owner was identified on the previous page, fill in his/her name and write "See above." If the entity is filing a Change Form, list any individuals or organizations that are no longer owners at the bottom of this section. If more space is needed, attach additional pages labeled "Additional Owners."

There are no owners listed because (select one):

- The entity is not-for-profit
- The entity is an individual
- No individual or organization owns 10% or more of the entity

Other (explain) _____

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

First Name _____ MI ____ Last _____ Birth Date (mm/dd/yy) _____

Office Title _____ Employer (if not employed by entity) _____

Home Address _____

First Name _____ MI ____ Last _____ Birth Date (mm/dd/yy) _____

Office Title _____ Employer (if not employed by entity) _____

Home Address _____

Organization Owners (that own or control 10% or more of the entity)

Organization Name _____

Organization Name _____

Organization Name _____

Remove the following previously-reported Principal Owners

Name _____ Removal Date _____

Name _____ Removal Date _____

Name _____ Removal Date _____

Senior Managers

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

Senior Managers

First Name _____ MI ____ Last _____ Birth Date (mm/dd/yy) _____

Office Title _____ Employer (if not employed by entity) _____

Home Address _____

First Name _____ MI ____ Last _____ Birth Date (mm/dd/yy) _____

Office Title _____ Employer (if not employed by entity) _____

Home Address _____

First Name _____ MI ____ Last _____ Birth Date (mm/dd/yy) _____

Office Title _____ Employer (if not employed by entity) _____

Home Address _____

Remove the following previously-reported Senior Managers

Name _____ removal date _____

Name _____ removal date _____

Certification
I certify that the information submitted on these two pages and _____ additional pages is accurate and complete. I understand that willful or fraudulent submission of a materially false statement may result in the entity being found non-responsible and therefore denied future City awards.
Name _____ Title _____
Entity Name _____ Work Phone # _____
Signature _____ Date _____

ATTACHMENT 13 – WHISTLEBLOWER PROTECTION EXPANSION ACT RIDER

1. In accordance with Local Law Nos. 30-2012 and 33-2012, codified at sections 6-132 and 12-113 of the New York City Administrative Code, respectively,
 - (a) Contractor shall not take an adverse personnel action with respect to an officer or employee in retaliation for such officer or employee making a report of information concerning conduct which such officer or employee knows or reasonably believes to involve corruption, criminal activity, conflict of interest, gross mismanagement or abuse of authority by any officer or employee relating to this Contract to (i) the Commissioner of the Department of Investigation, (ii) a member of the New York City Council, the Public Advocate, or the Comptroller, or (iii) the City Chief Procurement Officer, ACCO, Agency head, or Commissioner.
 - (b) If any of Contractor's officers or employees believes that he or she has been the subject of an adverse personnel action in violation of subparagraph (a) of paragraph 1 of this rider, he or she shall be entitled to bring a cause of action against Contractor to recover all relief necessary to make him or her whole. Such relief may include but is not limited to: (i) an injunction to restrain continued retaliation, (ii) reinstatement to the position such employee would have had but for the retaliation or to an equivalent position, (iii) reinstatement of full fringe benefits and seniority rights, (iv) payment of two times back pay, plus interest, and (v) compensation for any special damages sustained as a result of the retaliation, including litigation costs and reasonable attorney's fees.
 - (c) Contractor shall post a notice provided by the City in a prominent and accessible place on any site where work pursuant to the Contract is performed that contains information about:
 - (i) how its employees can report to the New York City Department of Investigation allegations of fraud, false claims, criminality or corruption arising out of or in connection with the Contract; and
 - (ii) the rights and remedies afforded to its employees under New York City Administrative Code sections 7-805 (the New York City False Claims Act) and 12-113 (the Whistleblower Protection Expansion Act) for lawful acts taken in connection with the reporting of allegations of fraud, false claims, criminality or corruption in connection with the Contract.
 - (d) For the purposes of this rider, "adverse personnel action" includes dismissal, demotion, suspension, disciplinary action, negative performance evaluation, any action resulting in loss of staff, office space, equipment or other benefit, failure to appoint, failure to promote, or any transfer or assignment or failure to transfer or assign against the wishes of the affected officer or employee.
 - (e) This rider is applicable to all of Contractor's subcontractors having subcontracts with a value in excess of \$100,000; accordingly, Contractor shall include this rider in all subcontracts with a value a value in excess of \$100,000.

ATTACHMENT 13 (continued)**NOTICE TO BIDDERS, PROPOSERS, CONTRACTORS, AND RENEWAL CONTRACTORS**

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

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

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

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

ATTACHMENT 14 – SUBCONTRACTOR REPORTING**NOTICE TO BIDDERS**

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

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

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

Contractor hereby agrees to these provisions.

ATTACHMENT 15 – DISPLACEMENT DETERMINATION FORM

Displacement Determination Form – Pursuant to City Charter § 312(a)
(for PSRs or equivalent pre-procurement documents)

This form must be used to certify whether or not there is displacement in the instant contracting action, as defined in City Charter § 312(a) (as amended by Local Law 63 of 2011). You can either certify that there is no displacement by completing Part 1 of this form, or you can certify that there is displacement by completing Part 2 of this form.

If the contract that you are awarding is a task order contract that does not simultaneously result in the award of a first task order, then you must check the box on the bottom of this page; displacement determinations will be made in conjunction with the issuance of task orders pursuant to the subject contract. If the contract that you are awarding does simultaneously result in the award of a first task order, then the displacement determination for that first task order must be done prior to issuance of the solicitation and you must complete either Part 1 or Part 2 of this form.

If you have any questions about Local Law 63 or about completing this form, please contact the Mayor’s Office of Contract Services at APTL63@cityhall.nyc.gov or (212) 788-0010.

Procurement Description:

APT EPIN: 85019P0009

Agency: DDC

Your Name: Melanie Sanchez

Phone: 718-391-3430

Email: SanchezMe@ddc.nyc.gov

Please specifically identify the service(s) being procured.

FY19NDDC3734 - Requirements Contracts for Project Management and Construction Management Services for Coastal Resiliency Projects, Citywide

— If the contract to be awarded as a result of this procurement action is a task order contract (multiple or single award and multiple or single agency) that does not simultaneously result in the award of a first task order, then displacement determinations will be made in conjunction with the issuance of task orders pursuant to the subject contract. (Check this box *only* if you are completing this form for a task order contract that will not simultaneously result in the award of the first task order. If you check this box, do not fill out the remainder of this form.)

If the contract to be awarded as a result of this procurement action *does* simultaneously result in the award of a first task order, then the displacement determination for that first task order must be done prior to issuance of the solicitation and you must complete either Part 1 or Part 2 of this form.

Part 1: Certification of No Displacement

X **The Agency has determined that the contract resulting from this procurement action *will not* result in the displacement of any City employee within this Agency, as defined by Charter § 312(a).**

The basis upon which the Agency has made this determination (Please answer *all* questions under Part 1):

Do any civil service and/or job titles within this Agency currently perform the services sought by the proposed contract and/or services of a substantially similar nature or purpose?

Yes X No __

If so, list the names of such titles and the extent to which Agency employees within such titles currently perform such services.

Construction Project Manager, Associate Project Manager, Highways And Sewers Inspector, Surveyor, Assistant Civil Engineer, Administrative Architect, Administrative Architect NM, Administrative Construction Project Manager, Administrative Engineer, Administrative Engineer NM, Administrative Landmarks Preservationist, Administrative Landscape Architect, Administrative Landscape Architect NM, Administrative Project Manager, Administrative Project Manager NM, Architect and Administrative Construction Project Manager NM

Do the services sought by the proposed contract expand, supplement, or replace existing services?

Yes X No __

In either event, include a detailed description comparing the services sought by the proposed contract with such existing services.

The services under the proposed contracts expand existing capacity and secure construction management and consulting services. The role of the DDC staff in the Division of Public Buildings is predominantly to supervise and manage the performance of the contractors and act as liaisons between the client agencies and the contractor.

Is there capacity within the Agency to perform the services sought by the proposed contract?

Yes X No __

If not, provide a detailed description specifying the ways in which the Agency lacks such capacity.

Constraints imposed by personnel service budget coupled with fluctuations in the capital construction portfolio has prevented the agency from hiring additional professional staff to meet all construction management needs in-house.

For the term of the proposed contract, list the projected headcount of employees within such titles or employees who perform such services and/or services of a substantially similar nature or purpose.

107 Construction Project Manager, 106 Associate Project Manager, 2 Highways And Sewers Inspector, 37 Surveyor, 128 Assistant Civil Engineer, 15 Administrative Architect, 26 Administrative Architect NM, 2 Administrative Construction Project Manager, 38 Administrative Engineer, 20 Administrative Engineer Nm, 1 Administrative Landmarks Preservationist, 3 Administrative Landscape Architect, 1 Administrative Landscape Architect NM, 36 Administrative Project Manager, 88 Administrative Project Manager NM, 18 Architect and 13 Administrative Construction Project Manager NM

X Check this box to confirm that none of the below events have occurred within the Agency in the past three years.

- The displacement of a City employee within the agency who performs or has performed the services sought by the proposed contract and/or services of a substantially similar nature or purpose; or
- The announcement of spending reductions in connection with a budgetary program, including but not limited to a Program to Eliminate the Gap, that could result or has resulted in the displacement of a City employee within the Agency who performs or has performed the services sought by the proposed contract and/or services of a substantially similar nature or purpose; or
- Any other statement by an Agency or by the Mayor of a specific anticipated employment action that could result or has resulted in the displacement of a City employee within the Agency who performs or has performed the services sought by the proposed contract and/or services of a substantially similar nature or purpose.

List any other bases for the Agency's determination that the contract resulting from this procurement action will not result in the displacement of any City employee within this Agency.

The Agency does not have enough staff to perform the scope of work outlined in this contracts. As such, the procurement does not result in the displacement of the Agency's employees. The staff will supervised and manage the performance of the contractors and act as liaisons between client agencies and the contractor.

Part 2: Certification of Displacement

- **The agency has determined that displacement, as defined by Charter § 312(a), has or will occur as a result of this contracting action. The agency has performed the required cost-benefit analysis, as described in Charter § 312(a).**

APPENDIX 1 – CONTRACT DOCUMENT

THE CITY OF NEW YORK
DEPARTMENT OF DESIGN AND CONSTRUCTION
DIVISION OF INFRASTRUCTURE

30-30 THOMSON AVENUE
LONG ISLAND CITY, NEW YORK 11101

REQUIREMENTS CONTRACT FOR
PROJECT MANAGEMENT/CONSTRUCTION MANAGEMENT SERVICES
FOR COASTAL RESILIENCY PROJECTS

BOROUGH: City Wide / All Five Boroughs

FMS NUMBER: HWDCRW07

REGISTRATION NUMBER: _____

E-PIN: 85019P0009

PIN NUMBER: 8502019HW0020P

PM/CM: _____

Requirements Contract
November 2018

THIS AGREEMENT, made and entered into this _____ day of _____, _____, by and between the City of New York (the "City") acting by and through the Commissioner of the Department of Design and Construction (the "Commissioner") and _____, ("Project Manager" or "PM"), located at _____.

WITNESSETH:

WHEREAS, the City desires to have project management construction management, resident engineering services and/or consulting services performed on a requirements basis for various coastal resiliency construction projects, and

WHEREAS, the PM has been selected based upon and in consideration of its representation that it can perform the required services set forth herein in a timely and expeditious manner,

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

ARTICLE 1 - Definitions

1.1 "Agreement" will mean the various documents that constitute the contract between the PM and the City, including (1) Request for Proposals for the Contract, (2) PM's Proposal for the Contract, (3) Task Order Request for Proposal for the Project, (4) PM's Proposal for the Project, (5) Task Orders issued to the PM, and (4) the Exhibits set forth below. In the event of any conflict between the Request for Proposals and the PM's Proposal, the Request for Proposals will prevail.

Exhibit A	Contract Information
Exhibit B	Scope of Services
Exhibit C	Titles of Personnel and All Inclusive Hourly Rates
Exhibit D	Minimum Requirements per Title
Exhibit E	DDC Safety Requirements
Exhibit F	Requirements for As-Built Drawings
Exhibit G	Schedule B: M/WBE Participation Requirements
Exhibit H	Appendix A: General Provisions Governing Contracts for Consultants, Professional, Technical, Human and Client Services
Exhibit I	Hiring and Employment Rider: HireNYC and Reporting Requirements
Exhibit J	Uniform Federal Contract Provisions Rider for Federally Funded Procurement Contracts
Exhibit K	Community Development Block Grant Disaster Relief ("CDBG-DR") Program Rider, U.S. Department of Housing and Urban Development ("HUD") Exhibit 2, and HUD Exhibit 3
Exhibit L	Community Development Block Grant ("CDBG") Program Rider, HUD Exhibit 2, and HUD Exhibit 3
Exhibit M	Federal Emergency Management Agency ("FEMA") Rider and FEMA Exhibit 2
Exhibit N	Hazard Mitigation Grant Program ("HMGP") Rider
Exhibit O	East Side Coastal Resiliency Staffing Proposal and Subcontractors
Exhibit P	Other PM Staff Included with PM's Proposal

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

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

1.4 "Architect" or "Consultant" will mean any person, firm, partnership or corporation, other than the PM, engaged by the Department to furnish architectural, engineering, design, or any other consulting services for the Project.

1.5 "City" will mean the City of New York.

- 1.6 "City Chief Procurement Officer" or "CCPO" will mean the position delegated authority by the Mayor to coordinate and oversee the procurement activity of Mayoral agency staff, including the ACCOs.
- 1.7 "Commissioner" or "Agency Head" will mean the head of the Department or his or her duly authorized representative. The term "duly authorized representative" will include any person or persons acting within the limits of his or her authority.
- 1.8 "Commissioner's Representative" will mean the Project Manager designated by the Commissioner or any successor or alternate representative designated by the Commissioner.
- 1.9 "Comptroller" will mean the Comptroller of the City of New York, his/her successors, or duly authorized representatives.
- 1.10 "Construction Documents" will mean the final plans, drawings and specifications for the construction work and all modifications thereto prepared by Consultant(s) engaged by the Department and approved in writing by the Commissioner.
- 1.13 "Contract" or "Contract Documents" will mean the Agreement referred to in Paragraph 1.1 of this Article.
- 1.14 "Contractor" or "Construction Manager" or "Project Manager" or "CM" or "PM" will mean the entity entering into this Agreement with the Department.
- 1.15 "Days" will mean calendar days unless otherwise specifically noted to mean business days.
- 1.16 "Department" or "DDC" will mean the Department of Design and Construction of the City of New York acting by and through the Commissioner thereof, or his/her duly authorized representative.
- 1.17 "Drawings" will mean all graphic or written illustrations, descriptions, explanations, directions, requirements and standards of performance applied to the construction work.
- 1.18 "Final Acceptance" will mean the final written acceptance of all required construction work for the Project, as determined by the Commissioner.
- 1.19 "Government Entity" will mean the United States, the State and City of New York, and any and every agency, department, court, commission, or other instrumentality or political subdivision of government of any kind whatsoever, now existing or hereafter created.
- 1.20 "Law" or "Laws" will mean the New York City Charter ("Charter"), the New York City Administrative Code ("Admin. Code"), a local rule of the City of New York, the Constitutions of the United States and the State of New York, a statute of the United States or of the State of New York and any ordinance, rule or regulation having the force of law and adopted pursuant thereto, as amended, and common law.
- 1.21 "Mayor" will mean the Mayor of the City of New York, his/her successors or duly authorized representatives.
- 1.22 "Modification" will mean any written amendment of this Agreement signed by both the DDC and the PM.
- 1.23 "Procurement Policy Board" or "PPB" will mean the board established pursuant to Charter § 311 whose function is to establish comprehensive and consistent procurement policies and rules which have broad application throughout the City.
- 1.24 "PPB Rules" will mean the rules of the Procurement Policy Board as set forth in Title 9 of the Rules of the City of New York ("RCNY"), § 1-01 et seq.
- 1.25 "Project" will mean the Project for which construction management and/or consulting services are required, as specified by the Commissioner on a Task Order basis.
- 1.26 "Safety Standards" will mean all laws, union rules and trade or industry custom or codes of any kind whatsoever, in effect from the date of this Agreement through Final Acceptance of the construction work, pertaining to worker safety and accident prevention applicable to the Project and/or the construction work (including, but not limited to, rules, regulations and

standards adopted pursuant to the Occupational Safety and Health Act of 1970, as amended from time to time).

1.27 "Shop Drawing" will mean any and all drawings, diagrams, layouts, explanations, illustrations, manufacturer's drawings or other written or graphic materials which illustrate any portion of the construction work.

1.28 "Site(s)" will mean the area(s) upon or in which the construction work is carried on, and such other areas adjacent thereto as may be designated by the Commissioner.

1.29 "Specifications" will mean all of the directions, requirements and standards of performance applied to the construction work.

1.30 "State" will mean the State of New York.

1.31 "Subcontractor" will mean any person, firm, or corporation, other than employees of the PM, who or which contracts with the PM or its subcontractors to furnish, or actually furnishes services, labor, or labor and materials, or labor and equipment hereunder. All subcontractors are subject to the prior written approval of the Commissioner.

1.32 "Substantial Completion" will mean the written determination by the Commissioner that all required construction work for the Project is substantially complete.

ARTICLE 2 - General Provisions

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

2.2 If applicable and directed by the Commissioner in the Task Order, the PM must comply with the HireNYC Rider. The HireNYC Rider is included as an Exhibit to the Contract.

2.3 DDC anticipates that all Task Orders issued hereunder will be funded, in whole or in part, with federal funds provided to the City through various grant programs. Copies of federal funding riders are attached to this Contract, which may be updated from time to time. If a Task Order is funded with federal funds, the Task Order will include the current version of the Uniform Federal Contract Provisions Rider for Federally Funded Procurement Contracts and current versions of the applicable federal funding rider, depending on the funding source. The PM must comply with the federal funding riders attached to the Task Order.

ARTICLE 3 –Task Order Process

3.1 General: The PM will provide, to the satisfaction of the Commissioner, construction management, resident engineering services and/or consulting services in accordance with the Task Order process outlined below. The PM's services will be provided with respect to the Project specified in the Task Order. The services the PM may be required to provide will be as set forth in Article 6, or as otherwise specified in the Task Order. The PM will not perform services hereunder until the Commissioner has issued a Task Order.

3.2 Task Order Issuance Process

3.2.1 Task Order Request for Proposal ("TRFP"): DDC will send the PM a TRFP. Such request will include the following:

- i. Description of the Project for which services are required, along with available reference documents (e.g., geotechnical and survey data collected for the Project)
- ii. Current versions of the applicable federal riders, if any
- iii. Proposed scope of work setting forth the project management, construction management, resident engineering and/or consulting services to be performed by the PM (i.e., comprehensive/partial/consulting)
- iv. Preliminary Project Schedule or, if no schedule is available, significant Project milestones
- v. Time for performance (i.e., start and completion date for services)
- vi. Proposed titles, including any additional titles and minimum requirements, if any, for such titles
- vii. Direction as to whether the PM should submit its fee proposal for Staffing Expenses for the Project as

timecard services or as a fixed fee

3.2.2 Proposal: Within twenty-one (21) business days after receipt of a TRFP from DDC, the PM will submit a proposal for the Project. For consulting services in accordance with Article 6.4.3, the PM will submit a proposal within two (2) business days unless otherwise directed. Such proposal will include: (1) proposed Staffing Plan and (2) anticipated Reimbursable Services (submitted for proposal purposes only). The items that must be included in the Staffing Plan are set forth in Article 5.

- (a) The PM may propose additional or alternative titles. If additional or alternative titles are proposed, the PM will submit a detailed narrative explaining why such titles are necessary or recommended. The PM must submit proposed All Inclusive Hourly Rates for such titles and include the proposed individuals/titles in its proposed Staffing Plan for the Project.
- (b) The PM must submit a list of anticipated Reimbursable Services for the Project. Such submission is for budgeting purposes only and will not be binding on the PM or the City. The finalized Task Order will set an Allowance for Reimbursable Services.

3.2.3 Review of Proposal: The Commissioner will review the PM's proposal and will direct revisions to the same if necessary prior to issuing the final Task Order. The PM will promptly respond to requests from the Commissioner for additional information and supporting documentation. The PM will attend meetings as directed to review and discuss the proposal.

3.2.4 Final Task Order: Following the process set forth above, Commissioner will issue a Task Order to the PM. The Commissioner may issue separate and/or Supplemental Task Orders to the PM for the performance of services for different phases or portions of the Project following the process set forth above. Each Task Order issued hereunder will include the items set forth below:

- (a) Description of the Project or assignment for which services are required
- (b) Current versions of the applicable federal riders, if any
- (c) Scope of work setting forth the project management, construction management, resident engineering and/or consulting services to be performed by the PM (i.e., comprehensive/partial/consulting)
- (d) Project or Preliminary Project Schedule
- (e) Time for Performance
- (f) Staffing Plan
- (g) Overall Not to Exceed amount for the services to be performed. Such overall Not to Exceed amount will be broken down into various amounts and/or allowances, including without limitation the following: (1) Allowance for Staffing Expenses and (2) Allowance for Reimbursable Services. If the parties negotiate Staffing Expenses as a Fixed Fee, the Task Order will set forth a payment or milestone schedule.

3.3 Miscellaneous Provisions: The provision set forth below will apply to Task Orders issued hereunder.

3.3.1 Supplemental Task Orders: In the event of any changes to the Task Order, the Commissioner will issue a Supplemental Task Order to the PM. The PM will be bound by the terms and conditions of any such Supplemental Task Order issued by the Commissioner.

3.3.2 Reallocation of Allowance Amounts: Notwithstanding the specific amounts allocated for allowances, as set forth in Task Orders issued hereunder, the Commissioner may, by issuance of a Supplemental Task Order to the PM, reallocate such specific allowance amounts.

3.3.3 Conflicts: In the event of any conflict between a Task Order issued hereunder and any provision of this Contract, the Contract will take precedence; except that with respect to the scope of services to be performed, the provisions of the Task Order will take precedence over Article 6 of this Contract.

3.3.4 No Right to Reject: The PM will have no right: (a) to decline to respond to an RFP (b) to reject a Task Order issued hereunder, or (c) to refuse to perform services pursuant to a Task Order. Violation of the requirements set forth herein will be grounds for termination for cause.

3.3.5 Work by Others: In the event there is a need for construction management, resident engineering and/or consulting services, the Commissioner reserves the right not to utilize this requirements contract and to proceed with a new solicitation for the required services, or to have the services performed by another CM(s), or by City employees, if the Commissioner, in his/her sole opinion, determines that it would be in the best interest of the City to do so.

3.3.6 Task Order Cancellation: The Commissioner reserves the right to cancel at any time a Task Order issued to the PM. The PM will be paid for Work performed on such Task Order to date.

ARTICLE 4 - Time Provisions

4.1 Term of the Contract: The Contract will commence on the date of registration by the Comptroller and will remain in effect for the period set forth in Exhibit A. At the Commissioner's sole option, the term of this Contract may be renewed for the period(s) stated in Exhibit A.

4.2 Task Order for the Project: The Task Order for the Project will commence as of the date of issuance and will remain in effect until (1) Final Acceptance by the Commissioner of all required construction work for the Project, and (2) completion of all required project management, construction management, resident engineering, and/or consulting services for the Project. The anticipated time frame for completion of all required construction work and all required services for the Project will be set forth in the Task Order. The anticipated timeframe for completion of all services for the Project will be re-evaluated upon submission by the construction contractor for the Project of a Progress Schedule, in accordance with Article 9 of the Standard Construction Contract.

4.2.1 If at any time during the performance of a Task Order, it becomes apparent to the PM that the actual time for (1) Final Acceptance by the Commissioner of all required construction work for the Project, or (2) completion of all required CM, resident engineering, and/or consulting services for the Project, will exceed the anticipated time for completion of such services set forth in the Task Order, the PM will immediately notify the Commissioner so that the parties (the PM and the City) may act proactively to, if appropriate, ensure adequate funding and continued registration status for the PM's activities. The PM must carefully document the causes for delay and will submit, upon request of the Commissioner, a log of all such delays and supporting document for the same.

4.3 Responsibility for Delay: In the event the Project is not completed within the timeframe set forth in the original Progress Schedule, the Commissioner will prepare a report analyzing the causes of the delay and determining responsibility for the same.

4.3.1 If the report indicates that the PM, as a result of its actions or inactions, is responsible for the delay, or any portion thereof, the Commissioner will deduct from any amount due and owing to the PM under this Contract, the total amount of staffing expenses paid to the PM for the period of the delay, or any portion thereof, for which the Commissioner determines the PM is responsible. For the purpose of this deduction, staffing expenses will mean the All Inclusive Hourly Rates paid in accordance with Article 7.

4.3.2 If the amount due and owing to the PM under this Contract is less than the total amount of staffing expenses paid to the PM for the period of the delay, or any portion thereof, for which the Commissioner determines the PM is responsible, the PM will be liable for and agrees to pay the difference upon demand by the Commissioner.

4.3.3 If the PM files a dispute regarding its responsibility for the delay, or any portion thereof, the PM is obligated, while the dispute is pending, to continue performing any required services pursuant to this Contract, and, if demanded by the Commissioner, to pay the amount described in the paragraph above.

4.3.4 The following will have no relevance to a determination by the Commissioner that the PM is responsible for the delay, or any portion thereof: (a) approval by the Commissioner of any time extension(s), and/or (2) approval by the Commissioner of any revised Project Schedule. Any such approval(s) by the Commissioner will not be referred to or offered in evidence by the PM or its attorneys in any dispute or proceeding regarding the PM's responsibility for the delay.

4.4 Continuation of the Contract: In the event (1) services are required for a Project, (2) a Task Order for the Project is issued by the Commissioner during the term of the Contract, including the last day thereof, and (3) the time frame for completion of the Project extends beyond the term of the Contract, the Contract will remain in effect for the purposes of such

Task Order through the time frame for completion of the Project, as set forth in the Task Order or any Supplemental Task Order required to complete the Project. For the purpose of this provision, the term of the Contract will mean whichever of the following is the latest and actual final period of the Contract: (1) the term of the Contract, or (2) the renewed/extended term of the Contract.

ARTICLE 5 - The PM's Personnel

5.1 General: The PM agrees, throughout the term of the Contract, to provide personnel for the performance of all required construction management and/or consulting services for the Project in accordance with Task Orders issued by the Commissioner. The PM specifically agrees that its employees, agents and subconsultants will possess the experience, knowledge and character necessary to qualify them individually for the particular duties they perform.

5.2 Staffing Requirements: Staffing requirements for personnel are set forth in Exhibits C and D. Such staffing requirements specify the following: (1) titles of personnel the PM will be required to provide, (2) minimum requirements per title, and (3) All Inclusive Hourly Rate per title. If any additional titles of personnel are required for the Project, the Task Order will specify: (A) additional required title(s), (B) minimum requirements per title, and (C) All Inclusive Hourly Rate per title.

5.2.1 Minimum Requirements: Personnel provided by the PM and/or its Subconsultant must satisfy the minimum requirements for the title in question, as set forth in Exhibit D. The PM will provide resumes or other documentation acceptable to the Commissioner to demonstrate that personnel to be provided comply with the minimum requirements per title. In exceptional circumstances, the Commissioner, in his/her sole and absolute discretion, may modify the minimum requirements per title.

5.3 Staffing Plan: The PM will provide personnel in accordance with the final approved Staffing Plan. Prior to finalization, the Staffing Plan is subject to review and approval by the Commissioner in accordance with the process described below. The final approved Staffing Plan will be included in the Task Order.

5.3.1 Contents of Staffing Plan: The PM's Staffing Plan will include the items set forth below.

- (a) Contract Executive, identified by the PM in its Proposal for the Project.
- (b) Key PM Personnel: Required titles of Key Personnel and specific individual for each title identified by the PM in its Proposal for the Project.
- (c) Other PM Personnel: Required titles and specific individual for each title
- (d) All Inclusive Hourly Rate for each specified individual (except Contract Executive), determined by the Commissioner in accordance with Article 7.
- (e) Total estimated hours per title per Task (Design, Procurement, Construction, Post Construction, and Other Specialty Services)
- (f) Total estimated amount per title per Task (Design, Procurement, Construction, Post Construction, and Other Specialty Services)
- (g) Total estimated amount for all required titles

5.3.2 Limitations on Payment: The specific individuals identified in the Staffing Plan, except for any Contract Executive(s), will be considered assigned personnel for the purpose of the PM's entitlement to payment for services performed by such individuals in accordance with Article 7. The PM will not be entitled to payment for staffing expenses for any individual not included in the approved Staffing Plan.

5.3.3 Contract Executive: The Contract Executive will serve as the PM's principal representative with respect to its obligations hereunder. Such Contract Executive will be responsible for coordinating the activities of personnel performing services and for providing, on an as needed basis, executive or management expertise and oversight with respect to the Project. The Contract Executive must be an employee, officer, or principal of the PM. The PM's entitlement to payment for the services of the Contract Executive(s) is limited to five (5) hours per month per Project. All other compensation for services provided by any Contract Executive(s) is deemed included in the All Inclusive Hourly Rate for all titles.

5.3.4 Key Project and Construction Management Personnel: The Key PM Personnel will provide all services necessary and required for the inspection, supervision, management, coordination and administration of the Project, so the required construction work is properly executed, completed in a timely fashion and conforms to the requirements of the

Construction Documents, as well as to good construction practice.

5.3.5 Agreement to Assign: The PM specifically agrees to assign to the Project for its entire duration, the specific individuals identified by the PM in its Proposal for the Project as the Contract Executive and the Key PM Personnel. Failure by the PM to provide any of the individuals identified in its Proposal for the Project as the Contract Executive and the Key PM Personnel will be considered a material breach of the Contract and grounds for termination for cause. Replacement of such Contract Executive and/or Key PM Personnel will only be permitted in the following circumstances: (1) if the designated individual is no longer employed by the PM, or (2) if the City does not direct the PM to commence work on the Project within six (6) months of the date on which the PM submitted its Proposal for the Project. Replacement of such Contract Executive and/or Key PM Personnel must comply with the conditions set forth below.

- (a) The PM's Proposal for the East Side Coastal Resiliency Project (ESCR) was submitted with the PM's Proposal for this Agreement. The Contract Executive, PM Personnel, including Key Personnel, and Subcontractors for the ESCR Project are listed in Exhibit O.
- (b) The Project Manager for the ESCR Project will be dedicated exclusively to the ESCR Project for the duration of the Project. The PM agrees that the Project Manager for the ESCR Project will not be proposed or assigned to other projects and will not work on other projects while services as the Project Manager for the ESCR Project.

5.3.6 Other Project and Construction Management Personnel: In addition to the Key PM Personnel, other PM personnel were identified by the PM in its Proposal for the Project. Such other PM personnel will provide services that are supportive or ancillary to the services provided by the Key PM Personnel. Replacement of such PM personnel must comply with the conditions set forth below.

5.3.7 Proposed Staffing Plan: Within five (5) business days of a written request from the Commissioner, the PM will submit a proposed Staffing Plan for the Project. Such Staffing Plan will include the items listed above. With respect to each individual, the PM will provide: (1) the individual's resume, as well as any other information detailing his/her technical qualifications and expertise, including but not limited to license information and (2) the title for which the individual meets the minimum requirements, as set forth in Exhibit D.

5.3.8 Review and Approval of Staffing Plan: The Commissioner will review the PM's proposed Staffing Plan and will direct revisions to the same if necessary prior to final approval thereof. As part of his/her review, the Commissioner will determine the following: (1) whether the Staffing Plan includes the individuals identified by the PM as Key Personnel in its Proposal for the Project, (2) whether each specific individual is qualified for the applicable title, and (3) All Inclusive Hourly Rate per hour to be paid for each specific individual, computed in accordance with Article 7. The PM will revise the Staffing Plan as directed, until such plan is approved in writing by the Commissioner.

5.3.9 Revisions to the Staffing Plan: Any revisions to the Staffing Plan are subject to the prior written approval of the Commissioner.

- (a) Replacement Personnel: No substitutions for assigned personnel will be permitted unless the proposed replacement has received the prior written approval of the Commissioner. Replacement personnel must possess qualifications substantially similar to those of the personnel being replaced. As set forth above, replacement of the Contract Executive and/or the Key PM Personnel will only be permitted under the circumstances set forth in Article 5.3.5.
- (b) Changes by the Commissioner: The Commissioner reserves the right to direct changes to the Staffing Plan, including without limitation, modifying the titles of personnel necessary for the Project and increasing or decreasing the personnel assigned to the Project, based upon the scope of the required Work. The PM will increase or decrease the personnel assigned to the Project, as directed by the Commissioner.
- (c) Removal of Personnel: At the Commissioner's request at any time, the PM will remove any personnel and substitute another employee of the PM reasonably satisfactory to the Commissioner. The Commissioner may request such substitution at any time, in his/her sole discretion.
- (d) Revisions Due to Delay: In the event completion of the Project is delayed for any reason, including without limitation, strike, work stoppage, severe weather conditions or other circumstances not due to the fault of the PM, the Commissioner will, in writing, direct revisions to the Staffing Plan to decrease the level of staffing to be maintained throughout the delay. The PM will be paid for the cost of the staffing it is directed by the

Commissioner to maintain. Upon termination of the delay, the PM will restore the level of staffing as directed by the Commissioner.

5.5 Subconsultants: The PM will engage the Subconsultant(s) identified in its Proposal for the Contract and set forth in Exhibit A, unless otherwise approved by the Commissioner. Failure by the PM to provide the Subconsultant(s) set forth in Exhibit A will be grounds for termination for cause. The PM will be responsible for the performance of services by its Subconsultant(s), including maintenance of schedules, correlation of their work and resolution of all differences between them.

5.5.1 General Provisions: General Provisions governing the Contract, including provisions requiring the approval of subcontractors, are set forth in Appendix A. Appendix A is included as an Exhibit to the Contract.

5.5.2 Replacement Subconsultants: No substitution for any Subconsultant will be permitted unless approved by the Commissioner. Any proposed replacement Subconsultant must possess qualifications and experience substantially similar to those of the Subconsultant being replaced and is subject to the prior written approval of the Commissioner. In addition, at the Commissioner's request at any time, the PM will remove any Subconsultant and substitute another Subconsultant reasonably satisfactory to the Commissioner. The Commissioner may request such substitution at any time, if, in his sole opinion, he determines that any Subconsultant may be unable to satisfactorily provide the required services in a timely fashion.

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

ARTICLE 6 – Construction Management Services

6.1 General: The PM will provide, to the satisfaction of the Commissioner, Services set forth in Exhibit B in accordance with this Article 6. The PM will comply with all local, State and Federal laws, rules and regulations applicable to this Agreement and to the services to be performed hereunder, including, if attached or referenced in the Task Order, the PM will comply with the applicable federal rider(s).

6.2 The PM will have responsibility for proper and efficient management of each Project, whether or not the details of those management responsibilities are further specified elsewhere in this Agreement. The PM's responsibilities will include, without limitation, the employment of or subcontracting for all necessary professionals, technicians, architects and engineers, properly qualified, licensed and skilled in the various aspects of the Work and the performance of all Services reasonably inferable from the Contract Documents. The PM will manage, direct, supervise, coordinate and cooperate with the construction contractors, and any Consultants, in furthering the best interests of the City with respect to each Project.

6.3 The PM will perform its duties hereunder in conformance with its expert experience and with the very highest standard of care practiced by project managers, construction managers and resident engineers in the New York City metropolitan area with a substantial and noteworthy experience in successfully managing major, high-profile projects in highly dense urban areas. Nothing to the contrary herein will erode this standard of care, including a requirement that the PM use its best efforts to comply with any provisions hereof. The PM agrees to use its best efforts to facilitate timely completion of each Project as soon as possible.

6.4 Services:

6.4.1 Comprehensive Project Management (PM)/Construction Management (CM)/Resident Engineering Inspection (REI) Services: The PM will provide all services necessary and required for the inspection, management, coordination and administration of the Project, so that the required construction work is properly executed, completed in a timely fashion and conforms to the requirements of the construction contract and to good construction practice. The PM/CM/REI to be provided by the PM will include without limitation the services set forth in this Article 6 and Exhibit B, unless provided otherwise in the Task Order. The PM will be responsible for the proper and efficient management of the Project(s) whether or not the details of its management responsibilities are further specified elsewhere in this Agreement. The PM will cooperate in all respects with representatives of the Commissioner concerning all aspects of the Project.

- (a) The PM will serve as the representative of the Commissioner and will, subject to review by the Commissioner, be responsible for the services delineated in the article of the Standard Construction Contract

entitled “The Engineer or Architect or Project Manager”. DDC will notify the construction contractor(s) in writing that the PM has been designated by the Commissioner to serve as his/her representative in connection with the Project. The City will require its construction contractor(s) to include the PM as an additional insured on commercial general liability policies required under the Standard Construction Contract.

- (b) The PM will ascertain the standard practices of the City prior to the performance of services required by this Contract. All PM services performed hereunder will be in accordance with these standard practices, except where grant rules require that alternative practices be adopted, in which instance the PM will be responsible for recommending and preparing written procedures for such alternative practices.
- (c) The Commissioner or his duly authorized representative(s) will have the right at all times to inspect the work of the PM and contractors.
- (d) The PM’s services will include the management, supervision and coordination of any Reimbursable Services required for the Project.
- (e) The PM will assign a Resident Engineer, approved by the Commissioner, and supporting personnel to each Project to supervise the construction work. Once approved, the Commissioner will notify the construction contractor(s) that such individual has been designated as the “Resident Engineer” for purposes of the article of the Standard Construction Contract entitled “The Resident Engineer”.
- (f) If directed by the Commissioner, the PM will provide oversight to ensure that the Building Information Modeling (BIM) services and/or uses are properly implemented by all construction contractors, as described in the DDC BIM Guidelines.

6.4.2 Partial PM/CM/REI: The PM will provide PM staffing as directed by the Commissioner to supplement PM, PM and/or REI services being provided by DDC’s in-house staff or by another firm on a Project. The PM will not be designated as the “Engineer or Architect or Project Manager” for purposes of the article of the Standard Construction Contract entitled “The Engineer or Architect or Project Manager”. The PM may, in the Commissioner’s discretion, designate the PM as the “Resident Engineer” for purposes of the article of the Standard Construction Contract entitled “The Resident Engineer”.

6.4.3 Consulting Services: The PM will provide consulting services as specified in the Task Order. Consulting services may include, without limitation, studies, audits, reviews, delay damage analysis, insurance risk and policy analysis and recommendations, preparation of various manuals, or other consulting services to facilitate DDC’s projects and programs. The PM represents that it has the requisite capacity and resources to provide a broad range of expert consulting services related to the architectural/engineering and construction industry.

6.4.4 Reimbursable Services: The PM will provide Reimbursable Services as directed in writing by the Commissioner. Reimbursable Services are described in Article 6.5.

6.4.5 Non-Reimbursable Services: Throughout the Contract, the PM will be responsible for providing the non-reimbursable items and/or services set forth below. All costs for providing such items and/or services are deemed included in the applicable All Inclusive Hourly Rate for all titles.

- (a) Overnight Delivery: Upon request, the PM will provide overnight delivery of the following Project documents: (1) design documents; (2) all required submittals, including without limitation shop drawings, material samples and catalogue cuts; (3) change orders; (4) documents with respect to payment, and (5) any other critical communications and/or documents.
- (b) Transportation: The PM will provide transportation for all personnel performing services, including without limitation: (1) expenses for ordinary transportation (i.e., other than long distance travel, as set forth in Article 6.5), (2) expenses for time spent by personnel commuting or traveling, and (3) expenses for parking and tolls. PMs and/or Subconsultants that are not located in New York City or its vicinity will not be entitled to reimbursement for transportation expenses.
- (c) Equipment: The PM will provide the items set forth below for all personnel performing services, including any Contract Executive(s).
 - (1) All computer hardware and software necessary for the PM to perform the required services, including, but not limited to, mobile tablets (latest release i-Pad, Surface Pro, or approved equal), CADD equipment and software, BIM equipment and software, computer and internet usage time and monthly costs thereof.
 - (2) All necessary office supplies and/or tools.

- (3) Communications equipment and service, including without limitation email-enabled cellular telephones (i.e., smartphones). The telephone numbers of all personnel will be submitted to the Commissioner.
 - (4) Hard hats, safety vests, and all other necessary and required Personal Protective Equipment (P.P.E.).
- (d) In the event the PM is directed in advance in writing by the Commissioner to provide services which require long distance travel, the PM will be reimbursed for expenses incurred in connection with such long-distance travel. Long distance travel is defined in Article 6.5.

6.5 Reimbursable Services: The PM may be directed by the Commissioner to provide Reimbursable Services for the Project. If so directed, the PM will provide such Reimbursable Services through entities approved by the Commissioner. Payment for Reimbursable Services will be in accordance with the terms and conditions set forth in Article 7.

6.5.1 No Reimbursable Services will be provided by the PM, or reimbursed hereunder, unless expressly authorized in a written directive from the Commissioner. For Reimbursable Services in excess of \$500, such written authorization must be provided in advance of the expenditure.

6.5.2 The PM will utilize the method of procurement directed by the Commissioner. If so directed, the PM will conduct a competitive bid and/or proposal process for the specified Reimbursable Service. In general, such competitive process will be required if the cost of the specified Reimbursable Service exceeds \$20,000.

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

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

- (a) Printing of contract documents and reports
- (b) Express mail postage, except as otherwise provided in Article 6.1.5 and excluding mail from the PM's main or home office to the Field Office
- (c) Laboratory services for testing of materials and/or items of work
- (d) Purchase of long lead items for the construction work
- (e) Performance of general conditions items
- (f) Long distance travel. In the event the PM is directed in advance in writing by the Commissioner to provide services which require long distance travel, the PM will be reimbursed for expenses incurred in connection with such long-distance travel. Long distance travel will mean travel which is in excess of 75 miles from whichever of the following is closer to the destination: (1) Columbus Circle, or (2) the PM's home office. Reimbursement for long distance travel expenses will be as set forth in Article 7. Long distance travel will not include travel expenses for the PM and/or any Subconsultants that are not located in New York City or its vicinity.
- (g) Any other services, determined by the Commissioner to be necessary for the Project.

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

6.6 Communications in Writing:

6.6.1 All recommendations and communications by the PM to the Commissioner that will affect the scheduled substantial completion date and/or cost of the Project will be made or confirmed by it in writing. The Commissioner may also require other recommendations and communications by the PM to be made or confirmed by it in writing. All recommendations relating to proposed changes in the work, work schedules, instructions to contractor(s) and all other matters requiring action by the Commissioner and the contractor(s) will be made directly to the Commissioner, unless otherwise directed by the

Commissioner. After approval by the Commissioner, the PM will issue instructions directly to the contractor(s).

6.6.2 The PM will institute written policies and procedures to ensure that Project decisions and directions on administrative matters that arise routinely throughout the Project, between the PM and the City and between the PM and construction contractor(s), are captured and contemporaneously recorded by the PM. Except where such decision or direction is captured in another form acceptable to DDC, a contract administrative memorandum will be prepared at the resolution of each issue (e.g., interpretation of contract documents, response to contractor requests for approval under the Standard Construction Contract, other similar routine project administration matters). The PM will maintain such memoranda as Project records and will ensure that such documents are saved electronically in searchable form, appropriately labeled, dated, and tagged.

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

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

6.8 Patented and Proprietary Items: The PM will not, without the prior written approval of the Commissioner, specify for the Project, or necessarily imply the required use of any article, product, material, fixture or form of construction, the use of which is covered by a patent, or which is otherwise exclusively controlled by a particular firm or group of firms.

ARTICLE 7 - Payment Terms and Conditions

7.1 General

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

7.1.2 Task Orders: The Task Order will specify an overall Not to Exceed amount for the services to be performed. Such overall Not to Exceed amount will be broken down into various amounts and/or allowances, including without limitation the following: (1) Allowance for Staffing Expenses, and (2) Allowance for Reimbursable Services. In the event the allowance amounts set forth in the Task Order are not sufficient, as determined by the Commissioner, to cover the cost of required services for which allowance amounts are specified, the Commissioner will increase the amounts of such allowances.

7.1.3 Reallocation of Allowance Amounts: Notwithstanding the specific amounts allocated for allowances, as set forth in Task Orders issued hereunder, the Commissioner may, by issuance of a Supplemental Task Order to the Contractor, reallocate such specific allowance amounts.

7.1.4 Guaranteed Minimum: In the event the PM is not issued any Task Orders hereunder and the PM has, throughout the term of the Contract, submitted reasonable Proposals for specific Projects, the City agrees to pay, and the PM agrees to accept, a minimum fee of \$2,500. The PM further agrees that under such circumstances, it has no action for damages or for loss of profits against the City.

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

7.1.6 Maximum Price: The Not to Exceed Amount set forth in the Task Order for the required services will constitute the maximum price to be paid to the PM for providing the services specified therein. The PM will not be entitled to payment in excess of such amount, unless the Commissioner, in his/her sole and absolute discretion, determines that exceptional circumstances exist which were not foreseeable by the parties and which were not attributable to any fault on the part of the PM.

7.3 Staffing Expenses

7.3.1 General: The Task Order will specify an Allowance for Staffing Expenses. Such allowance is provided for payment of the PM's staffing expenses for those individuals who have been assigned to the Project and are identified in the Staffing Plan approved by the Commissioner. Staffing Expenses may be payable on a timecard basis or as a fixed price, as set forth in the Task Order.

7.3.2 Limitations on Payment: Payment for staffing expenses is subject to the limitations set forth below.

- (a) Inclusion in Staffing Plan: The PM will not be entitled to payment for any individual not included in the approved Staffing Plan. The specific individuals identified in the approved Staffing Plan will be considered Assigned Personnel for the purpose of the PM's entitlement to payment for services performed by such individuals.
- (b) Contract Executive: The PM will not be entitled to payment for the services of the Contract Executive in excess of five (5) hours per month per Project. All other compensation for the Contract Executive is deemed included in the All Inclusive Hourly Rates for all other titles.

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

- (a) All expenses incurred by the PM and/or its Subconsultants in the performance of all required services for the Project
- (b) All expenses related to management and oversight, including, without limitation, any time spent by principals performing such duties
- (c) All expenses related to overhead and any anticipated profit
- (d) All expenses related to providing the non-reimbursable items and/or services set forth in Article 6.

7.3.5 No Payment for Principals: The PM will not be entitled to payment for a principal's time performing oversight or management duties. This prohibition on payment for a principal's time will not apply if the following criteria are met: (a) such principal is qualified to perform services in accordance with one of the titles set forth in Exhibit D, including as Contract Executive to the extent permitted by this Contract, and (b) such principal is included in the approved Staffing Plan for such title.

7.3.6 Amount of Payment for Timecard Staffing Expenses: For any week during which an Assigned Employee performs services for the Project on a time card basis, payment to the PM for such employee's services for that week will be calculated as follows: Multiply the amount set forth in subparagraph (a) by the number set forth in subparagraph (b).

- (a) All Inclusive Hourly Rate applicable to the Assigned Employee. The All Inclusive Hourly Rate for an Assigned Employee will be the rate set forth in Exhibit C for the title for which the Commissioner determines the employee meets the minimum requirements.
- (b) Total number of hours set forth on time sheets completed by the Assigned Employee for the week in question during which the Assigned Employee actually performed services for this Project on a time card basis. This total number of hours will NOT include the following: (1) any hours the Assigned Employee spent commuting and/or traveling; (2) any non-billable hours, as defined below; (3) any hours during which the Assigned Employee performed services for this Project covered under Fee(s); (4) any hours during which the Assigned Employee performed services for any other project; (5) any hours the Assigned Employee spent performing

services for this Project for which the PM is not entitled to compensation, and (6) any non-regular business hours, unless otherwise authorized in advance, in writing by the Commissioner.

- (c) Non-billable hours will be defined as any hours set forth on time sheets completed by the Assigned Employee which have been allocated to any category or function other than services performed for this Project. Non-billable hours will include without limitation: (1) compensated absence time, including without limitation vacation time, sick time, personal time and holidays; (2) performance of administrative tasks, or (3) any other time keeping category consistent with standard accounting practices.

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

7.3.8 Increases: The All Inclusive Hourly Rates set forth in Exhibit C will be subject to increases every year during the term of this Agreement, including during the renewal term and any extended term. Any increase in All Inclusive Hourly Rates will be subject to the limitations set forth below.

- (a) The first such increase will be made two (2) years after the date of registration of this Agreement and, thereafter, on every second anniversary date of the date of registration.
- (a) Any increase in the All Inclusive Hourly Rates will be based on an increase in the Employment Cost Index for Professional, Scientific, and Technical Services, published by the U.S. Dept. of Labor, Bureau of Labor Statistics (the "Index"), as determined by the Engineering Audit Office ("EAO").
- (b) Any increase in the All Inclusive Hourly Rates will be based on whatever increase may have occurred in the Index for the **PRIOR YEAR ONLY**, as determined by EAO. If, for the prior year, the Index showed an increase, the All Inclusive Hourly Rates will be increased. If, for the prior year, the Index declined or showed no increase, the All Inclusive Hourly Rates will remain unchanged.
- (c) Any increase in the All Inclusive Hourly Rates will be applied on a prospective basis only and will have no impact on rates paid to date.
- (d) Task Orders: The All Inclusive Hourly Rates in effect on the date the TRFP for the Project is issued will be used to negotiate Fees for the Task Order issued as a result of such TRFP, as well as for payment for services on a time card basis. This applies whether the TRFP for the Project is issued during the base term, the renewal term or the extended term, including the last day of any such term.
- (e) Supplemental Task Orders: The All Inclusive Hourly Rates in effect on the date the Supplemental Task Order is issued will be used to negotiate Fees for the Supplemental Task Order, as well as for payment for services on a time card basis. This applies whether the Supplemental Task Order is issued during the base term, the renewal term or the extended term, including the last day of any such term.

7.3.9 Not Used.

7.3.10 All Inclusive Hourly Rates for Additional Titles: If an additional title(s) of personnel is required for a specific Project, the Commissioner will establish the following: (1) additional required title(s), (2) minimum requirements per title, and (3) All Inclusive Hourly Rate per title. The All Inclusive Hourly Rate for the additional required title will be negotiated and will be commensurate with the rates charged by the PM for similar services/qualifications to other clients. The PM will submit the following in support of such negotiations: (1) all information and supporting documents requested by the Commissioner; (2) the actual annual direct salary for the proposed individual, determined as set forth below; (3) the PM's payroll register for the past twelve (12) months; (4) a copy of the PM's most recent audited Statement of Direct Labor, Fringe Benefits and General Overhead, prepared in accordance with Part 31 of the Federal Acquisition Regulation; and (5) if the PM has an audited overhead rate that has been accepted by a cognizant governmental agency that engages in capital construction work (city, state, or federal), it must submit such audited overhead rate, as well as a copy of the letter approving and/or accepting such rate, or, if the PM does not have an audited overhead rate that has been accepted by a cognizant governmental agency, the PM must submit a certified statement that no such rate exists for the PM. Actual direct salary rate will be determined as follows:

- (a) Actual Annual Direct Salary: The Assigned Personnel's actual annual direct salary will be the salary amount directly payable to such employee on an annual basis and will **NOT INCLUDE** any amount for the following

costs or payments: (1) any payments for services performed during other than regular business hours (i.e., premium for Night Differential and/or Overtime); (2) any employer payments mandated by law, including without limitation, Social Security and Medicare taxes, insurance (Worker's Compensation, Employers Liability, Unemployment); (3) any employer contributions to retirement plans, including without limitation pension and/or deferred compensation plans, and (4) any costs for any other fringe and/or supplemental benefits.

- (b) Computation: The Assigned Employee's actual annual direct salary rate per hour will be computed as follows: The Assigned Employee's actual annual direct salary, as defined above, divided by 2080.

7.3.11 Representations: With respect to staffing expenses, the PM covenants and represents the following: (1) it will incur only those staffing expenses which are necessary and reasonable, based on standard practice in the construction industry, to complete the Project, and (2) it will ensure that staffing expenses do not exceed the Allowance for Staffing Expenses provided for in the Task Order. Any deviations or anticipated deviations from the Allowance for Staffing Expenses, even those deviations which do not involve an increase in such allowance, will not be paid, unless approved in advance in writing by the Commissioner.

7.3.12 Amount of Payment for Fixed Fee Staffing Expenses: Staffing Expenses for any Task Order may be negotiated as a Fixed Fee, in the Commissioner discretion, and made payable as progress payments or on a milestone basis, as set forth in the Task Order.

7.4 Allowance for Reimbursable Services

7.4.1 General: In the event the Commissioner directs the PM to provide Reimbursable Services, the provisions set forth below will apply. In such case, the Task Order will specify an Allowance for Reimbursable Services. Such allowance is established for payment for Reimbursable Services, as set forth in Article 6. In providing Reimbursable Services, the PM will comply with all terms and conditions set forth in Article 6, including utilization of the method of procurement and form of payment directed by the Commissioner. If so directed, the PM will conduct a competitive bid and/or proposal process for the specified Reimbursable Service. In general, such competitive process will be required if the cost of the specified Reimbursable Service exceeds \$20,000.

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

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

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

7.4.4 No Mark Up: The PM will not be entitled to any mark-up for overhead and profit on payments for Reimbursable Services. All costs and expenses for overhead and/or profit in connection with the provision of Reimbursable Services are deemed included in the All Inclusive Hourly Rates for all titles.

7.4.5 In the event the Commissioner directs the PM to provide Reimbursable Services and such Reimbursable Services require the PM, through its personnel, to provide technical or professional services, the PM will be paid for staffing expenses for its personnel through the Allowance for Staffing Expenses.

7.5 Requisitions for Payment

7.5.1 Requisitions for payment may be submitted as the work progresses, but not more often than once a month. Requisitions will be in the authorized form and will set forth the services performed by the PM and the total amount of partial payment requested. The total amount of partial payment requested will be broken down into the following categories: (1) Staffing Expenses, and (2) Reimbursable Services. The PM will submit one (1) original and two (2) copies of each requisition

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

- (a) Project Progress Report: The PM will submit a current report indicating (1) the percentage of completion of all required Work for the Project, and (2) the services the PM provided during the payment period.
- (b) Staffing Expenses: For any period for which the PM is requesting payment for staffing expenses for an Assigned Personnel, the PM will submit the documentation set forth below:
 - (1) Assigned Personnel's name and title.
 - (2) Commissioner approval of the Assigned Personnel, either approved Staffing Plan or documentation approving the Assigned Personnel as a replacement.
 - (3) All Inclusive Hourly Rate applicable to the Assigned Employee. The All Inclusive Hourly Rate for an Assigned Employee will be the rate set forth in Exhibit C for the title for which the Commissioner determines the employee meets the minimum requirements, unless otherwise provided in writing by the Commissioner.
 - (5) Number of hours worked each day by the Assigned Personnel for the week(s) in question.
 - (6) Detailed time sheets completed by the Assigned Personnel for the week(s) in question. Such detailed time sheets will reflect all hours of service by the Assigned Personnel and a summary of activities performed each hour by the Assigned Personnel, including without limitation: (1) actual hours during the employee performed services for this Project; (2) actual hours during which the employee performed services for other projects; (3) non-billable hours, as defined above; (4) actual hours, if any, during which the Assigned Personnel spent performing services for this Project for which the PM is not entitled to compensation, and (5) non-regular business hours, if any.
 - (6) Commissioner authorization for services during non-regular business hours, if applicable
- (c) Reimbursable Services: For any period for which the PM is requesting payment for Reimbursable Services, the PM will submit the documentation set forth below:
 - (1) Description of the Reimbursable Service the PM was directed to provide.
 - (2) If payment is on a lump sum basis, a report on the progress of the work, indicating the percentage of completion of all required services.
 - (3) If payment is on a unit price basis, a report indicating the number of completed units.
 - (4) If payment is based on actual cost, received bills or any other data required by the Commissioner.

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

7.5.3 Following the receipt of a satisfactory requisition for payment, the Commissioner will approve a voucher in the amount certified for partial payment, less any and all deductions authorized to be made by the Commissioner under any terms of this Agreement or by law. This voucher will thereupon be filed with the Comptroller, with a copy thereof available to the PM if requested.

7.7 Liquidated Damages

7.7.1 In the event that the Task Order issued to the PM is HUD funded, the Task Order will include liquidated damages for failure to meet deadlines and/or key performance indicators. The PM and the Commissioner will negotiate the amount of liquidated damages to be assessed against the PM in the event the PM fails to perform the duties specified in the Agreement and the Task Order. If the parties cannot agree, the amount of liquidated damages will be set by the Commissioner and such amounts will be final and binding. The amount of liquidated damages set forth in the Task Order, in view of the difficulty of accurately ascertaining the loss which the City will suffer by reason of delay in commencing the work, will be fixed and agreed as liquidated damages that the City will suffer by reason of such delay, and not as a penalty.

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

hereunder will be less than the amount of liquated damages suffered by the City, the PM will be liable to pay the difference upon demand by the Commissioner.

ARTICLE 8 - Authorized Action

8.1 Wherever under this Agreement action is to be taken or approval given by the City, such action or approval may be taken or given only by the Commissioner or such person as may be designated in writing by the Commissioner to act on behalf of the City, for such purpose. The PM will not act or rely upon any purported direction or approval by any other person on behalf of the City.

8.2 The Commissioner, through his/her duly authorized representative, the Assistant Commissioner, will, in writing, designate a City employee to review the performance of the PM and to serve as the Commissioner's Representative with respect to this Agreement. The PM will be responsible to the Commissioner's Representative.

ARTICLE 9 - Services Furnished by the City

9.1 The City, through the personnel of DDC, or by retaining the services of a Consultant, or through allowances in the construction contract(s), will furnish for the use of the PM pile driving inspection, topographic surveys, inspection of concrete materials at mix plant and at job-site and such other services as the Commissioner, in his sole discretion, deems appropriate.

9.2 The Commissioner may direct the PM to provide any of the above described services as Reimbursable Services in accordance with Article 6 hereof.

ARTICLE 10 - Participation by Minority-Owned and Women-Owned Business Enterprises in City Procurement

ARTICLE I. 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 the program for participation in City procurement ("M/WBE Program") by minority- owned business enterprises ("MBEs") and women-owned business enterprises ("WBEs"), certified in accordance with Section 1304 of the New York City Charter. As stated in Section 6-129, the intent of the program is to address the impact of discrimination on the City's procurement process, and to promote the public interest in avoiding fraud and favoritism in the procurement process, increasing competition for City business, and lowering contract costs. The contract provisions contained herein are pursuant to Section 6-129, and the rules of the Department of Small Business Services ("DSBS") promulgated thereunder.

If this Contract is subject to the M/WBE Program established by Section 6-129, the specific requirements of MBE and/or WBE participation for this Contract are set forth in Schedule B of the Contract (entitled the "M/WBE Utilization Plan"), and are detailed below. The Contractor must comply with all applicable MBE and WBE requirements for this Contract.

All provisions of Section 6-129 are hereby incorporated in the Contract by reference and all terms used herein that are not defined herein will have the meanings given such terms in Section 6-129. Article I, Part A, below, sets forth provisions related to the participation goals for construction, standard and professional services contracts. Article I, Part B, below, sets forth miscellaneous provisions related to the M/WBE Program.

PART A: PARTICIPATION GOALS FOR CONSTRUCTION, STANDARD AND PROFESSIONAL SERVICES CONTRACTS OR TASK ORDERS

1. The MBE and/or WBE Participation Goals established for this Contract or Task Orders issued pursuant to this Contract, ("Participation Goals"), as applicable, are set forth on Schedule B, Part I to this Contract (see Page 1, line 1 Total Participation Goals) or will be set forth on Schedule B, Part I to Task Orders issued pursuant to this Contract, as applicable.

The Participation Goals represent a percentage of the total dollar value of the Contract or Task Order, as applicable, that may be achieved by awarding subcontracts to firms certified with New York City Department of Small Business Services as MBEs and/or WBEs, and/or by crediting the participation of prime contractors and/or qualified joint ventures as provided in Section

3 below, unless the goals have been waived or modified by Agency in accordance with Section 6-129 and Part A, Sections 10 and 11 below, respectively.

2. If Participation Goals have been established for this Contract or Task Orders issued pursuant to this Contract, Contractor agrees or will agree as a material term of the Contract that Contractor will be subject to the Participation Goals, unless the goals are waived or modified by Agency in accordance with Section 6-129 and Part A, Sections 10 and 11 below, respectively.

3. If Participation Goals have been established for this Contract or Task Order issued pursuant to this Contract, a Contractor that is an MBE and/or WBE will be permitted to count its own participation toward fulfillment of the relevant Participation Goal, provided that in accordance with Section 6-129 the value of Contractor's participation will be determined by subtracting from the total value of the Contract or Task Order, as applicable, any amounts that the Contractor pays to direct subcontractors (as defined in Section 6-129(c)(13)), and provided further that a Contractor that is certified as both an MBE and a WBE may count its own participation either toward the goal for MBEs or the goal for WBEs, but not both.

A Contractor that is a qualified joint venture (as defined in Section 6-129(c)(30)) will be permitted to count a percentage of its own participation toward fulfillment of the relevant Participation Goal. In accordance with Section 6-129, the value of Contractor's participation will be determined by subtracting from the total value of the Contract or Task Order, as applicable, any amounts that Contractor pays to direct subcontractors, and then multiplying the remainder by the percentage to be applied to total profit to determine the amount to which an MBE or WBE is entitled pursuant to the joint venture agreement, provided that where a participant in a joint venture is certified as both an MBE and a WBE, such amount will be counted either toward the goal for MBEs or the goal for WBEs, but not both.

4. A. If Participation Goals have been established for this Contract, a prospective contractor will be required to submit with its bid or proposal, as applicable, a completed Schedule B, M/WBE Utilization Plan, Part II (see Pages 2-4) indicating: (a) whether the contractor is an MBE or WBE, or qualified joint venture; (b) the percentage of work it intends to award to direct subcontractors; and (c) in cases where the contractor intends to award direct subcontracts, a description of the type and dollar value of work designated for participation by MBEs and/or WBEs, and the time frames in which such work is scheduled to begin and end. In the event that this M/WBE Utilization Plan indicates that the bidder or proposer, as applicable, does not intend to meet the Participation Goals, the bid or proposal, as applicable, will be deemed non-responsive, unless Agency has granted the bidder or proposer, as applicable, a pre- award waiver of the Participation Goals in accordance with Section 6-129 and Part A, Section 10 below.

B. (i) If this Contract is for a master services agreement or other requirements type contract that will result in the issuance of Task Orders that will be individually registered ("Master Services Agreement") and is subject to M/WBE Participation Goals, a prospective contractor will be required to submit with its bid or proposal, as applicable, a completed Schedule B, M/WBE Participation Requirements for Master Services Agreements That Will Require Individually Registered Task Orders, Part II (page 2) indicating the prospective contractor's certification and required affirmations to make all reasonable good faith efforts to meet participation goals established on each individual Task Order issued pursuant to this Contract, or if a partial waiver is obtained or such goals are modified by the Agency, to meet the modified Participation Goals by soliciting and obtaining the participation of certified MBE and/or WBE firms. In the event that the Schedule B indicates that the bidder or proposer, as applicable, does not intend to meet the Participation Goals that may be established on Task Orders issued pursuant to this Contract, the bid or proposal, as applicable, will be deemed nonresponsive.

(ii) Participation Goals on a Master Services Agreement will be established for individual Task Orders issued after the Master Services Agreement is awarded. If Participation Goals have been established on a Task Order, a contractor will be required to submit a Schedule B – M/WBE Utilization Plan For Independently Registered Task Orders That Are Issued Pursuant to Master Services Agreements, Part II (see Pages 2-4) indicating: (a) whether the contractor is an MBE or WBE, or qualified joint venture; (b) the percentage of work it intends to award to direct subcontractors; and (c) in cases where the contractor intends to award direct subcontracts, a description of the type and dollar value of work designated for participation by MBEs and/or WBEs, and the time frames in which such work is scheduled to begin and end. The contractor must engage in good faith efforts to meet the Participation Goals as established for the Task Order unless Agency has granted the contractor a pre-award waiver of the Participation Goals in accordance with Section 6-129 and Part A, Section 10 below.

C. THE BIDDER/PROPOSER MUST COMPLETE THE SCHEDULE B INCLUDED HEREIN (SCHEDULE B, PART II). A SCHEDULE B SUBMITTED BY THE BIDDER/PROPOSER WHICH DOES NOT INCLUDE THE VENDOR CERTIFICATION AND REQUIRED AFFIRMATIONS (SEE SECTION V OF PART II) WILL BE DEEMED TO BE NON-RESPONSIVE, UNLESS A FULL WAIVER

OF THE PARTICIPATION GOALS IS GRANTED (SCHEDULE B, PART III). IN THE EVENT THAT THE CITY DETERMINES THAT THE BIDDER/PROPOSER HAS SUBMITTED A SCHEDULE B WHERE THE VENDOR CERTIFICATION AND REQUIRED AFFIRMATIONS ARE COMPLETED BUT OTHER ASPECTS OF THE SCHEDULE B ARE NOT COMPLETE, OR CONTAIN A COPY OR COMPUTATION ERROR THAT IS AT ODDS WITH THE VENDOR CERTIFICATION AND AFFIRMATIONS, THE BIDDER/PROPOSER WILL BE NOTIFIED BY THE AGENCY AND WILL BE GIVEN FOUR (4) CALENDAR DAYS FROM RECEIPT OF NOTIFICATION TO CURE THE SPECIFIED DEFICIENCIES AND RETURN A COMPLETED SCHEDULE B TO THE AGENCY. FAILURE TO DO SO WILL RESULT IN A DETERMINATION THAT THE BID/PROPOSAL IS NON-RESPONSIVE. RECEIPT OF NOTIFICATION IS DEFINED AS THE DATE NOTICE IS E-MAILED OR FAXED (IF THE BIDDER/PROPOSER HAS PROVIDED AN E-MAIL ADDRESS OR FAX NUMBER), OR NO LATER THAN FIVE (5) CALENDAR DAYS FROM THE DATE OF MAILING OR UPON DELIVERY, IF DELIVERED.

5. Where an M/WBE Utilization Plan has been submitted, the Contractor will, within 30 days of issuance by Agency of a notice to proceed, submit a list of proposed persons or entities to which it intends to award subcontracts within the subsequent 12 months. In the case of multiyear contracts, such list will also be submitted every year thereafter. The Agency may also require the Contractor to report periodically about the contracts awarded by its direct subcontractors to indirect subcontractors (as defined in Section 6-129(c)(22)). PLEASE NOTE: If this Contract is a public works project subject to GML §101(5) (i.e., a contract valued at or below \$3M for projects in New York City) or if the Contract is subject to a project labor agreement in accordance with Labor Law §222, and the bidder is required to identify at the time of bid submission its intended subcontractors for the Wicks trades (plumbing and gas fitting; steam heating, hot water heating, ventilating and air conditioning (HVAC); and electric wiring), the Contractor must identify all those to which it intends to award construction subcontracts for any portion of the Wicks trade work at the time of bid submission, regardless of what point in the life of the contract such subcontracts will occur. In identifying intended subcontractors in the bid submission, bidders may satisfy any Participation Goals established for this Contract by proposing one or more subcontractors that are MBEs and/or WBEs for any portion of the Wicks trade work. In the event that the Contractor's selection of a subcontractor is disapproved, the Contractor will have a reasonable time to propose alternate subcontractors.

6. MBE and WBE firms must be certified by DSBS in order for the Contractor to credit such firms' participation toward the attainment of the Participation Goals. Such certification must occur prior to the firms' commencement of work. A list of MBE and 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 St., 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. A firm that is certified as both an MBE and a WBE may be counted either toward the goal for MBEs or the goal for WBEs, but not both. No credit will be given for participation by a graduate MBE or graduate WBE, as defined in Section 6-129(c)(20).

7. Where an M/WBE Utilization Plan has been submitted, the Contractor will, with each voucher for payment, and/or periodically as Agency may require, submit statements, certified under penalty of perjury, which will include, but not be limited to, the total amount the Contractor paid to its direct subcontractors, and, where applicable pursuant to Section 6-129(j), the total amount direct subcontractors paid to indirect subcontractors; the names, addresses and contact numbers of each MBE or WBE hired as a subcontractor by the Contractor, and, where applicable, hired by any of the Contractor's direct subcontractors; and the dates and amounts paid to each MBE or WBE. The Contractor will also submit, along with its voucher for final payment: the total amount it paid to subcontractors, and, where applicable pursuant to Section 6-129(j), the total amount its direct subcontractors paid directly to their indirect subcontractors; and a final list, certified under penalty of perjury, which will include the name, address and contact information of each subcontractor that is an MBE or WBE, the work performed by, and the dates and amounts paid to each.

8. If payments made to, or work performed by, MBEs or WBEs are less than the amount specified in the Contractor's M/WBE Utilization Plan, Agency will take appropriate action, in accordance with Section 6-129 and Article II below, unless the Contractor has obtained a modification of its M/WBE Utilization Plan in accordance with Section 6-129 and Part A, Section 11 below.

9. Where an M/WBE Utilization Plan has been submitted, and the Contractor requests a change order the value of which exceeds the greater of 10 percent of the Contract or Task Order, as applicable, or \$500,000, Agency will review the scope of work for the Contract or Task Order, as applicable, and the scale and types of work involved in the change order, and determine whether the Participation Goals should be modified.

10. Pre-award waiver of the Participation Goals. (a) A bidder or proposer, or contractor with respect to a Task Order, may seek a pre-award full or partial waiver of the Participation Goals in accordance with Section 6-129, which requests that Agency change one or more Participation Goals on the grounds that the Participation Goals are unreasonable in light of the availability

of certified firms to perform the services required, or by demonstrating that it has legitimate business reasons for proposing a lower level of subcontracting in its M/WBE Utilization Plan.

(b) To apply for a full or partial waiver of the Participation Goals, a bidder, proposer, or contractor, as applicable, must complete Part III (Page 5) of Schedule B and submit such request no later than seven (7) calendar days prior to the date and time the bids, proposals, or Task Orders are due, in writing to the Agency by email at zhangji@ddc.nyc.gov or via facsimile at (718) 391-1886. Bidders, proposers, or contractors, as applicable, who have submitted requests will receive an Agency response by no later than two (2) calendar days prior to the due date for bids, proposals, or Task Orders; provided, however, that if that date would fall on a weekend or holiday, an Agency response will be provided by close-of-business on the business day before such weekend or holiday date.

(c) If the Agency determines that the Participation Goals are unreasonable in light of the availability of certified firms to perform the services required, it will revise the solicitation and extend the deadline for bids and proposals, or revise the Task Order, as applicable.

(d) Agency may grant a full or partial waiver of the Participation Goals to a bidder, proposer or contractor, as applicable, who demonstrates—before submission of the bid, proposal or Task Order, as applicable—that it has legitimate business reasons for proposing the level of subcontracting in its M/WBE Utilization Plan. In making its determination, Agency will consider factors that will include, but not be limited to, whether the bidder, proposer or contractor, as applicable, has the capacity and the bona fide intention to perform the Contract without any subcontracting, or to perform the Contract without awarding the amount of subcontracts represented by the Participation Goals. In making such determination, Agency may consider whether the M/WBE Utilization Plan is consistent with past subcontracting practices of the bidder, proposer or contractor, as applicable, whether the bidder, proposer or contractor, as applicable, has made efforts to form a joint venture with a certified firm, and whether the bidder, proposer, or contractor, as applicable, has made good faith efforts to identify other portions of the Contract that it intends to subcontract.

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

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

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

(b) The Agency may modify the Participation Goals when the scope of the work has been changed by the Agency in a manner that affects the scale and types of work that the Contractor indicated in its M/WBE Utilization Plan would be awarded to subcontractors.

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

13. If Participation Goals have been established for this Contract or a Task Order issued pursuant to this Contract, at least once annually during the term of the Contract or Task Order, as applicable, Agency will review the Contractor's progress toward attainment of its M/WBE Utilization Plan, including but not limited to, by reviewing the percentage of work the Contractor has actually awarded to MBE and/or WBE subcontractors and the payments the Contractor made to such subcontractors.

14. If Participation Goals have been established for this Contract or a Task Order issued pursuant to this Contract, Agency will evaluate and assess the Contractor's performance in meeting those goals, and such evaluation and assessment will become part of the Contractor's overall contract performance evaluation.

PART B: MISCELLANEOUS

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

2. Pursuant to DSBS rules, construction contracts that include a requirement for an M/WBE Utilization Plan will not be subject to the law governing Locally Based Enterprises set forth in Section 6-108.1 of the Administrative Code of the City of New York.

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

4. Prospective contractors are encouraged to enter into qualified joint venture agreements with MBEs and/or WBEs as defined by Section 6-129(c)(30).

5. By submitting a bid or proposal the Contractor hereby acknowledges its understanding of the M/WBE Program requirements set forth herein and the pertinent provisions of Section 6-129, and any rules promulgated thereunder, and if awarded this Contract, the Contractor hereby agrees to comply with the M/WBE Program requirements of this Contract and pertinent provisions of Section 6-129, and any rules promulgated thereunder, all of which will be deemed to be material terms of this Contract. The Contractor hereby agrees to make all reasonable, good faith efforts to solicit and obtain the participation of MBEs and/or WBEs to meet the required Participation Goals.

ARTICLE II. ENFORCEMENT

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

2. Whenever Agency believes that the Contractor or a subcontractor is not in compliance with Section 6-129 or the DSBS rules promulgated pursuant to Section 6-129, or any provision of this Contract that implements Section 6-129, including, but not limited to any M/WBE Utilization Plan, Agency will send a written notice to the Contractor describing the alleged

noncompliance and offering the Contractor an opportunity to be heard. Agency will then conduct an investigation to determine whether such Contractor or subcontractor is in compliance.

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

- (a) Entering into an agreement with the Contractor allowing the Contractor to cure the violation;
- (b) Revoking the Contractor's pre-qualification to bid or make proposals for future contracts;
- (c) Making a finding that the Contractor is in default of the Contract;
- (d) Terminating the Contract;
- (e) Declaring the Contractor to be in breach of Contract;
- (f) Withholding payment or reimbursement;
- (g) Determining not to renew the Contract;
- (h) Assessing actual and consequential damages;
- (i) Assessing liquidated damages or reducing fees, provided that liquidated damages may be based on amounts representing costs of delays in carrying out the purposes of the M/WBE Program, or in meeting the purposes of the Contract, the costs of meeting utilization goals through additional procurements, the administrative costs of investigation and enforcement, or other factors set forth in the Contract;
- (j) Exercising rights under the Contract to procure goods, services or construction from another contractor and charge the cost of such contract to the Contractor that has been found to be in noncompliance; or
- (k) Taking any other appropriate remedy.

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

5. Whenever Agency has reason to believe that an MBE and/or WBE is not qualified for certification, or is participating in a contract in a manner that does not serve a commercially useful function (as defined in Section 6-129(c)(8)), or has violated any provision of Section 6-129, Agency will notify the Commissioner of DSBS who will determine whether the certification of such business enterprise should be revoked.

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

7. The Contractor's record in implementing its M/WBE Utilization Plan will be a factor in the evaluation of its performance. Whenever Agency determines that a Contractor's compliance with an M/WBE Utilization Plan has been unsatisfactory, Agency will, after consultation with the City Chief Procurement Officer, file an advice of caution form for inclusion in VENDEX as caution data.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in triplicate, the day and year first above written, one copy to remain with the Commissioner, one copy to be filed with the Comptroller of the City of New York and one copy to be delivered to the PM.

THE CITY OF NEW YORK

By: _____
_____ Commissioner

CONSTRUCTION MANAGER:

By: _____

Print Name: _____

Title: _____

EIN: _____

Approved as to Form and Certified
as to Legal Authority

Acting Corporation Counsel

Date: _____

ACKNOWLEDGMENT BY CORPORATION

State of _____ County of _____ ss:

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

Notary Public or Commissioner of Deeds

ACKNOWLEDGMENT BY COMMISSIONER

State of _____ County of _____ ss:

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

Notary Public or Commissioner of Deeds

EXHIBIT A

CONTRACT INFORMATION

- Division: Division of Infrastructure; provided, however, the Commissioner reserves the right to issue Task Orders to the PM for projects from the Division of Public Buildings.
- Type of Projects: Coastal Resiliency Projects
- Boroughs: City Wide – All Five Boroughs
- Total Amount: Not to Exceed: \$120,000,000
- Contract Time Frame:
 - Contract Term: Duration: 1095 consecutive calendar days (“ccds”)
 - Renewal: Duration: One renewal period of 730 ccds
Increase: Not to Exceed: \$20,000,000
- Subconsultant(s): If any, to be inserted after selection of the PM
- Insurance Requirements: The amounts of such insurance, subject to Article 7 of Appendix A, are set forth below in Schedule A. General Provisions governing the Contract, including insurance coverage the PM and its subconsultants are required to provide, are set forth in Appendix A, which is included as an Exhibit to the Contract.

EXHIBIT A, CONTINUED: SCHEDULE A

General Provisions, Appendix A-Article 7¹ -- Insurance	
Types of Insurance (per Article 7 in its entirety, including listed paragraph)	Minimum Limits and Special Conditions
<p>■ Workers' Compensation §7.02</p> <p>■ Disability Benefits Insurance §7.02</p> <p>■ Employers' Liability §7.02</p>	<p>Statutory amounts.</p>
<p>■ Commercial General Liability §7.03(A)</p>	<p><u>\$1,000,000.00</u> per occurrence</p> <p><u>\$1,000,000.00</u> personal & advertising injury (unless waived in writing by the Department)</p> <p><u>\$2,000,000.00</u> aggregate</p> <p><u>\$0</u> products/completed operations</p> <p>Additional Insureds:</p> <p>1. City of New York, including its officials and employees, and</p> <p>2. _____</p> <p>3. _____</p>
<p>Commercial Auto Liability §7.03(B)</p> <p>If vehicles are used in the provision of Services under this Agreement, then the PM will maintain Commercial Automobile Liability insurance in the amount specified.</p>	<p><u>\$1,000,000.00</u> per accident combined single limit</p> <p>If vehicles are used for transporting hazardous materials, the PM will provide pollution liability broadened coverage for covered vehicles (endorsement CA 99 48) as well as proof of MCS 90</p>
<p>Professional Liability/Errors & Omissions §7.03(C)</p> <p>For all professional Services provided by the PM pursuant to this Agreement, PM will maintain, or cause each Subconsultant providing professional Services to maintain,</p>	<p><u>\$5,000,000.00</u> per claim</p>

¹ All article or section references in Schedule A are to Appendix A unless otherwise specified.

<p>professional liability insurance or errors and omissions insurance appropriate to the type(s) of such Services to be provided under this Agreement in the amount specified.</p>	
<p><input type="checkbox"/> Crime Insurance §7.03(D)</p>	<p>\$_____ Employee Theft/Dishonesty</p> <p>\$_____ Computer Fraud</p> <p>\$_____ Funds Transfer Fraud</p> <p>\$_____ Client Coverage</p> <p>\$_____ Forgery or Alteration</p> <p>\$_____ Inside the Premises (theft of money and securities)</p> <p>\$_____ Inside the Premises (robbery or safe burglary of other property)</p> <p>\$_____ Outside the Premises</p> <p>\$_____ Money Orders and Counterfeit Money</p> <p>City of New York is a loss payee as its interests may appear</p>
<p><input type="checkbox"/> Cyber Liability Insurance §7.03(E)</p>	<p><i>Reserved</i></p>
<p><input type="checkbox"/> [OTHER]</p>	
<p><input type="checkbox"/> [OTHER]</p>	
<p>Section 10.07 – Liquidated Damages</p>	
<ul style="list-style-type: none"> • Violation of Section 3.02(H), reporting subcontractors in the City’s Payee Information Portal • Additional amounts/types on a Task Order Basis, as required by Article 7 	<p>\$100 per day</p>
<p>Section 14.04 – Notice</p>	
<p>Department’s Mailing Address for Notices</p>	<p>Agency Head 30-30 Thomson Avenue Long Island City, Queens 11101</p>

PM's Mailing Address and Email Address for Notices	

EXHIBIT B

SCOPE OF SERVICES

Project Management/Construction Management and Related Services

A. INTENT AND PROGRAM OBJECTIVE

It is the intent of this Project Management/Construction Management and Related Services Contract that the PM provide all project management and construction management services necessary, from project planning through close-out, such that each Project is completed safely, on time, within budget, in accordance with the highest standards of quality for design and construction, and in compliance with applicable grant requirements.

For each Project, the City will engage the services of construction contractors through competitive sealed bidding in accordance with applicable Law. In addition to procurement, pre-construction and other services set forth herein, the PM will be designated as the “Engineer” as that role is defined in the City’s Standard Construction Contract and will perform, in accordance with the standard of care set forth herein, all services and tasks associated with such role. At each Project Site, the PM will also serve in the role of “Resident Engineer” as that role is defined in the City’s Standard Construction Contract. Specific requirements and services include, but are not limited to the Tasks set forth in this Scope of Services and Article 6 of the Contract.

In addition, for each Project, the City has procured, or will procure, multiple Consultants to perform investigation, design services and environmental review and permitting services, including Environmental Impact Studies (EIS) and Uniform Land Use Review Procedure (ULURP) assessments for each Project. The PM may be designated as the “Commissioner’s Representative” for certain Consultant contracts and will be charged with coordinating, managing, supervising and facilitating the completion of all Consultant tasks for the Project. The PM will be charged with managing the activities of these Consultants, standing in place of the City, as owner, for all Consultant-contract activities, except for those activities reserved to the City. The PM’s role as “Commissioner’s Representative” for Consultant contracts will be similar to the PM’s role and powers as the “Engineer” under the City’s Standard Construction Contract, except as limited herein or in the Task Order.

DDC has engaged the PM to manage, supervise, and coordinate Coastal Resiliency Projects in all five (5) Boroughs. The PM has been chosen based on its demonstration and representation that it has the necessary experience, record of past performance, expertise, personnel, and resources to coordinate and manage multiple complex and multi-faceted projects simultaneously. Although DDC will have oversight over the PM’s performance, the PM must be the primary driver, coordinator, and facilitator of Project activities.

In addition to compliance with all local, State and Federal laws, rules and regulations, the PM will be tasked with ensuring Project compliance with various grant criteria, including but not limited to US Housing and Urban Development (HUD) Community Development Block Grant – Disaster Recovery (CDBG-DR), National Disaster Resilience (CDBG-NDR), Federal Emergency Management Agency (FEMA), and Hazard Mitigation Grant Program (HMGP) grant requirements. Grant compliance activities will include, but not be limited to documenting all Project activities and procurements in a clear and consistent manner, responding to document requests from various auditing and/or inspector general offices, Section 3 reporting, and cost reasonableness assessments for all Project procurement activities. For HUD-funded Task Orders, the PM will be required to comply with Section 3 and will also be tasked with coordinating Section 3 compliance activities and reporting for construction contractors and Consultants.

At a minimum, a Task Order will be issued for each Project, although multiple Task Orders may be issued for larger Projects with extended phasing. Task Orders and Supplemental Task Orders may be issued at any time during the term of this Contract. The PM’s Services will continue until the completion of all Services required and close-out of each Project.

B. SPECIFIC REQUIREMENTS FOR PROJECT/CONSTRUCTION MANAGEMENT SERVICES.

As set forth on a Task Order basis, the PM will provide the services set forth herein.

Each Task Order will set forth a Scope of Services. Each Task Order is anticipated to include, without limitation, the tasks set forth below:

Task 1. Design Phase Services (Pre-Construction)

Task 2. Procurement Services

Task 3. Construction Management Services

Task 4. Post-Construction Services

Task 5. Other Specialty Services

Typical tasks that may be required of the PM under these categories are detailed in the following sections.

Task 1 – Design Phase Services (Pre-Construction Phase I)

- 1.1. The services to be provided during the design phase for each Project include, but are not limited to, managing, coordinating, providing responsible reporting, documentation, recommendations and supervision of the following services: pre-construction scheduling, review and recommendations during the design development stages from schematic phase to the completion of working drawings, preparation of conceptual and periodic estimates, budget assessment and cost containment advice, value engineering studies and recommendations, and project planning and management services.
- 1.2. Communication and Coordination. The PM will coordinate and direct design progress meetings with stakeholders and design Consultants on a biweekly or monthly basis, or as often as necessary to facilitate timely and meaningful progress in the Project design. The PM will provide continuous constructability and cost analysis throughout the design process.
- 1.3. Compliance and Constructability Review.
 - a. Compliance Review. The PM will perform a thorough document review to become familiar with the guidelines, requirements and procedures governing the Project. The PM will thoroughly review the plans and specifications, including all available design information relevant to the project. The PM will continue to review the Consultant's submittals, including design plans and conformance to contract requirements and stakeholder agencies standards throughout the duration of the design and construction work, as an ongoing effort to identify and address potential problems or conflicts and to ensure compliances with all applicable guidelines, requirements and procedures governing the project.
 - b. Constructability Review. The PM will review the proposed design for constructability, suitability of materials and cost impact of various alternatives. The Constructability Review will also include a thorough investigation of the Project site and subsurface conditions based on available record drawings, utility surveys, soil boring information and actual visual inspection of the Project Site. The PM will notify DDC of any work and/or discrepancies not accounted for in the Project budget and will update the Project budgets and make recommendations to DDC as to the course of action to be taken to keep the construction costs at or under the Project's budget. The PM will also provide value improvement advice for the Project.
 - c. The PM will review the contract documents prior to bid and recommend or make, as directed, changes to ensure that the information is adequate to produce clear bid documents in conformance with City, State, and Federal procurement regulations, including but not limited to 2 CFR 200.320. Ensure that site conditions are well depicted, limitations on the site have been considered, and phasing requirements have been assessed. The PM will provide inputs relative to means and methods of construction, duration of

construction, and constructability and provides comments per DDC procedures.

- d. The PM will assist with identifying long lead procurement items that may impact bid and overall project timeframes. Also, in cooperation with the design Consultant, identify potential construction alternatives and materials or systems selections which would substantially shorten the Project schedules and/or reduce the project costs. If opportunities exist, notify the City and the design Consultant.
- e. Goals. The Compliance Review and the Constructability Review will be performed to ensure the following:
 - i. The drawings and specifications are complete, covering all construction work coordinated among various disciplines without conflicts and ambiguities. All required work is included in the contract documents.
 - ii. The contract documents are fully coordinated and recommending alternative solutions whenever design details affect construction feasibility, the estimated cost or the Project Schedule.
 - iii. Contract documents are reviewed for claims prevention, duplications, errors, omissions, life safety requirements, poor construction practices, and conflicts with or misrepresentations of existing known conditions and appropriate changes are incorporated.
 - iv. The contract drawings adequately represent the existing Project Site conditions with respect to Utilities, underground structure and any other known conditions that may affect demolition and/or construction.
 - v. The construction staging, and phasing is adequately shown with respect to constructability, construction access, pedestrian safety and detours, vehicular safety, utilities access, transit operations, storage and logistics.
- f. The PM will prepare, review and recommend suitable phasing of the construction schedule to minimize interference with existing operations, adjacent facilities and other conflicts while maximizing construction efficiency and safety without inconvenience to the users, including, without limitation, the review of and recommendations to the construction phasing plans developed by the design Consultant.
- g. The PM will prepare Standard Operation Procedures (SOPs) and Job Aids for the Project.
- h. Once the PM is satisfied that all of the City's comments have been addressed and the design documents are ready for bid, the PM will mark the design documents as ready for bid.

1.4. Construction Management Plan. The PM will prepare a Construction Management Plan (CMP) for the Project which will establish the scope for the Project and the general basis for the sequence of procurement and construction of the Project. The CMP will reflect a thorough understanding of the Project design, construction complexities, and the City priority of minimizing disruption to parks, traffic network and neighboring community. The CMP will assist with the overall successful delivery of the project through the oversight of multiple bid packages, and the monitoring and ensuring grant funding compliance and other funding grant. The CMP will set forth the coordination of activities to ensure that the goals and objectives are accomplished within a prescribed period and funding parameters, while ensuring safety, promoting diversity, and delivering the scope as outlined by the DDC.

- a. The PM will evaluate the local market, Project schedule and budget goals, and will develop various alternatives approaches, and make recommendation to DDC. Upon approval by DDC of the final draft CMP, the PM will prepare the CMP in final form. This document will indicate the project's rationale and recommend the strategy for purchasing, construction, the various bid packages for the projects and a Master Project Schedule.
- b. The PM will develop the CMP that will outline the construction management services and practices for the Project. CMP must clearly delineate the party responsible for each task. The guidelines developed from the

CMP will outline the necessary process and steps for the PM to:

- i. Providing performance evaluations, as requested, for all construction contractors and Consultants that are working for the City.
- ii. Implementing program policies and procedures during the construction phase of the work.
- iii. On-site design coordination and issue of drawings/clarification.
- iv. Monitoring construction to identify and report variances between actual costs and approved budgets to the project team and identifying potential cost overruns.
- v. Work with all local and government agencies to keep them informed of the progress of the project. Meet with them as required.
- vi. Approval of contractor shop drawings, product data sheets, and samples.
- vii. Refinement of Work Breakdown Structure (WSB).
- viii. Monitoring the progress of work with the Master construction schedule.
- ix. Day-to-day correspondence including contractual issues.
- x. Changing order management for design changes and Extra Work.
- xi. Oversight for the daily and workload of all construction management team.
- xii. After PM's review and approval, issue of RFC drawings (ready for construction) to respective contractors and keep updated record issued.
- xiii. Conducting progress review meetings on weekly basis.
- xiv. Collecting, review, and maintenance all records of contractor's daily progress reports.
- xv. Arrangement for corrections of any deficiencies through contractors and develop all corresponding punch lists.
- xvi. Review and approval of construction contract requisitions, contractor invoices, and proposals for completeness and accuracy. Certification for the completion of work and signing monthly pay estimates.
- xvii. Biweekly construction coordination meetings with the multiple contractors, City representatives, and Consultants.
- xviii. Review of procedures and lines of authority to carry out the overall plan for development of the Project.
- xix. The PM's approved Safety Management Plan
- xx. Coordination of all Project activities to ensure the goals and objectives are accomplished within a prescribed period and in accordance with the objectives of this Contract.
- xxi. Develop and maintain a Request for Information (RFI) logs. Coordinate and track responses with the design Consultant(s). Report performance issues.

1.5. Master Project Schedule. The PM will develop a Master Project Schedule for the project, subject to approval by DDC, which will contain key milestones to be accomplished by the participants, including milestone completion dates for any Consultant's final design activities. If necessary or directed, the PM will update the Master Project Schedule for the Project and submit each update for DDC's approval.

- 1.6. Project Budget. The PM will develop a budget based upon the amounts provided by DDC. This budget will include: the anticipated total of all the separate contracts for the project (e.g., PM costs + Consultant costs + construction costs). The PM will review DDC's Project requirements, schedule goals, and existing budget data.
- a. The PM will make a report of the Project budget to DDC indicating (1) shortfalls or surpluses in the budget and (2) recommendations for cost reductions, value engineering, or revision to DDC's Project requirements. The PM will analyze scope and design documents and will suggest reasonable adjustments in the scope of the Project, if any, and alternative bidding strategies to maximize the Project budget.
- 1.7. Cost Estimating & Control. The PM will provide a preliminary evaluation of the Project with respect to the project budget requirements. The PM will have its own cost estimator prepare independent detailed area take-off cost estimates at the end of design development, at an interim point to be determined by DDC, and at 100% Contract Document preparation phase to provide a gauging mechanism for the Project budget. The PM will provide evaluations of alternative materials and systems.
- a. In the event that there are discrepancies between the PM's estimated costs and the estimated costs prepared by the design Consultant, the PM will work with the Design Consultant to define the areas where these discrepancies exist, and to reconcile the estimates.
 - b. The PM will review, analyze and assess each cost estimate submitted by the design Consultant and reconcile using Work Breakdown Structure (WBS) approved by DDC. Such cost review will determine whether:
 - i. Unit cost are reasonable;
 - ii. Quantity takeoffs are accurate;
 - iii. All design elements are included;
 - iv. Level of detail is appropriate to design stage;
 - v. Formats are correct;
 - vi. Cost escalation factors are properly applied;
 - vii. Overall project costs are within the Project budget.
- 1.8. Document Control and Data Management.
- a. The PM will provide and maintain throughout each Project a digital document control and data management system and collaboration platform for communication and sharing of all project files, documents, drawings, and BIMs ("Document Control System"). The data management system, including the categories into which the data is organized, is subject to prior written approval by DDC. Such data management and collaboration platform will have varying levels of access for all project participants, including construction contractor staff and construction contractor subcontractors, end-users, and DDC staff. Such data management and collaboration platform will be organized to manage all project related data and documents in a manner consistent with industry best practice. The system will be customized to the needs of the Project, will implement established workflow processes, and will be used to assemble the full Project record.
 - b. The PM will develop and implement a reporting structure for clear communication between all parties. The data management system, including the categories into which the data is organized, is subject to prior written approval by the Commissioner.
 - c. Such data management and collaboration platform will have varying levels of access for all project participants, including construction contractors, construction contractor subcontractors, Consultant(s), DDC staff and other end-users approved by the Commissioner. Provide the Commissioner with full viewing access rights.

- d. Such data management and collaboration platform will be organized to manage all project related data in a manner consistent with industry practice, including without limitation, organization into the following categories: Requisitions for payment, all contract documents (including but not limited to the PM's Contract Documents, consultant and construction contract documents), Sketches, Requests for Information (RFIs), BIM's, As-Built Drawings, and Shop Drawings. Maintain a centralized, searchable document tracking and control system for collection and distribution for all correspondence, drawings, submittals, contract documents, operating manuals and a resource library of relevant and useful technical information on the various Project elements. The Document Control System must facilitate the storage and timely retrieval of this documentation. The PM will be responsible for identifying, categorizing and organizing all documents, and maintaining an on-site technical resource library. The PM will also be responsible for using commercially reasonable means to protect City Sensitive/Confidential information received and/or generated in any form. As part of the Document Control System, the PM will also coordinate with DDC as necessary to facilitate the review, coordination, and control of construction contract submittals

Task 2 – Procurement Phase Services (Pre-Construction Phase II)

- 2.1. If directed, the PM will procurement support activities to the Commissioner and ACCO, including but not limited to preparing notices of intent, reviewing and assembling final solicitation packages prior to public release. The PM may be directed to provide comments, revisions, and/or analysis and market research.
- 2.2. The PM may be tasked with developing fair and reasonable vendor qualifications and industry awareness strategies.
- 2.3. If the City determines that a pre-qualification list is necessary or appropriate for any Project, in accordance with applicable Law, the PM will develop qualification criteria and may be tasked with reviewing statements of qualifications for compliance with the request for qualifications, including, without limitation, providing qualified personnel (in-house or through Subconsultants) to perform reviews of financial qualifications.
- 2.4. The PM may be directed to coordinate and/or participate pre-bid and pre-award activities. The PM will coordinate pre-construction meetings to acquaint the REIs and the Contractors with project stakeholders, applicable procedures for interfaces, safety and security requirements, and guidelines for early submittal requirements and mobilization efforts. Throughout the process, the PM will monitor and ensure compliance with federal grant funding requirements.
- 2.5. The PM will review, monitor and track all permits and permit applications submitted by the construction contractor over the course of each construction bid package.
- 2.6. Review proposed construction subcontractors and material vendors and make recommendations or other comments to the Commissioner as to approval of the same.
- 2.7. Identify long lead procurement items that may impact bid and overall project timeframes.
- 2.8. If directed by the DDC, the PM will identify the most appropriate labor posture on the project, considering the use of Project Labor Agreements (PLA), and make its recommendation to the City. If the City determines that a PLA is necessary or appropriate for the Project, the PM will provide support (e.g., develop reports, analysis, consultant advisory services) to the City for development and/or implementation of the PLA.

Task 3 – Construction Phase Services

- 3.1. The construction phase consists of the coordination of all activities that are included in the construction of a project. The PM will be responsible for coordinating the work for the Project pursuant to the Master Project Schedule with the goal of completing the Projects safely, on time and within the budget, in accordance with the

objectives of this Contract.

- 3.2. The PM will be in charged with managing the construction contractor(s) and coordinating, expediting, facilitating, and resolving the various construction related issues as they arise, including but not limited to maintaining competent supervisory staff to coordinate and provide general direction of the work and progress of the contractors on the Project; supervising and inspecting the work as it is being performed for general conformance with working drawings and specifications; establishing procedures for coordinating among City, Consultant, contractors and PM personnel with respect to all aspects of the Project and implementing such procedures; maintaining job site records and making appropriate progress reports; implementing labor policy in conformance with the requirements of the local, federal and state law; reviewing the safety and equal opportunity programs of each contractor for conformance with the DDC's policies and making recommendations; reviewing and processing all applications for payment by involved contractors in accordance with the terms of the contract; developing and monitoring a project progress schedule, coordinating and expediting the work of all contractors and providing periodic status reports to DDC; and establishing and maintaining a cost control system and conducting meetings to review costs; as well as:
- 3.3. Prior to the commencement of the Work, obtain or verify that the construction contractor(s) has obtained all necessary permits, certificates, licenses or approvals, required for the performance of the work by the New York City Building Code or any other applicable law, rule or regulation of any government entity. Assure that no work proceeds in the absence of such necessary permits, certificates, licenses or approvals.
- 3.4. Undertake the following responsibilities with respect to shop drawings:
 - a. Implement procedures to be followed by the construction contractor(s) for the expeditious processing of submittals, including without limitation shop drawings, material samples and catalogue cuts.
 - b. Review and approve all shop drawings for the Project, including without limitation shop drawings for temporary sheeting, bracing, shoring, underpinning, temporary vehicular and pedestrian bridges, retaining walls, decks and all permanent structures in the Project.
 - c. Review and approve all rebar drawings/shop drawings and placement of all steel reinforcement and structural steel for structures.
 - d. Ensure that no construction work commences until the shop drawing is approved.
 - e. Upon approval, transmit to the Commissioner the original stamped, signed and dated approved shop drawing. All shop drawings must be stamped and signed by a licensed Professional Engineer.
- 3.5. Prepare correspondence or other communications in order to advance the Project.
- 3.6. Perform minor design services for the Project. Minor design services will be those services which, in the determination of the Commissioner, involve relatively small adjustments, enhancements or changes to the design for the Project. Minor design services may include, without limitation, the services set forth below.
 - a. Raising or lowering the curb profile along the majority of the blockface.
 - b. Temporary support of defective retaining wall
 - c. Adjustment to or addition of catch basins
 - d. Removal of minor encroachments (chain link or wood fence, hedges, pavement block, etc.) and restoration in connection with such removal, if required
 - e. Modification of sidewalk grades to match existing adjacent properties. Such adjustments will comply with the Americans with Disabilities Act (ADA), as well as tree requirements of the Department of Parks and Recreation.

- f. Re-design of original curb profiles to lessen the impact upon existing field conditions, including any associated infrastructure changes necessitated by these re-designs.
- g. Addition, subtraction or movement of multiple "break" points within a blockface.

3.7. Schedule Management/Control:

- a. Conduct pre-construction kick-off meetings with contractors
- b. Establish phasing requirements
- c. Review and monitor Project/progress schedules submitted by contractors, approve or direct revisions in accordance with the construction contract
- d. Manage work flow, material deliveries
- e. Prepare Project Master Schedule with baseline that encompasses the design, procurement, and construction phases of the project.
- f. Ensure that the activities encompass all contract work, including submittal and review activities, fabrication activities, coordination activities with project stakeholders, and the reasonableness of the schedule logic and durations.
- g. Define project milestone or significant points in during the life of the project
- h. Provide Critical Path Method (CPM) scheduling services using the scheduling software to ensure that the baseline schedule represents the designer's intent for construction of the project in accordance with DDC's scheduling requirements.
- i. Forecast of project schedule completion with varying confidence
- j. 90-day look-ahead schedules of important activities: evaluating the schedule to identify critical and near critical paths, as well as providing explanation for changes in critical path from previous month, and recommended actions to recover time.
- k. Updated Project Change Log including changes during design
- l. Updated Project Issues Log and Risk Log

3.8. Cost Management/Control. The PM will provide regular monitoring of the approved estimate of construction cost, showing actual costs for activities in progress and estimates for uncompleted tasks. The PM will identify variances between actual and budgeted or estimated costs and will advise the DDC and the Design Consultant whenever the Project's costs appear to be exceeding budgets or estimates.

- a. The PM will implement and maintain cost management procedures throughout the final design and completion of construction for the project. When design or programmatic changes are made and approved by DDC, these changes will be recorded and the cost effect will be documented.
 - i. Provide cost estimating summary, estimates report per DDC requirements.
 - ii. Monitor the submittal review process
 - iii. Review of contractor payment request
 - iv. Monitor project financial data
 - v. Implement budgetary cost accounting
 - vi. Cost reasonableness study

- vii. Review the monthly payment requests for completeness and accuracy including proper payroll documentation and lien releases are in order and make recommendation for payment to DDC.

3.9. Construction Payment Requisitions. The PM will undertake the following tasks and responsibilities with respect to payment requisitions submitted by the construction contractors:

- a. The PM is responsible to track and monitor payment submittals and for ensuring that payments are being processed in a timely and efficient manner. The PM will promptly take appropriate action when it observes delays or inappropriate gaps in payment submittals from the construction contractor or other symptoms of problems with the contractor's accounting or record management, including but not limited to meeting with contractors and analyzing contractor resources and procedures to determine causation and to make appropriate recommendations for corrective action.
- b. Promptly review and process payment requisitions submitted by the construction contractors for completeness and conformity with the applicable contract documents and the Project protocols, including without limitation partial payments, payments for extra work, substantial completion and final payments.
- c. Verify all estimates for payments of construction work performed, computations, as well as field measurements and sketches necessary for payment purposes.
- d. Determine the amount of liquidated damages, back charges or other deductions to be assessed and the amount of any award fees or incentive payments due, if any.
- e. Input payment records into Project Information Module System (PIMS) and coordinate with DDC, as required.
- f. If the requisition is complete and ready for engineering audit review, submit such approved requisition, noting all withholdings and deductions, if any, to the Commissioner's Representative for this Contract with a written certification by an authorized representative of the PM in the following form, or other form approved by the Commissioner in writing:
 - i. "I certify that I have verified this estimate and that to the best of my knowledge and belief it is a true and correct statement of the work performed and the materials supplied by the construction contractor and that all work and material included in this estimate has been inspected by me or my duly authorized assistants and has been found to comply with the terms and conditions of the corresponding contract documents and authorized changes thereto. I further certify that I have verified that certificates of non-discrimination have been obtained from the construction contractor and all construction contractor subcontractors that performed any work covered by this payment and that the Subcontractor Payment Form, if applicable to this payment, has been obtained."
- g. Payment requisitions approved and submitted by the PM should be ready for review by DDC Engineering Audit Officer ("EAO"). The PM will ensure such requisitions are complete and well organized and will act as liaison between the EAO and the construction contractors and will work to ensure harmonious relations.
- h. If the payment requisition is not ready for submission, the PM will promptly return such requisition to the appropriate construction contractor with a detailed report, in standard form, setting forth the issues necessary to be addressed prior to re-submission or reasons why the requisition cannot be processed.
- i. The PM will process each payment requisition submitted by construction contractors within fourteen (14) Days. The PM will log and track all payment requisitions submitted and will submit a quarterly report to the Commissioner of payment transactions, including but not limited to processing times for all submitted requisition and details about the outcome of each requisition. In such report, the PM will include recommendations for improving the requisition process without diminishing the quality of the review and audit process and without compromising compliance with applicable Law, including Comptroller

Directives.

- 3.10. Except as provided for herein, the PM is responsible for promptly responding to each item of information or request for approval submitted by the construction contractor(s) for the Project.
- 3.11. Risk Management Plan. The Consultant will develop and monitor a risk register that includes, but is not limited to, the following: project scope cost, identify potential risks to schedule and budget, associated likelihood situations, impacts if realized, date identified, major milestones for reducing or avoiding risk realization, and change order status.
- 3.12. Field Oversight/Quality Control. The PM's supervision and inspection duties will include reasonable diligence to discover work that is not in compliance with the contract documents. The PM will endeavor to guard against defects and deficiencies and will reject work containing deviations, defects or deficiencies in accordance with the article of the Standard Construction Contract titled "Inspection".
 - a. In accordance with the article of the Standard Construction Contract titled "Inspection", the PM will direct the contractor(s) to uncover or take down finished work, and the restoration thereof, as necessary to inspect the work and ensure the work is performed in accordance with the contract documents.
- 3.13. The PM will review the construction contractor's proposed means and methods in accordance with the article of the Standard Construction Contract titled "Means and Methods of Construction".
- 3.14. The PM will have a thorough understanding of the Project Site and mitigation procedures for environmental issues. The PM will have a clear understanding of the work at hand and the procedures to be employed and will promote a positive team approach to accomplish the Project objectives.
- 3.15. Establish and implement a QA/QC Management Plan for the Project which includes steps to observe, verify and document the specified level of construction quality. The QA/QC Management Plan will address or include, at a minimum, all of the following:
 - a. Identify all PM personnel authorized by the Commissioner to act as the "Engineer" and, on-site, the "Resident Engineer" in accordance with the Standard Construction Contract.
 - b. Preparing QA/QC plan method statement.
 - c. Quality assurance and control to ensure conformance to drawings and specification.
 - d. Review of environmental, health, and safety plans submitted by contractors and Consultants
 - e. Monitor contract labor standards
 - f. Perform site surveys
 - g. Monitor Hazardous materials/Manufactured Gas Plant (MGP) Contamination
 - h. Monitor Hazmat abatement work
 - i. Provide progress and/or final photographs
 - j. Monitor compliance with safety
 - k. Perform routine inspections to evaluate work in progress to confirm that it conforms to the contract documents.
 - l. Identify nonconforming work
 - m. Notify contractor when work needs correction
 - n. Compile work defects and omissions

- o. Review and approve, or direct revisions, site safety and safety protocols submitted by the construction contract
- 3.16. Site Safety. Undertake the following responsibilities with respect to the safety of the site:
- a. Perform all responsibilities set forth in Section IV(A) of the DDC Safety Requirements (Exhibit E).
 - b. Monitor contractor compliance with (1) Safety Program, (2) Site Safety Plan, (3) DDC Safety Requirements, and (4) all applicable regulations that pertain to construction safety. The PM will perform a daily inspection of the Project site(s) at the beginning and end of each day (“Dawn and Dusk Patrol”) and will issue directives to the contractor(s) to correct any deficiencies which may be identified.
 - c. Promptly notify the Commissioner and the contractor(s) if the PM observes any hazardous conditions at the site or non-compliance by the contractor(s) with its Safety Program, Site Safety Plan, DDC Safety Requirements, any applicable safety regulations or subcontract requirements.
 - d. Coordinate with city agencies and public and private utilities, so that the contractor(s) provides a safe environment for both workers and the general public.
 - e. Inspect the maintenance and protection of pedestrian and vehicular traffic operations on a daily basis and record observations in the PM’s diary. Review and evaluate contractor proposals regarding pedestrian and vehicular traffic operations and make recommendations to the Commissioner. The PM’s personnel assigned this responsibility will be trained in this area and approved by the Commissioner for this work. This employee will be designated the "safety officer" for the Project.
 - f. In the event of an emergency, provide such labor, materials, equipment and supervision necessary to cure such emergency condition. The PM will immediately notify the Commissioner of any such emergency condition.
 - g. In addition to the DDC Accident Report and accident/incident/near miss investigation report, as set forth in the DDC Safety Requirements, the PM will, as directed by the Commissioner, provide analysis, reporting, and recommendations with respect to Project safety.
- 3.17. Record Keeping. Undertake the following responsibilities with respect to Project record keeping:
- a. Keep accurate and detailed written records of the progress of the Project during all stages of planning and construction.
 - b. Maintain daily detailed time and material records regarding the use of labor, equipment and material for the Project. The PM will use such records to prepare the Contract Cost Summary/Close Out Report.
 - c. Maintain a daily job diary or log book describing all activities which occurred on the Project on a daily basis, including without limitation, all work accomplished, the number of workers, identified by trade, employed at the site by the contractor(s), the number of hours worked, material shortages, labor difficulties, weather conditions, visits by officials, decisions reached, specific problems encountered, general and specific observations, and all other pertinent data relative to the performance of the construction contract(s).
 - d. Maintain accurate, orderly and detailed files and written records and documents regarding the Project, including without limitation, correspondence, minutes and/or reports of job conferences, progress reports, shop drawings and other submissions, construction contract documents, including all addenda, change orders, supplemental drawings and all other Project related documents. The PM will provide any records, documents or information concerning the Project to the Commissioner as directed.
 - e. With respect to work to be performed on a time-and-materials, unit cost, or similar basis, requiring the keeping of records and computation therefrom, maintain cost accounting records in accordance with the

City's procedures.

- f. Prepare record (“as built”) drawings in accordance with Exhibit F.
 - g. Prepare and maintain fixed asset inventory forms for all required contract components.
 - h. Maintain all Project records in accordance with the PM’s approved Document Management Plan.
 - i. All Project records, including without limitation those specified above, will be available to the Commissioner at all times immediately upon request, and the Commissioner will have the right to remove such Project records and make copies thereof. The PM will ensure that such records are promptly and contemporaneously made available and maintained in appropriate digital format as part of the Document Control System.
- 3.18. Monitor compliance by the contractor(s) with the following requirements applicable to the construction work: (1) New York State Labor Law and (2) Americans with Disabilities Act (ADA).
- 3.19. Construction Monitor / Restoration Specialist: The PM will, if directed by the Commissioner, as part of its personnel for the Project, provide a Construction Monitor / Restoration Specialist (“CMRS”), who will perform the services set forth below. The PM will only be directed to provide a CMRS if the project involves BMP work.
- a. The CMRS will monitor and ensure the following:
 - i. That all work within the project is in strict conformance with all conditions of the NYSDEC and USACE wetland permits and construction contract specifications,
 - ii. That the contractor is following the NYSDEC required Storm Water Pollution Prevention Plan (SWPPP), and
 - iii. That the contractor is constructing and/or restoring all BMP work in accordance with the contract specifications. BMP work may include, without limitation, the following: installation of fences to protect natural areas, trees and wetlands, installation and maintenance of erosion control measures, dewatering, stabilization of bare soils, protection of natural areas and trees, plant salvage, tree removal, wild life removal, excavation and stabilization, and landscaping work.
 - b. On a daily basis, or as otherwise directed by the PM, the CMRS will submit reports to the PM documenting all BMP work and compliance with permit conditions, including a log of all dewatering activities and associated sediment control measures. Any violation of permit conditions and the remedial actions will be included in the reports along with color digital photographs.
 - c. The CMRS will prepare all paper work and drawings necessary for the agency to apply for necessary permit modifications and will follow up with NYSDEC on the status of the permit. Any drawings will be reviewed and approved by the PM.
 - d. The CMRS will prepare supplemental field sketches for use by the PM in preparing non-structural design modifications due to field conditions. Sketches will be reviewed and approved by the PM.
 - e. The CMRS will keep a digital photograph log of the BMP and BMP-related portion of the project. The photo log will follow the progress of the project in a clear and understandable progression and will incorporate before, in-progress, and completed photographs of BMP’s and natural area restorations within the project. The CMRS will use fixed photo points at each site to ensure that before and after photographs are taken from the same location and angle. A digital camera with a minimum resolution of 10.0 megapixels will be used for photo-documentation purposes. The CMRS will assemble the completed photo log onto CD’s and submit it to the PM.

- f. The CMRS will review for accuracy the as-built drawings regarding the BMP work prepared by the PM. The CMRS will ensure that the as-built drawings regarding the BMP work are in accordance with the specifications.
- g. Monitoring Reports: The CMRS will prepare and submit a Monitoring Report to DDC following the completion of all planting and associated restoration activities. On an annual basis, the CMRS will prepare and submit a Monitoring Report until the guarantee period(s) for the plant material has expired, as directed by DDC. Six (6) copies of each Monitoring Report will be required.
- h. The CMRS will examine, monitor and report on the various components of the restoration and will incorporate color photographs, color photocopies, graphs, etc., as appropriate. All information will be reported in a concise format. The Monitoring Report will include the items set forth below:
 - i. Report on all construction activities related to BMP and stream bank stabilization,
 - ii. Report the conditions of the vegetation planted within this Contract,
 - iii. Quantify survival and cover rates and compare to permit requirements,
 - iv. Recommend replacement species,
 - v. Report observed impacts to existing vegetation,
 - vi. Report success rates in controlling erosion and sedimentation,
 - vii. Report voluntary recruitment,
 - viii. Present recommendations, and
 - ix. Give general commentary for increasing the success of future Bluebelt restoration projects.

3.20. Develop a Close-out Program.

- a. Punch List – Issue final punch list. Coordinate and verify inspection punch list at substantial completion. Coordinate corrections with Consultants and construction contractors. Verify project completion and cleanup by construction contractors. Schedule and conduct a final walk through with design Consultants, construction contractors and City prior to acceptance.
- b. Acceptance –Provide written recommendation of project final acceptance to City in preparation of formal project acceptance.
- c. Final Payment – Obtain and verify all lien releases from construction contractors. Authorize, when appropriate, final payment in the form of release of retention. Finalize all contract modifications and determine final quantities for final payment and contract closeouts.
- d. Coordinate and receive all close-out items including as-built drawings, operation and maintenance manuals, and warranties as required.
- e. Records – Provide a final report to City, along with all project files as electronic copies, as set forth below.
- f. Coordinate Substantial Completion and Final Acceptance Inspections.
- g. All significant reports that have been issued during design and construction phase should be summarized in a final project history report. These reports should officially note the dates of substantial completion and commencement of warranties.

3.21. Change Management Plan. The PM will be responsible for putting together a Change Management Plan that will ensure that any changes that occur throughout the project’s lifetime are formally defined, evaluated, and approved prior to implementation. All parties working on the project are subject to the procedures defined

within the Change Management Plan.

- a. Change Order Proposals. The PM will undertake the following responsibilities with respect to change order proposals submitted by construction contractors:
 - i. The PM is responsible for promptly reviewing and analyzing change proposals, negotiating reasonable costs for the same, and for presenting the negotiated change proposal with the PM's detailed analysis and recommendation to the Commissioner's Representative for this Contract for approval. The PM will maintain contemporaneous records of all change proposals from construction contractors and Extra Work performed by construction contractors.
 - ii. The PM will not order Extra Work to be performed unless written direction from the Commissioner for the same is received on file with the PM, except in the event of an emergency condition implicating the health and safety of any person or property.
 - iii. The PM is not authorized to issue change orders for Extra Work. However, the PM is hereby authorized to reject change proposals that the PM finds to be invalid or improperly submitted, including, without limitation, change proposals for work already within the Project scope and incomplete change proposals or change proposals submitted without appropriate information or documentation. Unless otherwise directed, the PM will reject, without submission to the Commissioner's Representative, change proposals that the PM reasonably believes to be invalid or improperly submitted.
 - iv. Prior to requesting a cost proposal for Extra Work from the construction contractor, the PM will perform an independent cost estimate.
 - v. Review and evaluate all change order proposals for compliance with the applicable contract document requirements and standards. Prepare detailed change order documentation for the Commissioner's Representative's signature.
 - vi. Prepare and maintain a change order log inclusive of potential change orders and change proposals rejected by the PM. Prepare a report to the Commissioner recommending approval or disapproval of the requested change order in accordance with the contract documents and Project SOPs. Such report will include the PM's review and evaluation of the following: (1) the validity of the proposed change order, (2) the cost of the proposed change order, including any design costs and impacts, (3) the quantities of labor, equipment and materials necessary to perform the proposed change order, and (4) the impact of the change order proposal on the other trades work and Project schedules, including the Master Project Schedule.
 - vii. The PM will substantiate the information contained in any change order or change order report to the Commissioner's Representative, the EAO, the Comptroller and any other agency having jurisdiction in this area. The Commissioner's Representative will make all final determinations regarding change orders, modifications and additions to the construction contract documents that the PM, as the "Engineer" per the Standard Construction Contract, is not authorized to make.
- b. Time extensions. The PM will undertake the following with respect to requests for time extensions submitted by construction contractors:
 - i. The PM is not authorized to grant an extension of time for performance to construction contractors.
 - ii. The PM will review all applications for extensions of time submitted by construction contractors and prepare recommendations to the Commissioner for approval or disapproval thereof in accordance with Project SOPs and applicable Law. The PM's recommendation will be accompanied by an analysis of the request and a report of delays affecting the progress of the construction work. The PM will provide all assistance requested by the Commissioner or the ACCO with respect to such time extensions,

including but not limited to the preparation of data, schedules, and reports related to the same.

c. Claims Management Services

- i. The PM will provide claims management as requested. This could include the review of design and construction contract claims and change orders, evaluating the basis for claims and disputes, analyzing claim amounts and participating in negotiations.
- ii. The PM will institute procedures for effective claims avoidance, including without limitation:
 - (1) Effective notice and contemporaneous documentation procedures, including daily logs, the institution of written administration memoranda for contract determinations made by the PM or authorized DDC personnel, transparent and effective progress reporting;
 - (2) Effective decision-making processes and governance;
 - (3) Appropriate and prompt responses to DDC and contractor requests; and
 - (4) Efficient and transparent management of the payment process, including the instruction of effective governance that ensures that problems and/or delays in payment processing are addressed quickly and effectively.
- iii. Evaluate schedule and productivity-related issues associated with change orders, claims, and disputes. Issues may include concurrency of delays, acceleration, and responsibility for a delay.
- iv. Preparation of cost estimates and analyses with respect to claims made by contractor(s).
- v. Provide written explanation of each claim to City, including background information and proposed resolution. Support and assist City in resolving Contractor claims and disputes, and negotiate to an agreed resolution.

d. Contractor Disputes. The construction contract provides for dispute resolution procedures. If the construction contractor disputes any determination of the PM or the Agency, for determinations not delegated to the PM herein, with respect to matters dealt with under the Article titled “Resolution of Disputes” in the Standard Construction Contract (Art. 27 in the 2017 version), the construction contractor may present its dispute to the Commissioner. The PM will undertake the responsibilities set forth herein with respect to disputes submitted by the construction contractors.

- i. Coordinate all necessary meetings, submittals, and responses in accordance with Project SOPs and the contract documents. Track submittals and responses to ensure the City’s timely response in all instances and circumstances.
- ii. Review, evaluate and prepare a recommended determination with respect to such disputes. The PM’s recommendation will be in writing, and will contain a clearly stated, well-reasoned explanation for the recommendation based upon the information and evidence presented by the construction contractor and relevant information gathered by the PM, as well as the construction contract documents.
- iii. The PM may be directed to provide forensic accounting services and professional engineering services with respect to disputes, as needed. If so directed, the PM will provide any written reports or analysis performed hereunder in certified form. Such services will be performed by appropriately authorized firms and licensed individuals in accordance with applicable Law.

3.22. Community Construction Liaison: The PM will, if directed by the Commissioner, as part of its personnel for the Project, provide a Community Construction Liaison (“CCL”), who will perform the services set forth in this section with respect to interaction with the community. Prior to assignment to the Project, the CCL is subject to the prior written approval of the Commissioner. With respect to the proposed CCL, the PM will

provide the following: (1) resumes and any other information, and (2) a writing sample. The Commissioner may require the PM to provide a CCL with proficiency and/or fluency in multiple languages. The PM will provide its CCL with PHOTO IDENTIFICATION, clearly indicating the Project Name/Number, EIC name/number, field office, phone/fax, and validation dates, which will correspond with the anticipated contract duration plus three (3) months. The PM will also provide the CCL with business cards, which will include the same Project information. The construction contractor will provide a personal computer and other equipment required in accordance with Article 6, and with a designated email address for use by the CCL.

- a. The PM will, as directed by DDC, print necessary community notification materials (e.g., kiosk posters, brochures, buttons, and newsletters) as developed in conjunction with DDC-OCN staff. Materials may be printed in 4-colour as required by design; the PM will also pay for any related installation costs for Kiosk Posters. Reimbursement for these items will be paid for through “Reimbursable Services”.
- b. The CCL will perform the following services:
 - i. Produce and widely distribute within the community a monthly Reconstruction Newsletter, using WORD Software Template provided by the DDC Office of Community Outreach and Notification.
 - ii. Immediately after commencement of this Contract, the CCL will participate in a program of Orientation and Training conducted by the DDC Office of Community Outreach and Notification. The following topics will be Included in this orientation: Introduction to DDC; Review of NYC Charter, Site Safety, Maintenance and Protection of Traffic, Intergovernmental Networking/Notification, Plans and Contracts; City Government; Community Relations, and Media Relations.
 - iii. Immediately after commencement of this Contract, the CCL will review the plans and specifications for the construction contract(s). Within five (5) business days of completing the contract review, the CCL will organize and arrange for a walk through of the Project to assess its impact on the community. Notification of the walk through will be given to the District Manager of the Community Board, other interested community representatives, and representatives of DDC.
 - iv. Water Service Interruption Notification: If the Project involves any water main replacement and related work, to assess the negative impact on the community, the CCL will conduct a door to door survey of each commercial/residential property within the area of influence of water service interruption. The CCL will notify the Resident Engineer and keep him abreast of persons, businesses, and properties which may require additional planning and coordination to minimize water service interruption impacts. The CCL will assist in the distribution and posting of notices and will secure from DDC translations of notices/flyers for use on specific projects within targeted communities where and when indicated.
 - v. The CCL will develop, maintain and keep a current calendar of significant community events including: Ethnic/Religious Festivals, Street Fairs, Marathons, Parades, Play Street Closing and Block Parties/Celebrations.
 - vi. Community Notification Network/Record Keeping: With input and information provided from sources including the DDC Office of Community Outreach and Notification, the Community Board and elected officials, the CCL will develop a Community Notification Network, identifying key community institutions and organizations by name, association and address. The CCL will keep field office records regarding community interaction, including without limitation, complaints received and all correspondence, meetings, and task force minutes.
 - vii. Construction Notification Email Requirements – The PM will, if directed by the commissioner, provide an email notification system with the following minimum specifications:

- (1) Must support multiple formats (plain text, rich text, and HTML) and accept attachments of 500kb minimum and any file type (e.g. Word, Publisher, Excel, Adobe Acrobat, etc.)
- (2) Web driven application. Users need internet and e-mail access to subscribe and/or view updated information. Clients and administrators should not require any special mail list software.
- (3) Platform independent (accessible through Windows, Linux or Mac, etc.).
- (4) Dedicated email list for each construction project (i.e., update@wallstreet.com, update@madisonave.com)
- (5) Dedicated and secure database for email list subscriptions. E-mail lists cannot be sold or distributed under any circumstances.
- (6) Ease of end users subscription modification. Must provide the options to subscribe and unsubscribe to email lists via web and e-mail.
- (7) CCL to act as list moderator. The moderator is responsible for the preparation and dissemination of email updates. The moderator will be required to validate his/her email address with the server prior to sending out any notifications to the list which provides an additional anti-spamming measure.
- (8) Requires Double Opt-In process for both subscription and removal from the list.
- (9) List Server must be incorporated into a website that is capable of being linked to the DDC or other NYC agency websites.
- (10) Easily expandable. Lists for new construction must be able to be added within 12 hours of notification by the city.
- (11) Message Forum for CCL to post messages for public viewing only. No posting allowed by end users.
- (12) Event calendar with message forum integration, such as:
 - (a) Supports multiple private and public calendars
 - (b) Viewable public and private events
 - (c) Weekly, monthly and yearly views
 - (d) Jump to Today option
 - (e) Add single, ranged or recurring events
 - (f) Add all day events
 - (g) Option to show calendar event on forum home page
 - (h) Show events to specific user groups
 - (i) Calendar Moderation
 - (j) Private events reminder
 - (k) Ability to add custom fields

c. Payment for the email notification system will be made through “Reimbursable Services”

Task 4 – Post Construction Services

- 4.1. The services to be provided by the PM during the Post-Construction Phase will include without limitation the services set forth below. All post construction services set forth below will be completed by the PM within ninety (90) days after Substantial Completion of the construction work for the Project, unless otherwise authorized by the Commissioner.
- a. The PM will submit its final payment package to the Commissioner within one (1) month after the date of final inspection of the construction contract.
- 4.2. The PM will coordinate the correction and completion of the work. The PM will promptly schedule and coordinate Substantial Completion and Final Acceptance inspections and issue the final Punch List in accordance with the Standard Construction Contract. If the construction work is determined to be substantially complete, the PM will issue such determination in writing with the final punch list, in accordance with the article fo the Standard Construction Contract titled “Completion and Final Acceptance of the Work” within fourteen (14) Days of the inspection date. The PM will establish the Final Approved Punch List in accordance with the same. The PM will schedule and coordinate such other inspections with the contract and/or other entities that are necessary to complete all items on the Final Approved Punch List within six (6) months of the date of Substantial Completion.
- 4.3. Contract Cost Summary/Close-out Report: During the performance of the work, the PM will keep labor, equipment and material use (Time & Material) records to be used to report on the T&M used for every major facet of the construction work. The items of work will include, but not be limited to, the installation of water mains and appurtenances, installation of various types and depths of sheeting systems, installation of sewers, fluming of sewers, catch basins, manholes/chambers and appurtenances, dewatering systems, curbs, roadway pavement (concrete and asphalt), sidewalks, etc. Within one month of Substantial Completion of the construction work, or any phase of the construction work, if performed in phases, the PM will submit to the Commissioner four (4) printed copies of a contract T&M summary/close-out report summarizing these construction activities. In addition, the PM will submit a copy of the report and all back up data used to generate the report using Microsoft Office (i.e., Excel Spreadsheet, Word, etc.) software. The report will include without limitation the items set forth below:
- a. Summary of the average time per unit quantity expended to perform such work and will note the hours expended for each labor class and type of equipment utilized along with the amount and type of material and total quantity of work. No cost data is required.
 - b. The report will also include maximum, minimum and average rates of production and all circumstances that affected production rates for each facet of work.
 - c. Summary description of the actual versus original contract duration/schedule, including mobilization. Any significant changes (including delays or time savings) to the original schedule are to be detailed (i.e. incentives, weather, utilities, etc.).
 - d. Summary description of all change orders and large overruns.
- 4.4. Record “As-Built” Drawings: The PM will mark-up the construction drawings on a daily basis and prepare and submit all record “as-built” drawings for the Project to DDC’s Construction Safety Unit (CSU) within sixty (60) Days of Substantial Completion. The record “as-built” drawings will accurately show all items and components of the work installed pursuant to the construction contract(s), including but not limited to taking as-built elevations/coordinates for pedestrian ramps and recording in final as-built. Such record drawings will be signed, stamped and sealed by a Professional Engineer. All record drawings will be in accordance with DDC standards and requirements, as set forth in Exhibit F.

- 4.5. Project Records: Upon completion of the required construction work for the Project, the PM will submit to the Commissioner originals of all Project records, including without limitation, (1) all reports for the Project, including inspector's reports, as well as laboratory and plant testing reports; (2) all certificates and guarantees from manufacturers; (3) survey field books; (4) daily job diary or log book(s); (5) all records with respect to payment, including monthly and final estimates of quantities; (6) all contract administrative memoranda; (7) record "as-built" drawings in conformance with DDC requirements; (8) photographs of the various phases of construction, supplied by the construction contractor, and (9) all other data which may be required to complete the Project records.
- a. Digital Copies of all Project Documents: The PM will prepare, furnish, and index a complete and accurate set of the following Project documents in PDF format, or other format as directed by the Commissioner: (1) shop drawings; (2) working drawings; (3) record as-built drawings, which will show the work as actually installed; (4) catalog sheets; (5) technical bulletins; (6) manuals; (7) diagrams, and (8) other printed matter as required.
- 4.6. The PM will provide a complete digital library of Project records with all documents appropriately, organized, indexed, and tagged. All documents and the library must be text-searchable.

Task 5 – Other Specialty Services

- 5.1. Commissioning Services. Review final operations and maintenance submittals for conformance to the Service Agreement Documents, as provided by the equipment supplier, and provide final recommendations for approval of all Operations and Maintenance (O&M) related documents. Collect and maintain all documents, manuals, and warranties for turnover to the City.
- 5.2. Testing services. Provide services to perform project specific quality control testing and inspections services, including:
- a. Test and inspection of soils
 - b. Test concrete and precast concrete
 - c. Test steel and sheet pile
- 5.3. Engagement and Outreach. The DDC Office of Community Outreach and Notification (OCON) has an established Outreach Strategy (OS) that DDC implements for all construction projects. The DDC OCON will train all community construction liaisons (CCLs) on the agency's outreach procedures and protocols. OCON will act as support and guidance on final outreach strategies throughout the life of the project.
- a. The Outreach Strategy (OS) includes outreach to stakeholder agencies, local elected officials, community boards, affected residents, and the public. Outreach will include messaging of construction phasing, schedule, activities, impacts and mitigations. The goal of the OS is to ensure consistent messaging from the community construction liaisons (CCLs), associated with each contract, to the public in coordination with the DDC.
 - b. The PM will supplement the DDC OS program by developing programs and procedures that will build upon the collaborative planning and community outreach conducted earlier by other Consultants earlier in the Project's lifetime, and will capitalize lessons learned as approved by the DDC.
 - c. The OS will achieve the following:
 - i. Identify and engage potentially interested parties.
 - ii. Identify and convey public and agency concerns.
 - iii. Provide to the public and affected agencies a clear understanding of the purpose of and need for the

proposed action(s) and the alternatives being reviewed and developed for future mitigation.

- iv. Develop two-way communication methods with interested public stakeholders to facilitate information sharing and to be responsive to inquiries.
- v. Clearly communicate the public's role in the process and clarify the type of information and updates that that will be most relevant and useful to the public.
- vi. Effective and consistent communication and coordination with affected agencies, entities, and private utilities.

5.4. Construction and Demolition Waste Management Plan (CDWMP). The PM will prepare and implement a Construction and Demolition Waste Management Plan (CDWMP). The Consultant will reference and adhere to the requirements set forth in the "Soil and Groundwater Management Plan" in preparation of the CDWMP. An example of a DDC CDWMP is provided through DDC's "Sustainable Design goals".

If any of the following work has been completed by the Environmental Consultant, the PM will review and use existing information to perform the below tasks, so as not to duplicate work:

- a. The CDWMP will consist of at least the following major sections:
 - i. Waste Management Goals;
 - ii. Waste Management Plan;
 - iii. Soil Coordination;
 - iv. Recycling Reports;
 - v. Hazardous and Contaminated Waste Disposal;
 - vi. Management Plan Implementation.
- b. The CDWMP will outline the coordination of the transportation of soil, waste materials, and designated recyclables on and off the project site throughout the various phases of construction.
- c. Waste Management goals will outline the minimum amount of recycled or diverted waste from landfills as a percentage of total waste as a percentage by weight or volume. This target may be set by the Project Team or other agencies with diverted material requirements.
- d. The Waste Management Plan will outline opportunities of diversion for each type and amount of waste. Diversion of soils will be described within Soil Coordination.
- e. Under Soil Coordination:
 - i. The PM will assist with all processes and preparation of paperwork to identify and characterize contaminated soil and hazardous waste found on the project site by the end of the Environmental Consultant contract (if not completed within / by end of Environmental Consultant contract).
 - ii. The PM will develop strategy and protocol for screening of soil on site to ensure NYSDEC requirements for reuse of soil are fulfilled. The Consultant will support the DDC in providing proper documentation to NYSDEC. The Consultant will coordinate, as necessary, if soil excavated under one contract may be utilized in another area of the project under separate contract. This coordination will include planning and determining timing, storage, and cost savings and/or impacts.

- iii. The Consultant will maintain communication with the DDC and the Mayor’s Office of Environmental Remediation (OER) on the potential use of the Clean Soil Bank.
- iv. The PM will coordinate with OER to utilize the Clean Soil Bank as much as is feasible. The PM will provide information and logistical support including, but not limited to the following:
 - (1) Storage needs and availability
 - (2) Schedule and timing
 - (3) On-site material screening
 - (4) Coordination with other agencies, as necessary (i.e. NYSDEC, NYCDEP, etc.)
 - (5) Union tracking, as necessary
- f. The PM will prepare the Recycling Reports. Recycling Reports will detail the type, quantity, and receiving party of each construction and demolition waste to be diverted from landfills. The target goal of recycled materials will be designated by the DDC.
- g. Hazardous and Contaminated Waste Disposal. The PM will review existing soil data and disposal estimates; quantify the amount (in tons or cubic yards) of hazardous and contaminated waste; and document how it will be disposed of, who the receiving party is, and proper handling of the waste as per Local, state, and Federal standards and requirements for hazardous waste handling and disposal.
- h. Soil and Groundwater Management Plan Implementation. The PM will detail in the CDWMP the means in which the materials will be collected, stored, and transferred to their respective end destinations, and the coordination required with the separate facilities for collection, and receipt of and distribution of the appropriate materials. The PM will distribute copies of the CDWMP, and provide instruction to the construction contractors for proper implementation of the CDWMP.

5.5. Envision™ Rating System Responsibilities

- a. The Engineer will assign its certified Envision Sustainability Professional (“ENVSP”) to track the project and collect all relevant data in response to the Envision Rating System credit categories. Information about the Envision Process can be found by going to the Institute for Sustainable Infrastructure (“ISI”) website, located at www.sustainableinfrastructure.org.
- b. The Engineer will prepare a report showing opportunities for maximizing the sustainable impact of the Project during construction and will outline methods to improve the Project and make recommendations as to areas where the Project could have been improved in light of Envision.
- c. During the course of construction, the Engineer will review the construction contract documents and prepare an ISI Envision Scoresheet that compiles all relevant documents, including but not limited to, meeting minutes, presentations, data compilations, studies, and reports which are prepared in the performance of this Project. Any and all project data based on the specified project typology will be documented and rated in the Envision Scoresheet.
- d. If so directed, the Engineer will submit the Project’s Envision Scoresheet to ISI for verification. The Engineer will work with ISI’s verifier to provide further documentation, use their feedback to improve the overall score of the project and to confirm the level of achievement of the project.

5.6. Financial and Grants Management Services. To properly administer and manage federal funding grants, upon issuance of a federally funded Task Order, the following tasks may be required:

- a. The PM will comply with the applicable grant rider, as attached to the Task Order.

- b. Development of a grant management, risk management plans, and/or compliance protocols for the Project in coordination with DDC and the Office of Management and Budget
- c. Prepare risk assessments based on detailed reviews of Project expenditures, including but not limited to, review of existing contracts, invoicing mechanisms, current compliance with applicable Law and grant requirements.
- d. Assess overall contract management controls and policies in relation to the risk assessment
- e. Generate grant management reports
- f. Develop implementation plans necessary to address items noted in the risk assessment to ensure compliance with grant funding requirements. The implementation plan(s) must provide a clear roadmap to address items to ensure proper reimbursement and compliance with applicable Law and grant requirements. If so directed, the PM will perform activities in the implementation plan.
- g. Advise on grant rules, practices and procedures and advise on how to track costs, including direct administrative costs to facilitate reimbursement for all eligible client costs, including contractor costs
- h. Provide general grant management advice and support services
- i. Conduct pre-audit activities and prepare documentation for audit
 - i. Provide oversight of contractor and Consultant invoices to ensure that invoiced costs are eligible for grant funding, fully documented and optimally organized. For FEMA funded Task Orders, the PM will be required to track eligible scope activities separately by budget code and will ensure the contractors' and Consultants' invoices reflect the same
 - ii. Categorize, record, track and file costs in support of the financial reimbursement process.
- j. As directed, the PM will provide cost estimates, cost and price analyses, and other reports necessary to ensure Project compliance with 2 CFR 200 Subparts E and F. All reports must include supporting documentations, citations, and a statement of methodology.
- k. As directed, the PM will perform cost reasonableness analyses, which analyses may be required for existing contracts, new procurement actions, and change orders to any contract procured by the City for the Project.
 - i. Such analysis must be on the PM's letterhead and include a statement of whether, based on the detailed analysis and supporting evidence/documentation contained therein and/or attached thereto, there is a reasonable basis for the Commissioner to find the subject expenditure cost reasonable.
 - ii. The PM will revise the analysis as directed by the Commissioner to address the clarity and completeness of the analysis, except that the Commissioner may not direct the PM's conclusion of whether there is a reasonable basis for a finding of cost reasonableness.
 - iii. The PM may request cost information from past DDC procurements to the extent such information will be helpful to the PM's analysis in accounting for the uniqueness of the New York City marketplace and the responsibilities and requirements placed on the City in procuring goods and services. The City may release or withhold such information in the Commissioner's sole discretion. To the extent such information is released, the PM agrees to hold such information confidential unless otherwise directed and that such information will be used for no other purpose than for the purpose provided for herein.

5.7. HUD Grant Program Support Services (CDBG/CDBG-DR/CDBG-NDR and NY Rising)

- a. Provide knowledge, experience and technical competence in the planning, administration, and implementation of HUD eligible activities.

- b. Coordinate with the environmental Consultant to ensure compliance with all applicable Law, including but not limited to the Uniform Land Use Review Procedure, National Environmental Policy Act, and Uniform Relocation Act.
- c. Conduct any and all other implementation services necessary to comply with all other federal requirements such as procurement, federal labor standards, fair housing, accessibility, and uniform administrative requirements, for each Project.
- d. Develop and assist with submission of any required sub-recipient application for HUD funding, performance reporting, and grant closeout.
- e. Maintain project files with supporting documentation for all grant funded activities that meet requirements from HUD and/or New York's Governor's Officer of Storm Recover (GOSR).
- f. Deploy a system of record that includes mobile/web-based intake tools and an end-to-end grant management system for all jurisdiction disaster recovery funding.
- g. Section 3 Compliance Initiatives. Task Orders funded by HUD are subject to Section 3 of the Housing & Urban Development Act of 1968, as amended. The PM will be required to comply with Section 3 requirements as set forth in the applicable HUD grant riders (CDBG/CDBG-DR, CDBG-NDR/NY Rising). In addition, the PM will provide support activities with respect to the Section 3 activities for the Project, including, without limitation:
 - i. Recommendations as to strategy and compliance, reports and analysis of Project activities.
 - ii. Training and support for City, construction contractor, and Consultant personnel.
 - iii. Outreach and education sessions to potential Section 3 residents and businesses on Section 3 requirements and opportunities.
 - iv. Create a Section 3 website for each Project.
 - v. Develop a process for contractors, subcontractors, Consultants, and subconsultants to generate Section 3 related contract and workforce reports based on City, State, and Federal reporting requirements.
 - vi. Develop enforcement actions for failure of others to comply.
 - vii. Develop written policies and procedures for Section 3 requirements.
 - viii. Provide Section 3 reporting for all construction contractor and Consultant activities for the Project.

5.8. FEMA Grant Program Support Services (FEMA, HMGP)

- a. Assist in identifying, developing and evaluating opportunities for hazard mitigation programs to reduce or eliminate risk from future events.
- b. Provide experienced hazard mitigation staff to identify and prepare hazard mitigation proposals, grant applications, benefit cost analysis, and other services related hazard and disaster programs.
- c. Provide post-award grant administration services and project management services for projects funded by FEMA or HMGP grants. This may include outreach, intake, documentation processing, construction inspection, and closeout.

5.9. MWBE Program. MWBE goals for each Task Order will be set forth in the Task Order, pursuant to Article 10 of this Contract. In addition, each Project will include MWBE participation goals with the construction contract documents. The PM will provide support services to assist the City and will undertake the following with respect to MWBE participation in the construction work:

- a. Evaluate and recommend appropriate minority, women, small and disadvantaged business enterprise (MWBE) sub-contractor goals and assist in managing the Project's MWBE program, including but not limited to working with DDC's Office of Diversity and Industry Relations to conduct outreach activities and other activities that may be required to encourage participation by MWBE enterprises and compliance with MWBE goals.
- b. Monitor construction contractor and Consultant compliance with MWBE goals.
- c. Furnish a monthly report on current status and progress with respect to MWBE goals.
- d. Provide analysis and analysis and recommendations on strategies to meet or exceed MWBE goals.

EXHIBIT C
TITLES AND ALL INCLUSIVE HOURLY RATES

Titles: Staffing requirements are set forth on the following pages. Such staffing requirements specify the titles of personnel which the PM will be required to provide, through its own employees and/or through its Subconsultants.

All Inclusive Hourly Rates: All Inclusive Hourly Rates per title are set forth on the following pages. Such All Inclusive Hourly Rates will apply as follows: (1) if the method of payment for the performance of services is through fee(s), the All Inclusive Hourly Rates will be used as a basis for negotiating fees with the PM, and (2) if the method of payment for the performance of services is on a time card basis, All Inclusive Hourly Rates will be used to calculate payment to the PM in accordance with Article 7.

Increases/Decreases: The All Inclusive Hourly Rates are subject to increases and/or decreases in accordance with Article 7. Decreases are described below.

Key Personnel: The titles marked with an asterisk (*) are titles of Key Personnel. In its Proposal for the Contract, the PM identified various individuals who will provide services for the East Side Coastal Resiliency Project. The individuals identified by the PM for each specific title for the East Side Coastal Resiliency Project, as well as their qualifications, are set forth in Exhibit O. In addition, in its Proposal for the Contract, the PM identified various individuals who may provide services on other Projects. The individuals identified by the PM for each specific title for Projects other than the East Side Coastal Resiliency Project, as well as their qualifications, are set forth in Exhibit P. This Exhibit C specifies an All Inclusive Hourly Rate applicable to each title of Key Personnel. Each such All Inclusive Hourly Rate was negotiated based on the average of the qualifications and salary rates of the individuals identified in the PM's proposal for the title in question. In the event the PM fails, for any title of Key Personnel required for the Project, to provide one of the individuals identified in the PM's proposal for the title in question, the Commissioner may decrease the All Inclusive Hourly Rate for such title to an amount based on the qualifications and salary rate of the individual approved as a replacement.

Additional Titles: If an additional title(s) of personnel is required for a specific Project, the Commissioner will establish the following: (1) additional required title(s), (2) minimum requirements per title, and (3) All Inclusive Hourly Rate per title. The All Inclusive Hourly Rate for the additional required title will be negotiated in accordance with Article 7.

(Insert attachment from RFP)

EXHIBIT D

MINIMUM REQUIREMENTS PER TITLE

Minimum requirements per title are set forth on the following pages.

Key Personnel: The titles marked with an asterisk (*) are titles of Key Personnel. The individuals identified by the PM for each specific title for the East Side Coastal Resiliency Project, as well as their qualifications, are set forth in Exhibit O. The individuals identified by the PM for each specific title for Projects other than the East Side Coastal Resiliency Project, as well as their qualifications, are set forth in Exhibit P. For any title of Key Personnel, the minimum requirements per title will be the **GREATER** of the following: (1) the average of the qualifications of the individuals identified for the title in question, as set forth in Exhibits O and P, or (2) the minimum requirements per title set forth on the following pages.

Other Personnel: For all other titles of personnel, the minimum requirements per title are set forth on the following pages.

(Insert attachment from RFP)

EXHIBIT E

DDC SAFETY REQUIREMENTS

CITY OF NEW YORK
DEPARTMENT OF DESIGN AND CONSTRUCTION
SAFETY REQUIREMENTS

June 2015

THE DDC SAFETY REQUIREMENTS INCLUDE THE FOLLOWING SECTIONS:

- I. POLICY ON SITE SAFETY**
- II. PURPOSE**
- III. DEFINITIONS**
- IV. RESPONSIBILITIES**
- V. SAFETY QUESTIONNAIRE**
- VI. SAFETY PROGRAM AND SITE SAFETY PLAN**
- VII. KICK-OFF/PRE-CONSTRUCTION MEETINGS AND SAFETY REVIEW**
- VIII. EVALUATION DURING WORK IN PROGRESS**
- IX. SAFETY PERFORMANCE EVALUATION**

I. POLICY ON SITE SAFETY

The City of New York Department of Design and Construction (DDC) is committed to a policy of injury and illness prevention and risk management for construction work that will ensure the safety and health of the workers engaged in the projects and the protection of the general public. Therefore, it is DDC's policy that work carried out by Contractors on DDC jobsites must, at a minimum, comply with applicable federal, state and city laws, rules and regulations, including without limitation:

- ❑ U. S. Department of Labor 29 Code of Federal Regulations (CFR) Part 1926 and applicable Sub-parts of Part 1910 – U.S. Occupational Safety and Health Administration (OSHA); New York State Department of Labor Industrial Code Rule 23 – Protection in Construction, Demolition and Excavation;
- ❑ New York City Construction Codes, Title 28
- ❑ NYC Department of Transportation Title 34 Chapter 2 – Highway Rules
- ❑ New York State Department of Labor Industrial Code Rule 16 NYCRR Part 753
- ❑ Title 15 of the Rules of the City of New York, Chapter 13 Citywide Construction Dust Mitigation
- ❑ Manual on Uniform Traffic Control Devices (MUTCD)
- ❑ Title 15 of the Rules of the City of New York, Chapter 28 Citywide Construction Noise Mitigation

II. PURPOSE

The purpose of this policy is to ensure that Contractors perform their work and supervise their employees in accordance with all applicable federal, state and city rules and regulations. Further, Contractors will be expected to minimize or eliminate jobsite and public hazards, through a planning, inspection, auditing and corrective action process. The goal is to control risks so that injuries, illnesses and accidents to contractors' employees, DDC employees and the general public, as well as damage to city-owned and private property, are reduced to the lowest level feasible.

III. DEFINITIONS

Agency Chief Contracting Officer (ACCO): The ACCO shall mean the person delegated authority by the Commissioner to organize and supervise the procurement activity of subordinate Agency staff in conjunction with the CCPO.

Competent Person: As defined by OSHA, an individual who is capable of identifying existing and predictable hazards in the surroundings or working conditions that are unsanitary, hazardous, or dangerous to employees or the general public, and who has authorization to take prompt corrective measures to eliminate them.

Construction Safety Auditor: A representative of the QA&CS Construction Safety Unit who provides inspection and assessment services to enhance health and safety on all DDC construction projects. The activities of the Construction Safety Auditor include performing site surveys, reviewing health and safety plans, reviewing construction permits, and rendering technical advice and assistance to DDC Resident Engineers and Project Managers.

Construction Safety Unit: A part of QA&CS within the Division of Program Management/ Safety & Site Support that assesses contractor safety on DDC jobsites and advises responsible parties of needed corrective actions.

Construction Superintendent: A representative of the contractor responsible for overseeing performance of the required construction work. This individual must engage in sound construction practices, and is responsible to maintain a safe work site. In the case of a project involving the demolition, alteration or new construction of buildings, the Construction Superintendent must be licensed by the NYC Department of Buildings.

Contractor: For purposes of these Safety Requirements, the term "Contractor" shall mean any person or entity that enters into a contract for the performance of construction work on a DDC project. The term "Contractor" shall include any person or entity which enters into any of the following types of contracts: (1) a prime construction contract for a specific project, (2) a prime construction contract using the Job Order Contracting System ("JOCS Contract"), and (3) a subcontract with a CM/Builder ("First Tier Subcontract").

Daily Safety Job Briefing: Daily jobsite safety meetings, giving to all jobsite personnel by contractor, with the purpose of discussing project specific safety procedures for the scheduled construction work.

City of New York Department of Design and Construction: Safety Requirements
Safety and Site Support– Quality Assurance and Construction Safety

Director - Quality Assurance and Construction Safety (QA&CS): Responsible for the operations of the QACS Construction Safety Unit and the DDC Site Safety management programs.

Job Hazard Analysis (JHA): A process of identifying the major job steps and any potential site-specific hazards that may be present during construction and establishing the means and methods to eliminate or control those hazards.

Qualified Person: As defined by OSHA, an individual who, by possession of a recognized degree, certificate, license or professional standing, or who by extensive knowledge, training, and experience, has successfully demonstrated his or her ability to solve problems relating to the subject matter, the work, or the project. Qualified Persons are required under regulation to address issues pertaining to, but without limit, to fall protection, scaffold design and trenching and shoring, among others.

Project Site: Those areas indicated in the Contract Documents where the Work is to be performed.

Project Safety Representative: The designated project safety representative shall have completed an authorized 30 hour OSHA Construction Safety Course and other safety training applicable to Contractor's/subcontractor's project work. Except in instances where a dedicated Project Safety Manager is required, a Project Safety Representative may also function as a superintendent, foreman or crew leader on the Project, but must have sufficient experience and authority to undertake corrective actions and must qualify to be a competent person. No work is to be performed on site when a Project Safety Representative is not present.

Project Safety Manager: A dedicated, full-time project safety manager may be a contractual requirement on large projects or projects deemed by DDC to be particularly high risk. This would be in addition or in lieu of a Contractor's Project Safety Representative. This individual shall not have any other assigned duties. This individual shall have received, at a minimum an authorized 30 hour OSHA Construction Safety Course. Other examples of acceptable training are OSHA Safety and Health Standards for the Construction Industry training program (OSHA 510), Certified Safety Professional (CSP), Certified Industrial Hygienist (CIH) or a degree/certificate in a safety and health from a college-level curriculum. A Project Safety Manager shall possess the additional training, years of experience, and skills necessary to thoroughly understand the health and safety hazards and controls for large construction projects, including the full scope of the specific Work.

QA&CS – Quality Assurance and Construction Safety of the New York City Department of Design and Construction.

Resident Engineer (RE) / Construction Project Manager (CPM): Representative of the Commissioner duly designated by the Commissioner to be his/her representative at the site of the work. (The RE/CPM may be a third-party consultant, including a Construction Management firm, retained by DDC)

Safety Program: Established by the Contractor that covers all operations of that Contractor and establishes the Contractor's overall safety policy, regulatory compliance plan and minimum safety standards. The Safety Program must be submitted prior to the commencement of work at the site and is subject to review and acceptance by the Construction Safety Unit.

Safety Questionnaire: Used by DDC to evaluate Contractor's current and past safety performance. It is required to be completed by all Contractors initially when submitting bids for Construction work, or when being pre-qualified and updated annually or as requested by the DDC.

Site Safety Manager: For certain projects, as defined in NYC Construction Codes – Title 28, the Contractor shall provide a Site Safety Manager with a Site Safety Manager License issued by the NYC Department of Building.

Site Safety Plan: A site-specific safety plan developed by the Contractor for a specific project. The Site Safety Plan must identify hazards associated with the project, and include specific safety procedures and training appropriate and necessary to complete the work. The Site Safety Plan must be submitted prior to the commencement of work at the site and is subject to review and acceptance by the Construction Safety Unit.

Unsafe or Unhealthy Condition: A condition that could be potentially hazardous to the health and safety of personnel or the public, and/or damaging to equipment, machinery, property or the environment.

Weekly Safety Meetings: Weekly documented jobsite safety meetings, given to all jobsite personnel by contractor, with the purpose of discussing general safety topics and job specific requirements encountered at the DDC work site.

City of New York Department of Design and Construction: Safety Requirements
Safety and Site Support– Quality Assurance and Construction Safety

Work: The construction required by the Contract Documents whether completed or partially completed, performed by the Contractor/ subcontractors. Work refers to the furnishing of labor, furnishing and incorporating materials and equipment into the construction and providing any service required by the Contract Documents to fulfill the Contractor's obligation to complete the Project.

IV. RESPONSIBILITIES

All persons who manage, perform, and provide support for construction projects shall conduct operations in compliance with the requirements identified in this Policy and all applicable governing regulatory agency requirements and guidelines pertaining to safety in construction.

A. DDC or CM Resident Engineer / Construction Project Manager

- Monitors the issuance of safety- related permits, approvals and drawings and maintains copies on site.
- Monitors construction-related work activities to confirm that they are conducted in accordance with DDC policies and all applicable regulations that pertain to construction safety.
- Maintains documentation and periodically attends weekly safety meetings and daily safety job briefings.
- Notifies the Construction Safety Unit and the ACCO's Insurance and Risk Management Unit of project- related accidents and emergencies, as per DDC's Construction Safety Emergency and Accident Notification and Response Protocol.
- Gathers facts related to all accidents and prepares DDC Construction Accident Report.
- Notifies the Construction Safety Unit within two (2) hours of the start of an inspection by any outside regulatory agency personnel, including OSHA, NYC DOB or others and forwards a copy of the inspection report within three days of its receipt.
- Monitors the conditions at the site for conformance with the contractor's Site Safety Plan and DDC construction documents.
- Notifies the contractor and DDC in the event that any condition or activity exists that is not in compliance with the contractor's Site Safety Plan, applicable federal, state or local codes or any condition that presents a potential risk of injury to the public or workers or possible damage to property.
- Notifies DDC of any unsafe or unhealthy condition and directs the contractor to provide such labor, materials, equipment and supervision to abate such conditions.
- Escort and assist QA&CS Construction Safety Auditors during the field and record inspections.
- Reports emergency conditions to the Construction Safety Unit immediately.

B. Contractors

- Submit a completed Safety Questionnaire and other safety performance related documentation with its bid or as part of a pre-qualification package.
- Complete a written Job Hazard Analysis (JHA) that identifies safety hazards for project specific work tasks and hazard control methods. A written JHA shall be available at the site for reference and included in the Site Safety Plan submitted by the contractor.
- Submit a Site Safety Plan and Safety Program within 30 days from the Award Date or as otherwise directed. The Site Safety Plan and Safety Program are subject to review and acceptance by the Construction Safety Unit prior to the commencement of work at the site. The Site Safety Plan shall be revised and updated as necessary.
- Develop project specific safety procedures to protect general public during all construction activities for the duration of the project.
- Ensure that all employees are aware of the hazards associated with the project through documented formal and informal training and/or other communications. Conduct and document weekly safety meetings and daily job briefing sessions for the duration of the project. Documentation to be provided to the RE/CPM on a monthly basis.
- Name the Project Safety Representative and Project Safety Manager, if required. The Contractor will be required to identify the Project Safety Representative and Project Safety Manager in the Site Safety Plan. Resumes, outlining the qualification and experience for the Project Safety Representative and Project Safety Manager, shall be available upon request. DDC reserves the right to request that the Contractor replace any Project Safety Representative or Project Safety Manager for any reason at any time during the project.

City of New York Department of Design and Construction: Safety Requirements
Safety and Site Support– Quality Assurance and Construction Safety

- Name a Competent Person(s), The Contractor will be required to identify a Competent Person(s) in the Site Safety Plan.
- Comply with all mandated federal, state and local safety and health rules and regulations.
- Comply with all provisions of the Site Safety Plan.
- Conduct applicable safety training prior to the commencement of work at the site. All training records (OSHA 10-hour, flagger, scaffold, fall protection, confined space entry, etc.) shall be provided to the RE/CPM prior to mobilization, included in the Site Safety Plan, kept current during the course of the project, and available for review. Prior to performing any work on DDC project all employees shall have successfully completed, within the previous five calendar years, a 10 Hour OSHA construction safety course.
- As part of the Site Safety Plan, prepare a site specific programs and plans, such as MPT plan, steel erection plan, confined space program, fall protection plan, demolition plan, etc. (if not otherwise provided in the contract documents) and comply with all of its provisions.
- Conduct and document site-specific safety orientation for Contractor personnel to review the hazards associated with the project as identified in the Site Safety Plan and the specific safety procedures and controls that will be used to protect workers, the general public and property. The Project Safety Representative and/or Project Safety Manager will conduct this training prior to mobilization and provide documentation to the RE/CPM.
- Provide, replace and adequately maintain at or around the project site, suitable and sufficient signage, lights, barricades and enclosures (fences, sidewalk sheds, netting, bracing, etc.).
- Report unsafe or unhealthy conditions to the RE/CPM as soon as practical, but no more than 24 hours after discovery, and take prompt actions to remove or abate such conditions.
- Report any accidents involving injuries to workers or the general public, as well as property damage, to the RE/CPM within one (1) hour.
- Following an accident, the Contractor shall not remove or alter any equipment, structure, material, or evidence related to the accident. Exception: Immediate emergency procedures taken to secure structures, temporary construction, operations, or equipment that pose a continued imminent danger or facilitate assistance for persons who are trapped or who have sustained bodily injury.
- Notify the RE/CPM within one (1) hour of the start of an inspection by any outside regulatory agency personnel, including OSHA, NYC DOB or others.
- Maintain all records pertaining to all required compliance documents and accident and injury reports.
- Address DDC recommendations on safety, which shall in no way relieve the Contractor of its responsibilities for safety on the project. The Contractor has sole responsibility for safety.

V. SAFETY QUESTIONNAIRE

DDC requires that all Contractors provide information regarding their current and past safety performance and programs. This will be accomplished by the use of the DDC Safety Questionnaire. As a part of the bid submittal package, the contractor must submit a completed DDC Safety Questionnaire listing company workers' compensation experience modification rating and OSHA Incident Rates for the three (3) years prior to the date of the bid opening. DDC may request a Contractor to update its Questionnaire at any time or to provide more detailed information. The Contractor must provide the requested information within 15 days.

The following criteria will be used by DDC in reviewing the Contractor's responsibility, which will be based on the information provided on the questionnaire:

- Criteria 1: OSHA Injury and Illness Rates (I&IR) are no greater than the average for the industry (based on the most current Bureau of Labor Statistics data for the Contractors SIC code); and
- Criteria 2: Insurance workers compensation Experience Modification Rate (EMR) equal to or less than 1.0; and
- Criteria 3: Any willful violations issued by OSHA or NYC DOB within the last three (3) years; and
- Criteria 4: A fatality (worker or member of public) and injuries, requiring OSHA notification, experienced on or near Contractor's worksite within the last three (3) years; and
- Criteria 5: Past safety performance on DDC projects (accidents; status of safety program and site safety plan submittals; etc.)
- Criteria 6: OSHA violation history for the last three (3) years;
- Criteria 7: Contractor shall provide OSHA Injury and Illness Records (currently OSHA 300 and 300A Logs) for the last three (3) years.

If the Contractor fails to meet the basic criteria listed above, the Construction Safety Unit may request, through the ACCO,

City of New York Department of Design and Construction: Safety Requirements
Safety and Site Support– Quality Assurance and Construction Safety

more details concerning the Contractor's safety experience. DDC may request the Contractor to provide copies of, among other things, accident investigation reports, OSHA records, OSHA and NYC DOB citations, EPA citations and written corrective action plan.

VI. SAFETY PROGRAM AND SITE SAFETY PLAN

Within thirty (30) days from the Award Date, or as otherwise directed, the Contractor shall submit the following: (1) Safety Program, and (2) Site Safety Plan. The Safety Program shall set forth the Contractor's overall safety policy, regulatory compliance plan and minimum safety standards. The Site Safety Plan shall identify project work scope, safety hazards associated with the project tasks, and include specific safety procedures and training appropriate and necessary to complete the work. The Safety Program and the Site Safety Plan are subject to review and acceptance by the Construction Safety Unit prior to the commencement of work at the site. Failure by the Contractor to submit an acceptable Site Safety Plan and Safety Program shall be grounds for default.

Safety Program: Corporate Safety Program established by the Contractor that includes the Contractor's overall safety policy, regulatory compliance plan and basic safety procedures covering all aspects of construction operations, performed by the Contractor. The Safety Program shall be a written document with a separate section describing each element of the Safety Program. The Safety Program shall have at minimum the following elements applicable to the Contractor's operations:

- Responsibility and Organization – Contractor's company organization chart, including titles, names, contact information, roles and responsibilities for key personnel, etc.
- Safety Training Program – Contractor's corporate training program.
- Hazard Corrective Actions – Criteria for safety inspections, identification of safety non-compliances, implementation and verification of corrective actions, forms to document safety inspections results, etc.
- Accident/Exposure Investigation
- Recordkeeping and Reporting Injuries – Responsible staff; reporting and recording criteria; OSHA 300 and 300A form completion, etc.
- Fire Protection and Prevention Program
- Housekeeping
- Illumination
- Sanitation
- Personal Protective Equipment (PPE) – Company policy for the use of head protection, foot protection, hearing protection, eye and face protection, protective clothing, and any additional protective equipment based on work tasks; PPE inspection and replacement policy.
- Hazard Communication Program
- Employee Emergency Action Plan
- Protection of Underground Facilities and Utilities
- Ionizing/Nonionizing Radiation
- Material Handling, Storage, Use and Disposal
- Tools – Hand and Power
- Signs, Signals, and Barricades
- Scaffold – Local Law 52 requirements, installation, use, inspection, dismantling, training and general safety requirements.
- Welding and Cutting
- Electrical Safety
- Fall Protection
- Cranes, Derrick, Hoists, Elevators, Conveyors
- Excavation Safety
- Concrete and Masonry Construction
- Maintenance and Protection of Traffic
- Steel Erection
- Demolition
- Blasting and the Use of Explosives
- Stairways and Ladders
- Toxic and Hazardous Substances
- Alcohol and Drug Abuse Policy

City of New York Department of Design and Construction: Safety Requirements
Safety and Site Support– Quality Assurance and Construction Safety

- Rodents and Vermin
- Occupational Noise Exposure
- Confined Space Program – General confined Space Program: training requirements, confined space hazard evaluation procedure, atmospheric testing procedure, confined space classification, permit-required procedure, communication procedure, rescue procedure, forms, etc.
- Construction Vehicles/Heavy Equipment
- Dust Control Procedures

Site Safety Plan: The Site Safety Plan shall be a written document and shall apply to all project specific Contractor and subcontractor operations, and shall have at a minimum, the following elements with each element described in a separate section (It may be necessary to modify the basic format for certain unique or high-risk projects, such as tunnels or high-rise construction):

- Project Work Scope – Detailed information regarding work tasks that will be performed by contractor and subcontractors under the project.
- Responsibility and Organization – Contractor’s organization chart with responsible staff for the project, including titles, names, contact information, roles and responsibilities.
- Safety Training and Education – OSHA 10 Hours training, requirements for daily safety briefings and weekly safety meetings, any work task specific training, responsible staff for implementation of training program for the project.
- Job Hazard Analysis (JHA) – Project specific Job Hazard Analysis including work tasks, identified hazards, hazard control methods (administrative, engineering, PPE), contractor’s name, project id, location, name and signature of a certifying person, hazard assessment date.
- Protection of Public
- Hazard Corrective Actions – Responsible staff, forms, frequency of safety inspections and implementation of corrective actions.
- Accident/Exposure Investigation – Accident/incident notification procedure of DDC project staff. Project specific procedures for accident investigation and implementation of corrective actions.
- First Aid and Medical Attention – Responsible staff, location and inspection of First Aid kit, directions to local hospitals; emergency telephone numbers.
- Project Specific Fire Protection and Prevention Program.
- Project Specific Illumination Procedure.
- Project Specific Sanitation Procedure.
- Personal Protective Equipment (PPE)
- Hazard Communication Program – Responsible staff; training; SDS records, project specific list of chemical; location of the program and SDS records.
- Means of Egress – Information regarding free and unobstructed egress from all parts of the building or structure; exit marking; maintenance of means of egress, etc.
- Employee Emergency Action Plan – Project specific: responsible staff, emergency alarm system, evacuation procedure, procedure to account for employees after evacuation, etc.
- Evacuation Plan – Project specific evacuation plan (drawing/scheme) with exits and evacuation routes.
- Protection of Underground Facilities and Utilities, including responsible staff.
- Ionizing/Nonionizing Radiation – Competent person, license and qualification requirements, type of radiation, employees exposure and protection, etc.
- Material Handling, Storage, Use and Disposal – Project specific information regarding material storage and disposal.
- Signs, Signals, and Barricades – Use of danger/warning signs, sidewalk closure, safety instruction signs, pedestrian fencing and barricades, etc.
- Scaffold – Project specific scaffold types, training, scaffold drawings, competent person, criteria for project specific scaffold, falling object protection.
- Welding and Cutting – project specific procedure for welding and cutting, including all necessary safety requirements such as fire prevention, personal protective equipment, hot work permits, FDNY certificate requirements.
- Fall Protection – Project specific information regarding selected fall protection systems, fall protection plan.
- Cranes, Derrick, Hoists, Elevators, Conveyors – project specific equipment information including type, rated load capacity, manufacture specification requirements, competent person, exposure to falling load, inspection, recordkeeping, clearance requirements, communication procedure, ground lines, permits.
- Excavation Safety – Competent person, project specific protective system.

City of New York Department of Design and Construction: Safety Requirements
Safety and Site Support– Quality Assurance and Construction Safety

- Maintenance and Protection of Traffic Plan – Project specific MPT plan, flagmen training.
- Steel Erection – Site specific erection plan, requirements for applicable written notifications, competent person.
- Demolition – Engineering survey, including written evidence, disconnection of all effected utilities, identification of all hazardous chemicals, materials, gases, etc., floor openings, chutes, inspection and maintenance of all stairs/passageways, removal of materials/debris/structural elements, lock out/tag out, competent person.
- Blasting and the Use of Explosives – Project specific safety procedures, warning signs, training/qualification, transportation, storage and use of explosives, inspection.
- Toxic and Hazardous Substances – Safety procedures for substances to be used on project.
- Noise Mitigation Plan – Completed project specific Noise Mitigation Plan.
- Confined Space Program – Project specific Confined Space Program, responsible staff, training records, equipment information, rescue procedure, list of project specific confined spaces, forms.
- Construction Vehicles/Heavy Equipment – Type of construction vehicles/heavy equipment to be used on site.
- Dust Mitigation Plan – Completed project specific Dust Mitigation Plan.

The most critical component of the Site Safety Plan is the Job Hazard Analysis (JHA) section. The JHA form is a written document prepared by the contractor. The contractor must conduct a site and task assessment JHA to identify the major job steps and any potential safety or environmental hazards related to performance of the work, eliminate or implement controls for the potential hazards, and identify proper personal protective equipment for the task. The JHA shall be communicated to all contractor/subcontractor personnel on site.

The initial Job Hazard Assessment form shall be included in the contractor's Site Safety Plan and the current form shall be available at the construction site for reference.

Certain DDC programs, such as Job Order Contracting System (JOCS), may not necessarily require Site Safety Plans. The JOCS contractor shall submit a Safety Program. The Site Safety Plan requirement for the JOCS contractor will be determined by QA&CS based on a project work scope, construction activities and project location. In addition, certain DDC Operating Units may establish client-specific program or safety requirements. The contractor's Site Safety Plan must address such client-specific program or safety requirements.

VII. KICK-OFF MEETINGS/PRE-CONSTRUCTION AND SAFETY REVIEW

RE/CPM shall invite QA&CS Construction Safety Unit to the construction kick-off meeting. A QA&CS representative will participate in this meeting with the Contractor and RE/CPM prior to the start of the project for the purpose of:

- A. Reviewing the safety issues detailed in the contract.
- B. Reviewing the Site Safety Plan.
- C. Reviewing any new issues or information that was not previously addressed.
- D. Discussing planned inspections and audits of the site by QA&CS personnel.

VIII. EVALUATION DURING WORK IN PROGRESS

The Contractor's adherence to these Safety Requirements will be monitored throughout the project. This will be accomplished by the following:

- A. Use of a safety checklist by a representative of the Construction Safety Unit or other designated DDC representative or Consultant during regular, unannounced inspections of the job site. Field Exit Conferences will be held with the RE/CPM, Contractor Project Safety Representatives.
- B. The RE/CPM will continually monitor the safety and environmental performance of the contractor's employees and work methods. Deficiencies shall be brought to the attention of the contractor's representative on site for immediate correction. The DDC representative will maintain a written record of these deficiencies and have these records available upon request. Any critical deficiencies shall be immediately reported to QA&CS phone# (718) 391-1624 or (718) 391-1911.
- C. If the Contractor's safety performance during the project is not up to DDC standards (safety performance measure, accident/incident rate, etc.) the Director – QA&CS, or his/her designee will meet with the Contractor's Project Safety Representative and or Project Safety Manager, the DDC Project Manager, the RE/CPM, and the DDC Environmental Specialist (if environmental issues are involved). The purpose of this meeting is to 1) determine the level of non-

City of New York Department of Design and Construction: Safety Requirements
Safety and Site Support– Quality Assurance and Construction Safety

compliance; 2) explain and clarify the safety/environmental provisions; 3) agree on a future course of action to correct the deficiencies.

- D. If the deficiencies continue to occur with inadequate attention by the contractor, this shall, among other remedies available, be grounds for default.
- E. The contractor shall within 1 hour inform the RE/CPM/CM of all accidents/incidents including all fatalities, any injuries to employees or members of the general public, and property damage (e.g., structural damage, equipment rollovers, utility damage, loads dropped from crane). The RE/CPM shall notify the Construction Safety Unit as per DDC's Construction Safety Emergency and Accident Notification and Response Protocol and shall maintain a record of all contractor accidents/incidents for the project.
- F. The Construction Safety Unit shall be notified within two (2) hours of the start of any NYS-DOL/ NYC-COSH/ OSHA/ EPA inspections.

IX. SAFETY PERFORMANCE EVALUATION

The contractor's safety record, including accident/incident history and DDC safety inspection results, will be considered as part of the Contractor's performance evaluation at the conclusion of the project. Poor safety performance during the course of the project shall be a reason to rate a Contractor unsatisfactory which may be reflected in the City's Vendex system and will be considered for future procurement actions as set forth in the City's Procurement Policy Board Rules.

EXHIBIT F

REQUIREMENTS FOR AS-BUILT DRAWINGS

EXHIBIT F: REQUIREMENTS FOR AS-BUILT DRAWINGS

(A) Record “As-Built” Drawings: The Engineer shall prepare and submit a complete set of record “as-built” drawings (hereinafter referred to as the “record drawings”). The record drawings shall accurately show all items and components of the work installed pursuant to the construction contract(s), including without limitation: (1) highways, including retaining walls and pedestrian bridges, (2) water mains, (3) seawalls, (4) sewers (newly constructed, replaced or rehabilitated) including catch basins, seepage basins and trench restorations, (5) new structures, (6) utilities, (7) underground facilities, and (8) construction that differs from that of the contract drawings. Such record drawings must be signed, stamped and sealed by a Professional Engineer, and shall be in accordance with the standards and requirements set forth in this Exhibit.

(B) Time Frame for Preparation and Submission: The Engineer shall complete and submit record drawings within 90 days of Substantial Completion of the construction contract(s).

(C) Payment: For the preparation of record drawings, the Engineer shall be entitled to payment of staffing expenses in accordance with the contract for personnel identified in the approved staffing plan; provided, however, payment of staffing expenses shall only be made for the initial submission and one (1) revision. If further revisions are required, the Engineer shall not be entitled to payment for such revisions. In the event the Commissioner directs the Engineer to provide additional copies of the record drawings, above and beyond the requirements set forth Paragraph (D)(1) below, the Engineer shall be reimbursed for costs and expenses in connection with the printing of such additional copies through the Allowance for Reimbursable Services.

(D) General Requirements: The general requirements set forth below apply to all record drawings for projects involving highways, sewers, water mains, retaining walls and seawalls.

(1) The Engineer shall submit to DDC one complete set of record drawings on Mylar and a duplicate set on CD/DVD(s), which accurately show all items and components of work installed pursuant to the construction contract(s), i.e., all such work and components thereof shall be reflected on the complete set of record drawings. In addition, the Engineer shall prepare a complete set of duplicate original record drawings on Mylar for submission to other city agencies and/or utilities. Such duplicate original record drawings shall bear the original signature, certification statements, stamp and seal of a Professional Engineer, as well as the date.

(a) The Engineer is advised that all field survey work, as well as the gathering of information necessary to prepare the record drawings, must be done throughout the progress of the work. The Engineer is also required to perform a final survey on completed projects where record drawings are required. The survey may be performed by personnel of the Engineer or its Subconsultant. DDC Construction Support Unit (CSU) must be notified whether the survey was performed by the Engineer or its subconsultant.

(2) The record drawing shall be in digital format and in original Mylar, in a format to be approved by the Commissioner prior to preparation. DDC will provide sample formats to the Engineer.

(3) All record drawings must be prepared by using the latest version of CADD software (AutoCAD) by following DDC CADD standards, which will be provided to the contractor/consultant upon request. The contractor/consultant must scan all sheets of the final approved record drawings (with all signatures) and save the cleaned images on CD/DVD. The consultant/contractor shall follow all the technical specifications and requirements for scanned images including cleaning.

(4) Scanning Guidelines

(a) **Black & White Images:** The image should be saved in a TIFF Group 4- format. The minimum and preferred dpi requirement is 300dpi.

(b) **Color Drawings Images:** The image should also be saved in JPEG compression with no loss of information. The minimum and preferred dpi requirement is 200dpi. Multi-color drawings in which different colors represent different attributes should always be scanned in color.

(c) **Grayscale Images:** Scanning in grayscale should only be used when the scanning in 300dpi TIFF Group-format black & white does not produce a good image export. It is preferred that DDC receives all the images in 300dpi TIFF Group 4-format. When scanning in grayscale, the image should be saved in JPEG compression with no loss of information. The minimum and preferred dpi requirement is 200dpi. If images are scanned in grayscale, it is understood that some of the backgrounds of the scanned images will remain

dark due to the color of the media type; however, the scanning operator will try to lighten the gray background as much as possible without compromising the legibility of the drawing and without creating a washed out appearance.

- (d) Quality Control of Scanned Image: Images should be visually inspected using multiple zoom checks to assure the quality of the image. All images will undergo complete Quality Control Procedures and if necessary, perform the following post-process techniques to enhance the image display:

- Cropping to 1" of drawing border
 - De-Skewing to under 1% horizontal
 - Rotate image to proper orientation
 - Filter/De-Speckle to remove excess noise (dirt) without affecting integrity of image
 - Images will be delivered in positive polarity (if necessary)
 - Images will be mirrored to right reading position (if necessary)
- AutoCAD raster design software, or approved equal, is required to perform the editing of scanned record drawings. Raster Design is an add-on to AutoCAD application.

- (1) Further Notes: All scanned images must be in open flat form and can be viewed with virtually any imaging or viewing software.
- (2) Record Drawings: DDC will only accept images saved in a TIFF Group 4-format black & white, with 300 dpi minimum and preferred or color JPEG with 200 dpi minimum and preferred.
- (3) Record Drawings Name: All record drawings shall be scanned to a separate folder titled as As-built. All drawings shall be titled by drawing name. All pages of the record drawings shall be stamped "As-Built". All record drawings files shall be named according to the following naming convention:

Sample File name:
Project ID
Project Name
Drawing Number

SEQ001234_FlaggPI_001of100.dwg
(Project ID_Contract_Sheet###of###.dwg)

- (4) DVD/CD: Two-(2) copies of the original DVD/CD shall be required per project. The CD/DVD shall be labeled, using approved labeling software, with the Project ID, Contract Name, Project Registration #, Number of Drawings, As-Built Type (i.e., Sewer, Highway, etc.) Date Signed and the REI Consultant/Contractor Name.
- (5) The consultant/contractor shall provide a printed Document Index and the electronic file of the same, including an abstract of the document content for the central project file.

- (5) The title sheet for the record drawings shall include the items set forth below:

- (a) Original signature, stamp and seal of Professional Engineer, as well as the date.
The contract information set forth below:

CONTRACTOR:
BOROUGH DIRECTOR:
ENGINEER-IN-CHARGE:
RESIDENT ENGINEER:
ORDER TO WORK DATE:
SUBSTANTIAL COMPLETION DATE:
DRAWN BY:
CHECKED BY:

Legends, notes and box with revision information, i.e., number of sheets revised

- (6) The record drawings shall show all items that differ from what is shown on the contract drawings, i.e., field changes in location of utilities, changes in roadway alignments and/or sidewalk widths, etc.

(E) Requirements for Record Drawings for Highway Projects: In addition to the general requirements set forth in Paragraph (D) above, the requirements set forth below shall apply to all record drawings for projects involving highways.

- (1) Record drawings must show all as-built grades which differ from grades shown on the contract drawings. Information regarding grades and any changes therein shall be based upon a final survey prepared by the Engineer.
- (2) Record drawings shall conform to DOT Design Directive #83-S-5, except as modified herein. DDC shall provide a copy of such directive and other requirements to the Engineer upon request.
- (3) There shall be no erasures on the original record drawings. If revisions are necessary, the Engineer shall either (i) cross out the original record data (e.g. numbers/letters/etc.) and show changes nearby in red and bubbles, or (ii) prove supplementary record drawings to show the revision.
- (4) Upon approval of the record drawings by DDC, two (2) complete sets of duplicate originals and two (2) sets of CD/DVD(s) shall be transmitted to DDC for subsequent distribution to DOT Records Management Office.

(F) Requirements for Record Drawings for Sewer Projects: In addition to the general requirements set forth in Paragraph (D) above, the requirements set forth below shall apply to all record drawings for projects involving sewers. Sewer record drawings shall be so modified to show only sewer information on the roadway from curb to curb. All non-sewer related items must be removed from curb to curb of the plan; and from the profile views.

- (1) The record drawings shall show the following: (i) all new, replaced, repaired and existing sanitary sewers, storm sewers, combined sewers, encased sewers, and sewers on piles; (ii) lining or guniting; (iii) all new, replaced and existing catch basins, including type, and (iv) all drainage structures and appurtenances constructed under the contract. All such items shall be indicated with a different sewer legend.
- (2) Any existing sewers or appurtenances that were removed shall not be shown on the record drawings. Any existing sewers or appurtenances that were abandoned and left in place shall be so indicated on the record drawings.
- (3) For every sewer run between two manholes, the record drawings shall show the length between center lines of manholes, slopes, diameter, type of flow (sanitary, storm etc.), type of sewer (E.S.V.P., R.C.P., etc.) and the direction of flow.
- (4) The record drawings shall show the following: (i) all house connections for both new and reconnections, including house numbers; (ii) locations of connections; (iii) risers, including height, and (iv) spurs, measured from the nearest downstream manhole.
- (5) The record drawings shall include catch basin inventory information, including length of Catch Basin Connections, labeled as per the latest DEP requirements, a copy of which will be provided to the Engineer by DDC.
- (6) The record drawings shall show every manhole, including the type of manhole (A, B, etc.) rim elevation and invert elevation, as well as distance from center to center of each manhole. The Engineer shall obtain and utilize necessary data (i.e., previous as-built drawings, etc.) from the respective DEP borough office.
- (7) Upon approval of the record drawings by DDC, one complete set of duplicate originals shall be transmitted to DEP. A complete set of sewer record drawing shall consist of 1 Mylar, 5 paper copies and two (2) sets of unique CD(s) or DVD(s) for each project.
- (8) All sewer record drawings shall include a separate title sheet which will be created or modified as needed to conform to format set by the Agency. The sewer title page shall contain sewer legends, drawing description, number of pages included, datum information, and required certification statements. Actual formats and sample record drawings shall be distributed by DDC upon request.

(G) Requirements for Record Drawings for Water Main Projects: In addition to the general requirements set forth in Paragraph (D) above, the requirements set forth below shall apply to all record drawings for projects involving water mains.

- (1) The record drawings shall show the following: (i) all new and existing distribution and trunk mains; (ii) all replaced mains, lining methods and appurtenances, indicated with legend; (iii) for every run between two manholes or valves, the length, diameter and type of pipe, and (iv) all tap locations. The record drawings shall be in accordance with the latest DEP requirements, a copy of which will be provided to the Engineer by DDC.
- (2) All measurements indicated on the record drawings shall be made from curb lines. All appurtenances (pipes, valves, hydrants, offsets, hydrants valves, regulators, etc.) must be tied into the curb lines.
- (3) All depths of manholes and regulators, etc., indicated on the record drawings shall be made from final grades.
- (4) The Engineers shall prepare in-service sheets, tap cards and field cards as the project progresses. The Engineer shall request from DEP current sample field cards.
- (5) The record drawings shall indicate the type of valves installed.
- (6) In preparing the record drawings, the Engineer shall obtain and utilize necessary data (i.e., previous as-built drawings, etc.) from the respective DEP borough office.

(7) Upon approval of the record drawings by DDC, one complete set of duplicate originals shall be transmitted to DEP.

(H) SUBMITTALS: Once the record drawings are completed, one copy is to be submitted for review to DDC Infrastructure Construction Support Unit (CSU). Once approval is gained, the Resident Engineer/Engineer-In-Charge or the designate is to obtain all required signatures and seals, then submit the required Mylar; paper prints copies and electronic copy on CD(s) or DVD(s) to CSU. CSU will forward the record drawings to all applicable Agencies.

- (1) For projects involving highways, the Engineer shall submit a complete set of duplicate original Mylar record drawings for the Department of Transportation (“DOT”), Records Management Office. Specifically, the Engineer shall submit two (2) Mylars of a complete set of original record drawings and two (2) sets of unique project CD(s) or DVD(s).
- (2) For projects involving sewers, the Engineer shall submit a complete set of sewer record Mylar drawings plus five (5) paper copies and two (2) sets of unique project CD(s) or DVD(s) for distribution to DDC and Department of Environmental Protection (“DEP”).
- (3) For projects involving water mains, the engineer shall submit a complete set of duplicate original record drawings to the Department of Environmental Protection. In addition, an electronic copy on CD(s) or DVD(s) should be submitted to CSU.

EXHIBIT G

SCHEDULE B: M/WBE PARTICIPATION REQUIREMENTS

SCHEDULE B: M/WBE PARTICIPATION REQUIREMENTS: The document entitled “Schedule B: M/WBE Participation Requirements”, set forth on the following pages, was submitted by the PM as part of its proposal for the Contract.

EXHIBIT H

APPENDIX A

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

APPENDIX A

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

ARTICLE 1 - DEFINITIONS	1
<i>Section 1.01 Definitions</i>	<i>1</i>
ARTICLE 2 – REPRESENTATIONS, WARRANTIES, CERTIFICATIONS AND DISCLOSURES.....	2
<i>Section 2.01 Procurement of Agreement</i>	<i>2</i>
<i>Section 2.02 Conflicts of Interest</i>	<i>2</i>
<i>Section 2.03 Certification Relating to Fair Practices</i>	<i>3</i>
<i>Section 2.04 Disclosures Relating to Vendor Responsibility</i>	<i>3</i>
<i>Section 2.05 Disclosure Relating to Bankruptcy and Reorganization</i>	<i>3</i>
<i>Section 2.06 Authority to Execute Agreement</i>	<i>4</i>
ARTICLE 3 - ASSIGNMENT AND SUBCONTRACTING	4
<i>Section 3.01 Assignment</i>	<i>4</i>
<i>Section 3.02 Subcontracting.....</i>	<i>5</i>
ARTICLE 4 - LABOR PROVISIONS	7
<i>Section 4.01 Independent Contractor Status.....</i>	<i>7</i>
<i>Section 4.02 Employees and Subcontractors.....</i>	<i>8</i>
<i>Section 4.03 Removal of Individuals Performing Work.....</i>	<i>8</i>
<i>Section 4.04 Minimum Wage; Living Wage</i>	<i>9</i>
<i>Section 4.05 Non-Discrimination in Employment</i>	<i>11</i>
<i>Section 4.06 Paid Sick Leave Law.....</i>	<i>14</i>
<i>Section 4.07 Whistleblower Protection Expansion Act.....</i>	<i>18</i>
ARTICLE 5 - RECORDS, AUDITS, REPORTS, AND INVESTIGATIONS	20
<i>Section 5.01 Books and Records</i>	<i>20</i>
<i>Section 5.02 Retention of Records</i>	<i>20</i>
<i>Section 5.03 Inspection</i>	<i>20</i>
<i>Section 5.04 Audit.....</i>	<i>21</i>
<i>Section 5.05 No Removal of Records from Premises.....</i>	<i>21</i>
<i>Section 5.06 Electronic Records</i>	<i>22</i>
<i>Section 5.07 Investigations Clause.....</i>	<i>22</i>

Appendix A (Architects, Engineers, and Surveyors) January 2018 Final

Section 5.08 Confidentiality24

ARTICLE 6 - COPYRIGHTS, PATENTS, INVENTIONS, AND ANTITRUST26

Section 6.01 Copyrights and Ownership of Work Product.....26

Section 6.02 Patents and Inventions.....27

Section 6.03 Pre-existing Rights27

Section 6.04 Antitrust27

Article 7 - INSURANCE28

Section 7.01 Agreement to Insure.....28

Section 7.02 Workers’ Compensation, Disability Benefits, and Employers’ Liability Insurance.....28

Section 7.03 Other Insurance.....29

Section 7.04 General Requirements for Insurance Coverage and Policies30

Section 7.05 Proof of Insurance31

Section 7.06 Miscellaneous32

Article 8 - PROTECTION OF PERSONS AND PROPERTY AND INDEMNIFICATION.....33

Section 8.01 Reasonable Precautions33

Section 8.02 Protection of City Property33

Section 8.03 Indemnification.....33

Section 8.04 Infringement Indemnification34

Section 8.05 Indemnification Obligations Not Limited By Insurance Obligation34

Section 8.06 Actions By or Against Third Parties34

Section 8.07 Withholding of Payments34

Section 8.08 No Third Party Rights35

ARTICLE 9 - CONTRACT CHANGES35

Section 9.01 Contract Changes35

Section 9.02 Changes Through Fault of Contractor35

ARTICLE 10 - TERMINATION, DEFAULT, REDUCTIONS IN FUNDING, AND LIQUIDATED DAMAGES.....36

Section 10.01 Termination by the City Without Cause.....36

Section 10.02 Reductions in Federal, State, and/or City Funding36

Section 10.03 Contractor Default.....37

Section 10.04 Force Majeure39

Section 10.05 Procedures for Termination39

Appendix A (Architects, Engineers, and Surveyors) January 2018 Final

<i>Section 10.06 Miscellaneous Provisions</i>	40
<i>Section 10.07 Liquidated Damages</i>	41
Article 11 - PROMPT PAYMENT AND ELECTRONIC FUNDS TRANSFER	41
<i>Section 11.01 Prompt Payment</i>	41
<i>Section 11.02 Electronic Funds Transfer</i>	41
Article 12 - CLAIMS	42
<i>Section 12.01 Choice of Law</i>	42
<i>Section 12.02 Jurisdiction and Venue</i>	42
<i>Section 12.03 Resolution of Disputes</i>	42
<i>Section 12.04 Claims and Actions</i>	47
<i>Section 12.05 No Claim Against Officials, Agents, or Employees</i>	48
<i>Section 12.06 General Release</i>	48
<i>Section 12.07 No Waiver</i>	48
ARTICLE 13 - APPLICABLE LAWS	48
<i>Section 13.01 PPB Rules</i>	48
<i>Section 13.02 All Legal Provisions Deemed Included</i>	48
<i>Section 13.03 Severability / Unlawful Provisions Deemed Stricken</i>	49
<i>Section 13.04 Compliance With Laws</i>	49
<i>Section 13.05 Unlawful Discrimination in the Provision of Services</i>	49
<i>Section 13.06 Americans with Disabilities Act (ADA)</i>	50
<i>Section 13.07 Voter Registration</i>	50
<i>Section 13.08 Political Activity</i>	53
<i>Section 13.09 Religious Activity</i>	53
<i>Section 13.10 Participation in an International Boycott</i>	53
<i>Section 13.11 MacBride Principles</i>	54
<i>Section 13.12 Access to Public Health Insurance Coverage Information</i>	54
<i>Section 13.13 Distribution of Personal Identification Materials</i>	55
Article 14 - MISCELLANEOUS PROVISIONS	56
<i>Section 14.01 Conditions Precedent</i>	56
<i>Section 14.02 Merger</i>	56
<i>Section 14.03 Headings</i>	56
<i>Section 14.04 Notice</i>	56

ARTICLE 1 - DEFINITIONS

Section 1.01 Definitions

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

A. “Agency Chief Contracting Officer” or “ACCO” means 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” means the various documents, including this Appendix A, that constitute the contract between the Contractor and the City.

C. “City” means the City of New York.

D. “City Chief Procurement Officer” or “CCPO” means 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” means 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” means the Comptroller of the City of New York.

G. “Contractor” means the entity entering into this Agreement with the City.

H. “Days” means calendar days unless otherwise specifically noted to mean business days.

I. “Department” or “Agency” means the City agency or office through which the City has entered into this Agreement.

J. “Law” or “Laws” means 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” means the board established pursuant to Charter § 311 whose function is to establish comprehensive and consistent procurement policies and rules that have broad application throughout the City.

L. “PPB Rules” means 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. “SBS” means the New York City Department of Small Business Services.

N. “State” means the State of New York.

ARTICLE 2 – REPRESENTATIONS, WARRANTIES, CERTIFICATIONS AND DISCLOSURES

Section 2.01 Procurement of Agreement

A. The Contractor represents and warrants that, with respect to securing or soliciting this Agreement, the Contractor is in compliance with the requirements of the New York State Lobbying Law (Legislative Law §§ 1-a *et seq.*). The Contractor makes such representation and warranty to induce the City to enter into this Agreement and the City relies upon such representation and warranty in the execution of this Agreement.

B. For any breach or violation of the representation and warranty 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 2.01(B) 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 Section 2.02(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.

Section 2.03 Certification Relating to 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 that 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 2.03.

Section 2.04 Disclosures Relating to Vendor Responsibility

The Contractor represents and warrants that it has duly executed and filed all disclosures as applicable, in accordance with Admin. Code § 6-116.2, PPB Rule § 2-08, and the policies and procedures of the Mayor’s Office of Contract Services. The Contractor acknowledges that the Department’s reliance on the completeness and veracity of the information stated therein is a material condition to the execution of this Agreement, and the Contractor represents and warrants that the information it and its principals have provided is accurate and complete.

Section 2.05 Disclosure Relating to Bankruptcy and Reorganization

If 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 days of filing.

Section 2.06 Authority to Execute Agreement

The Contractor represents and warrants that: (i) its execution, delivery and performance of this Agreement have been duly authorized by all necessary corporate action on its part; (ii) it has all necessary power and authority to execute, deliver and perform its obligations under this Agreement; and (iii) once executed and delivered, this Agreement will constitute its legal, valid and binding obligation, enforceable in accordance with its terms.

ARTICLE 3 - ASSIGNMENT AND SUBCONTRACTING

Section 3.01 Assignment

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

B. Before entering into any such assignment, transfer, conveyance, or other disposal of this Agreement, the Contractor shall submit a written request for approval to the Department giving the name and address of the proposed assignee. The proposed assignee's disclosure that is required by PPB Rule § 2-08(e) must be submitted within 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 Department 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 3.01 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. In accordance with PPB Rule § 4-13, all subcontractors must be approved by the Department prior to commencing work under a subcontract.

1. *Approval when subcontract is \$5,000 or less. Except where the Agreement provides otherwise, the Department hereby grants approval for all subcontractors providing services covered by this Agreement pursuant to a subcontract in an amount that does not exceed \$5,000.00. The Contractor must submit monthly reports to the Department listing all such subcontractors and shall list the subcontractor in the City's Payee Information Portal (www.nyc.gov/pip). Such reports shall be provided in portable document format (PDF) and Microsoft Excel format and delivered to the Commissioner's Representative and to the Office of the Agency Chief Contracting Officer. In addition, the Contractor shall submit a revised report each time it enters into a new subcontract or enters a new subcontractor into the City's Payee Information Portal in an amount that does not exceed \$5,000.00.*

2. *Approval when subcontract is greater than \$5,000.*

a. The Contractor shall not enter into any subcontract for an amount greater than \$5,000.00 without the prior approval by the Department of the subcontractor.

b. Prior to entering into any subcontract for an amount greater than \$5,000.00, 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, the portion of the work and materials that it is to perform and furnish, and the estimated cost of the subcontract. If the subcontractor is providing professional services under this Agreement for which professional liability insurance or errors and omissions insurance is reasonably commercially available, the Contractor shall submit proof of professional liability insurance in the amount required by Article 7. In addition, the Contractor shall list the proposed subcontractor in the City's Payee Information Portal (www.nyc.gov/pip) and provide the following information: maximum subcontract value, description of subcontractor work, start and end date of the subcontract, and the subcontractor's industry.¹

¹ Assistance establishing a Payee Information Portal account and using the system may be obtained by emailing the Financial Information Services Agency Help Desk at pip@fisa.nyc.gov.

c. Upon receipt the information required above, the Department in its discretion may grant or deny preliminary approval for the Contractor to contract with the subcontractor.

d. The Department shall notify the Contractor within 30 Days whether preliminary approval has been granted. If preliminary approval is granted, the Contractor shall provide such documentation as may be requested by the Department to show that the proposed subcontractor has the necessary facilities, skill, integrity, past experience and financial resources to perform the required work, including, the proposed subcontract and/or any of the items listed in PPB Rule 4-13(d)(3).

e. Upon receipt of all relevant documentation, the Department shall notify the Contractor in writing whether the proposed subcontractor is approved. If the proposed subcontractor is not approved, the Contractor may submit another proposed subcontractor unless the Contractor decides to do the work. No subcontractor shall be permitted to perform work unless approved by the Department.

f. For proposed subcontracts that do not exceed \$25,000.00, the Department's approval shall be deemed granted if the Department does not issue a written approval or disapproval within 45 Days of the Department's receipt of the written request for approval or, if PPB Rule 2-08(e) is applicable, within 45 Days of the Department's acknowledged receipt of fully completed disclosures for the subcontractor.

B. All subcontracts must be in writing. 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 4.05(D) 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.

C. 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.

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

E. The Department may revoke the approval of a subcontractor granted or deemed granted pursuant to Section 3.02(A) if revocation is deemed to be in the interest of the City in writing on no less than 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.

F. 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.

G. Individual employer-employee contracts are not subcontracts subject to the requirements of this Section 3.02.

H. The Contractor shall report in the City's Payee Information Portal payments made to each subcontractor within 30 days of making the payment. If any of the information provided in accordance with Section 3.02(A)(2)(b) changes during the term of this Agreement, the Contractor shall update the information in such Portal accordingly. Failure of the Contractor to list a subcontractor and/or to report subcontractor payments in a timely fashion may result in the Department declaring the Contractor in default of the Agreement and will subject Contractor to liquidated damages in the amount of \$100 per day for each day that the Contractor fails to identify a subcontractor along with the required information about the subcontractor and/or fails to report payments to a subcontractor, beyond the time frames set forth herein or in the notice from the City.

ARTICLE 4 - LABOR PROVISIONS

Section 4.01 Independent Contractor Status

The Contractor and the City agree that the Contractor is an independent contractor and not an employee, subsidiary, affiliate, division, department, agency, office, or unit of the City. Accordingly, the Contractor and its employees, officers, and agents shall not, by reason of this Agreement or any performance pursuant to or in connection with this Agreement, assert the

existence of any relationship or status on the part of the Contractor, with respect to the City, that differs from or is inconsistent with that of an independent contractor.

Section 4.02 Employees and Subcontractors

All persons who are employed by the Contractor and all the Contractor's subcontractors (including without limitation, consultants and independent contractors) that are retained to perform services under or in connection with 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 the Contractor is engaged under this Agreement. Nothing in this Agreement, and no entity or person's performance pursuant to or in connection with this Agreement, shall create any relationship between the City and the Contractor's employees, agents, subcontractors, or subcontractor's employees or agents (including without limitation, a contractual relationship, employer-employee relationship, or quasi-employer/quasi-employee relationship) or impose any liability or duty on the City (i) for or on account of the acts, omissions, liabilities, rights or obligations of the Contractor, its employees or agents, its subcontractors, or its subcontractor's employees or agents (including without limitation, obligations set forth in any collective bargaining agreement); or (ii) for taxes of any nature; or (iii) for any right or benefit applicable to an official or employee of the City or to any officer, agent, or employee of the Contractor or any other entity (including without limitation, Workers' Compensation coverage, Employers' Liability coverage, Disability Benefits coverage, Unemployment Insurance benefits, Social Security coverage, employee health and welfare benefits or employee retirement benefits, membership or credit). The Contractor and its employees, officers, and agents shall not, by reason of this Agreement or any performance pursuant to or in connection with this Agreement, (i) hold themselves out as, or claim to be, officials or employees of the City, including any department, agency, office, or unit of the City, or (ii) make or support in any way on behalf of or for the benefit of the Contractor, its employees, officers, or agents any demand, application, or claim upon or against the City for any right or benefit applicable to an official or employee of the City or to any officer, agent, or employee of the Contractor or any other entity. Except as specifically stated in this Agreement, nothing in the Agreement and no performance pursuant to or in connection with the Agreement shall impose any liability or duty on the City to any person or entity whatsoever.

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 Days' written notice. The Commissioner may direct the Contractor to prohibit the individual from performing work under the Agreement pending the opportunity to be heard and the Commissioner's determination.

Section 4.04 Minimum Wage; Living Wage

A. Except for those employees whose minimum wage is required to be fixed in accordance with N.Y. Labor Law §§ 220 or 230 or by Admin. 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 4.04 shall be deemed a material breach of this Agreement.

B. If this Agreement involves the provision of homecare services, day care services, head start services, services to persons with cerebral palsy, building services, food services, or temporary services, as those services are defined in Admin. Code § 6-109 (“Section 6-109”), in accordance with Section 6-109, the Contractor agrees as follows:

1. The Contractor shall comply with the requirements of Section 6-109, including, where applicable, the payment of either a prevailing wage or a living wage, as those terms are defined in Section 6-109.

2. The Contractor shall not retaliate, discharge, demote, suspend, take adverse employment action in the terms and conditions of employment or otherwise discriminate against any employee for reporting or asserting a violation of Section 6-109, for seeking or communicating information regarding rights conferred by Section 6-109, for exercising any other rights protected under Section 6-109, or for participating in any investigatory or court proceeding relating to Section 6-109. This protection shall also apply to any employee or his or her representative who in good faith alleges a violation of Section 6-109, or who seeks or communicates information regarding rights conferred by Section 6-109 in circumstances where he or she in good faith believes it applies.

3. The Contractor shall maintain original payroll records for each of its covered employees reflecting the days and hours worked on contracts, projects, or assignments that are subject to the requirements of Section 6-109, and the wages paid and benefits provided for such hours worked. The Contractor shall maintain these records for the duration of the term of this Agreement and shall retain them for a period of four years after completion of this Agreement. For contracts involving building services, food services, or temporary services, the Contractor shall submit copies of payroll records, certified by the Contractor under penalty of perjury to be true and accurate, to the Department with every requisition for payment. For contracts involving homecare, day care, head start or services to persons with cerebral palsy, the Contractor shall submit either certified payroll records or categorical information about the wages, benefits, and job classifications of covered employees of the Contractor, and of any subcontractors, which shall be the substantial equivalent of the information required in Section 6-109(2)(a)(iii).

4. The Contractor and all subcontractors shall pay all covered employees by check and shall provide employees check stubs or other documentation at least once each month containing information sufficient to document compliance with the requirements of the Living Wage Law concerning living wages, prevailing wages, supplements, and health benefits. In addition, if this Agreement is for an amount greater than \$1,000,000.00, checks issued by the Contractor to covered employees shall be generated by a payroll service or automated payroll system (an in-house system may be used if approved by the Department). For any subcontract for an amount greater than \$750,000.00, checks issued by a subcontractor to covered employees shall be generated by a payroll service or automated payroll system (an in-house system may be used if approved by the Department).

5. The Department will provide written notices to the Contractor, prepared by the Comptroller, detailing the wages, benefits, and other protections to which covered employees are entitled under Section 6-109. Such notices will be provided in English, Spanish and other languages spoken by ten percent or more of a covered employer's covered employees. Throughout the term of this Agreement, the Contractor shall post in a prominent and accessible place at every work site and provide each covered employee a copy of the written notices provided by the Department. The Contractor shall provide the notices to its subcontractors and require them to be posted and provided to each covered employee.

6. The Contractor shall ensure that its subcontractors comply with the requirements of Section 6-109, and shall provide written notification to its subcontractors of those requirements. All subcontracts made by the Contractor shall be in writing and shall include provisions relating to the wages, supplements, and health benefits required by Section 6-109. No work may be performed by a subcontractor employing covered employees prior to the Contractor entering into a written subcontract with the subcontractor.

7. Each year throughout the term of the Agreement and whenever requesting the Department's approval of a subcontractor, the Contractor shall submit to the Department an updated certification, as required by Section 6-109 and in the form of the certification attached to this Agreement, identifying any changes to the current certification.

8. Failure to comply with the requirements of Section 6-109 may, in the discretion of the Department, constitute a material breach by the Contractor of the terms of this Agreement. If the Contractor and/or subcontractor receives written notice of such a breach and fails to cure such breach within 30 Days, the City shall have the right to pursue any rights or remedies available under this Agreement or under applicable law, including termination of the Agreement. If the Contractor fails to perform in accordance with any of the requirements of Section 6-109 and fails to cure such failure in accordance with the preceding sentence, and there is a continued need for the service, the City may obtain from another source the required service as specified in the original Agreement, or

any part thereof, and may charge the Contractor for any difference in price resulting from the alternative arrangements, and may, as appropriate, invoke such other sanctions as are available under the Agreement and applicable law. In addition, the Contractor agrees to pay for all costs incurred by the City in enforcing the requirements of Section 6-109, including the cost of any investigation conducted by or on behalf of the Department or the Comptroller, where the City discovers that the Contractor or its subcontractor(s) failed to comply with the requirements of this Section 4.04(B) or of Section 6-109. The Contractor also agrees, that should it fail or refuse to pay for any such investigation, the Department is hereby authorized to deduct from a Contractor's account an amount equal to the cost of such investigation.

Section 4.05 Non-Discrimination in Employment

A. General Prohibition. To the extent required by law, the Contractor shall not unlawfully discriminate against any employee or applicant for employment because of actual or perceived age, religion, religious practice, creed, sex, gender, gender identity or gender expression, sexual orientation, status as a victim of domestic violence, stalking, and sex offenses, familial status, partnership status, marital status, caregiver status, pregnancy, childbirth or related medical condition, disability, presence of a service animal, predisposing genetic characteristics, race, color, national origin (including ancestry), alienage, citizenship status, political activities or recreational activities as defined in N.Y. Labor Law 201-d, arrest or conviction record, credit history, military status, uniformed service, unemployment status, salary history, or any other protected class of individuals as defined by City, State or Federal laws, rules or regulations. The Contractor shall comply with all statutory and regulatory obligations to provide reasonable accommodations to individuals with disabilities, due to pregnancy, childbirth, or a related medical condition, due to status as a victim of domestic violence, stalking, or sex offenses, or due to religion.

B. N.Y. Labor Law § 220-e. 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 N.Y. 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;

Appendix A (Architects, Engineers, and Surveyors) January 2018 Final

3. There may be deducted from the amount payable to the Contractor by the City under this Agreement a penalty of \$50.00 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 4.05.

The provisions of this Section 4.05(B) shall be limited to operations performed within the territorial limits of the State of New York.

C. 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 Admin. Code § 6-108, that:

1. 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.

2. It shall be unlawful for any person or any servant, agent or employee of any person, described in Section 4.05(C)(1) 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.

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

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 4.05(C) shall, upon conviction thereof, be punished by a fine of not more than \$100.00 or by imprisonment for not more than 30 Days, or both.

D. E.O. 50 -- Equal Employment Opportunity

1. 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:

a. 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;

b. 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;

c. 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;

d. 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;

e. 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 SBS, Division of Labor Services ("DLS"); and

f. 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.

2. 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:

- a. Disapproval of the Contractor; and/or
- b. Suspension or termination of the Agreement; and/or
- c. Declaring the Contractor in default; and/or

d. In lieu of any of the foregoing sanctions, imposition of an employment program.

3. 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.

4. The Contractor agrees to include the provisions of the foregoing Sections 4.05(D)(1)-(3) in every subcontract or purchase order in excess of \$100,000.00 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 Section 4.05(D)(4).

5. 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 Section 4.05(D)(5).

6. Nothing contained in this Section 4.05(D) 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.

Section 4.06 Paid Sick Leave Law

A. Introduction and General Provisions.

1. The Earned Sick Time Act, also known as the Paid Sick Leave Law (“PSLL”), requires covered employees who annually perform more than 80 hours of

work in New York City to be provided with paid sick time.² Contractors of the City or of other governmental entities may be required to provide sick time pursuant to the PSLL.

2. The PSLL became effective on April 1, 2014, and is codified at Title 20, Chapter 8, of the Admin. Code. It is administered by the City’s Department of Consumer Affairs (“DCA”). DCA’s rules promulgated under the PSLL are codified at Chapter 7 of Title 6 of the Rules of the City of New York (“Rules”).

3. The Contractor agrees to comply in all respects with the PSLL and the Rules, and as amended, if applicable, in the performance of this Agreement. The Contractor further acknowledges that such compliance is a material term of this Agreement and that failure to comply with the PSLL in performance of this Agreement may result in its termination.

4. The Contractor must notify the ACCO in writing within 10 Days of receipt of a complaint (whether oral or written) regarding the PSLL involving the performance of this Agreement. Additionally, the Contractor must cooperate with DCA’s education efforts and must comply with DCA’s subpoenas and other document demands as set forth in the PSLL and Rules.

5. The PSLL is summarized below for the convenience of the Contractor. The Contractor is advised to review the PSLL and Rules in their entirety. On the website www.nyc.gov/PaidSickLeave there are links to the PSLL and the associated Rules as well as additional resources for employers, such as Frequently Asked Questions, timekeeping tools and model forms, and an event calendar of upcoming presentations and webinars at which the Contractor can get more information about how to comply with the PSLL. The Contractor acknowledges that it is responsible for compliance with the PSLL notwithstanding any inconsistent language contained herein.

B. Pursuant to the PSLL and the Rules: Applicability, Accrual, and Use.

1. An employee who works within the City of New York for more than eighty hours in any consecutive 12-month period designated by the employer as its “calendar year” pursuant to the PSLL (“Year”) must be provided sick time. Employers must provide a minimum of one hour of sick time for every 30 hours worked by an employee and compensation for such sick time must be provided at the greater of the employee’s regular hourly rate or the minimum wage. Employers are not required to provide more than 40 hours of sick time to an employee in any Year.

² Pursuant to the PSLL, if fewer than five employees work for the same employer, as determined pursuant Admin. Code § 20-912(g), such employer has the option of providing such employees uncompensated sick time.

2. An employee has the right to determine how much sick time he or she will use, provided that employers may set a reasonable minimum increment for the use of sick time not to exceed four hours per Day. In addition, an employee may carry over up to 40 hours of unused sick time to the following Year, provided that no employer is required to allow the use of more than 40 hours of sick time in a Year or carry over unused paid sick time if the employee is paid for such unused sick time and the employer provides the employee with at least the legally required amount of paid sick time for such employee for the immediately subsequent Year on the first Day of such Year.

3. An employee entitled to sick time pursuant to the PSLL may use sick time for any of the following:

a. such employee's mental illness, physical illness, injury, or health condition or the care of such illness, injury, or condition or such employee's need for medical diagnosis or preventive medical care;

b. such employee's care of a family member (an employee's child, spouse, domestic partner, parent, sibling, grandchild, or grandparent, or the child or parent of an employee's spouse or domestic partner) who has a mental illness, physical illness, injury or health condition or who has a need for medical diagnosis or preventive medical care;

c. closure of such employee's place of business by order of a public official due to a public health emergency; or

d. such employee's need to care for a child whose school or childcare provider has been closed due to a public health emergency.

4. An employer must not require an employee, as a condition of taking sick time, to search for a replacement. However, an employer may require an employee to provide: reasonable notice of the need to use sick time; reasonable documentation that the use of sick time was needed for a reason above if for an absence of more than three consecutive work days; and/or written confirmation that an employee used sick time pursuant to the PSLL. However, an employer may not require documentation specifying the nature of a medical condition or otherwise require disclosure of the details of a medical condition as a condition of providing sick time and health information obtained solely due to an employee's use of sick time pursuant to the PSLL must be treated by the employer as confidential.

5. If an employer chooses to impose any permissible discretionary requirement as a condition of using sick time, it must provide to all employees a written policy containing those requirements, using a delivery method that reasonably ensures that employees receive the policy. If such employer has not provided its written policy, it may not deny sick time to an employee because of non-compliance with such a policy.

Appendix A (Architects, Engineers, and Surveyors) January 2018 Final

6. Sick time to which an employee is entitled must be paid no later than the payday for the next regular payroll period beginning after the sick time was used.

C. *Exemptions and Exceptions.* Notwithstanding the above, the PSLI does not apply to any of the following:

1. an independent contractor who does not meet the definition of employee under N.Y. Labor Law § 190(2);

2. an employee covered by a valid collective bargaining agreement in effect on April 1, 2014, until the termination of such agreement;

3. an employee in the construction or grocery industry covered by a valid collective bargaining agreement if the provisions of the PSLI are expressly waived in such collective bargaining agreement;

4. an employee covered by another valid collective bargaining agreement if such provisions are expressly waived in such agreement and such agreement provides a benefit comparable to that provided by the PSLI for such employee;

5. an audiologist, occupational therapist, physical therapist, or speech language pathologist who is licensed by the New York State Department of Education and who calls in for work assignments at will, determines his or her own schedule, has the ability to reject or accept any assignment referred to him or her, and is paid an average hourly wage that is at least four times the federal minimum wage;

6. an employee in a work study program under Section 2753 of Chapter 42 of the United States Code;

7. an employee whose work is compensated by a qualified scholarship program as that term is defined in the Internal Revenue Code, Section 117 of Chapter 20 of the United States Code; or

8. a participant in a Work Experience Program (WEP) under N.Y. Social Services Law § 336-c.

D. *Retaliation Prohibited.* An employer may not threaten or engage in retaliation against an employee for exercising or attempting in good faith to exercise any right provided by the PSLI. In addition, an employer may not interfere with any investigation, proceeding, or hearing pursuant to the PSLI.

E. *Notice of Rights.*

1. An employer must provide its employees with written notice of their rights pursuant to the PSLI. Such notice must be in English and the primary language spoken

by an employee, provided that DCA has made available a translation into such language. Downloadable notices are available on DCA's website at <http://www.nyc.gov/html/dca/html/law/PaidSickLeave.shtml>.

2. Any person or entity that willfully violates these notice requirements is subject to a civil penalty in an amount not to exceed \$50.00 for each employee who was not given appropriate notice.

F. *Records.* An employer must retain records documenting its compliance with the PSLL for a period of at least three years, and must allow DCA to access such records in furtherance of an investigation related to an alleged violation of the PSLL.

G. *Enforcement and Penalties.*

1. Upon receiving a complaint alleging a violation of the PSLL, DCA has the right to investigate such complaint and attempt to resolve it through mediation. Within 30 Days of written notification of a complaint by DCA, or sooner in certain circumstances, the employer must provide DCA with a written response and such other information as DCA may request. If DCA believes that a violation of the PSLL has occurred, it has the right to issue a notice of violation to the employer.

2. DCA has the power to grant an employee or former employee all appropriate relief as set forth in Admin. Code § 20-924(d). Such relief may include, among other remedies, treble damages for the wages that should have been paid, damages for unlawful retaliation, and damages and reinstatement for unlawful discharge. In addition, DCA may impose on an employer found to have violated the PSLL civil penalties not to exceed \$500.00 for a first violation, \$750.00 for a second violation within two years of the first violation, and \$1,000.00 for each succeeding violation within two years of the previous violation.

H. *More Generous Policies and Other Legal Requirements.* Nothing in the PSLL is intended to discourage, prohibit, diminish, or impair the adoption or retention of a more generous sick time policy, or the obligation of an employer to comply with any contract, collective bargaining agreement, employment benefit plan or other agreement providing more generous sick time. The PSLL provides minimum requirements pertaining to sick time and does not preempt, limit, or otherwise affect the applicability of any other law, regulation, rule, requirement, policy or standard that provides for greater accrual or use by employees of sick leave or time, whether paid or unpaid, or that extends other protections to employees. The PSLL may not be construed as creating or imposing any requirement in conflict with any federal or state law, rule, or regulation.

Section 4.07 Whistleblower Protection Expansion Act

A. In accordance with Local Laws 30 and 33 of 2012, codified at Admin. Code §§ 6-132 and 12-113, respectively,

1. Contractor shall not take an adverse personnel action with respect to an officer or employee in retaliation for such officer or employee making a report of information concerning conduct which such officer or employee knows or reasonably believes to involve corruption, criminal activity, conflict of interest, gross mismanagement or abuse of authority by any officer or employee relating to this Agreement to (i) the Commissioner of the Department of Investigation, (ii) a member of the New York City Council, the Public Advocate, or the Comptroller, or (iii) the City Chief Procurement Officer, ACCO, Agency head, or Commissioner.

2. If any of Contractor's officers or employees believes that he or she has been the subject of an adverse personnel action in violation of this Section 4.07, he or she shall be entitled to bring a cause of action against Contractor to recover all relief necessary to make him or her whole. Such relief may include but is not limited to: (i) an injunction to restrain continued retaliation, (ii) reinstatement to the position such employee would have had but for the retaliation or to an equivalent position, (iii) reinstatement of full fringe benefits and seniority rights, (iv) payment of two times back pay, plus interest, and (v) compensation for any special damages sustained as a result of the retaliation, including litigation costs and reasonable attorney's fees.

3. Contractor shall post a notice provided by the City (attached hereto) in a prominent and accessible place on any site where work pursuant to the Agreement 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 the Agreement; and

b. the rights and remedies afforded to its employees under Admin. Code §§ 7-805 (the New York City False Claims Act) and 12-113 (the Whistleblower Protection Expansion Act) for lawful acts taken in connection with the reporting of allegations of fraud, false claims, criminality or corruption in connection with the Agreement.

4. For the purposes of this Section 4.07, "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.

5. This Section 4.07 is applicable to all of Contractor's subcontractors having subcontracts with a value in excess of \$100,000.00; accordingly, Contractor shall include this Section 4.07 in all subcontracts with a value in excess of \$100,000.00.

B. Section 4.07 is not applicable to this Agreement if it is valued at \$100,000.00 or less. Sections 4.07(A)(1), (2), (4), and (5) are not applicable to this Agreement if it was solicited pursuant to a finding of an emergency. Section 4.07(A)(3) is neither applicable to this Agreement if it was solicited prior to October 18, 2012 nor if it is a renewal of a contract executed prior to October 18, 2012.

ARTICLE 5 - RECORDS, AUDITS, REPORTS, AND INVESTIGATIONS

Section 5.01 Books and Records

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

Section 5.02 Retention of Records

The Contractor agrees to retain all books, records, documents, other evidence 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 books, records, documents, and other evidence must be retained until the completion of such litigation, claim, or audit. Any books, records, documents, and other evidence that are created in an electronic format in the regular course of business may be retained in an electronic format. Any books, records, documents, or other evidence that are created in the regular course of business as a paper copy may be retained in an electronic format provided that they satisfy the requirements of N.Y. 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, documents, or other evidence 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, documents, and other evidence maintained or retained by or on behalf of the Contractor pursuant to this Article 5. Notwithstanding any provision herein regarding notice of inspection, all books, records, documents, and other evidence 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, the Comptroller, and/or federal auditors without prior notice and at no additional cost to the City. The Contractor shall make such books, records

documents, and other evidence 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. If observation of particular services or activity would constitute a waiver of a legal privilege or violate the Law or an ethical obligation under the New York Rules of Professional Conduct for attorneys, National Association of Social Workers Code of Ethics or other similar code governing the provision of a profession's services in New York State, the Contractor shall promptly inform the Department or other entity seeking to observe such work or activity. Such restriction shall not act to prevent government representatives from inspecting the provision of services in a manner that allows the representatives to ensure that services are being performed in accordance with this Agreement.

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 5.03.

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 5.04.

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 items or material (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 evidence" 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.

6. 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.

7. 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 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 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. 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 obligation under this Section 5.08 to hold reports, information or data confidential shall not apply where the Contractor is legally required to disclose such reports, information or data, by virtue of a subpoena, court order or otherwise (“disclosure demand”), provided that the Contractor complies with the following: (1) the Contractor shall provide advance notice to the Commissioner, in writing or by e-mail, that it received a disclosure demand for to disclose such reports, information or data and (2) if requested by the Department, the Contractor shall not disclose such reports, information, or data until the City has exhausted its legal rights, if any, to prevent disclosure of all or a portion of such reports, information or data. The previous sentence shall not apply if the Contractor is prohibited by law from disclosing to the Department the disclosure demand for such reports, information or data.

B. The Contractor shall provide notice to the Department within three 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 24 hours prior to any statement to the press or at least five 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 5.08 shall constitute a material breach of this Agreement for which the Department may terminate this Agreement pursuant to Article 10. The Department reserves any and all other rights and remedies in the event of unauthorized disclosure.

ARTICLE 6 - COPYRIGHTS, PATENTS, INVENTIONS, AND ANTITRUST

Section 6.01 Copyrights and Ownership of Work Product

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

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

C. The Contractor acknowledges that the City may, in its sole discretion, register copyright in the Copyrightable Materials with the United States Copyright Office or any other government agency authorized to grant copyright registrations. The Contractor shall fully

cooperate in this effort, and agrees to provide any and all documentation necessary to accomplish this.

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

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

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

Section 6.02 Patents and Inventions

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

Section 6.03 Pre-existing Rights

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

Section 6.04 Antitrust

The Contractor hereby assigns, sells, and transfers to the City all right, title, and interest in and to any claims and causes of action arising under the antitrust laws of the State or of the

United States relating to the particular goods or services procured by the City under this Agreement.

ARTICLE 7 - INSURANCE

Section 7.01 Agreement to Insure

The Contractor shall maintain the following types of insurance if and as indicated in Schedule A (with the minimum limits and special conditions specified in Schedule A) throughout the term of this Agreement, including any applicable guaranty period. All insurance shall meet the requirements set forth in this Article 7. Wherever this Article 7 requires that insurance coverage be “at least as broad” as a specified form (including all ISO forms), there is no obligation that the form itself be used, provided that the Contractor can demonstrate that the alternative form or endorsement contained in its policy provides coverage at least as broad as the specified form.

Section 7.02 Workers’ Compensation, Disability Benefits, and Employers’ Liability Insurance

A. The Contractor shall maintain workers’ compensation insurance, employers’ liability insurance, and disability benefits insurance, in accordance with Law on behalf of, or in regard to, all employees providing services under this Agreement

B. Within 10 Days of award of this Agreement or as otherwise specified by the Department, and as required by N.Y. Workers’ Compensation Law §§ 57 and 220(8), the Contractor shall submit proof of Contractor’s workers’ compensation insurance and disability benefits insurance (or proof of a legal exemption) to the Department in a form acceptable to the New York State Workers’ Compensation Board. ACORD forms are not acceptable proof of such insurance. The following forms are acceptable:

1. Form C-105.2, *Certificate of Workers’ Compensation Insurance*;
2. Form U-26.3, *State Insurance Fund Certificate of Workers’ Compensation Insurance*;
3. Form SI-12, *Certificate of Workers’ Compensation Self-Insurance*;
4. Form GSI-105.2, *Certificate of Participation in Worker’s Compensation Group Self-Insurance*;
5. Form DB-120.1, *Certificate of Disability Benefits Insurance*;
6. Form DB-155, *Certificate of Disability Benefits Self-Insurance*;
7. Form CE-200 – *Affidavit of Exemption*;

8. Other forms approved by the New York State Workers' Compensation Board; or
9. Other proof of insurance in a form acceptable to the City.

Section 7.03 Other Insurance

A. *Commercial General Liability Insurance.* The Contractor shall maintain commercial general liability insurance in the amounts specified in Schedule A covering operations under this Agreement. Coverage must be at least as broad as the coverage provided by the most recently issued ISO Form CG 00 01, primary and non-contributory, and "occurrence" based rather than "claims-made." Such coverage shall list the City, together with its officials and employees, and any other entity that may be listed on Schedule A as an additional insured with coverage at least as broad as the most recently issued ISO Form CG 20 10 or CG 20 26 and, if construction is performed as part of the services, ISO Form CG 20 37.

B. *Commercial Automobile Liability Insurance.* If vehicles are used in the provision of services under this Agreement, the Contractor shall maintain commercial automobile liability insurance 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 CA 00 01. If vehicles are used for transporting hazardous materials, the commercial 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.

C. *Professional Liability Insurance.*

1. The Contractor is providing professional services pursuant to this Agreement. The Contractor shall maintain and submit evidence of professional liability insurance or errors and omissions insurance appropriate to the type(s) of such services to be provided under this Agreement. The policy or policies shall 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.

2. All subcontractors of the Contractor providing professional services under this Agreement for which professional liability insurance or errors and omissions insurance is reasonably commercially available shall also maintain such insurance in the amount specified in Schedule A. At the time of the request for subcontractor approval, the Contractor shall provide to the Department, evidence of such professional liability insurance on a form acceptable to the Department.

3. 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 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.

D. *Crime Insurance.* If indicated in Schedule A, the Contractor shall maintain crime insurance during the term of the Agreement in the minimum amounts listed in Schedule A. Such insurance shall include coverage, without limitation, for any and all acts of employee theft including employee theft of client property, forgery or alteration, inside the premises (theft of money and securities), inside the premises (robbery or safe burglary of other property), outside the premises, computer fraud, funds transfer fraud, and money orders and counterfeit money. The policy shall name the Contractor as named insured and shall list the City as loss payee as its interests may appear.

E. *Cyber Liability Insurance.* If indicated in Schedule A, the Contractor shall maintain cyber liability insurance covering losses arising from operations under this Agreement in the amounts listed in Schedule A. The City shall approve the policy (including exclusions therein), coverage amounts, deductibles or self-insured retentions, and premiums, as well as the types of losses covered, which may include but not be limited to: notification costs, security monitoring costs, losses resulting from identity theft, and other injury to third parties. If additional insured status is commercially available under the Contractor's cyber liability insurance, the insurance shall cover the City, together with its respective officials and employees, as additional insured.

F. *Other Insurance.* The Contractor shall provide such other types of insurance in the amounts specified in Schedule A.

Section 7.04 General Requirements for Insurance Coverage and Policies

A. Unless otherwise stated, all insurance required by Section 7.03 of this Agreement must:

1. be provided by companies that may lawfully issue such policies;
2. have an A.M. Best rating of at least A- / VII, a Standard & Poor's rating of at least A, a Moody's Investors Service rating of at least A3, a Fitch Ratings rating of at least A- or a similar rating by any other nationally recognized statistical rating organization acceptable to the New York City Law Department unless prior written approval is obtained from the New York City Law Department; and
3. be primary (and non-contributing) to any insurance or self-insurance maintained by the City (not applicable to professional liability insurance/errors and omissions insurance) and any other entity listed as an additional insured in Schedule A.

B. 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.

C. There shall be no self-insurance program, including a self-insurance retention, exceeding \$10,000.00, with regard to any insurance required under Section 7.03 unless approved in writing by the Commissioner. Any such self-insurance program shall provide the City and any other additional insured listed on Schedule A with all rights that would be provided by traditional insurance required under this Article 7, including but not limited to the defense obligations that insurers are required to undertake in liability policies.

D. The limits of coverage for all types of insurance for the City, including its officials and employees, and any other additional insured listed on Schedule A that must be provided to such additional insured(s) shall be the greater of (i) the minimum limits set forth in Schedule A or (ii) the limits provided to the Contractor as named insured under all primary, excess, and umbrella policies of that type of coverage.

Section 7.05 Proof of Insurance

A. For each policy required under Section 7.03 and Schedule A of this Agreement, the Contractor shall file proof of insurance and, where applicable, proof that the City, including its officials and employees, is an additional insured with the Department within ten Days of award of this Agreement. The following proof is acceptable:

1. A certificate of insurance accompanied by a completed certification of insurance broker or agent (included in Schedule A of this Agreement) and any endorsements by which the City, including its officials and employees, have been made an additional insured; or

2. A copy of the insurance policy, including declarations and endorsements, certified by an authorized representative of the issuing insurance carrier.

B. Proof of insurance confirming renewals of insurance required under Section 7.03 must be submitted to the Department prior to the expiration date of the coverage. Such proof must meet the requirements of Section 7.05(A).

C. The Contractor shall provide the City with a copy of any policy required under this Article 7 upon the demand for such policy by the Commissioner or the New York City Law Department.

D. 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 7 (and ensuring that subcontractors maintain such policies) or from any liability arising from its failure to do so.

E. If the Contractor receives notice, from an insurance company or other person, that any insurance policy required under this Article 7 shall expire or be cancelled or terminated for any reason, the Contractor shall immediately forward a copy of such notice to both the address referred to in Section 14.04 and Schedule A and to the New York City Comptroller, Attn: Office of Contract Administration, Municipal Building, One Centre Street, Room 1005, New York, New York 10007.

Section 7.06 Miscellaneous

A. Whenever notice of loss, damage, occurrence, accident, claim, or suit is required under a policy required by Section 7.03 and Schedule A, 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 be covered under such policy if this Agreement requires that the City be an additional insured (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, including its officials and employees, as additional insured" (such notice shall also include the name of any other entity listed as an additional insured on Schedule A) and contain the following information to the extent known: 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, together with its officials and employees, and any other entity listed as an additional insured on Schedule A 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 together with its officials and employees, and any other entity listed as an additional insured on Schedule A.

B. The Contractor's failure to maintain any of the insurance required by this Article 7 and Schedule A 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 7 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. With respect to insurance required by Section 7.03 and Schedule A (but not including professional liability/errors and omissions insurance), the Contractor waives all rights against the City, including its officials and employees, and any other entity listed as an additional insured on Schedule A for any damages or losses that are covered under any insurance required under this Article 7 (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 maintain insurance with regard to any operations under this Agreement and requires such subcontractor to list the Contractor as an additional insured under such insurance, the Contractor shall ensure that such entity also list the City, including its officials and employees, and any other entity listed as an additional insured on Schedule A as an additional insured. With respect to commercial general liability insurance, such coverage must be at least as broad as the most recently issued ISO form CG 20 26.

ARTICLE 8 - PROTECTION OF PERSONS AND PROPERTY AND INDEMNIFICATION

Section 8.01 Reasonable Precautions

The Contractor shall take all reasonable precautions to protect all persons and the property of the City and of others from injury, damage, or loss 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 negligence, 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

To the fullest extent permitted by Law, the Contractor shall defend, indemnify, and hold harmless the City, including its officials and employees, against any and all judgments for damages on account of any injuries or death to any person or damage to any property, and costs and expenses to which the City or its officials or employees, may be subject to or which they may suffer or incur allegedly arising out of any of the operations of the Contractor and/or its subcontractors under this Agreement to the extent resulting from any negligent act of commission or omission, any intentional tortious act, and/or the failure to comply with Law or any of the requirements of this Agreement. Insofar as the facts or Law relating to any of the foregoing would preclude the City or its officials or employees from being completely indemnified by the Contractor, the City and its officials and employees shall be partially indemnified by the Contractor to the fullest extent permitted by Law. In the event the Contractor fails to provide a defense of the City, or its officials or employees, of a claim upon demand, the Contractor shall reimburse the City, or its officials or employees as the case may be, for all reasonable attorney's fees and expenses. Notwithstanding the above, where a claim relates exclusively to the negligent performance of professional services, the Contractor is not obligated

to provide the City or its officials and employees with a defense or reimbursement for attorney's fees.

Section 8.04 Infringement Indemnification

To the fullest extent permitted by Law, the Contractor shall defend, indemnify, and hold harmless the City, including its officials and employees, against any and all claims (even if the allegations of the claim are without merit), judgments for damages, and costs and expenses to which the City or its officials or employees, may be subject to or which they may suffer or incur allegedly arising out of any infringement, violation, or unauthorized use of any copyright, trade secret, trademark or patent or any other property or personal right of any third party by the Contractor and/or its employees, agents, or subcontractors in the performance of this Agreement. To the fullest extent permitted by Law, the Contractor shall defend, indemnify, and hold harmless the City and its officials and employees regardless of whether or not the alleged infringement, violation, or unauthorized use arises out of compliance with the Agreement's scope of services/scope of work. Insofar as the facts or Law relating to any of the foregoing would preclude the City and its officials and employees from being completely indemnified by the Contractor, the City and its officials and employees 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 Contractor's obligation to indemnify, defend and hold harmless the City and its officials and employees shall neither be (i) limited in any way by the Contractor's obligations to obtain and maintain insurance under this Agreement, nor (ii) adversely affected by any failure on the part of the City or its officials or employees to avail themselves of the benefits of such insurance.

Section 8.06 Actions By or Against Third Parties

A. If 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 that the City may reasonably require of the Contractor.

B. The Contractor shall report to the Department in writing within five business days of the initiation by or against the Contractor of any legal action or proceeding relating to this Agreement.

Section 8.07 Withholding of Payments

A. If 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. If 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 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 set-off in the event that an insurance company that provided insurance pursuant to Section 7.03 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 8.07 are not 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 officials and employees.

ARTICLE 9 - CONTRACT CHANGES

Section 9.01 Contract Changes

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

Section 9.02 Changes Through Fault of Contractor

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

ARTICLE 10 - TERMINATION, DEFAULT, REDUCTIONS IN FUNDING, AND LIQUIDATED DAMAGES

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. In its sole discretion, the City shall have the right to terminate this Agreement, in whole or in part, upon the request of the Contractor to withdraw from the Contract, in accordance with the provisions of Section 10.05.

C. If the City terminates this Agreement pursuant to this Section 10.01, 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 10.02(A) 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 Section 10.02(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 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 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 10.02, 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 10.02 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 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 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 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 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 10.03.

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 10.03. 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 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 10.03, 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 10.04, 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 10.05 and Section 14.04. For termination without cause, the effective date of the termination shall not be

less than ten Days from the date the notice is personally delivered, or 15 Days from the date the notice is either sent by certified mail, return receipt requested, delivered by overnight or same day courier service in a properly addressed envelope with confirmation, or sent by email and, unless the receipt of the email is acknowledged by the recipient by email, deposited in a post office box regularly maintained by the United States Postal Service in a properly addressed 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 45 Days, any unexpended funds which have been advanced to the Contractor pursuant to this Agreement;

2. Furnishing within 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 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, unless the Department waives, in writing, the requirement that a certified public accountant or licensed public accountant make such report; 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 10.06, 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 10 shall not be exclusive and are in addition to all other rights and remedies provided by Law or under this Agreement.

Section 10.07 Liquidated Damages

If Schedule A or any other part of this Agreement includes liquidated damages for failure to comply with a provision of this Agreement, the sum indicated is fixed and agreed as the liquidated damages that the City will suffer by reason of such noncompliance and not as a penalty.

ARTICLE 11 - PROMPT PAYMENT AND ELECTRONIC FUNDS TRANSFER

Section 11.01 Prompt Payment

A. The prompt payment provisions of PPB Rule § 4-06 are applicable to payments made under this Agreement. With some exceptions, 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 11.02 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 Department may waive the requirements of this Section 11.02 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 11.02 is applicable to contracts valued at \$25,000.00 and above.

ARTICLE 12 - CLAIMS

Section 12.01 Choice of Law

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

Section 12.02 Jurisdiction and Venue

Subject to Section 12.03, 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 12.02, 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 12.02.

Section 12.03 Resolution of Disputes

A. Except as provided in Subparagraphs (A)(1) and (A)(2) below, all disputes between the City and the Contractor that arise under, or by virtue of, this Agreement shall be

finally resolved in accordance with the provisions of this Section 12.03 and PPB Rule § 4-09. This procedure shall be the exclusive means of resolving any such disputes.

1. This Section 12.03 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 12.03 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 12.03 shall not apply to termination of the Agreement for cause or other than for cause.

B. All determinations required by this Section 12.03 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 12.03 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 12.03, 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 12.03 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 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 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 12.03 as the Contractor initiating the dispute.

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

4. Finality of Agency Head Decision. The Agency Head's decision shall be final and binding on all parties, unless presented to the Contract Dispute Resolution Board ("CDRB") pursuant to this Section 12.03. The City may not take a petition to the CDRB. However, should the Contractor take such a petition, the City may seek, and the CDRB may render, a determination less favorable to the Contractor and more favorable to the City than the decision of the Agency Head.

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

1. Time, Form, and Content of Notice. Within 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 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 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 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 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 12.03 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 12.03, 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 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 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 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 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 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 12.03 shall not affect or impair the ability of the Agency Head or CDRB to make a binding and final decision pursuant to this Section 12.03.

Section 12.04 Claims and Actions

A. Any claim, that is not subject to dispute resolution under the PPB Rules or this Agreement, against the City for damages for breach of contract shall not be made or asserted in

any action, 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 months after the final payment under this Agreement, or within six months of the termination or expiration of this Agreement, or within six months after the accrual of the cause of action, whichever first occurs.

Section 12.05 No Claim Against Officials, Agents, or Employees

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

Section 12.06 General Release

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

Section 12.07 No Waiver

Waiver by either the Department or the Contractor of a breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of the Agreement unless and until the same shall be agreed to in writing by the parties as set forth in Section 9.01.

ARTICLE 13 - APPLICABLE LAWS

Section 13.01 PPB Rules

This Agreement is subject to the PPB Rules. If there is 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 Unlawful Discrimination in the Provision of Services

A. *Discrimination in Public Accommodations.* With respect to services provided under this Agreement, the Contractor shall not unlawfully discriminate against any person because of actual or perceived age, religion, creed, sex, gender, gender identity or gender expression, sexual orientation, partnership status, marital status, disability, presence of a service animal, race, color, national origin, alienage, citizenship status, or military status, or any other class of individuals protected from discrimination in public accommodations by City, State or Federal laws, rules or regulations. The Contractor shall comply with all statutory and regulatory obligations to provide reasonable accommodations to individuals with disabilities.

B. *Discrimination in Housing Accommodations.* With respect to services provided under this Agreement, the Contractor shall not unlawfully discriminate against any person because of actual or perceived age, religion, creed, sex, gender, gender identity or gender expression, sexual orientation, status as a victim of domestic violence, stalking, and sex offenses, partnership status, marital status, presence of children, disability, presence of a service or emotional support animal, race, color, national origin, alienage or citizenship status, lawful occupation, or lawful source of income (including income derived from social security, or any form of federal, state, or local public government assistance or housing assistance including Section 8 vouchers), or any other class of individuals protected from discrimination in housing accommodations by City, State or Federal laws, rules or regulations. The Contractor shall comply with all statutory and regulatory obligations to provide reasonable accommodations to individuals with disabilities.

C. *Admin. Code § 6-123.* In accordance with 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 Admin. 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 \$50,000.00 that such subcontractor shall not engage in any such unlawful discriminatory practice.

D. *Immigration status.* In connection with the services provided under this Agreement, the Contractor shall not inquire about the immigration status of a recipient or potential recipient of such services unless (i) it is necessary for the determination of program, service or benefit eligibility or the provision of City services or (ii) the Contractor is required by law to inquire about such person's immigration status.

Section 13.06 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). If 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 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 13.07 Voter Registration

A. *Participating Agencies.* Pursuant to Charter § 1057-a, if this Agreement is made by and through 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 13.06. 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; SBS; 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 Hygiene; 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.

Appendix A (Architects, Engineers, and Surveyors) January 2018 Final

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 13.06, 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 13.06 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 13.06 are material conditions of this Agreement.

F. The provisions of this Section 13.06 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 13.08 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 13.09 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 13.10 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 13.11 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 13.12 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 13.11 applies as provided in Paragraph B of this Section 13.11, the Contractor hereby agrees to fulfill the obligations in Paragraph C of this Section 13.11. 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 13.11 shall be applicable to a Contractor operating pursuant to an Agreement which (i) is in excess of \$250,000.00 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 13.11 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 13.11 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 13.13 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 13.12. The participating City agencies are: Administration for Children’s Services, Department of Consumer Affairs, Department of Correction, Department of Health and Mental Hygiene, Department of Homeless Services, Department of Housing Preservation and Development, Human Resources Administration, Department of Parks

and Recreation, Department of Probation, and Department of Youth and Community Development.

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

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

ARTICLE 14 - MISCELLANEOUS PROVISIONS

Section 14.01 Conditions Precedent

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

B. The requirements of this Section 14.01 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 modify 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 hereby designates the business address and email address and the Department hereby designates the business address specified in Schedule A (and if not specified in Schedule A, as 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 email and 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 14.04 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.

Appendix A (Architects, Engineers, and Surveyors) January 2018 Final

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.

SCHEDULE A

Article 7 -- Insurance	
Types of Insurance (per Article 7 in its entirety, including listed paragraph)	Minimum Limits and Special Conditions
<p>■ Workers' Compensation §7.02</p> <p>■ Disability Benefits Insurance §7.02</p> <p>■ Employers' Liability §7.02</p>	Statutory amounts.
<p>■ Commercial General Liability §7.03(A)</p>	<p><u>\$1,000,000.00</u> per occurrence</p> <p><u>\$1,000,000.00</u> personal & advertising injury (unless waived in writing by the Department)</p> <p><u>\$2,000,000.00</u> aggregate</p> <p><u>\$0</u> products/completed operations</p> <p>Additional Insureds:</p> <p>1. City of New York, including its officials and employees, and</p> <p>2. _____</p> <p>3. _____</p>
<p>Commercial Auto Liability §7.03(B)</p> <p>If vehicles are used in the provision of services under this Agreement, then the Contractor shall maintain Commercial Automobile Liability insurance in the amount specified.</p>	<p><u>\$1,000,000.00</u> per accident combined single limit</p> <p>If vehicles are used for transporting hazardous materials, the Contractor shall provide pollution liability broadened coverage for covered vehicles (endorsement CA 99 48) as well as proof of MCS 90</p>
<p>■ Professional Liability/Errors & Omissions</p> <p style="text-align: right;">§7.03(C)</p>	<u>\$1,000,000.00</u> per claim

Appendix A (Architects, Engineers, and Surveyors) January 2018 Final

<input type="checkbox"/> Crime Insurance §7.03(D)	<p>\$ _____ Employee Theft/Dishonesty</p> <p>\$ _____ Computer Fraud</p> <p>\$ _____ Funds Transfer Fraud</p> <p>\$ _____ Client Coverage</p> <p>\$ _____ Forgery or Alteration</p> <p>\$ _____ Inside the Premises (theft of money and securities)</p> <p>\$ _____ Inside the Premises (robbery or safe burglary of other property)</p> <p>\$ _____ Outside the Premises</p> <p>\$ _____ Money Orders and Counterfeit Money</p> <p>City of New York is a loss payee as its interests may appear</p>
<input type="checkbox"/> Cyber Liability Insurance §7.03(E)	<p><i>[If there is a significant cyber risk, please consult with the Law Department about specific insurance requirements.]</i></p>
<input type="checkbox"/> [OTHER]	<p><i>[If other type(s) of insurance need to be required under the Contract, the Contracting Agency should (a) check the box and fill in the type of insurance in left-hand column, and (b) in this right-hand column, specify appropriate limit(s) and appropriate Named Insured and Additional Insured(s).]</i></p>
<input type="checkbox"/> [OTHER]	<p><i>[If other type(s) of insurance need to be required under the Contract, the Contracting Agency should (a) check the box and fill in the type of insurance in left-hand column, and (b) in this right-hand column, specify appropriate limit(s) and appropriate Named Insured and Additional Insured(s).]</i></p>

Appendix A (Architects, Engineers, and Surveyors) January 2018 Final

Section 10.07 – Liquidated Damages	
<ul style="list-style-type: none"> • Violation of Section 3.02(H), reporting subcontractors in the City’s Payee Information Portal • _____ 	<p>\$100 per day</p> <p>\$ _____</p>
Section 14.04 – Notice	
<p>Department’s Mailing Address</p>	<p>Agency Head 30-30 Thomson Avenue Long Island City, Queens 11101</p>
<p>Contractor’s Mailing Address and Email Address for Notices</p>	

CERTIFICATES OF INSURANCE

Instructions to New York City Agencies, Departments, and Offices

All certificates of insurance (except certificates of insurance solely evidencing Workers' Compensation Insurance, Employer's Liability Insurance, and/or Disability Benefits Insurance) must be accompanied by one of the following:

- (1) the Certification by Insurance Broker or Agent on the following page setting forth the required information and signatures;

-- OR --

- (2) copies of all policies as certified by an authorized representative of the issuing insurance carrier that are referenced in such certificate of insurance. If any policy is not available at the time of submission, certified binders may be submitted until such time as the policy is available, at which time a certified copy of the policy shall be submitted.

CITY OF NEW YORK
CERTIFICATION BY INSURANCE BROKER OR AGENT

The undersigned insurance broker or agent represents to the City of New York that the attached Certificate of Insurance is accurate in all material respects.

[Name of broker or agent (typewritten)]

[Address of broker or agent (typewritten)]

[Email address of broker or agent (typewritten)]

[Phone number/Fax number of broker or agent (typewritten)]

[Signature of authorized official, broker, or agent]

[Name and title of authorized official, broker, or agent (typewritten)]

State of)

) ss.:

County of)

Sworn to before me this ____ day of _____ 20__

NOTARY PUBLIC FOR THE STATE OF _____

WHISTLEBLOWER PROTECTION EXPANSION ACT POSTER



REPORT
CORRUPTION, FRAUD, UNETHICAL CONDUCT
RELATING TO A NYC-FUNDED CONTRACT
OR PROJECT
CALL THE NYC DEPARTMENT OF INVESTIGATION
212-825-5959

DOI CAN ALSO BE REACHED BY MAIL
OR IN PERSON AT:
New York City Department of
Investigation (DOI)
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



Or scan the QR Code above
to make a complaint

**THE LAW PROTECTS EMPLOYEES OF
CITY CONTRACTORS WHO REPORT CORRUPTION**

- Any employee of a City contractor, or subcontractor of the City, or a City contractor with a contract valued at 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 to DOI – or to certain other specified government officials – information about fraud, false claims, corruption, criminality, conflict of interest, gross mismanagement, or abuse of authority relating to a City contract valued at more than \$100,000.
- Any employee who makes 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

EXHIBIT I

HIRING AND EMPLOYMENT RIDER: HIRENYC AND REPORTING REQUIREMENTS

Introduction

This Rider will apply to all contracts for goods, services, and construction with a value of one million dollars (\$1,000,000.00) or more, provided, however, that certain requirements of the Rider will only apply as indicated below. This Rider addresses the HireNYC process, including reporting obligations under the HireNYC process, and certain other reporting requirements imposed by law. In general, the HireNYC process under this Rider requires the Contractor to enroll with the HireNYC portal for the City of New York (“the City”) found within the Department of Small Business Services’s (“SBS”) website, to disclose all entry to mid-level job opportunities described in this Rider arising from tis contract and located in the New York City, and to agree to interview qualified candidates from HireNYC for those opportunities.

HireNYC Requirements

A. Enrollment

The Contractor will enroll with the HireNYC system, found at www.nyc.gov/sbs, within thirty (30) days after the registration of this Contract pursuant to Section 328 of the New York City Charter. The Contractor will provide information about the business, designate a primary contact and say whether it intends to hire for any entry to mid-level job opportunities arising from this contract an located in New York City, and, if so, the approximate start date of the first hire.

B. Job Posting Requirements

Once enrolled in HireNYC, the Contractor agrees to update the HireNYC portal with all entry to mid-level job opportunities arising from this contract and located in New York City, if any, which will be defined as jobs requiring no more than an associate degree, as provided by the New York State Department of Labor (see Column F of <https://labor.ny.gov/stats/2012-2022-NYS-Employment-Prospects.xls>). The information to be updated includes the types of entry and mid-level positions made available from the work arising from the contract and located in New York City, the number of positions, the anticipated schedule of initiating the hiring process for these positions, and the contact information for the Contractor’s representative charged with overseeing hiring. The Contractor must update the HireNYC portal with any hiring needs arising from the contract and located in New York City, and the requirements of the jobs to be filled, no less than three weeks prior to the intended first day of employment for each new position, except with the permission of SBS, not to be unreasonably withheld, and must also update the HireNYC portal as set forth below.

After enrollment through HireNYC and submission of relevant information, SBS will work with the Contractor to develop a recruitment plan which will outline the candidate screening process, and will provide clear instructions as to when, where, and how interviews will take place. HireNYC will screen applicants based on employer requirements and refer applicants whom it believes are qualified to the Contractor for interviews. The Contractor must interview referred applicants whom it believes are qualified.

After completing an interview of candidate referred by HireNYC, the Contractor must provide feedback via the portal within twenty (20) business days to indicate which candidate were interviewed and hired, if any. In addition, the Contactor will provide the start date of new hires, and additional information reasonably related to such hires, within twenty (20) business days after the start date. In the event the Contractor does not have any job openings covered by this Rider in any given year, the Contractor will be required to provide an annual update to HireNYC to that effect. For this purpose, the reporting year will run from the date of the registration of the contract and each anniversary date.

These requirements do not limit the Contractor’s ability to assess the qualifications of prospective workers, and to make final hiring and retention decisions. No provision of this Rider will be interpreted so as to require the Contractor to employ any particular worker.

In addition, the provisions of the Rider will not apply to positions that the Contractor intends to fill with employee employed pursuant to the job retention provision of Section 22-505 of the Administrative Code of the City of New York. The Contractor will enroll with the HireNYC system pursuant to Section A, above, and, if such positions subsequently become open, then the remaining provisions of this Rider will apply.

C. Breach and Liquidated Damages

If the Contractor fails to comply with the terms of the contract and this Rider (1) by not enrolling its business with HireNYC; (2) by not informing HireNYC, as required, of open positions; or (3) by failing to interview a qualified candidate, the contracting agency may assess liquidated damages in the amount of two-thousand five hundred dollars (\$2,500.00) per breach. For all other events of noncompliance with the terms of this Rider, the agency may assess liquidated damages in the amount of five hundred dollars (500) per breach.

Furthermore, in the event the Contractor breaches the requirement of this Rider during the term of the contract, the City may hold the Contractor in default of this contract.

Audit Compliance

In addition to the auditing requirements set forth in other parts of the contract, the Contractor will permit SBS and the City to inspect any and all records concerning or relating to job openings or the hiring of individuals for work arising from the contract and located in New York City. The Contractor will permit an inspection within seven (7) business days of the request.

Other Reporting Requirements

The Contractor will report to the City, on a monthly basis, all information reasonably requested by the City that is necessary for the City to comply with any reporting requirements imposed by law or rule, including any requirement that the City maintain a publicly accessible database. In addition, the Contractor agrees to comply with all reporting requirements imposed by law or rule, or as otherwise requested by the City.

Construction Requirements

Construction contractors will comply with the HireNYC requirements set forth above for all non-trades jobs (e.g., for an administrative position arising out of the work of the contract and located in New York City) as set forth above.

In addition, construction contractors will reasonably cooperate with SBS and the City on specific outreach events, including Hire on the Sport events, for the hiring of trades workers for the work of this contract.

Further, this contract will be subject to a project labor agreement if so required elsewhere in this contract.

Federal Hiring Requirements

The Contractor will comply with all federal hiring requirements as may be set forth elsewhere in this contract, including, as applicable:

- Section 3 of the HUD Act of 1968, which requires, to the greatest extent feasible, economic opportunities for 30 percent of new hires be given to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

Executive Order 11246, which prohibits discrimination in employment due to race, color, religion, sex or national origin, and requires the implementation of goals for minority and female participation for work involving any Construction trade.

EXHIBIT J

**UNIFORM FEDERAL CONTRACT PROVISIONS RIDER FOR FEDERALLY FUNDED PROCUREMENT
CONTRACTS**

(SEPARATE ATTACHMENT)

**UNIFORM FEDERAL CONTRACT PROVISIONS RIDER
FOR FEDERALLY FUNDED PROCUREMENT CONTRACTS**
(Version 02.16.2018)

[Instructions to Agencies: This Uniform Federal Contract Provisions Rider for Federally Funded Procurement Contracts (“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). This Rider does not apply to subrecipient or subaward agreements. Procurement contracts funded by the U.S. Department of Housing and Urban Development CDBG Program or CDBG-DR Program must also include the CDBG or CDBG-DR Rider, as applicable.]

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.
- (8) “Government” means the U.S. government.
- (9) “Rider” means this Uniform Federal Contract Provisions Rider.

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). The Contractor shall include this provision in all subcontracts.
- (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) *Lobbying.* The Contractor certifies, to the best of its knowledge and belief, 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 will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," (which is available on the HUD website or here: <https://www.hudexchange.info/resources/documents/HUD-Form-Sflll.pdf>) in accordance with its instructions; and
 - (c) It will require that the language of this Section (C)(6) be included in the award documents for all subcontracts at all tiers.
 - (d) This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352. 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.
- (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 (codified at 42 USC § 6962). 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. For the purposes of the Equal Opportunity Construction Contract Specifications and Clause below, the term “Construction Work” means the construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction .

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;
 - c. “Employer identification number” means the Federal Social Security number used on the Employer’s Quarterly Federal Tax Return, U.S. Treasury Department Form 941.
 - d. “Minority” includes:
 - (i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
 - (ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
 - (iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
 - (iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).
2. Whenever the Contractor, or any subcontractor at any tier, subcontracts a portion of the work involving any Construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this 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).

- (3) **Equal Opportunity Clause** (for contracts for Construction Work) required by 41 CFR § 60-1.4(b).

During the performance of this contract, the Contractor agrees as follows:

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.

(4) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, 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 the administering

agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

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.
 - c. *Invention Disclosure, Election of Title and Filing of Patent Application by Contractor.*
 - 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).

1. *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.

FEDERAL EXHIBIT 1

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:

Goals and Timetables for Minorities

<u>Trade</u>	<u>Goal</u> <u>(percent)</u>
Electricians	9.0 to 10.2
Carpenters	27.6 to 32.0
Steamfitters	12.2 to 13.5
Metal Lathers	24.6 to 25.6
Painters	28.6 to 26.0
Operating Engineers	25.6 to 26.0
Plumbers	12.0 to 14.5
Iron Workers (structural)	25.9 to 32.0
Elevator Constructors	5.5 to 6.5
Bricklayers	13.4 to 15.5
Asbestos Workers	22.8 to 28.0
Roofers	6.3 to 7.5
Iron Workers (ornamental)	22.4 to 23.0
Cement Masons	23.0 to 27.0
Glazers	16.0 to 20.0
Plasterers	15.8 to 18.0
Teamsters	22.0 to 22.5
Boilermakers	13.0 to 15.5
All Other	16.4 to 17.5

Goals and Timetables for Women

From April 1, 1980 until the present 6.9

These goals are applicable to all the Contractor's Construction Work (whether or not it is Federal or federally assisted) performed in the covered area. If the Contractor performs Construction Work in a geographical area located outside of the covered area, it shall apply the goals established for such

geographical area where the work is actually performed. With regard to this second area, the Contractor also is subject to the goals for both its federally involved and nonfederally involved Construction.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a), and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the Contractor shall make 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.

FEDERAL EXHIBIT 2

[Insert Exhibit 2 for applicable federal grant program]

EXHIBIT K

COMMUNITY DEVELOPMENT BLOCK GRANT DISASTER RELIEF (“CDBG-DR”) PROGRAM RIDER

HUD EXHIBIT 2

(SEPARATE ATTACHMENT)

CDBG-DR Rider

(Version 02.16.2018)

INSTRUCTIONS TO NYC AGENCIES AND OFFICES

This CDBG Rider contains supplementary general conditions for use with procurement contracts and subrecipient agreements that are funded in whole or in part by the U.S. Department of Housing and Urban Development (“HUD”) under Title I of the Housing and Community Development Act of 1974 (Pub. L. 93-383) as amended. For all procurement contracts and subrecipient agreements funded by the Community Development Block Grant Disaster Recovery (“CDBG-DR”) Program, *except those funded by the regular CDBG (“CDBG”) Program*, this CDBG-DR Rider must be included as an attachment, expressly made a part of, and incorporated by reference. A different rider with terms specific to the regular CDBG Program should be attached to CDBG funded procurement contracts and subrecipient agreements.

If this rider is attached to a subrecipient agreement, the agency or office must ensure that the subrecipient agreement includes the information specific to the subaward required in 2 CFR § 200.331.

FEDERAL REGISTER NOTICES

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Federal Register Notices applicable to the use of CDBG-DR Funds for Hurricane Sandy disaster recovery are available on the HUD Web site at <https://www.hudexchange.info/cdbg-dr/cdbg-dr-laws-regulations-and-federal-register-notices>.

Contents

ARTICLE 1. DEFINITIONS	3
ARTICLE 2. HOUSING AND COMMUNITY DEVELOPMENT ACT AND NATIONAL ENVIRONMENTAL POLICY ACT	4
ARTICLE 3. LABOR REQUIREMENTS	4
ARTICLE 4. ADDITIONAL FEDERAL CONDITIONS FOR CONSTRUCTION FOR SUBRECIPIENTS	6
ARTICLE 5. FEDERAL NON-DISCRIMINATION LAWS	13
ARTICLE 6. ENVIRONMENTAL PROTECTION; ENERGY EFFICIENCY; HISTORIC PRESERVATION; FLOOD PROTECTION; LEAD-BASED PAINT	14
ARTICLE 7. UNIFORM RELOCATION ASSISTANCE.....	15
ARTICLE 8. UNIFORM ADMINISTRATIVE REQUIREMENTS (INCLUDING PROCUREMENT STANDARDS), COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS.....	15
ARTICLE 9. UNEARNED PAYMENTS; INCOME; DOCUMENTATION OF COSTS; ACCOUNTING SYSTEM; FIDELITY BONDS; DISBURSEMENT RESTRICTIONS	15
ARTICLE 10. RECORDS AND AUDITS	17
ARTICLE 11. SUBCONTRACTORS	17
ARTICLE 12. CONFLICTS; EXHIBITS	18
ARTICLE 13. REVERSION OF ASSETS	18
ARTICLE 14. SMALL FIRMS, M/WBE FIRMS, AND LABOR SURPLUS AREA FIRMS	18
ARTICLE 15. INTANGIBLE PROPERTY.....	19
ARTICLE 16. HATCH ACT; LOBBYING; CONFLICTS OF INTEREST	20
ARTICLE 17. SUSPENSION AND TERMINATION.....	21
ARTICLE 18. PERFORMANCE REQUIREMENTS AND REMEDIES	21

ARTICLE 1. DEFINITIONS

As used in this CDBG-DR Rider:

(a) “Act” means Title 1 of the Housing and Community Development Act of 1974 (Pub. L. 93-383) as amended.

(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) “Equipment” means tangible personal property (including information technology systems) having a useful life of more than one year and a per-unit acquisition cost which equals or exceeds \$5,000.

(h) “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.

(i) “Hometown Plan” means a voluntary areawide plan that was developed by representatives of affected groups (usually labor unions, minority organizations, and contractors), and subsequently approved by the Office of Federal Contract Compliance (OFCC), for purposes of implementing the equal employment opportunity requirements pursuant to Executive Order 11246, as amended.

(j) “HUD” means the Secretary of Housing and Urban Development or a person authorized to act on his or her behalf.

(k) “Program” means the New York City Community Development Block Grant Program approved by HUD as the same may from time to time be amended.

(l) "Real property" means land, including land improvements, structures and appurtenances thereto, but excludes moveable machinery and moveable equipment.

(m) “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. 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. § 1701 u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3 shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
 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.
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).
8. The Contractor or Subrecipient agrees to submit, and shall cause its subcontractors to submit, quarterly reports to the Agency detailing the number of new employees hired, the number of new Section 3 employees hired, and any affirmative efforts made to direct hiring efforts to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing during the previous quarter.

- (b) ***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.**
- (c) ***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. ADDITIONAL FEDERAL CONDITIONS FOR CONSTRUCTION FOR SUBRECIPIENTS

[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), (2) and (3).]

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 § 60-4.3 in all federally assisted contracts and subcontracts. For the purposes of the Equal Opportunity Construction Contract Specifications and Clause below, the term “Construction Work” means the construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction.

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;
 - c. “Employer identification number” means the Federal Social Security number used on the Employer’s Quarterly Federal Tax Return, U.S. Treasury Department Form 941.
 - d. “Minority” includes:
 - (i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
 - (ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
 - (iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
 - (iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).
2. Whenever the contractor or any subcontractor at any tier, subcontracts a portion of the work involving any Construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this Agreement resulted.
3. If the contractor is participating (pursuant to 41 CFR § 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades

which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each contractor or subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other contractors or subcontractors toward a goal in an approved Plan does not excuse any covered contractor's or subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

4. The contractor shall implement the specific affirmative action standards provided in paragraphs 7 a through p of these specifications. The goals set forth in the solicitation from which this Agreement resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the contractor should reasonably be able to achieve in each Construction trade in which it has employees in the covered area. Covered Construction contractors performing Construction Work in geographical areas where they do not have a Federal or federally assisted Construction contract shall apply the minority and female goals established for the geographical areas where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.

6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the contractor during the training period, and the contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

7. The contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the contractor's employees are assigned to work. The contractor, where possible, will assign two or more women to each Construction project. The contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to

community organizations when the contractor or its unions have employment opportunities available, and maintain a record of the organization's responses.

c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the contractor by the union or, if referred, not employed by the contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the contractor may have taken.

d. Provide immediate written notification to the Director when the union or unions with which the contractor has a collective bargaining agreement has not referred to the contractor a minority person or woman sent by the contractor, or when the contractor has other information that the union referral process has impeded the contractor's efforts to meet its obligations.

e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the contractor's employment needs, especially those programs funded or approved by the Department of Labor. The contractor shall provide notice of these programs to the sources compiled under 7b above.

f. Disseminate the contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where Construction Work is performed.

g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with on-site supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of Construction Work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

h. Disseminate the contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the contractor's EEO policy with other contractors and subcontractors with whom the contractor does or anticipates doing business.

i. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation

employment to minority and female youth both on the site and in other areas of a contractor's work force.

k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.

l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the contractor's obligations under these specifications are being carried out.

n. Ensure that all facilities and company activities are non-segregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female Construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

p. Conduct a review, at least annually, of all supervisor's adherence to and performance under the Contractor's EEO policies and affirmative action obligations.

8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through p of these specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the Program are reflected in the contractor's minority and female work force participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the contractor. The obligation to comply, however, is the contractor's and failure of such a group to fulfill an obligation shall not be a defense for the contractor's noncompliance.

9. A single goal for minorities and a separate single goal for women have been established. The contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the contractor has achieved its goals for women generally, the contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).

10. The contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

11. The contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246 or suspended or is otherwise excluded from or ineligible for participation in federal assistance programs.

12. The contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

13. The contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 § CFR 60-4.8.

14. The contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, Construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for hiring of local or other areas residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

(B) **Equal Opportunity Clause.** Subrecipient shall include the following provisions, which are required by 41 CFR § 60-1.4(b), in all federally assisted contracts and subcontracts.

During the performance of this contract, the Contractor agrees as follows:

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment,

notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.

(4) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by HUD and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, 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 HUD may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by HUD, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

ARTICLE 5. 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 Parts 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) 24 CFR § 5.109, “Equal participation of faith-based organizations in HUD programs and activities.”
- (f) 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 Appendix A to 41 CFR Part 101-19, subpart 101-19.6), and the Americans with Disabilities Act (42 U.S.C. § 12131; 47 U.S.C. §§ 155, 201, 218, and 225).

The non-discrimination provisions in this Article shall be incorporated in and made a part of all subcontracts executed in connection with this Agreement.

- (g) Subrecipients shall comply with all civil-rights related requirements, pursuant to 24 CFR § 570.503(b)(5).

ARTICLE 6. ENVIRONMENTAL PROTECTION; ENERGY EFFICIENCY; HISTORIC PRESERVATION; FLOOD PROTECTION; LEAD-BASED PAINT

[Paragraphs (a) – (e) applicable to Contractors and Subrecipients; paragraph (f) applicable to 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 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). Further, the Contractor or Subrecipient shall comply with the construction standards concerning energy efficiency set forth in section VI(A)(1)(a)(5) of HUD Docket No. FR-5696-N-01.
- (c) This Agreement is subject to laws and authorities listed in 24 CFR § 58.5, including the Historic Preservation Act of 1966 (Section 1 of Pub. L. No. 89-665, as amended by Pub. L. No. 96-515; 54 U.S.C. §§ 100101 and 300101 *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.
- (f) Subrecipients shall implement procedures and mechanisms to ensure that assisted property owners comply with all flood insurance requirements set forth in Section VI(B)(31) of HUD Docket No. FR-56960-N-01.

ARTICLE 7. 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 8. UNIFORM ADMINISTRATIVE REQUIREMENTS (INCLUDING PROCUREMENT STANDARDS), COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

[Subdivision (a) is applicable to Contractors and Subrecipients; subdivision (b) is applicable to Subrecipients only; subdivision (c) 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) For the procurement of all subcontracts and goods contracts, Subrecipients are required to follow the procurement standards in 2 CFR §§ 200.318-200.326, except as allowed by 2 CFR § 200.110.
- (c) Contractors are subject to the Uniform Federal Contract Provisions Rider, attached to this Agreement.

ARTICLE 9. UNEARNED PAYMENTS; INCOME; DOCUMENTATION OF COSTS; ACCOUNTING SYSTEM; FIDELITY BONDS; DISBURSEMENT RESTRICTIONS

[Paragraphs (a), (b), (d), and (e) are applicable to Contractors and Subrecipients; paragraph (c) is applicable to Subrecipients only]

- (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.

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). Alternative program requirements concerning the definition of "program income" are set forth in Section VI(A)(17)(a)-(b) of Docket No. FR-56960-N-01, as amended by Section II(5) of Docket No. FR-5710-N-01.

- (b) 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.
- (c) The 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 Subrecipient, other provisions of the Agreement notwithstanding.
- (d) 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.
- (e) 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 10. RECORDS AND AUDITS

[Applicable to Contractors and Subrecipients]

- (a) (i) The Subrecipient shall maintain records in accordance with requirements prescribed by or in 2 CFR § 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. (ii) The Contractor shall maintain records in accordance with the requirements elsewhere in this Agreement.
- (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) Quarterly Data Collection Report forms for the purpose of including specific Program description, accomplishment, expenditure and beneficiary information in the City's Quarterly Performance Reports.
 - (ii) Annual Property Register forms for the purpose of tracking the use of CDBG purchased equipment.
- (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 11. 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.

ARTICLE 12. CONFLICTS; EXHIBITS

[Applicable to Contractors and Subrecipients]

- (a) If any provision in this CDBG Rider directly conflicts with any other provision in the Agreement, the provision in CDBG Rider shall be controlling.
- (b) Federal Exhibits 1 and 2 are attached to, and made a part of this CDBG Rider.

ARTICLE 13. REVERSION OF ASSETS

[Applicable to Subrecipients]

- (a) At the Agreement's expiration, the Subrecipient shall transfer to the City all CDBG funds on hand at the time of expiration and any accounts receivable attributable to the use of CDBG funds.
- (b) Any real property under the Subrecipient's control that was acquired or improved in whole or in part with Community Development funds in excess of \$25,000 must be used to either (i) meet the national objectives in Section 570.208 for a period of five years after acquisition if the property or completion of the improvements, as applicable, or (ii) 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-CDBG funds for acquisition of, or improvements to, the property.
- (c) Title to all Equipment in excess of \$5,000 purchased pursuant to this Agreement with CDBG funds or furnished by the City shall vest in the City and the same shall be conspicuously labeled as such.

ARTICLE 14. SMALL FIRMS, M/WBE FIRMS, AND LABOR SURPLUS AREA FIRMS

[Applicable to Subrecipients. Contractors must follow section C(11) of the Uniform Federal Contract Provisions Rider for Federally Funded Procurement Contracts.]

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 15. 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 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 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 16. 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 certifies, to the best of its knowledge and belief, that:
 - 1. 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;
 - 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, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," (which is available on the HUD website or here: <https://www.hudexchange.info/resources/documents/HUD-Form-Sflll.pdf>) in accordance with its instructions; and
 - 3. It will require that the language of this Article 16(b) 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 sub-subrecipients shall certify and disclose accordingly.

4. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352. 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.

- (c) Conflict of Interest: The Subrecipient agrees to abide by the provisions of 2 CFR §§ 200.112 and 200.318(c) and 24 CFR § 570.611.

ARTICLE 17. 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 18. PERFORMANCE REQUIREMENTS AND REMEDIES

[Applicable to Contractors]

The Disaster Relief Appropriations Act, 2013 (Public L. 113-2) of January 29, 2013, requires contracts to contain “performance requirements and penalties.” Accordingly, Contractor shall be subject to any performance requirements and remedial provisions and/or liquidated damages set forth in this Agreement. Contractor acknowledges that negative performance evaluations may impair its ability to win future contracts with the City as follows: Under City Procurement Policy Board (PPB) Rules section 4-01, Contractor is subject to performance evaluations at least once annually. The City shall enter such performance evaluations into the VENDEX system. To the extent allowed by the PPB Rules, such performance evaluations shall be considered by the City in:

- (1) making a determination of the Contractor’s responsibility or non-responsibility in future City procurements, under PPB Rule section 2-08(g)(1)(ii) and
- (2) deciding to renew or not to renew the Agreement, under PPB Rule section 4-04(c)(10).

FED. EXHIBIT 1

NOTICE TO BIDDERS

NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY (EXECUTIVE ORDER 11246, as amended) FOR ALL HUD COMMUNITY DEVELOPMENT FUNDED CONSTRUCTION CONTRACTS AND SUB-CONTRACTS IN EXCESS OF \$10,000.

1. The Offeror's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth above.
2. The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all Construction Work in the covered area, are as follows:

Goals and Timetables for Minorities

Trade	Goal (Percent)	
Electricians	9.0	to 10.2
Carpenters	27.6	to 32.0
Steamfitters	12.2	to 13.5
Metal Lathers	24.6	to 25.6
Painters	28.6	to 26.0
Operating Engineers	25.6	to 26.0
Plumbers	12.0	to 14.5
Iron Workers (structural)	25.9	to 32.0
Elevator Constructors	5.5	to 6.5
Bricklayers	13.4	to 15.5
Asbestos Workers	22.8	to 28.0
Roofers	6.3	to 7.5
Iron Workers (ornamental)	22.4	to 23.0
Cement Masons	23.0	to 27.0
Glazers	16.0	to 20.0
Plasterers	15.8	to 18.0
Teamsters	22.0	to 22.5
Boilermakers	13.0	to 15.5
All Other	16.4	to 17.5

Goals and Timetables for Women

From April 1, 1980 until the present	6.9
--	-----

These goals are applicable to all the Contractor's Construction Work (whether or not it is Federal or federally assisted) performed in the covered area. If the Contractor performs Construction Work in a geographical area located outside of the covered area, it shall apply the goals

established for such geographical area where the work is actually performed. With regard to this second area, the Contractor also is subject to the goals for both its federally involved and non-federally 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 make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

3. The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days of award of any Construction subcontract in excess of \$10,000 at any tier for Construction Work under the contract resulting from this solicitation. The notification shall list the name, address and telephone number of the subcontractor; employer identification number of the subcontractor; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the contract is to be performed.

4. As used in this Agreement, the "covered area" is the City of New York.

EXHIBIT 2

Applicability

The Project or Program to which the construction work covered by this contract pertains is being assisted by the United States of America and the following Federal Labor Standards Provisions are included in this Contract pursuant to the provisions applicable to such Federal assistance.

A. 1. (i) Minimum Wages. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section I(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR 5.5(a)(1)(ii) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible, place where it can be easily seen by the workers.

(ii) (a) Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(b) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by HUD or its designee to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB control number 1215-0140.)

(c) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

(d) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(ii)(b) or (c) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part

of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

2. Withholding. HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee or helper, employed or working on the site of the work, all or part of the wages required by the contract, HUD or its designee may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased. HUD or its designee may, after written notice to the contractor, disburse such amounts withheld for and on account of the contractor or subcontractor to the respective employees to whom they are due. The Comptroller General shall make such disbursements in the case of direct Davis-Bacon Act contracts.

3. (i) Payrolls and basic records. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section 1(b)(2)(B) of the Davis-bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5 (a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been

communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs. (Approved by the Office of Management and Budget under OMB Control Numbers 1215-0140 and 1215-0017.)

(ii) (a) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i) except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this subparagraph for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to HUD or its designee. (Approved by the Office of Management and Budget under OMB Control Number 1215-0149.)

(b) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under 29 CFR 5.5 (a)(3)(ii), the appropriate information is being maintained under 29 CFR 5.5(a)(3)(i), and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR Part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(c) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by subparagraph A.3.(ii)(b).

(d) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under subparagraph A.3.(i) available for inspection, copying, or transcription by authorized representatives of HUD or its designee or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, HUD or its designee may, after written notice to the contractor, sponsor, applicant or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and Trainees.

(i) **Apprentices.** Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who

is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) **Trainees.** Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by

the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under 29 CFR Part 5 shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR Part 3 which are incorporated by reference in this contract

6. Subcontracts. The contractor or subcontractor will insert in any subcontracts the clauses contained in subparagraphs 1 through 11 in this paragraph A and such other clauses as HUD or its designee may by appropriate instructions require, and a copy of the applicable prevailing wage decision, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this paragraph.

7. Contract termination; debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act Requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract

9. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and HUD or its designee, the U.S. Department of Labor, or the employees or their representatives.

10. (i) Certification of Eligibility. By entering into this contract the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be

awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001. Additionally, U.S. Criminal Code, Section 1 01 0, Title 18, U.S.C., "Federal Housing Administration transactions", provides in part: "Whoever, for the purpose of . . . influencing in any way the action of such Administration..... makes, utters or publishes any statement knowing the same to be false..... shall be fined not more than \$5,000 or imprisoned not more than two years, or both."

11. Complaints, Proceedings, or Testimony by Employees. No laborer or mechanic to whom the wage, salary, or other labor standards provisions of this Contract are applicable shall be discharged or in any other manner discriminated against by the Contractor or any subcontractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or relating to the labor standards applicable under this Contract to his employer.

B. Contract Work Hours and Safety Standards Act. The provisions of this paragraph B are applicable where the amount of the prime contract exceeds \$100,000. As used in this paragraph, the terms "laborers" and "mechanics" include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which the individual is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in subparagraph (1) of this paragraph, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in subparagraph (1) of this paragraph, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the clause set forth in 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, (Public Law 91-54, 83 Stat 96). 40 USC 3701 et seq.

(3) The contractor shall include the provisions of this paragraph in every subcontract so that such provisions will be binding on each subcontractor. The contractor shall take such action with respect to any subcontractor as the Secretary of Housing and Urban Development or the Secretary of Labor shall direct as a means of enforcing such provisions.

EXHIBIT 3

INVESTIGATIONS CLAUSE, CONFLICTS OF INTEREST CLAUSE; AND EXECUTIVE ORDER NO. 50

I. 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.

II. 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.

III. 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.

EXHIBIT L

COMMUNITY DEVELOPMENT BLOCK GRANT (“CDBG”) PROGRAM RIDER

HUD EXHIBIT 2

(SEPARATE ATTACHMENT)

CDBG Rider

(Version 02.16.2018)

INSTRUCTIONS TO NYC AGENCIES AND OFFICES

This CDBG Rider contains supplementary general conditions for use with procurement contracts and subrecipient agreements that are funded in whole or in part by the U.S. Department of Housing and Urban Development (“HUD”) under Title I of the Housing and Community Development Act of 1974 (Pub. L. 93-383) as amended. For all procurement contracts and subrecipient agreements funded by the Community Development Block Grant (“CDBG”) Program, ***except those funded by the CDBG Disaster Recovery (“CDBG-DR”) Program***, this CDBG Rider must be included as an attachment, expressly made a part of, and incorporated by reference. A different rider with terms specific to the CDBG-DR Program should be attached to CDBG-DR funded procurement contracts and subrecipient agreements.

If this rider is attached to a subrecipient agreement, the agency or office must ensure that the subrecipient agreement includes the information specific to the subaward required in 2 CFR § 200.331.

Table of Contents

ARTICLE 1. DEFINITIONS	3
ARTICLE 2. HOUSING AND COMMUNITY DEVELOPMENT ACT AND NATIONAL ENVIRONMENTAL POLICY ACT	4
ARTICLE 3. LABOR REQUIREMENTS	4
ARTICLE 4. ADDITIONAL FEDERAL CONDITIONS FOR CONSTRUCTION FOR SUBRECIPIENTS	6
ARTICLE 5. FEDERAL NON-DISCRIMINATION LAWS	13
ARTICLE 6. ENVIRONMENTAL PROTECTION; ENERGY EFFICIENCY; HISTORIC PRESERVATION; FLOOD PROTECTION; LEAD-BASED PAINT	14
ARTICLE 7. UNIFORM RELOCATION ASSISTANCE.....	15
ARTICLE 8. UNIFORM ADMINISTRATIVE REQUIREMENTS (INCLUDING PROCUREMENT STANDARDS), COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS.....	15
ARTICLE 9. UNEARNED PAYMENTS; INCOME; DOCUMENTATION OF COSTS; ACCOUNTING SYSTEM; FIDELITY BONDS; DISBURSEMENT RESTRICTIONS	15
ARTICLE 10. RECORDS AND AUDITS	17
ARTICLE 11. SUBCONTRACTORS	17
ARTICLE 12. CONFLICTS; EXHIBITS	18
ARTICLE 13. REVERSION OF ASSETS	18
ARTICLE 14. SMALL FIRMS, M/WBE FIRMS, AND LABOR SURPLUS AREA FIRMS	18
ARTICLE 15. INTANGIBLE PROPERTY.....	19
ARTICLE 16. HATCH ACT; LOBBYING; CONFLICTS OF INTEREST	20
ARTICLE 17. SUSPENSION AND TERMINATION.....	21

ARTICLE 1. DEFINITIONS

As used in this CDBG Rider:

(a) “Act” means Title 1 of the Housing and Community Development Act of 1974 (Pub. L. 93-383) as amended.

(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) “Equipment” means tangible personal property (including information technology systems) having a useful life of more than one year and a per-unit acquisition cost which equals or exceeds \$250.

(h) “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.

(i) “Hometown Plan” means a voluntary areawide plan that was developed by representatives of affected groups (usually labor unions, minority organizations, and contractors), and subsequently approved by the Office of Federal Contract Compliance (OFCC), for purposes of implementing the equal employment opportunity requirements pursuant to Executive Order 11246, as amended.

(j) “HUD” means the Secretary of Housing and Urban Development or a person authorized to act on his or her behalf.

(k) “Program” means the New York City Community Development Block Grant Program approved by HUD as the same may from time to time be amended.

(l) "Real property" means land, including land improvements, structures and appurtenances thereto, but excludes moveable machinery and moveable equipment.

(m) “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. 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. § 1701 u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3 shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

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.
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).

8. The Contractor or Subrecipient agrees to submit, and shall cause its subcontractors to submit, quarterly reports to the Agency detailing the number of new employees hired, the number of new Section 3 employees hired, and any affirmative efforts made to direct hiring efforts to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing during the previous quarter.
- (b) ***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.**
- (c) ***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. ADDITIONAL FEDERAL CONDITIONS FOR CONSTRUCTION FOR SUBRECIPIENTS

[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), (2), and (3).]

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 § 60-4.3 in all federally assisted contracts and subcontracts. For the purposes of the Equal Opportunity Construction Contract Specifications and Clause below, the term “Construction Work” means the construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction.

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;
 - c. “Employer identification number” means the Federal Social Security number used on the Employer’s Quarterly Federal Tax Return, U.S. Treasury Department Form 941.
 - d. “Minority” includes:
 - (i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
 - (ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
 - (iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
 - (iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).
- 2. Whenever the contractor or any subcontractor at any tier, subcontracts a portion of the work involving any Construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice

which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this Agreement resulted.

3. If the contractor is participating (pursuant to 41 CFR § 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each contractor or subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other contractors or subcontractors toward a goal in an approved Plan does not excuse any covered contractor's or subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

4. The contractor shall implement the specific affirmative action standards provided in paragraphs 7 a through p of these specifications. The goals set forth in the solicitation from which this Agreement resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the contractor should reasonably be able to achieve in each Construction trade in which it has employees in the covered area. Covered Construction contractors performing Construction Work in geographical areas where they do not have a Federal or federally assisted Construction contract shall apply the minority and female goals established for the geographical areas where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.

6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the contractor during the training period, and the contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

7. The contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the contractor's employees are assigned to work. The contractor, where possible, will assign two or more women to

each Construction project. The contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the contractor or its unions have employment opportunities available, and maintain a record of the organization's responses.

c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the contractor by the union or, if referred, not employed by the contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the contractor may have taken.

d. Provide immediate written notification to the Director when the union or unions with which the contractor has a collective bargaining agreement has not referred to the contractor a minority person or woman sent by the contractor, or when the contractor has other information that the union referral process has impeded the contractor's efforts to meet its obligations.

e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the contractor's employment needs, especially those programs funded or approved by the Department of Labor. The contractor shall provide notice of these programs to the sources compiled under 7b above.

f. Disseminate the contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where Construction Work is performed.

g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with on-site supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of Construction Work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

h. Disseminate the contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the contractor's EEO policy with other contractors and subcontractors with whom the contractor does or anticipates doing business.

i. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance

of applications for apprenticeship or other training by any recruitment source, the contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a contractor's work force.

k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.

l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the contractor's obligations under these specifications are being carried out.

n. Ensure that all facilities and company activities are non-segregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female Construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

p. Conduct a review, at least annually, of all supervisor's adherence to and performance under the Contractor's EEO policies and affirmative action obligations.

8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through p of these specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the Program are reflected in the contractor's minority and female work force participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the contractor. The obligation to comply, however, is the contractor's and failure of such a group to fulfill an obligation shall not be a defense for the contractor's noncompliance.

9. A single goal for minorities and a separate single goal for women have been established. The contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the contractor has achieved its goals for women generally, the contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).

10. The contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

11. The contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246 or suspended or is otherwise excluded from or ineligible for participation in federal assistance programs.

12. The contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

13. The contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR § 60-4.8.

14. The contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, Construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for hiring of local or other areas residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

B. Equal Opportunity Clause

Subrecipient shall include the following provisions, which are required by 41 CFR § 60-1.4(b), in all federally assisted contracts and subcontracts.

During the performance of this contract, the Contractor agrees as follows:

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment

without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.

(4) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by HUD and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order

11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, 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 HUD may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by HUD, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

ARTICLE 5. 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 Parts 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) 24 CFR § 5.109, “Equal participation of faith-based organizations in HUD programs and activities.”
- (f) 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 Appendix A to 41 CFR Part 101-19, subpart 101-19.6), and the Americans with Disabilities Act (42 U.S.C. § 12131; 47 U.S.C. §§ 155, 201, 218, and 225).

The non-discrimination provisions in this Article shall be incorporated in and made a part of all subcontracts executed in connection with this Agreement.

- (g) Subrecipients shall comply with all civil-rights related requirements, pursuant to 24 CFR § 570.503(b)(5).

ARTICLE 6. 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 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).
- (c) This Agreement is subject to laws and authorities listed in 24 CFR § 58.5, including the Historic Preservation Act of 1966 (Section 1 of Pub. L. No. 89-665, as amended by Pub. L. No. 96-515; 54 U.S.C. §§ 100101 and 300101 *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 7. 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 8. UNIFORM ADMINISTRATIVE REQUIREMENTS (INCLUDING PROCUREMENT STANDARDS), COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

[Subdivision (a) is applicable to Contractors and Subrecipients; subdivision (b) is applicable to Subrecipients only; subdivision (c) 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) For the procurement of all subcontracts and goods contracts, Subrecipients are required to follow the procurement standards in 2 CFR §§ 200.318-200.326, except as allowed by 2 CFR § 200.110.
- (c) Contractors are subject to the Uniform Federal Contract Provisions Rider, attached to this Agreement.

ARTICLE 9. UNEARNED PAYMENTS; INCOME; DOCUMENTATION OF COSTS; ACCOUNTING SYSTEM; FIDELITY BONDS; DISBURSEMENT RESTRICTIONS

[Paragraphs (a), (b), (d), and (e) are applicable to Contractors and Subrecipients; paragraph (d) is applicable to Subrecipients only]

- (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 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 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 10. RECORDS AND AUDITS

[Applicable to Contractors and Subrecipients]

- (a) (i) The Subrecipient shall maintain records in accordance with requirements prescribed by or in 2 CFR § 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. (ii) The Contractor shall maintain records in accordance with the requirements elsewhere in this Agreement.
- (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 equipment.
- (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 11. 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.

ARTICLE 12. CONFLICTS; EXHIBITS

[Applicable to Contractors and Subrecipients]

- (a) If any provision in this CDBG Rider directly conflicts with any other provision in the Agreement, the provision in CDBG Rider shall be controlling.
- (b) Federal Exhibits 1 and 2 are attached to, and made a part of this CDBG Rider.

ARTICLE 13. REVERSION OF ASSETS

[Applicable to Subrecipients]

- (a) At the Agreement's expiration, the Subrecipient shall transfer to the City all CDBG funds on hand at the time of expiration and any accounts receivable attributable to the use of CDBG funds.
- (b) Any real property under the Subrecipient's control that was acquired or improved in whole or in part with Community Development funds in excess of \$25,000 must be used to either (i) meet the national objectives in Section 570.208 for a period of five years after acquisition if the property or completion of the improvements, as applicable, or (ii) 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-CDBG funds for acquisition of, or improvements to, the property.
- (c) Title to all Equipment in excess of \$250 purchased pursuant to this Agreement with CDBG funds or furnished by the City shall vest in the City and the same shall be conspicuously labeled as such.

ARTICLE 14. SMALL FIRMS, M/WBE FIRMS, AND LABOR SURPLUS AREA FIRMS

[Applicable to Subrecipients. Contractors must follow section C(11) of the Uniform Federal Contract Provisions Rider for Federally Funded Procurement Contracts.]

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 15. 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 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 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 16. 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 certifies, to the best of its knowledge and belief, that:
 - 1. 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;
 - 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, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," (which is available on the HUD website or here: <https://www.hudexchange.info/resources/documents/HUD-Form-Sflll.pdf>) in accordance with its instructions; and

3. It will require that the language of this Article 16(b) 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 sub-subrecipients shall certify and disclose accordingly.
4. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352. 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.

(c) Conflict of Interest: The Subrecipient agrees to abide by the provisions of 2 CFR §§ 200.112 and 200.318(c) and 24 CFR § 570.611.

ARTICLE 17. 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).

FED. EXHIBIT 1

NOTICE TO BIDDERS

NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY (EXECUTIVE ORDER 11246, as amended) FOR ALL HUD COMMUNITY DEVELOPMENT FUNDED CONSTRUCTION CONTRACTS AND SUB-CONTRACTS IN EXCESS OF \$10,000.

1. The Offeror's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth above.

2. The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all Construction Work in the covered area, are as follows:

Goals and Timetables for Minorities

Trade	Goal (Percent)		
Electricians	9.0	to	10.2
Carpenters	27.6	to	32.0
Steamfitters	12.2	to	13.5
Metal Lathers	24.6	to	25.6
Painters	28.6	to	26.0
Operating Engineers	25.6	to	26.0
Plumbers	12.0	to	14.5
Iron Workers (structural)	25.9	to	32.0
Elevator Constructors	5.5	to	6.5
Bricklayers	13.4	to	15.5
Asbestos Workers	22.8	to	28.0
Roofers	6.3	to	7.5
Iron Workers (ornamental)	22.4	to	23.0
Cement Masons	23.0	to	27.0
Glazers	16.0	to	20.0
Plasterers	15.8	to	18.0
Teamsters	22.0	to	22.5
Boilermakers	13.0	to	15.5
All Other	16.4	to	17.5

Goals and Timetables for Women

From April 1, 1980 until the present	6.9
--	-----

These goals are applicable to all the Contractor's Construction Work (whether or not it is Federal or federally assisted) performed in the covered area. If the Contractor performs Construction Work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this

second area, the Contractor also is subject to the goals for both its federally involved and non-federally 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 make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

3. The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days of award of any Construction subcontract in excess of \$10,000 at any tier for Construction Work under the contract resulting from this solicitation. The notification shall list the name, address and telephone number of the subcontractor; employer identification number of the subcontractor; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the contract is to be performed.

4. As used in this Agreement, the "covered area" is the City of New York.

EXHIBIT 2

Applicability

The Project or Program to which the construction work covered by this contract pertains is being assisted by the United States of America and the following Federal Labor Standards Provisions are included in this Contract pursuant to the provisions applicable to such Federal assistance.

A. 1. (i) Minimum Wages. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section I(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR 5.5(a)(1)(ii) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible, place where it can be easily seen by the workers.

(ii) (a) Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(b) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by HUD or its designee to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB control number 1215-0140.)

(c) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

(d) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(ii)(b) or (c) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part

of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

2. Withholding. HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee or helper, employed or working on the site of the work, all or part of the wages required by the contract, HUD or its designee may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased. HUD or its designee may, after written notice to the contractor, disburse such amounts withheld for and on account of the contractor or subcontractor to the respective employees to whom they are due. The Comptroller General shall make such disbursements in the case of direct Davis-Bacon Act contracts.

3. (i) Payrolls and basic records. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section 1(b)(2)(B) of the Davis-bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5 (a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been

communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs. (Approved by the Office of Management and Budget under OMB Control Numbers 1215-0140 and 1215-0017.)

(ii) (a) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i) except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this subparagraph for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to HUD or its designee. (Approved by the Office of Management and Budget under OMB Control Number 1215-0149.)

(b) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under 29 CFR 5.5 (a)(3)(ii), the appropriate information is being maintained under 29 CFR 5.5(a)(3)(i), and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR Part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(c) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by subparagraph A.3.(ii)(b).

(d) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under subparagraph A.3.(i) available for inspection, copying, or transcription by authorized representatives of HUD or its designee or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, HUD or its designee may, after written notice to the contractor, sponsor, applicant or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and Trainees.

(i) **Apprentices.** Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who

is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) **Trainees.** Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by

the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under 29 CFR Part 5 shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR Part 3 which are incorporated by reference in this contract

6. Subcontracts. The contractor or subcontractor will insert in any subcontracts the clauses contained in subparagraphs 1 through 11 in this paragraph A and such other clauses as HUD or its designee may by appropriate instructions require, and a copy of the applicable prevailing wage decision, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this paragraph.

7. Contract termination; debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act Requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract

9. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and HUD or its designee, the U.S. Department of Labor, or the employees or their representatives.

10. (i) Certification of Eligibility. By entering into this contract the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be

awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001. Additionally, U.S. Criminal Code, Section 1 01 0, Title 18, U.S.C., "Federal Housing Administration transactions", provides in part: "Whoever, for the purpose of . . . influencing in any way the action of such Administration..... makes, utters or publishes any statement knowing the same to be false..... shall be fined not more than \$5,000 or imprisoned not more than two years, or both."

11. Complaints, Proceedings, or Testimony by Employees. No laborer or mechanic to whom the wage, salary, or other labor standards provisions of this Contract are applicable shall be discharged or in any other manner discriminated against by the Contractor or any subcontractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or relating to the labor standards applicable under this Contract to his employer.

B. Contract Work Hours and Safety Standards Act. The provisions of this paragraph B are applicable where the amount of the prime contract exceeds \$100,000. As used in this paragraph, the terms "laborers" and "mechanics" include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which the individual is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in subparagraph (1) of this paragraph, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in subparagraph (1) of this paragraph, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the clause set forth in 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, (Public Law 91-54, 83 Stat 96). 40 USC 3701 et seq.

(3) The contractor shall include the provisions of this paragraph in every subcontract so that such provisions will be binding on each subcontractor. The contractor shall take such action with respect to any subcontractor as the Secretary of Housing and Urban Development or the Secretary of Labor shall direct as a means of enforcing such provisions.

EXHIBIT 3

INVESTIGATIONS CLAUSE, CONFLICTS OF INTEREST CLAUSE; AND EXECUTIVE ORDER NO. 50

I. 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.

II. 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.

III. 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.

EXHIBIT M

FEDERAL EMERGENCY MANAGEMENT AGENCY (“FEMA”) RIDER AND FEMA EXHIBIT 2

(SEPARATE ATTACHMENT)

**FEDERAL EMERGENCY MANAGEMENT AGENCY (“FEMA”) RIDER
(10/27/2015)**

**For use with contracts funded by the FEMA Grant and Cooperative Agreement Programs,
including the Public Assistance Program**

(This Rider should not be used with contracts funded by the following FEMA Programs: Emergency Management Preparedness Grant Program, Homeland Security Grant Program, Nonprofit Security Grant Program, Tribal Homeland Security Grant Program, Port Security Grant Program, and Transit Security Grant Program. This Rider should be accompanied by the Uniform Federal Contract Provisions Rider for Federally Funded Procurement Contracts.)

1. Suspension and Debarment. Section C(5) of the Uniform Federal Contract Provisions Rider for Federally Funded Procurement Contracts is supplemented with the following provisions:
 - (a) This contract is a covered transaction for purposes of 2 C.F.R. Parts 180 and 3000. As such the Contractor is required to verify that none of the Contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935). By entering into this contract, the Contractor certifies that it is in compliance with 2 C.F.R. Parts 180 and 3000.
 - (b) The Contractor must comply with 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C during the term of this contract and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
 - (c) The certification in paragraph (a), above, and section C(5) of the Uniform Federal Contract Provisions Rider for Federally Funded Procurement Contracts is a material representation of fact relied upon by the City of New York. If it is later determined that the Contractor did not comply with 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C, in addition to remedies available to the City of New York and, if applicable, the State of New York, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
2. Davis-Bacon Act. For the purposes of Section D(1)(a) of the Uniform Federal Contract Provisions Rider, compliance with the Davis-Bacon Act (40 U.S.C. §§ 3141-3148) is not required of the Contractor pursuant to FEMA regulations. However, if this Contract is funded by another federal funding source (e.g., the U.S. Department of Housing and Urban Development CDBG or CDBG-DR programs), compliance with the Davis-Bacon Act is required to the extent required by law and as set forth in the contract documents.
3. Rights to Inventions Made Under a Contract or Agreement. Section E of the Uniform Federal Contract Provisions Rider for Federally Funded Procurement Contracts does not

apply to the following FEMA Programs: Public Assistance Program, Hazard Mitigation Grant Program, Fire Management Assistance Grant Program, Crisis Counseling Assistance and Training Grant Program, Disaster Case Management Program, and Federal Assistance to Individuals and Households – Other Needs Assistance Grant Program.

4. Copeland “Anti-Kickback” Act. The Contractor shall comply with provisions of the Copeland “Anti-Kickback” Act (18 U.S.C. § 874) as delineated in the Uniform Federal Contract Provisions Rider, FEMA Exhibit 2, Section (A).
5. Contract Work Hours and Safety Standards Act. The Contractor shall comply with the provisions of the Contract Work Hours and Safety Standards Act as delineated in the Uniform Federal Contract Provisions Rider, FEMA Exhibit 2, Section (B).
6. Access to Records.
 - (a) The Contractor agrees to provide the City of New York, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.
 - (b) The Contractor agrees to permit any of the foregoing parties to reproduce said documents by any means or to copy excerpts and transcriptions as reasonably needed.
 - (c) The Contractor agrees to provide the FEMA Administrator or his/her authorized representative access to construction or other work sites pertaining to the work being completed under the contract.
7. Logos. The Contractor shall not use DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.
8. Compliance with Law. The Contractor acknowledges that FEMA financial assistance will be used to fund the contract only and agrees to comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.
9. Federal Government not a Party. The Contractor acknowledges and understands that the Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the City, Contractor or any other party pertaining to any matter resulting from the contract.
10. False Claims. The Contractor acknowledges that 31 U.S.C. Chap. 38 applies to the Contractor’s actions pertaining to this contract.

EXHIBIT 2
Federal Labor Standards Provisions (Non-Davis Bacon)¹
Federal Emergency Management Agency
(10/27/2015)

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. Compliance with the Copeland “Anti-Kickback” Act.

1. **Contractor.** The contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.
2. **Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clause in paragraph 1 above and such other clauses as the FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.
3. **Breach.** A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

B. Compliance with the Contract Work Hours and Safety Standards Act. The provisions of this Section B are applicable where the amount of the prime contract exceeds \$100,000.

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 he or she is employed on such work to work in excess of forty 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 forty hours in such workweek.
2. **Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in paragraph (1) of this Section B the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In

¹ This version of Exhibit 2 applies to contracts funded by FEMA Grant and Cooperative Agreement Programs, including the Public Assistance Program. Do not use this version of Exhibit 2 in connection with FEMA programs that are subject to the Davis-Bacon Act; such programs are the Emergency Management Preparedness Grant Program, the Homeland Security Grant Program, Nonprofit Security Grant Program, Tribal Homeland Security Grant Program, Port Security Grant Program, and Transit Security Grant Program.

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 paragraph (1) of this section, 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 forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

3. **Withholding for unpaid wages and liquidated damages.** The City of New York 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 contractor, 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 paragraph (2) of this section.
4. **Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) of this Section B 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 paragraphs (1) through (4) of this section B.

C. **Health and Safety.** The provisions of this paragraph C are applicable where the amount of the prime contract exceeds \$100,000.

1. No laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.
2. The Contractor shall comply with all regulations issued by the Secretary of Labor pursuant to Title 29 Part 1926 and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act, (Public Law 91-54, 83 Stat 96). 40 USC 3701 et seq.
3. The contractor shall include the provisions of this paragraph in every subcontract so that such provisions will be binding on each subcontractor. The contractor shall take such action with respect to any subcontractor as FEMA or the Secretary of Labor shall direct as a means of enforcing such provisions.

EXHIBIT N

HAZARD MITIGATION GRANT PROGRAM (“HMGP”) RIDER

(SEPARATE ATTACHMENT)

City of New York

HAZARD MITIGATION GRANT PROGRAM (“HMGP”) RIDER

**For Use with Contracts Funded by HMGP through the
New York State Division of Homeland Security and Emergency Services**

*[Note to Agency: This HMGP Rider should be used together
with the Uniform Federal Contract Provisions Rider and
the DHSES Grant Agreement should be attached.]*

1. **Applicability.** This HMGP Rider is for use with contracts funded in whole or in part by a grant from the Federal Emergency Management Agency (“FEMA”) via the New York State (the “State”) Division of Homeland Security and Emergency Services’ (“DHSES”) Hazard Mitigation Grant Program (“HMGP”). The HMGP agreement (“Grant Agreement”) between DHSES and the City of New York (the “City”) which is attached imposes certain requirements on contractors that perform work funded by the grant. The work performed under this contract or agreement (“Contract”) must be in accordance with the terms of the Grant Agreement. The Contractor agrees to comply with the terms in this HMGP Rider and also agrees not to take any action that would cause the City to violate the terms of the Grant Agreement.
2. **Grant Agreement.** In accordance with section J(5) of Attachment A-1 to the Grant Agreement, the following documents included in the Grant Agreement are attached and incorporated by reference into this Contract: Attachment A-1, Attachment C, Certified Assurances for Federally Supported Projects,¹ Certification Regarding Lobbying, Debarment and Suspension, and, if applicable, Special Conditions. The other documents that comprise the Grant Agreement are attached for informational purposes.
3. **Governing Law.** This Contract shall be governed by the laws of the State of New York except where the Federal Supremacy Clause requires otherwise.
4. **Conflicts.** To the extent the requirements in this rider conflict with federal and State requirements, the federal requirements shall govern followed by the State requirements. To the extent the requirements in this rider conflict with the requirements in other parts of this Contract, the requirements in this rider shall govern, except with respect to provisions that are required by law.
5. **Compliance with Law and Granting Agency Requirements.** The Contractor agrees to comply will all applicable federal law, regulations, executive orders, and the policies, procedures, and directives of FEMA and DHSES.
6. **Compliance with the Copeland “Anti-Kickback” Act.** The provisions of this Section 6 are applicable to all contracts for construction or repair.

¹ Section J(5) refers to this document as “Certified Assurances for Federally Supported Projects.” This appears to refer to Attachment A-2, “Grant Assurances and Certifications for Federally-Funded Contracts.”

- (a) *Contractor.* The Contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. Part 3 as may be applicable, which are incorporated by reference into this Contract.
- (b) *Subcontracts.* The Contractor or subcontractor shall insert in any subcontracts the clause in paragraph (a) above and such other clauses as the FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.
- (c) *Breach.* A breach of the contract clauses above may be grounds for termination of the Contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

7. **Compliance with the Contract Work Hours and Safety Standards Act.** The provisions of this Section 7 are applicable to contracts in excess of \$100,000 that may require or involve the employment of laborers or mechanics.

- (a) *Overtime requirements.* The Contractor must comply with the Contract Work Hours and Safety Standards Act codified at 40 U.S.C. § 3701 et seq. The Contractor or subcontractor shall not require or permit any laborer or mechanic to work in excess of forty hours in a 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 forty hours in such workweek.
- (b) *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the clause set forth in paragraph (a) of this Section 10, the Contractor and any subcontractor responsible therefor shall be liable for the affected employee's unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States 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 paragraph (a) of this section, 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 forty hours without payment of the overtime wages required by the clause set forth in paragraph (a) of this Section 7.
- (c) *Withholding for unpaid wages and liquidated damages.* The City or State 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 Contractor, 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 paragraph (b) of this Section 7.

(d) *Subcontracts.* The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (a) through (d) of this Section 7 and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a) through (d) of this Section 7.

8. **Health and Safety.** The provisions of this Section 8 are applicable where the amount of the prime contract exceeds \$100,000.

(a) 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.

(b) The Contractor shall comply with all regulations issued by the Secretary of Labor pursuant to Title 29 Part 1926 and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act, (Public Law 91-54, 83 Stat 96). 40 USC 3701 et seq.

(c) 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 FEMA or the Secretary of Labor shall direct as a means of enforcing such provisions.

9. **Intellectual Property.**

(a) Section E of the Uniform Federal Contract Provisions Rider for Federally Funded Procurement Contracts does not apply to HMGP funds.

(b) **Patent Rights.** 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.

(c) **Copyrights.** Any creative or literary work developed or commissioned by the Contractor with grant support provided by DHSES shall become the property of DHSES, entitling DHSES to assert a copyright therein, unless otherwise provided in the Contract.

- (1) If DHSES shares its right to copyright such work with the Contractor, DHSES reserves a royalty free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use: (a) the copyright in any work developed under a grant, sub-grant, or contract under a grant or sub-grant; and (b) any rights of copyright to which a Contractor, sub- Contractor, or a contractor purchases ownership with grant support.
- (2) FEMA and the City also reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use: (a) the copyright in any work developed under a grant, subgrant or contract under a grant or sub-grant; and (b) any rights of copyright to which a Contractor, subcontractor, or a contractor purchases ownership with such grant support.

10. Records and Access.

- (a) The Contractor shall establish and maintain, in paper or electronic format, complete and accurate books, records, documents, receipts, accounts, and other evidence directly pertinent to its performance under the Contract (collectively, "Records"). The Contractor shall comply with the City's requests for Records and information necessary to complete reports required by DHSES or FEMA.
- (b) The Contractor agrees to provide DHSES, the FEMA Administrator or their authorized representatives access to construction or other work sites pertaining to the work be completed under the Contract.

11. Suspension and Debarment. Section C(5) of the Uniform Federal Contract Provisions Rider for Federally Funded Procurement Contracts is supplemented with the following provisions:

- (a) This Contract is a covered transaction for purposes of 2 C.F.R. Parts 180 and 3000. As such the Contractor is required to verify that none of the Contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935). By entering into this Contract, the Contractor certifies that it is in compliance with 2 C.F.R. Parts 180 and 3000.
- (b) The Contractor must comply with 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C during the term of this Contract and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- (c) The certification in paragraph (a), above, and section C(5) of the Uniform Federal Contract Provisions Rider for Federally Funded Procurement Contracts is a material representation of fact relied upon by the City of New York. If it is later determined that the Contractor did not comply with 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C, in addition to remedies available to the City of New York and, if applicable, the State of New York, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

12. **Acknowledgment: Logos.** The Contractor shall not use DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

Any document generated pursuant to this grant must contain the following language:

“This project was supported by a grant administered by the New York State Division of Homeland Security and Emergency Services and the U.S. Department of Homeland Security. Points of view in this document are those of the author and do not necessarily represent the official position or policies of the New York State Division of Homeland Security and Emergency Services or the U.S. Department of Homeland Security.”

13. **Compliance with Law.** The Contractor acknowledges that FEMA financial assistance will be used to fund the Contract only and agrees to comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.
14. **Federal Government not a Party.** The Contractor acknowledges and understands that the Federal Government is not a party to this Contract and is not subject to any obligations or liabilities to the City, the State, Contractor or any other party pertaining to any matter resulting from the Contract.
15. **False Claims.** The Contractor acknowledges that 31 U.S.C. Chap. 38 applies to the Contractor’s actions pertaining to this Contract.
16. **Insurance.** If the Contract requires Commercial General Liability Insurance, the Contractor shall name the State of New York, including its officials and employees, as an additional insured with the same coverage as that provided to the City.
17. **Indemnification.** Where the Contract requires the Contractor to defend and/or indemnify the City, the Contractor shall also be required to defend and/or indemnify the State of New York.
18. **No Contractual Relationship.** Nothing in this Contract shall be deemed to create a contractual relationship between the State and the Contractor.
19. **State’s Rights.** Nothing in this Contract shall impair the rights of the State.
20. **Legal Action.** The Contractor shall bring no litigation or regulatory action against the federal government, the State of New York, DHSES or against any county or other local government entity with the funds provided under the Contract. The term “litigation” shall include commencing or threatening to commence a lawsuit, joining or threatening to join as a party to ongoing litigation, or requesting any relief from any of the federal government, the State, DHSES or any county or other local government entity. The term “regulatory action” shall include commencing or threatening to commence a regulatory proceeding, or requesting any regulatory relief from any of the State of New York, the State Agency, or any county, or other local government entity.

21. **Secular Purpose.** Work performed pursuant to this Contract is secular in nature and shall be performed in a manner that does not discriminate on the basis of religious belief, or promote or discourage adherence to religion in general or particular religious beliefs.
22. **Partisan Political Activity and Lobbying.** Funds provided pursuant to this Contract shall not be used for any partisan political activity, or for activities that attempt to influence legislation or election or defeat of any candidate for public office.
23. **Licenses, Approvals, and Certifications.** The Contractor warrants that it has and its subcontractors have all the necessary licenses, approvals, and certifications currently required by the laws of any applicable local, state, or federal government to perform the services or work, as applicable, pursuant to the Contract. The Contractor further agrees that such required licenses, approvals, and certificates shall be kept in full force and effect during the term of the Contract, or any extension thereof, and to secure any new licenses, approvals, or certificates within the required time frames and/or to require its staff and subcontractors to obtain the requisite licenses, approvals, or certificates. In the event the Contractor, its staff, and/or subcontractors are notified of a denial or revocation of any license, approval, or certification to perform the services or work, as applicable, under the Contract, the Contractor shall immediately notify the City.

**NEW YORK STATE
DIVISION OF HOMELAND SECURITY AND EMERGENCY SERVICES**

Contract #C000751

The Contract is hereby made by and between the State of New York, acting by and through the New York State Division of Homeland Security and Emergency Services (DHSES or State Agency) and the public or private entity ("Contractor" or "Subrecipient") identified on the face page hereof (Face Page).

WITNESSETH:

WHEREAS, the State has the authority to regulate and provide funding for the establishment and operation of program services, design or the execution and performance of construction projects, as applicable and desires to contract with skilled parties possessing the necessary resources to provide such services or work, as applicable; and

WHEREAS, the Contractor is ready, willing and able to provide such program services or the execution and performance of construction projects and possesses or can make available all necessary qualified personnel, licenses, facilities and expertise to perform or have performed the services or work, as applicable, required pursuant to the terms of the Contract;

NOW THEREFORE, in consideration of the promises, responsibilities, and covenants herein, the State and the Contractor agree as follows:

STANDARD TERMS AND CONDITIONS

I. GENERAL TERMS AND CONDITIONS

A. Executory Clause: In accordance with Section 41 of the State Finance Law, the State shall have no liability under the Contract to the Contractor, or to anyone else, beyond funds appropriated and available for the Contract.

B. Required Approvals: In accordance with Section 112 of the State Finance Law (or, if the Contract is with the State University of New York (SUNY) or City University of New York (CUNY), Section 355 or Section 6218 of the Education Law), if the Contract exceeds \$50,000 (or \$85,000 for contracts let by the Office of General Services, or the minimum thresholds agreed to by the Office of the State Comptroller (OSC) for certain SUNY and CUNY contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount including, but not limited to, changes in amount, consideration, scope or contract term identified on the Face Page (Contract Term), it shall not be valid, effective or binding upon the State until it has been approved by, and filed with, the New York Attorney General Contract Approval Unit (AG) and OSC. If, by the Contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$10,000, it shall not be valid, effective or binding upon the State until it has been approved by, and filed with, the AG and OSC.

Budget Changes: An amendment that would result in a transfer of funds among program activities or budget categories that does not affect the amount, consideration, scope or other terms of such contract may be subject to the approval of the Offices of the State Comptroller and Attorney General where the amount of such modification is, as a portion of the total value of the contract, equal to or greater than ten percent for contracts of less than five million dollars, or five percent for contracts of more than five million dollars; and, in addition, such amendment may be subject to prior approval by the applicable State Agency as detailed in Attachment C (Payment and Reporting Schedule).

C. Contract Parts: This Contract incorporates the face pages attached, this Appendix and all of the marked Appendices identified on the face page hereof.

D. Order of Precedence: In the event of a conflict among (i) the terms of the Contract (including any and all Appendices and amendments) or (ii) between the terms of the Contract and the original request for proposal, the program application or other Attachment that was completed and executed by the Contractor in connection with the Contract, the order of precedence is as follows:

1. Standard Terms and Conditions
2. Modifications to the Face Page
3. Modifications to Attachment A-1, Attachment A-2¹, Attachment B, Attachment C and Attachment D
4. The Face Page
5. Attachment A-2², Attachment B, Attachment C and Attachment D
6. Other attachments, including but not limited to, the request for proposal or program application.

E. Governing Law: This Contract shall be governed by the laws of the State of New York except where the Federal Supremacy Clause requires otherwise.

F. Funding: Funding for the entire Contract Period shall not exceed the funding amount specified as “Funding Amount for the Initial Period” on the Face Page hereof or as subsequently revised to reflect an approved renewal or cost amendment. Funding for the initial and subsequent periods of the Contract shall not exceed the applicable amounts specified in the applicable Attachment B form (Budget).

G. Contract Period: The period of this Contract shall be as specified on the face page hereof.

H. Contract Performance: The Contractor shall perform all services or work, as applicable, and comply with all provisions of the Contract to the satisfaction of the State. The Contractor shall provide services or work, as applicable, and meet the program objectives summarized in Attachment D (Work Plan and Special Conditions) in accordance with the provisions of the Contract, relevant laws, rules and regulations, administrative, program and fiscal guidelines, and where applicable, operating certificate for facilities or licenses for an activity or program. For federally-funded grants, DHSES will conduct an evaluation to determine risks posted by Contractors in managing federal awards. Consistent with 2 CFR §200.331, the results of the evaluation may result in the imposition special conditions to this Contract including but not limited to increased monitoring, suspension of reimbursements and cancellation of the Contract.

¹ To the extent that the terms of Attachment A-2 are required by Federal requirements and conflict with other provisions of the Master Contract, the modifications to A-2 shall supersede all other provisions of this Master Contract.

² To the extent that the terms of Attachment A-2 are required by Federal requirements and conflict with other provisions of the Master Contract, the Federal requirements of A-2 shall supersede all other provisions of this Master Contract.

I. Modifications: To modify the Contract, the parties shall revise or complete the appropriate attachment form(s). Any change in the amount of consideration to be paid, change in scope, or change in the term, is subject to the approval of the NYS Office of the State Comptroller. Any other modifications shall be processed in accordance with DHSES guidelines as stated in this Contract.

J. Severability: Any provision of the Contract that is held to be invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, shall be ineffective only to the extent of such invalidity, illegality or unenforceability, without affecting in any way the remaining provisions hereof; provided, however, that the parties to the Contract shall attempt in good faith to reform the Contract in a manner consistent with the intent of any such ineffective provision for the purpose of carrying out such intent. If any provision is held void, invalid or unenforceable with respect to particular circumstances, it shall nevertheless remain in full force and effect in all other circumstances.

K. Interpretation: The headings in the Contract are inserted for convenience and reference only and do not modify or restrict any of the provisions herein. All personal pronouns used herein shall be considered to be gender neutral. The Contract has been made under the laws of the State of New York, and the venue for resolving any disputes hereunder shall be in a court of competent jurisdiction of the State of New York.

L. Notice:

1. All notices, except for notices of termination, shall be in writing and shall be transmitted either:
 - a. by certified or registered United States mail, return receipt requested;
 - b. by facsimile transmission;
 - c. by personal delivery;
 - d. by expedited delivery service; or
 - e. by e-mail.
2. Notices to the State shall be addressed to the Program Office.
3. Notices to the Contractor shall be addressed to the Contractor's designee.
4. Any such notice shall be deemed to have been given either at the time of personal delivery or, in the case of expedited delivery services or certified or registered United States mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of facsimile transmission or e-mail, upon receipt.
5. The parties may, from time to time, specify any new or different e-mail address, facsimile number or address in the United States as their address for purpose of receiving notice under the Contract by giving fifteen (15) calendar days prior written notice to the other party sent in accordance herewith. The parties agree to mutually designate individuals as their respective representatives for the purposes of receiving notices under the Master Contract. Additional individuals may be designated in writing by the parties for purposes of implementation, administration, billing and resolving issues and/or disputes.

M. Service of Process: In addition to the methods of service allowed by the State Civil Practice Law & Rules (CPLR), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must

promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. The Contractor shall have thirty (30) calendar days after service hereunder is complete in which to respond.

N. Set-Off Rights: The State shall have all of its common law, equitable, and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold, for the purposes of set-off, any moneys due to the Contractor under the Contract up to any amounts due and owing to the State with regard to the Contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of the Contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies, or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of setoff pursuant to an audit, the finalization of such audit by DHSES, its representatives, or OSC.

O. Indemnification: The Contractor shall be solely responsible and answerable in damages for any and all accidents and/or injuries to persons (including death) or property arising out of or related to the services to be rendered by the Contractor or its subcontractors pursuant to this Contract. The Contractor shall indemnify and hold harmless the State and its officers and employees from claims, suits, actions, damages and cost of every nature arising out of the provision of services pursuant to the Contract.

P. Non-Assignment Clause: In accordance with Section 138 of the State Finance Law, the Contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet, or otherwise disposed of without the State's previous written consent, and attempts to do so shall be considered to be null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract, let pursuant to Article XI of the State Finance Law, may be waived at the discretion of DHSES and with the concurrence of OSC, where the original contract was subject to OSC's approval, where the assignment is due to a reorganization, merger, or consolidation of the Contractor's business entity or enterprise. The State retains its right to approve an assignment and to require that the merged contractor demonstrate its responsibility to do business with the State. The Contractor may, however, assign its right to receive payments without the State's prior written consent unless the Contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

Q. Legal Action: No litigation or regulatory action shall be brought against the federal government, the State of New York, DHSES or against any county or other local government entity with the funds provided under the Contract. The term "litigation" shall include commencing or threatening to commence a lawsuit, joining or threatening to join as a party to ongoing litigation, or requesting any relief from any of the federal government, the State of New York, DHSES or any county or other local government entity. The term "regulatory action" shall include commencing or threatening to commence a regulatory proceeding, or requesting any regulatory relief from any of the State of New York, the State Agency, or any county, or other local government entity.

R. No Arbitration: Disputes involving the Contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.

S. Secular Purpose: Services performed pursuant to the Contract are secular in nature and shall be performed in a manner that does not discriminate on the basis of religious belief, or promote or discourage adherence to religion in general or particular religious beliefs.

T. Partisan Political Activity and Lobbying: Funds provided pursuant to the Contract shall not be used for any partisan political activity, or for activities that attempt to influence legislation or election or defeat of any candidate for public office.

U. Reciprocity and Sanctions Provisions: The Contractor is hereby notified that if its principal place of business is located in a country, nation, province, state, or political subdivision that penalizes New York State vendors, and if the goods or services it offers shall be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that it be denied contracts which it would otherwise obtain.³

V. Reporting Fraud and Abuse: Contractor acknowledges that it has reviewed information on how to prevent, detect, and report fraud, waste and abuse of public funds, including information about the federal False Claims Act, the New York State False Claims Act and whistleblower protections.

W. Non-Collusive Bidding: By submission of this bid, the Contractor and each person signing on behalf of the Contractor certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of his or her knowledge and belief that its bid was arrived at independently and without collusion aimed at restricting competition. The Contractor further affirms that, at the time the Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive binding certification on the Contractor's behalf.

X. Federally Funded Grants: The specific federal requirements that are applicable to the Contract are identified in Attachments A-1 and A-2. To the extent that the Contract is funded in whole or part with federal funds, (i) the provisions of the Contract that conflict with federal rules, federal regulations, or federal program specific requirements shall not apply and (ii) the Contractor agrees to comply with all applicable federal rules, regulations and program specific requirements including, but not limited to, those provisions that are set forth in Attachments A-1 and A-2. To the extent that Attachments A-1 and A-2 conflict with any other provisions of the Contract, the federal requirements of Attachments A-1 and A-2 shall supersede all other provisions of the Contract where required.

Y. The Contractor must meet the program objectives summarized in the Program Work Plan and Special Conditions (Attachment D) to the satisfaction of DHSES in accordance with provisions of the Contract, relevant laws, rules and regulations, administrative and fiscal guidelines and, where applicable, operating certificates for facilities or license for an activity or program.

II. TERM, TERMINATION AND SUSPENSION

A. Term: The term of the Contract shall be as specified on the Face Page, unless terminated sooner as provided herein.

B. Renewal:

- 1. General Renewal:** The Contract may consist of successive periods on the same terms and conditions, as specified within the Contract (a "Simplified Renewal Contract"). Each additional or superseding period shall be on the forms specified by the State and shall be incorporated in the Contract.

³As of October 9, 2012, the list of discriminatory jurisdictions subject to this provision includes the states of Alaska, Hawaii, Louisiana, South Carolina, West Virginia and Wyoming. Contact NYS Department of Economic Development for the most current list of jurisdictions subject to this provision.

2. Renewal Notice to Not-for-Profit Contractors:

- a. Pursuant to State Finance Law §179-t, if the Contract is with a not-for-profit Contractor and provides for a renewal option, the State shall notify the Contractor of the State's intent to renew or not to renew the Contract no later than ninety (90) calendar days prior to the end of the term of the Contract, unless funding for the renewal is contingent upon enactment of an appropriation. If funding for the renewal is contingent upon enactment of an appropriation, the State shall notify the Contractor of the State's intent to renew or not to renew the Contract the later of: (1) ninety (90) calendar days prior to the end of the term of the Contract, and (2) thirty (30) calendar days after the necessary appropriation becomes law. Notwithstanding the foregoing, in the event that the State is unable to comply with the time frames set forth in this paragraph due to unusual circumstances beyond the control of the State ("Unusual Circumstances"), no payment of interest shall be due to the not-for-profit Contractor. For purposes of State Finance Law §179-t, "Unusual Circumstances" shall not mean the failure by the State to (i) plan for implementation of a program, (ii) assign sufficient staff resources to implement a program, (iii) establish a schedule for the implementation of a program or (iv) anticipate any other reasonably foreseeable circumstance.
- b. Notification to the not-for-profit Contractor of the State's intent to not renew the Contract must be in writing in the form of a letter, with the reason(s) for the non-renewal included. If the State does not provide notice to the not-for-profit Contractor of its intent not to renew the Contract as required in this Section and State Finance Law §179-t, the Contract shall be deemed continued until the date the State provides the necessary notice to the Contractor, in accordance with State Finance Law §179-t. Expenses incurred by the not-for-profit Contractor during such extension shall be reimbursable under the terms of the Contract.

C. Termination:

1. Grounds:

- a. Mutual Consent: The Contract may be terminated at any time upon mutual written consent of the State and the Contractor.

Cause: The State may terminate the Contract immediately, upon written notice of termination to the Contractor, if the Contractor fails to comply with any of the terms and conditions of the Contract and/or with any laws, rules, regulations, policies, or procedures that are applicable to the Contract which include but are not limited to the following:

1. Failure to comply with any of the rules, regulations or provisions referred to herein, or such statutes, regulations, executive orders, or directives as may become applicable at an time including but not limited to environmental rules and regulations;
2. Failure, for any reason except those beyond the City's control, of the City to fulfill in a timely and satisfactory manner its obligations under this Agreement;
3. Ineffective or improper use of funds provided under this Agreement;

4. Submission by the City to the State of reports that are untimely, incorrect, or incomplete in any material respect; or
 5. Any other material noncompliance with the terms of this Agreement.
- b. Non-Responsibility: In accordance with the provisions of this Contract, the State may make a final determination that the Contractor is non-responsible (Determination of Non-Responsibility). In such event, the State may terminate the Contract at the Contractor's expense, complete the contractual requirements in any manner the State deems advisable and pursue available legal or equitable remedies for breach.
 - c. Convenience: Either party may terminate the Contractor for convenience upon thirty (30) calendar days' prior written notice consistent with 2 CFR §200.339. It is hereby understood that if the State terminates its pass through award with FEMA, the State may upon thirty (30) days' notice, terminate this contract with the Contractor and shall have no further obligation.
 - d. Lack of Funds: If for any reason the State or the Federal government terminates the pass-through federal award or reduces its appropriation to the applicable State Agency entering into the Contract or fails to pay the full amount of the allocation for the operation of one or more programs funded under this Contract, the Contract may be terminated or reduced at DHSES's discretion, provided that no such reduction or termination shall apply to allowable costs already incurred by the Contractor where funds are available to DHSES for payment of such costs. Upon termination or reduction of the Contract, all remaining funds paid to the Contractor that are not subject to allowable costs already incurred by the Contractor shall be returned to DHSES. In any event, no liability shall be incurred by the State (including DHSES) beyond monies available for the purposes of the Contract. The Contractor acknowledges that any funds due to DHSES or the State of New York because of disallowed expenditures after audit shall be the Contractor's responsibility.
 - e. Force Majeure: Either Party may terminate or suspend its performance under the Contract immediately upon the occurrence of a "force majeure." For purposes of the Contract, "Force majeure" shall include, but not be limited to, natural disasters, war, rebellion, insurrection, riot, strikes, lockout and any unforeseen circumstances and acts beyond the control of the State or City which render the performance of its obligations impossible.

2. Notice of Termination:

- a. Service of notice: Written notice of termination shall be sent by:
 - i. personal messenger service; or
 - ii. certified mail, return receipt requested and first class mail.
- b. Effective date of termination: The effective date of the termination shall be the later of (i) the date indicated in the notice and (ii) the date the notice is received by the Contractor, and shall be established as follows:
 - i. if the notice is delivered by hand, the date of receipt shall be established by the receipt given to the Contractor or by affidavit of the individual making such hand delivery attesting to the date of delivery; or

- ii. if the notice is delivered by registered or certified mail, by the receipt returned from the United States Postal Service, or if no receipt is returned, five (5) business days from the date of mailing of the first class letter, postage prepaid, in a depository under the care and control of the United States Postal Service.

3. *Effect of Notice and Termination on State's Payment Obligations:*

- a. Upon receipt of notice of termination, the Contractor agrees to cancel, prior to the effective date of any prospective termination, as many outstanding obligations as possible, and agrees not to incur any new obligations after receipt of the notice without approval by the State.
- b. The State shall be responsible for payment on claims for services or work provided and costs incurred pursuant to the terms of the Contract. In no event shall the State be liable for expenses and obligations arising from the requirements of the Contract after its termination date.

4. *Effect of Termination Based on Misuse or Conversion of State or Federal Property:*

Where the Contract is terminated for cause based on Contractor's failure to use some or all of the real property or equipment purchased pursuant to the Contract for the purposes set forth herein, the State may, at its option, require:

- a. the repayment to the State of any monies previously paid to the Contractor; or
- b. the return of any real property or equipment purchased under the terms of the Contract; or
- c. an appropriate combination of clauses (a) and (b) of Section II(C)(4) herein.

D. Remedies for Noncompliance:

1. Available Sanctions:

- a. **Additional Conditions:** If the Contractor fails to comply with the terms of this Agreement, federal and state statutes, regulations or the terms and conditions of a federal award, the State may impose additional conditions, as described in 2 CFR §200.207.
- b. **Other Sanctions:** If the State determines that noncompliance cannot be remedied by imposing additional conditions, consistent with 2 CFR Part 200, the State may take one or more of the following actions, as appropriate in the circumstances:
 - i. Temporarily withhold cash payments pending correction of the deficiency by the non-Federal entity or more severe enforcement action by the State.
 - ii. Disallow (that is, deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance.
 - iii. Wholly or partly suspend or terminate the Contract.
 - iv. Initiate suspension or debarment proceedings as authorized by 2 CFR Part 180.
 - v. Withhold further Federal awards for the project or program.
 - vi. Take other remedies that may be legally available.

Nothing herein shall be intended to limit the State's ability to pursue such other legal or equitable remedies as may be available.

E. Suspension: The State may, in its discretion in accordance with 2 CFR §200.338(c), order the Contractor to suspend performance for a reasonable period of time. In the event of such suspension, the Contractor shall be given a formal written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor shall comply with the particulars of the notice. The State shall have no obligation to reimburse Contractor's expenses during such suspension period. Activities may resume at such time as the State issues a formal written notice authorizing a resumption of performance under the Contract.

III. PAYMENT AND REPORTING

A. Terms and Conditions:

1. In full consideration of contract services to be performed, DHSES agrees to pay and the Contractor agrees to accept a sum not to exceed the amount noted on the Face Page.
2. The State has no obligation to make payment until all required approvals, including the approval of the AG and OSC, if required, have been obtained. Contractor obligations or expenditures that precede the start date of the Contract shall not be reimbursed.
3. The Contractor must provide complete and accurate billing invoices to the State in order to receive payment. Provided, however, the State may, at its discretion, automatically generate a voucher in accordance with an approved contract payment schedule. Billing invoices submitted to the State must contain all information and supporting documentation required by Attachment C (Payment and Reporting Schedule) and Section III(C) herein. The State may require the Contractor to submit billing invoices electronically.
4. Payment for invoices submitted by the Contractor shall only be rendered electronically unless payment by paper check is expressly authorized by the head of DHSES, in the sole discretion of the head of such State Agency, due to extenuating circumstances. Such electronic payment shall be made in accordance with OSC's procedures and practices to authorize electronic payments. Authorization forms are available at the State Comptroller's website at www.osc.state.ny.us/epay/index.htm, by email at epunit@osc.state.ny.us, or by telephone at (518) 474-4032. Contractor acknowledges that it will not receive payment on any vouchers submitted under this Contract if it does not comply with the State Comptroller's electronic payment procedures, except where the Director has expressly authorized payment by paper check as set forth above.
5. If travel expenses are an approved expenditure under this Contract, travel expenses shall be reimbursed at the lesser of the rates set forth in the written standard travel policy of the Contractor, the OSC guidelines, or United States General Services Administration rates. No out-of-state travel costs shall be permitted unless specifically detailed and pre-approved by the State.
6. Timeliness of advance payments or other claims for reimbursement, and any interest to be paid to Contractor for late payment, shall be governed by Article 11-A of the State Finance Law to the extent required by law.
7. Article 11-B of the State Finance Law sets forth certain time frames for the Full Execution of contracts or

renewal contracts with not-for-profit organizations and the implementation of any program plan associated with such contract. For purposes of this section, "Full Execution" shall mean that the contract has been signed by all parties thereto and has obtained the approval of the AG and OSC. Any interest to be paid on a missed payment to the Contractor based on a delay in the Full Execution of the Master Contract shall be governed by Article 11-B of the State Finance Law.

B. Advance Payment and Recoupment:

1. Advance payments, which the State in its sole discretion may make to not-for-profit grant recipients, shall be made and recouped in accordance with State Finance Law Section 179(u), this Section and the provisions of Attachment C (Payment and Reporting Schedule).
2. Advance payments made by the State to not-for-profit grant recipients shall be due no later than thirty (30) calendar days, excluding legal holidays, after the first day of the Contract Term or, if renewed, in the period identified on the Face Page.
3. For subsequent contract years in multi-year contracts, Contractor will be notified of the scheduled advance payments for the upcoming contract year no later than 90 days prior to the commencement of the contract year. For simplified renewals, the payment schedule (Attachment C) will be modified as part of the renewal process.
4. Recoupment of any advance payment(s) shall be recovered by crediting the percentage of subsequent claims listed in Attachment C (Payment and Reporting Schedule) and Section III(C) herein and such claims shall be reduced until the advance is fully recovered within the Contract Term. Any unexpended advance balance at the end of the Contract Term shall be refunded by the Contractor to the State.
5. If for any reason the amount of any claim is not sufficient to cover the proportionate advance amount to be recovered, then subsequent claims may be reduced until the advance is fully recovered.

C. Claims for Reimbursement:

1. The Contractor shall submit claims for the reimbursement of expenses incurred on behalf of the State under the Contract in accordance with this Section and the applicable claiming schedule in Attachment C (Payment and Reporting Schedule).

Vouchers submitted for payment shall be deemed to be a certification that the payments requested are for project expenditures made in accordance with the items as contained in the applicable Attachment B form (Budget) and during the Contract Term. When submitting a voucher, such voucher shall also be deemed to certify that: (i) the payments requested do not duplicate reimbursement from other sources of funding; and (ii) the funds provided herein do not replace funds that, in the absence of this grant, would have been made available by the Contractor for this program. Requirement (ii) does not apply to grants funded pursuant to a Community Projects Fund appropriation.

2. Consistent with the selected reimbursement claiming schedule in Attachment C (Payment and Reporting Schedule), the Contractor shall comply with the appropriate following provisions:
 - a. Quarterly Reimbursement: The Contractor shall be entitled to receive payments for work, projects, and services rendered as detailed and described in Attachment D (Work Plan and Special Conditions). The Contractor shall submit to DHSES quarterly voucher claims and supporting documentation. The

Contractor shall submit vouchers to DHSES in accordance with the procedures set forth in Section III(A)(3) herein.

- b. Monthly Reimbursement: The Contractor shall be entitled to receive payments for work, projects, and services rendered as detailed and described in Attachment D (Work Plan and Special Conditions). The Contractor shall submit to DHSES monthly voucher claims and supporting documentation. The Contractor shall submit vouchers to DHSES in accordance with the procedures set forth in Section III(A)(3) herein.
- c. Biannual Reimbursement: The Contractor shall be entitled to receive payments for work, projects, and services rendered as detailed and described in Appendix D (Work Plan). The Contractor shall submit to DHSES biannually voucher claims and supporting documentation. The Contractor shall submit vouchers to DHSES in accordance with the procedures set forth in Section III(A)(3) herein.
- d. Milestone/Performance Reimbursement:⁴ Requests for payment based upon an event or milestone may be either severable or cumulative. A severable event/milestone is independent of accomplishment of any other event. If the event is cumulative, the successful completion of an event or milestone is dependent on the previous completion of another event. Milestone payments shall be made to the Contractor when requested in a form approved by the State, and at frequencies and in amounts stated in Attachment C (Payment and Reporting Schedule). DHSES shall make milestone payments subject to the Contractor's satisfactory performance.
- e. Fee for Service Reimbursement:⁵ Payment shall be limited to only those fees specifically agreed upon in the Contract and shall be payable no more frequently than monthly upon submission of a voucher by the contractor.
- f. Rate Based Reimbursement:⁶ Payment shall be limited to rate(s) established in the Contract. Payment may be requested no more frequently than monthly.
- g. Scheduled Reimbursement:⁷ DHSES shall generate vouchers at the frequencies and amounts as set forth in Attachment C (Payment and Reporting Schedule).
- h. Interim Reimbursement: DHSES may generate vouchers on an interim basis and the amounts requested by the Contract as set forth in Attachment C (Payment and Reporting Schedule).
- i. Fifth Quarter Payments:⁸ Fifth quarter payment shall be paid to the Contractor at the conclusion of the final scheduled payment period of the preceding contract period. DHSES shall use a written

⁴ A milestone/performance payment schedule identifies mutually agreed-to payment amounts based on meeting contract events or milestones. Events or milestones must represent integral and meaningful aspects of contract performance and should signify true progress in completing the Contract effort.

⁵ Fee for Service is a rate established by the Contractor for a service or services rendered.

⁶ Rate based agreements are those agreements in which payment is premised upon a specific established rate per unit.

⁷ Scheduled Reimbursement agreements provide for payments that occur at defined and regular intervals that provide for a specified dollar amount to be paid to the Contractor at the beginning of each payment period (i.e. quarterly, monthly or bi-annually). While these payments are related to the particular services and outcomes defined in the Contract, they are not dependent upon particular services or expenses in any one payment period and provide the Contractor with a defined and regular payment over the life of the contract.

directive for fifth quarter financing. DHSES shall generate a voucher in the fourth quarter of the current contract year to pay the scheduled payment for the next contract year.

3. The Contractor shall also submit supporting fiscal documentation for the expenses claimed.
4. The State reserves the right to withhold up to fifteen percent (15%) of the total amount of the Contract as security for the faithful completion of services or work, as applicable, under the Contract. This amount may be withheld in whole or in part from any single payment or combination of payments otherwise due under the Contract. In the event that such withheld funds are insufficient to satisfy Contractor's obligations to the State, the State may pursue all available remedies, including the right of setoff and recoupment.
5. The State shall not be liable for payments on the Contract if it is made pursuant to a Community Projects Fund appropriation if insufficient monies are available pursuant to Section 99-d of the State Finance Law.
6. All vouchers submitted by the Contractor pursuant to the Contract shall be submitted to DHSES no later than thirty (30) calendar days after the end date of the period for which reimbursement is claimed. In no event shall the amount received by the Contractor exceed the budget amount approved by DHSES, and, if actual expenditures by the Contractor are less than such sum, the amount payable by DHSES to the Contractor shall not exceed the amount of actual expenditures.
7. All obligations must be incurred prior to the end date of the contract. Notwithstanding the provisions of Section III(C)(6) above, with respect to the final period for which reimbursement is claimed, so long as the obligations were incurred prior to the end date of the contract, the Contractor shall have up to ninety (90) calendar days after the contract end date to make expenditures; provided, however, that if the Contract is funded in whole or in part with federal funds, the Contractor shall have up to sixty (60) calendar days after the contract end date to make expenditures.

D. Identifying Information and Privacy Notification:

1. Every voucher or New York State Claim for Payment submitted to a State Agency by the Contractor, for payment for the sale of goods or services or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property, must include the Contractor's Vendor Identification Number assigned by the Statewide Financial System, and any or all of the following identification numbers: (i) the Contractor's Federal employer identification number, (ii) the Contractor's Federal social security number, and/or (iii) DUNS number. Failure to include such identification number or numbers may delay payment by the State to the Contractor. Where the Contractor does not have such number or numbers, the Contractor, on its voucher or Claim for Payment, must provide the reason or reasons for why the Contractor does not have such number or numbers.
2. The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principle purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. The personal information is requested by the purchasing unit of DHSES

contracting to purchase the goods or services or lease the real or personal property covered by the Contract. This information is main

3. tained in the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street, Albany, New York, 12236.

E. Refunds:

1. In the event that the Contractor must make a refund to the State for Contract-related activities, including repayment of an advance or an audit disallowance, payment must be made payable as set forth in this Attachment. The Contractor must reference the contract number with its payment and include a brief explanation of why the refund is being made. Refund payments must be submitted to the Office address listed in Attachment C.
2. If at the end or termination of the Contract, there remains any unexpended balance of the monies advanced under the Contract in the possession of the Contractor, the Contractor shall make payment within forty-five (45) calendar days of the end or termination of the Contract. In the event that the Contractor fails to refund such balance the State may pursue all available remedies.

F. Outstanding Amounts Owed to the State: Prior period overpayments (including, but not limited to, contract advances in excess of actual expenditures) and/or audit recoveries associated with the Contractor may be recouped against future payments made under this Contract to Contractor. The recoupment generally begins with the first payment made to the Contractor following identification of the overpayment and/or audit recovery amount. In the event that there are no payments to apply recoveries against, the Contractor shall make payment as provided in Section III(E) (Refunds) herein.

G. Program and Fiscal Reporting Requirements:

1. The Contractor shall submit required periodic reports in accordance with the applicable schedule provided in Attachment C (Payment and Reporting Schedule). All required reports or other work products developed pursuant to the Contract must be completed as provided by the agreed upon work schedule in a manner satisfactory and acceptable to DHSES in order for the Contractor to be eligible for payment.
2. Consistent with the selected reporting options in Appendix C (Payment and Reporting Schedule), the Contractor shall comply with the following applicable provisions:
 - a. If the Expenditure Based Reports option is indicated in Appendix C (Payment and Reporting Schedule), the Contractor shall provide DHSES with one or more of the following reports as required by the following provisions and Appendix C (Payment and Reporting Schedule) as applicable:
 - i. *Narrative/Qualitative Report:* The Contractor shall submit, on a quarterly basis, not later than the time period listed in Appendix C (Payment and Reporting Schedule), a report, in narrative form, summarizing the services rendered during the quarter. This report shall detail how the Contractor has progressed toward attaining the qualitative goals enumerated in Appendix D (Work Plan and Special Conditions). This report should address all goals and objectives of the project and include a discussion of problems encountered and steps taken to solve them.
 - ii. *Statistical/Quantitative Report:* The Contractor shall submit, on a quarterly basis, not later than the time period listed in Appendix C (Payment and Reporting Schedule), a detailed

report analyzing the quantitative aspects of the program plan, as appropriate (e.g., number of meals served, clients transported, patient/client encounters, procedures performed, training sessions conducted, etc.)

- iii. *Expenditure Report*: The Contractor shall submit, on a quarterly basis, not later than the time period listed in Appendix C (Payment and Reporting Schedule), a detailed expenditure report, by object of expense. This report shall accompany the voucher submitted for such period.
 - iv. *Final Report*: The Contractor shall submit a final report as required by the Contract, not later than the time period listed in Appendix C (Payment and Reporting Schedule) which reports on all aspects of the program and detailing how the use of funds were utilized in achieving the goals set forth in Appendix D (Work Plan and Special Conditions).
 - v. *Consolidated Fiscal Report (CFR)*: The Contractor shall submit a CFR, which includes a year-end cost report and final claim not later than the time period listed in Appendix C (Payment and Reporting Schedule).
- b. If the Performance-Based Reports option is indicated in Appendix C (Payment and Reporting Schedule), the Contractor shall provide DHSES with the following reports as required by the following provisions and Appendix C (Payment and Reporting Schedule) as applicable:
- i. *Progress Report*: The Contractor shall provide DHSES with a written progress report using the forms and formats as provided by DHSES, summarizing the work performed during the period. These reports shall detail the Contractor's progress toward attaining the specific goals enumerated in Appendix D (Work Plan and Special Conditions). Progress reports shall be submitted in a format prescribed in the Contract.
 - ii. *Final Progress Report*: Final scheduled payment is due during the time period set forth in Appendix C (Payment and Reporting Schedule). The deadline for submission of the final report shall be the date set forth in Appendix C (Payment and Reporting Schedule). DHSES shall complete its audit and notify the Contractor of the results no later than the date set forth in Appendix C (Payment and Reporting Schedule). Payment shall be adjusted by DHSES to reflect only those services/expenditures that were made in accordance with the Contract. The Contractor shall submit a detailed comprehensive final progress report not later than the date set forth in Appendix C (Payment and Reporting Schedule), summarizing the work performed during the entire Contract Term (i.e., a cumulative report), in the forms and formats required.
3. In addition to the periodic reports stated above, the Contractor may be required (a) to submit such other reports as are required in Table 1 of Appendix C (Payment and Reporting Schedule), and (b) prior to receipt of final payment under the Contract, to submit one or more final reports in accordance with the form, content, and schedule stated in Table 1 of Appendix C (Payment and Reporting Schedule).

H. Notification of Significant Occurrences:

- 1. If any specific event or conjunction of circumstances threatens the successful completion of this project, in whole or in part, including where relevant, timely completion of milestones or other program requirements, the Contractor agrees to submit to DHSES within three (3) calendar days of becoming aware of the occurrence or of such problem, a written description thereof together with a recommended solution thereto.

2. The Contractor shall immediately notify in writing the program manager assigned to the Contract of any unusual incident, occurrence, or event that involves the staff, volunteers, directors or officers of the Contractor, any subcontractor or program participant funded through the Contract, including but not limited to the following: death or serious injury; an arrest or possible criminal activity that could impact the successful completion of this project; any destruction of property; significant damage to the physical plant of the Contractor; or other matters of a similarly serious nature.

IV. ADDITIONAL CONTRACTOR OBLIGATIONS, REPRESENTATIONS AND WARRANTIES

A. Contractor as an Independent Contractor/Employees:

1. The State and the Contractor agree that the Contractor is an independent contractor and not an employee of the State and may neither hold itself out nor claim to be an officer, employee, or subdivision of the State nor make any claim, demand, or application to or for any right based upon any different status. The Contractor shall be solely responsible for the recruitment, hiring, provision of employment benefits, payment of salaries and management of its project personnel. These functions shall be carried out in accordance with the provisions of the Contract, and all applicable Federal and State laws and regulations.
2. The Contractor warrants that it, its staff, and any and all subcontractors have all the necessary licenses, approvals, and certifications currently required by the laws of any applicable local, state, or Federal government to perform the services or work, as applicable, pursuant to the Contract and/or any subcontract entered into under the Contract. The Contractor further agrees that such required licenses, approvals, and certificates shall be kept in full force and effect during the term of the Contract, or any extension thereof, and to secure any new licenses, approvals, or certificates within the required time frames and/or to require its staff and subcontractors to obtain the requisite licenses, approvals, or certificates. In the event the Contractor, its staff, and/or subcontractors are notified of a denial or revocation of any license, approval, or certification to perform the services or work, as applicable, under the Contract, Contractor shall immediately notify the State.

B. Subcontractors:

1. If the Contractor enters into subcontracts for the performance of work pursuant to the Contract, the Contractor shall take full responsibility for the acts and omissions of its subcontractors. Nothing in the subcontract shall impair the rights of the State under the Contract. No contractual relationship shall be deemed to exist between the subcontractor and the State.
2. If requested by the State, the Contractor agrees not to enter into any subcontracts, or revisions to subcontracts, that are in excess of \$100,000 for the performance of the obligations contained herein until it has received the prior written permission of the State, which shall have the right to review and approve each and every subcontract in excess of \$100,000 prior to giving written permission to the Contractor to enter into the subcontract. All agreements between the Contractor and subcontractors shall be by written contract, signed by individuals authorized to bind the parties. All such subcontracts shall contain provisions for specifying (1) that the work performed by the subcontractor must be in accordance with the terms of the Contract, (2) that nothing contained in the subcontract shall impair the rights of the State under the Contract, and (3) that nothing contained in the subcontract, nor under the Contract, shall be deemed to create any contractual relationship between the subcontractor and the State. In addition,

subcontracts shall contain any other provisions which are required to be included in subcontracts pursuant to the terms herein.

3. If requested by the State, prior to executing a subcontract, the Contractor agrees to require the subcontractor to provide to the State the information the State needs to determine whether a proposed subcontractor is a responsible vendor.
4. If requested by the State, when a subcontract equals or exceeds \$100,000, the subcontractor must submit a Vendor Responsibility Questionnaire (Questionnaire).
5. If requested by the State, when a subcontract is executed, the Contractor must provide detailed subcontract information (a copy of subcontract will suffice) to the State within fifteen (15) calendar days after execution. The State may request from the Contractor copies of subcontracts between a subcontractor and its subcontractor.
6. The Contractor shall require any and all subcontractors to submit to the Contractor all financial claims for Services or work to DHSES, as applicable, rendered and required supporting documentation and reports as necessary to permit Contractor to meet claim deadlines and documentation requirements as established in Appendix C (Payment and Reporting Schedule) and Section III. Subcontractors shall be paid by the Contractor on a timely basis after submitting the required reports and vouchers for reimbursement of services or work, as applicable. Subcontractors shall be informed by the Contractor of the possibility of non-payment or rejection by the Contractor of claims that do not contain the required information, and/or are not received by the Contractor by said due date.

C. Use of Material, Equipment, or Personnel:

1. The Contractor shall not use materials, equipment, or personnel paid for under the Contract for any activity other than those provided for under the Contract, except with the State's prior written permission.
2. Any interest accrued on funds paid to the Contractor by the State shall be deemed to be the property of the State and shall either be credited to the State at the close-out of the Contract or, upon the written permission of the State, shall be expended on additional services or work, as applicable, provided for under the Contract.

D. Property:

1. Property is real property, equipment, or tangible personal property having a useful life of more than one year and an acquisition cost of \$1,000 or more per unit.
 - a. If an item of Property required by the Contractor is available as surplus to the State, the State at its sole discretion, may arrange to provide such Property to the Contractor in lieu of the purchase of such Property.
 - b. If the State consents in writing, the Contractor may retain possession of Property owned by the State, as provided herein, after the termination of the Contract to use for similar purposes. Otherwise, the Contractor shall return such Property to the State at the Contractor's cost and expense upon the expiration of the Contract.

- c. In addition, the Contractor agrees to permit the State to inspect the Property and to monitor its use at reasonable intervals during the Contractor's regular business hours.
 - d. The Contractor shall be responsible for maintaining and repairing Property purchased or procured under the Contract at its own cost and expense. The Contractor shall procure and maintain insurance at its own cost and expense in an amount satisfactory to DHSES naming DHSES as an additional insured, covering the loss, theft or destruction of such equipment.
 - e. A rental charge to the Contract for a piece of Property owned by the Contractor shall not be allowed.
 - f. The State has the right to review and approve in writing any new contract for the purchase of or lease for rental of Property (Purchase/Lease Contract) operated in connection with the provision of the services or work, as applicable, as specified in the Contract, if applicable, and any modifications, amendments, or extensions of an existing lease or purchase prior to its execution. If, in its discretion, the State disapproves of any Purchase/Lease Contract, then the State shall not be obligated to make any payments for such Property.
 - g. No member, officer, director or employee of the Contractor shall retain or acquire any interest, direct or indirect, in any Property, paid for with funds under the Contract, nor retain any interest, direct or indirect, in such, without full and complete prior disclosure of such interest and the date of acquisition thereof, in writing to the Contractor and the State.
- 2. For non-Federally-funded contracts, unless otherwise provided herein, the State shall have the following rights to Property purchased with funds provided under the Contract:
 - a. For cost-reimbursable contracts, all right, title and interest in such Property shall belong to the State.
 - b. For performance-based contracts, all right, title and interest in such Property shall belong to the Contractor.
 - 3. For Federally funded contracts, title to Property whose requisition cost is borne in whole or in part by monies provided under the Contract shall be governed by the terms and conditions of Section V (FEDERALLY FUNDED GRANT REQUIREMENTS) contained herein.
 - 4. Upon written direction by the State, the Contractor shall maintain an inventory of all Property that is owned by the State as provided herein.
 - 5. The Contractor shall execute any documents which the State may reasonably require to effectuate the provisions of this section.

E. Records and Audits:

1. General:

- a. The Contractor shall establish and maintain, in paper or electronic format, complete and accurate books, records, documents, receipts, accounts, and other evidence directly pertinent to its performance under the Contract (collectively, Records).

- b. The Contractor agrees to produce and retain for the balance of the term of the Contract, and for a period of six years from the later of the date of (i) the Contract and (ii) the most recent renewal of the Contract, any and all Records necessary to substantiate upon audit, the proper deposit and expenditure of funds received under the Contract. Such Records may include, but not be limited to, original books of entry (e.g., cash disbursements and cash receipts journal), and the following specific records (as applicable) to substantiate the types of expenditures noted:
- i. personal service expenditures: cancelled checks and the related bank statements, time and attendance records, payroll journals, cash and check disbursement records including copies of money orders and the like, vouchers and invoices, records of contract labor, any and all records listing payroll and the money value of non-cash advantages provided to employees, time cards, work schedules and logs, employee personal history folders, detailed and general ledgers, sales records, miscellaneous reports and returns (tax and otherwise), and cost allocation plans, if applicable.
 - ii. payroll taxes and fringe benefits: cancelled checks, copies of related bank statements, cash and check disbursement records including copies of money orders and the like, invoices for fringe benefit expenses, miscellaneous reports and returns (tax and otherwise), and cost allocation plans, if applicable.
 - iii. non-personal services expenditures: original invoices/receipts, cancelled checks and related bank statements, consultant agreements, leases, cost allocation plans, and bid and procurement documentation, such as quotes, proposals and selection records, if applicable.
 - iv. receipt and deposit of advance and reimbursements: itemized bank stamped deposit slips, and a copy of the related bank statements.
- c. The OSC, AG and any other person or entity authorized to conduct an examination, as well as DHSES or State Agencies involved in the Contract that provided funding, shall have access to the Records during the hours of 9:00 a.m. until 5:00 p.m., Monday through Friday (excluding State recognized holidays), at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying.
- d. The State shall protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records, as exempt under Section 87 of the Public Officers Law, is reasonable.
- e. Nothing contained herein shall diminish, or in any way adversely affect, the State's rights in connection with its audit and investigatory authority or the State's rights in connection with discovery in any pending or future litigation.

2. Cost Allocation:

- a. For non-performance based contracts, the proper allocation of the Contractor's costs must be made according to a cost allocation plan that meets the requirements of 2 CFR Part 200. Methods used to determine and assign costs shall conform to generally accepted accounting practices and shall be

consistent with the method(s) used by the Contractor to determine costs for other operations or programs. Such accounting standards and practices shall be subject to approval of the State.

- b. For performance based milestone contracts, or for the portion of the contract amount paid on a performance basis, the Contractor shall maintain documentation demonstrating that milestones were attained.

3. **Federal Funds:** For records and audit provisions governing Federal funds, please see Attachments A-1 and A-2.

F. Confidentiality: The Contractor agrees that it shall use and maintain information relating to individuals who may receive services, and their families pursuant to the Contract, or any other information, data or records deemed confidential by the State (Confidential Information) only for the limited purposes of the Contract and in conformity with applicable provisions of State and Federal law. The Contractor (i) has an affirmative obligation to safeguard any such Confidential Information from unnecessary or unauthorized disclosure and (ii) must comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208).

G. Publicity:

1. Publicity includes, but is not limited to: news conferences; news releases; public announcements; advertising; brochures; reports; discussions or presentations at conferences or meetings; and/or the inclusion of State materials, the State's name or other such references to the State in any document or forum. Publicity regarding this project may not be released without prior written approval from the State.
2. Any publications, presentations or announcements of conferences, meetings or trainings which are funded in whole or in part through any activity supported under the Contract may not be published, presented or announced without prior approval of the State. Any such publication, presentation or announcement shall:
 - a. Acknowledge the support of the State of New York and, if funded with Federal funds, the applicable Federal funding agency; and
 - b. State that the opinions, results, findings and/or interpretations of data contained therein are the responsibility of the Contractor and do not necessarily represent the opinions, interpretations or policy of the State or if funded with Federal funds, the applicable Federal funding agency.
3. Notwithstanding the above, (i) if the Contractor is an educational research institution, the Contractor may, for scholarly or academic purposes, use, present, discuss, report or publish any material, data or analyses, other than Confidential Information, that derives from activity under the Master Contract and the Contractor agrees to use best efforts to provide copies of any manuscripts arising from Contractor's performance under this Master Contract, or if requested by the State, the Contractor shall provide the State with a thirty (30) day period in which to review each manuscript for compliance with Confidential Information requirements; or (ii) if the Contractor is not an educational research institution, the Contractor may submit for publication, scholarly or academic publications that derive from activity under the Master Contract (but are not deliverable under the Master Contract), provided that the Contractor first submits such manuscripts to the State forty-five (45) calendar days prior to submission for consideration by a publisher in order for the State to review the manuscript for compliance with confidentiality requirements and restrictions and to make such other comments as the State deems

appropriate. All derivative publications shall follow the same acknowledgments and disclaimer as described in Section IV(G)(2) (Publicity) hereof.

H. Web-Based Applications-Accessibility: Any web-based intranet and Internet information and applications development, or programming delivered pursuant to the Contract or procurement shall comply with New York State Enterprise IT Policy NYS-P08-005, Accessibility Web-Based Information and Applications, and New York State Enterprise IT Standard NYS-S08-005, Accessibility of Web-Based Information Applications, as such policy or standard may be amended, modified or superseded, which requires that State Agency web-based intranet and Internet information and applications are accessible to person with disabilities. Web content must conform to New York State Enterprise IT Standards NYS-S08-005, as determined by quality assurance testing. Such quality assurance testing shall be conducted by DHSES and the results of such testing must be satisfactory to DHSES before web content shall be considered a qualified deliverable under the Contract or procurement.

I. Non-Discrimination Requirements: Pursuant to Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional nondiscrimination provisions, the Contractor and sub-contractors will not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex (including gender identity or expression), national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract 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, and to the extent that the Contract shall be performed within the State of New York, the Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under the Contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, the Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under the Contract. The Contractor shall be subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 of the Labor Law.

J. Equal Opportunities for Minorities and Women; Minority and Women Owned Business Enterprises: In accordance with Section 312 of the Executive Law and 5 NYCRR 143, if the Contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting State Agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting State Agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting State Agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the Contractor certifies and affirms that (i) it is subject to Article 15-A of the Executive Law which includes, but is not limited to, those provisions concerning the maximizing of opportunities for the participation of minority and women-owned business enterprises and (ii) the following provisions shall apply and it is Contractor's equal employment opportunity policy that:

1. The Contractor shall not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status;

2. The Contractor shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts;
3. The Contractor shall undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;
4. At the request of the State, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative shall not discriminate on the basis of race, creed, color, national origin sex, age, disability or marital status and that such union or representative shall affirmatively cooperate in the implementation of the Contractor's obligations herein; and
5. The Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants shall be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

The Contractor shall include the provisions of subclauses 1 – 5 of this Section (IV)(J), in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (Work) except where the Work is for the beneficial use of the Contractor. Section 312 of the Executive Law does not apply to: (i) work, goods or services unrelated to the Contract; or (ii) employment outside New York State. The State shall consider compliance by the Contractor or a subcontractor with the requirements of any Federal law concerning equal employment opportunity which effectuates the purpose of this section. The State shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such Federal law and if such duplication or conflict exists, the State shall waive the applicability of Section 312 of the Executive Law to the extent of such duplication or conflict. The Contractor shall comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

K. Omnibus Procurement Act of 1992: It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises, as bidders, subcontractors and suppliers on its procurement contracts.

1. If the total dollar amount of the Contract is greater than \$1 million, the Omnibus Procurement Act of 1992 requires that by signing the Contract, the Contractor certifies the following:
 - a. The Contractor has made reasonable efforts to encourage the participation of State business enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;
 - b. The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;
 - c. The Contractor agrees to make reasonable efforts to provide notification to State residents of employment opportunities on this project through listing any such positions with the Job Service

Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

- d. The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of the Contract and agrees to cooperate with the State in these efforts.

L. Workers' Compensation Benefits:

1. In accordance with Section 142 of the State Finance Law, the Contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of the Contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.
2. If a Contractor believes they are exempt from the Workers Compensation insurance requirement they must apply for an exemption.

M. Unemployment Insurance Compliance: The Contractor shall remain current in both its quarterly reporting and payment of contributions or payments in lieu of contributions, as applicable, to the State Unemployment Insurance system as a condition of maintaining this grant.

The Contractor hereby authorizes the State Department of Labor to disclose to DHSES staff only such information as is necessary to determine the Contractor's compliance with the State Unemployment Insurance Law. This includes, but is not limited to, the following:

1. any records of unemployment insurance (UI) contributions, interest, and/or penalty payment arrears or reporting delinquency;
2. any debts owed for UI contributions, interest, and/or penalties;
3. the history and results of any audit or investigation; and
4. copies of wage reporting information.

Such disclosures are protected under Section 537 of the State Labor Law, which makes it a misdemeanor for the recipient of such information to use or disclose the information for any purpose other than the performing due diligence as a part of the approval process for the Contract.

N. Vendor Responsibility:

1. If a Contractor is required to complete a Questionnaire, the Contractor covenants and represents that it has, to the best of its knowledge, truthfully, accurately and thoroughly completed such Questionnaire. Although electronic filing is preferred, the Contractor may obtain a paper form from the OSC prior to execution of the Contract. The Contractor further covenants and represents that as of the date of execution of the Contract, there are no material events, omissions, changes or corrections to such document requiring an amendment to the Questionnaire.
2. The Contractor shall provide to the State updates to the Questionnaire if any material event(s) occurs requiring an amendment or as new information material to such Questionnaire becomes available.

3. The Contractor shall, in addition, promptly report to the State the initiation of any investigation or audit by a governmental entity with enforcement authority with respect to any alleged violation of Federal or state law by the Contractor, its employees, its officers and/or directors in connection with matters involving, relating to or arising out of the Contractor's business. Such report shall be made within five (5) business days following the Contractor becoming aware of such event, investigation, or audit. Such report may be considered by the State in making a Determination of Vendor Non-Responsibility pursuant to this section.
4. The State reserves the right, in its sole discretion, at any time during the term of the Contract:
 - a. to require updates or clarifications to the Questionnaire upon written request;
 - b. to inquire about information included in or required information omitted from the Questionnaire;
 - c. to require the Contractor to provide such information to the State within a reasonable timeframe; and
 - d. to require as a condition precedent to entering into the Contract that the Contractor agree to such additional conditions as shall be necessary to satisfy the State that the Contractor is, and shall remain, a responsible vendor; and
 - e. to require the Contractor to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity. By signing the Contract, the Contractor agrees to comply with any such additional conditions that have been made a part of the Contract.
5. The State, in its sole discretion, reserves the right to suspend any or all activities under the Contract, at any time, when it discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor shall be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor must comply with the terms of the suspension order. Contract activity may resume at such time as the State issues a written notice authorizing a resumption of performance under the Contract.
6. The State, in its sole discretion, reserves the right to make a final Determination of Non-Responsibility at any time during the term of the Contract based on:
 - a. any information provided in the Questionnaire and/or in any updates, clarifications or amendments thereof; or
 - b. the State's discovery of any material information which pertains to the Contractor's responsibility.
7. Prior to making a final Determination of Non-Responsibility, the State shall provide written notice to the Contractor that it has made a preliminary determination of non- responsibility. The State shall detail the reason(s) for the preliminary determination, and shall provide the Contractor with an opportunity to be heard.

O. Charities Registration: If applicable, the Contractor agrees to (i) obtain not-for-profit status, a Federal identification number, and a charitable registration number (or a declaration of exemption) and to furnish DHSES

with this information as soon as it is available, (ii) be in compliance with the OAG charities registration requirements at the time of the awarding of this Contract by the State and (iii) remain in compliance with the OAG charities registration requirements throughout the term of the Contract.

P. Consultant Disclosure Law:⁹ If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal, or similar services, then in accordance with Section 163 (4-g) of the State Finance Law (as amended by Chapter 10 of the Laws of 2006), the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to the agency that awarded the contract, the Department of Civil Service and the State Comptroller.

Q. Wage and Hours Provisions: If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

R. Participation By Minority Group Members And Women With Respect To Grant Contracts: Requirements And Procedures (state-funded grants only)

1. General Provisions

- a. The Division of Homeland Security and Emergency Services (DHSES) is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 142-144 ("MWBE Regulations") for all State contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.
- b. The Contractor to the subject contract (the "Contractor" and the "Contract," respectively) agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to the DHSES, to fully comply and cooperate with the DHSES in the implementation of New York State Executive Law Article 15-A. These requirements include equal employment opportunities for minority group members and women ("EEO") and contracting opportunities for certified minority and women-owned business enterprises ("MWBEs"). Contractor's demonstration of "good faith efforts" pursuant to 5 NYCRR §142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the "Human Rights Law") or other applicable federal, state or local laws.
- c. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility and/or a breach of contract, leading to the withholding of funds or such other

⁹ Not applicable to not-for-profit entities.

actions, liquidated damages pursuant to Section VII of this Contract or enforcement proceedings as allowed by the Contract.

2. Contract Goals

- a.** For purposes of this contract, Contractor is hereby made aware that the State has established overall goals for Minority and Women-Owned Business Enterprises (“MWBE”) participation at 30%.
- b.** For purposes of providing meaningful participation by MWBEs on the Contract and achieving the Contract Goals established in the contract work plan hereof, Contractor should reference the directory of New York State Certified MBWEs found at the following internet address: <https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>. Additionally, Contractor is encouraged to contact the Division of Minority and Woman Business Development (518) 292-5250; (212) 803-2414; or (716) 846-8200) to discuss additional methods of maximizing participation by MWBEs on the Contract.
- c.** Where MWBE goals have been established herein, pursuant to 5 NYCRR §142.8, Contractor must document “good faith efforts” to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract. In accordance with Section 316-a of Article 15-A and 5 NYCRR §142.13, the Contractor acknowledges that if Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, such a finding constitutes a breach of contract and the Contractor shall be liable to the DHSES for liquidated or other appropriate damages, as set forth herein.
- d.** Contractor agrees to comply with all MWBE and EEO contract goals reflected on the MWBE Utilization Plan and Staffing Plan respectively, that have been submitted with the application for this contract.

3. Equal Employment Opportunity (EEO)

- a.** Contractor agrees to be bound by the provisions of Article 15-A and the MWBE Regulations promulgated by the Division of Minority and Women's Business Development of the Department of Economic Development (the “Division”). If any of these terms or provisions conflict with applicable law or regulations, such laws and regulations shall supersede these requirements.
- b.** Contractor shall comply with the following provisions of Article 15-A:
 - i.** Contractor and Subcontractors shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.
 - ii.** The Contractor shall maintain an EEO policy statement and submit it to the DHSES if requested.
 - iii.** If Contractor or Subcontractor does not have an existing EEO policy statement, Section 4 below may be used to develop one.
 - iv.** The Contractor’s EEO policy statement shall include the following, or similar, language:
 - a)** The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will

undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force.

- b) The Contractor shall state in all solicitations or advertisements for employees that, in the performance of the contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.
- c) The Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein.
- d) The Contractor will include the provisions of Subdivisions (a) through (c) of this Subsection (iv) and Paragraph "e" of this Section 3, which provides for relevant provisions of the Human Rights Law, in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the Contract.

c. Staffing Plan

To ensure compliance with this Section, the Contractor shall submit a staffing plan to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and Federal occupational categories. Contractors shall complete the Local Assistance MWBE Equal Employment Opportunity Staffing Plan form and submit it as part of their bid or proposal or within a reasonable time, but no later than the time of award of the contract.

d. Workforce Employment Utilization Report

- i. Once a contract has been awarded and during the term of Contract, Contractor is responsible for updating and providing notice to the DHSES of any changes to the previously submitted Local Assistance MWBE Equal Employment Opportunity Staffing Plan. This information is to be submitted annually or as otherwise required by the DHSES during the term of the contract, for the purpose of reporting the actual workforce utilized in the performance of the contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. The Local Assistance MWBE Workforce Employment Utilization Report form must be used to report this information.
- ii. Separate forms shall be completed by Contractor and any Subcontractor performing work on the Contract.
- iii. In limited instances, Contractor may not be able to separate out the workforce utilized in the performance of the Contract from Contractor's and/or subcontractor's total workforce. When a separation can be made, Contractor shall submit the Local Assistance MWBE Workforce Employment Utilization Report and indicate that the information provided relates to the actual workforce utilized on the Contract. When the workforce to be utilized on the contract cannot be separated out from Contractor's and/or subcontractor's total workforce, Contractor shall submit the Local Assistance MWBE Workforce Employment Utilization Report and indicate that the information provided is Contractor's total workforce during the subject

time frame, not limited to work specifically under the contract.

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

4. MWBE Utilization Plan

- a. The Contractor represents and warrants that Contractor has submitted a Local Assistance MWBE Subcontractor/Supplier Utilization Proposal Form either prior to, or at the time of, the execution of the contract.
- b. Contractor agrees to use such Local Assistance MWBE Subcontractor/Supplier Utilization Proposal Form for the performance of MWBEs on the Contract pursuant to the prescribed MWBE goals.

5. Waivers

If the DHSES, upon review of the Local Assistance MWBE Subcontractor/Supplier Utilization Proposal Plan, the Detailed Itemization Forms or the Local Assistance MWBE Workforce Employment Utilization Report determines that a Contractor is failing or refusing to comply with the Contract goals and no waiver has been issued in regards to such non-compliance, the DHSES may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE Contract Goals.

6. MWBE Subcontractor Utilization Quarterly Report

Contractor is required to report MWBE Subcontractor utilization, as part of the quarterly claim process, to the DHSES by the last day of the month following the end of each calendar quarter over the term of the Contract documenting the progress made towards achievement of the MWBE goals of the Contract.

7. Liquidated Damages - MWBE Participation

- a. Where DHSES determines that Contractor is not in compliance with the requirements of the Contract and Contractor refuses to comply with such requirements, or if Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals, such finding constitutes a breach of Contract and DHSES may withhold payment from the Contractor as liquidated damages and/or provide for other appropriate remedies.
- b. Such liquidated damages shall be calculated as an amount equaling the difference between:
 - 1) All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and
 - 2) All sums actually paid to MWBEs for work performed or materials supplied under the Contract.
- c. In the event a determination has been made which requires the payment of liquidated damages and such identified sums have not been withheld by the DHSES, Contractor shall pay such liquidated damages to the DHSES within sixty (60) days after they are assessed by the DHSES unless prior to the

expiration of such sixtieth day, the Contractor has filed a complaint with the Director of the Division of Minority and Woman Business Development pursuant to Subdivision 8 of Section 313 of the Executive Law in which event the liquidated damages shall be payable if Director renders a decision in favor of the DHSES.

8. M/WBE AND EEO Policy Statement

- a. The Contractor agrees to adopt the following policies or similar policies with respect to the project being developed or services rendered in this contract with the Division of Homeland Security and Emergency Services:

M/WBE

This organization will and will cause its contractors and subcontractors to take good faith actions to achieve the M/WBE contract participations goals set by the State for that area in which the State-funded project is located, by taking the following steps:

- (1) Actively and affirmatively solicit bids for contracts and subcontracts from qualified State certified MBEs or WBEs, including solicitations to M/WBE contractor associations.
- (2) Request a list of State-certified M/WBEs from AGENCY and solicit bids from them directly.
- (3) Ensure that plans, specifications, request for proposals and other documents used to secure bids will be made available in sufficient time for review by prospective M/WBEs.
- (4) Where feasible, divide the work into smaller portions to enhanced participations by M/WBEs and encourage the formation of joint venture and other partnerships among M/WBE contractors to enhance their participation.
- (5) Document and maintain records of bid solicitation, including those to M/WBEs and the results thereof. Contractor will also maintain records of actions that its subcontractors have taken toward meeting M/WBE contract participation goals.
- (6) Ensure that progress payments to M/WBEs are made on a timely basis so that undue financial hardship is avoided, and that bonding and other credit requirements are waived or appropriate alternatives developed to encourage M/WBE participation.

EEO

(a) This organization will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing programs of affirmative action to ensure that minority group members are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on state contracts.

(b) This organization shall state in all solicitation or advertisements for employees that in the performance of the State contract all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex disability or marital status.

(c) At the request of the contracting agency, this organization shall request each employment agency, labor union, or authorized representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of this organization's obligations herein.

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

(e) This organization will include the provisions of sections (a) through (d) of this agreement in every subcontract in

such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the State contract.

- b. Contractor further agrees that a failure to submit and/or use such Local Assistance MWBE Subcontractor/Supplier Utilization Proposal Form shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, DHSES shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsiveness.

Contract #C000733

ATTACHMENT A-1

DIVISION OF HOMELAND SECURITY AND EMERGENCY SERVICES Agency-Specific Terms and Conditions

- A. **Hatch Act.** The Contractor agrees, as a material condition of the Contract, to comply with all applicable provisions of the Hatch Act (5 U.S.C. 1501 et seq.), as amended.
- B. **Requirement for System of Award Management:** Unless you are exempted from this requirement under 2 CFR 25.110, you as the subrecipient must maintain the currency of your information in the System of Award Management (SAM) until you submit the final financial report required under this award or receive the final payment, whichever is later. This requires that you review and update the information at least annually after the initial registration, and more frequently if required by changes in your information or another award term. Pursuant to section 2 CFR §200.210(a)(2), Contractors must maintain a current unique entity identifier prior to and during the life of the Contract.
- C. In accordance with 2 CFR §§200.112 and 200.113, Contractor understands and agrees that it must: (1) disclose in writing any potential conflict of interest to DHSES; and (2) disclose, in a timely manner, in writing to DHSES all violations of federal and state criminal law involving fraud, bribery, or gratuity violations potentially affecting the grant award. Failure to make required disclosures can result in any remedy available to DHSES for Contractor's noncompliance, including suspension or debarment.
- D. The Contractor must ensure that, for all contracts entered into by the Contractor, the contract provisions required by 2 CFR §200.326 (and Appendix II to 2 CFR Part 200) are included in such contracts. The Contractor further agrees to impose and enforce this requirement for any Contractor subaward agreements.
- E. Where advance payments are approved by DHSES, the Contractor agrees to expend the advance payments in accordance with the purposes set forth in Attachment C and consistent with Attachment B. The advanced funds must be placed in an interest-bearing account and are subject to the rules outlined in 2 CFR Part 200, (Uniform Administrative Requirements for Grants and Cooperative Contracts to State and Local Governments) and 2 CFR 215 (Uniform Administrative Requirements for Grants and Contracts with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations), which require Contractors to promptly remit back to the federal government, through New York State Division of Homeland Security and Emergency Services, any interest earned on these advanced funds. The Contractor may keep interest earned up to \$100 per federal fiscal year if a local unit of government and \$250 per federal fiscal year if a not-for-profit for administrative expenses. This maximum limit is not per award; it is inclusive of all interest earned as the result of all federal grant program funds received per year. Interest must be reported on Fiscal Cost Reports and remitted to DHSES quarterly.

F. Audit Requirements. This Contract, and any sub-awards resulting from this Contract, may be subject to fiscal audits by DHSES, NYS Office of State Comptroller, pertinent federal agencies, and other designated entities to ascertain financial compliance with federal and/or State laws, regulations, and guidelines applicable to this Contract. The Contractor shall meet all audit requirements of the federal government and State of New York. Such audits may include review of the Contractor's accounting, financial, and reporting practices to determine compliance with the Contract and reporting requirements; maintenance of accurate and reliable original accounting records in accordance with governmental accounting standards as well as generally accepted accounting principles; and specific compliance with allowable cost and expenditure documentation standards prescribed by applicable federal, State, and DHSES guidelines.

G. Administrative, Cost and Audit Requirements: The Contractor must comply with the most recent version of the Administrative Requirements, Cost Principles, and Audit requirements. *Failure to do so may result in disallowance of costs upon audit.* A list of regulations and guidance applicable to United States Department of Homeland Security (DHS) grants are listed below:

1) Administrative Requirements for all Federally Funded Grants:

- a. 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards

2) Cost Principles:

- a. 2 CFR Part 200, Subpart E

3) Audit Requirements:

- a. 2 CFR Part 200, Subpart F

4) For Projects funded with Hazard Mitigation Grant Funds

- a) New York State Administrative Plan for the Hazard Mitigation Program
- b) Sections 203 (PDM) and 404 (HMGP) of the Stafford Act
- c) Sections 1323 (RFC), 1361A (SRL), 1366 (FMA) of the NFIA
- d) National Flood Insurance Reform Act of 1994
- e) Bunning-Bereuter-Blumenauer Flood Insurance Reform Act of 2004
- f) Section 322 of the Stafford Act (Mitigation Planning)
- g) Section 324 of the Stafford Act (Management Costs)
- h) National Historic Preservation Act

- i) National Environmental Policy Act
- j) EO 11988: Floodplain Management and EO 11990: Protection of Wetlands (44 CFR Part 9)
- k) National Environmental Policy and Environmental Considerations (44 CFR Part 10)
- l) Uniform Administrative Requirements for Grants and Cooperative Agreements to States and Local Governments (2 CFR Part 200)
- m) Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, & other Non-Profit Organizations (2 CFR Part 215)
- n) Floodplain Management (44 CFR Part 60)
- o) Flood Mitigation Grants (44 CFR Part 79)
- p) Property Acquisition and Relocation for Open Space (44 CFR Part 80)
- q) Hazard Mitigation Planning (44 CFR Part 201)
- r) Hazard Mitigation Grant Program (44 CFR Part 206, Subpart N)
- s) Management Costs (44 CFR Part 207)
- t) 44 CFR Parts 7, 9, 10, 13, 14, 17, 18, 25, 206, 220, and 221, and any other applicable FEMA policy memoranda and guidance documents
- u) 2 CFR Parts 220 (OMB Circular A-21), Cost Principles for Educational Institutions; 225
- v) OMB Circular A-87, Cost Principles for State, Local, and Indian Tribal Governments
- w) (OMB Circular A-122), Cost Principles for Nonprofit Organizations
- x) OMB Circulars A-94 and A-133
- y) Federal Acquisition Regulations (FAR) Subpart 31.2, Contracts with Commercial Organizations; and
- z) Other applicable Federal, State, Indian Tribal, and local laws, implementing regulations, and Executive Orders.

H. Contracting with small and minority firms, women's business enterprise and labor surplus area firms.

- 1) Consistent with 2 CFR §200.321, the grantee and any subgrantees will take all necessary

affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.

- 2) Affirmative steps shall include:
 - 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 business, and women's business enterprises;
 - d) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises;
 - e) Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce; and
 - f) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in subsections (2)(a) through (f) of this section.

I. Compliance with Laws, Regulations and Program Guidance. The Contractor shall ensure it is aware of and complies with all applicable laws, regulations and program guidance. It is the responsibility of the Contractor to become familiar with and comply with all terms and conditions associated with acceptance of funds.

J. Adequate Documentation: The Contractor must ensure full compliance with all cost documentation requirements, including specific personal service documentation, as applicable directly to the Contractor, sub-recipient or collaborative agency/organization. The Contractor must maintain specific documentation as support for project related personal service expenditures as this Contract is supported by federal funds. Depending upon the nature or extent of personal service provided under this Contract, the Contractor shall maintain semi-annual (or more frequent) personal service certifications and/or an after-the-fact personnel activity reporting system (or equivalent) which complies with all applicable laws, regulations and program guidance. Failure to do so may result in disallowance of costs.

K. Single Audit Requirements: For audits of fiscal years beginning on or after December 26, 2014, recipients that expend \$750,000 or more from all federal funding sources during their fiscal year are required to submit an organization-wide financial and compliance audit report. The audit must be performed in accordance with the requirements of GAO's Government Auditing Standards, located at <http://www.gao.gov/govaud/ybk01.htm>, and the requirements of Subpart F of 2 C.F.R. Part 200, located at <http://www.ecfr.gov/cgi-bin/text-idx?SID=63811dc3410c008e2f8e28c325cdc09e&mc=true&node=sp2.1.200.f&rgn=div6>.

For audits of fiscal years beginning prior to December 26, 2014, recipients that expend \$500,000 or more from all federal funding sources during their fiscal year are required to submit an organization-wide financial and compliance audit report. The audit must be performed in accordance with GAO's Government Auditing Standards, located at <http://www.gao.gov/govaud/ybk01.htm>, and OMB Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations, located at https://www.whitehouse.gov/sites/default/files/omb/assets/a133/a133_revised_2007.pdf.

The final report for such audit must be completed within nine months of the end of the Contractor's fiscal year. The Contractor must provide one copy of such audit report to DHSES within nine (9) months of the end of its fiscal year, or communicate in writing to DHSES that Contractor is exempt from such requirement.

- L. Program Income:** Program income earned by the Contractor during the grant funding Period must be reported in writing to DHSES, in addition to any other statutory reporting requirements. Program income consists of income earned by the grant recipient that is directly generated by a supported activity or earned as a result of the grant program. Program income includes, but is not limited to, income from fees for services performed, the use of rental or real or personal property acquired under federally-funded projects, the sale of commodities or items fabricated under an award, license fees and royalties on patents and copyrights and interest on loans made with federal award funds. For example, if the purpose of a grant is to conduct conferences, any training fees that are generated would be considered program income. Interest earned on grant funds is not considered program income unless specified in Attachment C. The Contractor agrees to report the receipt and expenditures of grant program income to DHSES. Program income (not to include interest earned), generated by the use of these grant funds will be used to enhance the grant project.
- M. Intellectual Property:** Any creative or literary work developed or commissioned by the Contractor with grant support provided by DHSES shall become the property of DHSES, entitling DHSES to assert a copyright therein, unless the parties have expressly agreed otherwise in a written instrument signed by them.
- 1) If DHSES shares its right to copyright such work with the Contractor, DHSES reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use: (a) the copyright in any work developed under a grant, sub-grant, or contract under a grant or sub-grant; and (b) any rights of copyright to which a Contractor, sub-Contractor, or a contractor purchases ownership with grant support.
 - 2) If the grant support provided by DHSES is federally-sponsored, the federal awarding agency also reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use: (a) the copyright in any work developed under a grant, sub-grant or contract under a grant or sub-grant; and (b) any rights of copyright to which a Contractor, sub-Contractor, or a contractor purchases ownership with such grant support.
 - 3) The Contractor shall submit one copy of all reports and publications resulting from this Contract to DHSES within thirty (30) calendar days of completion. Any document generated pursuant to this grant must contain the following language:
 - 4) "This project was supported by a grant administered by the New York State Division of Homeland Security and Emergency Services and the U.S. Department of Homeland Security. Points of view in this document are those of the author and do not necessarily represent the official position or policies of the New York State Division of Homeland Security and Emergency Services or the U.S. Department of Homeland Security."

N. Accounting for Grant Expenditures:

- 1) Grant funds may be expended only for purposes and activities set forth in this Contract. Accordingly, the most important single requirement of accounting for this grant is the complete and accurate documentation of grant expenditures. If the Contractor receives funding from two or more sources, all necessary steps must be taken to ensure that grant-related transactions are not commingled. This includes, but is not limited to, the establishment of unique budget codes, a separate cost center, or a separate chart of accounts. Expenditures must be cross-referenced to supporting source documents (purchase orders, contracts, real estate leases, invoices, vouchers, timesheets, mileage logs, etc.).
- 2) Contractor agrees that it shall maintain adequate internal controls and adhere to Generally Accepted Accounting Principles for Government or Generally Accepted Accounting Principles for Not-for-Profit Organizations.
- 3) None of the goals, objectives or tasks, as set forth in Attachment C, shall be sub-awarded to another organization without specific prior written approval by DHSES. Where the intention to make sub-awards is clearly indicated in the application, DHSES approval is deemed given, if these activities are funded, as proposed.
- 4) If this Contract makes provisions for the Contractor to sub-grant funds to other recipients, the Contractor agrees that all sub-Contractors shall be held accountable by the Contractor for all terms and conditions set forth in this Contract in its entirety. The Contractor further agrees that it shall assume sole and complete responsibility for fulfilling all the obligations set forth in the Contract and the Contractor must guarantee the work of any sub-Contractor as if it were its own.
- 5) The Contractor agrees that all sub-Contractor arrangements shall be formalized in writing between the parties involved. The writing must, at a minimum, include the following information:
 - Activities to be performed;
 - Time schedule;
 - Project policies;
 - Other policies and procedures to be followed;
 - Dollar limitation of the Contract;
 - Attachment A-1, Attachment C, Certified Assurances for Federally Supported Projects, Certification Regarding Lobbying, Debarment and Suspension and any special conditions set forth in the Contract;
 - Applicable federal and/or State cost principles to be used in determining allowable costs; and
 - Property Records or Equipment Inventory Reports

Additionally, all Contracts shall also include the following:

1. Administrative, contractual, or legal remedies in instances where

contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. (Contracts more than the simplified acquisition threshold)

2. Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be effected and the basis for settlement. (All contracts in excess of \$ 10,000)
3. Compliance with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60). (All construction contracts awarded in excess of \$ 10,000 by grantees and their contractors or subgrantees)
4. Compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3). (All contracts and subgrants for construction or repair)
5. Compliance with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction contracts in excess of \$ 2000 awarded by grantees and subgrantees when required by Federal grant program legislation)
6. Compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction contracts awarded by grantees and subgrantees in excess of \$ 2000, and in excess of \$ 2500 for other contracts which involve the employment of mechanics or laborers)
7. Notice of awarding agency requirements and regulations pertaining to reporting.
8. Notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.
9. Awarding agency requirements and regulations pertaining to copyrights and rights in data.
10. Access by the grantee, the subgrantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.

11. Retention of all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed.
 12. Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). (Contracts, subcontracts, and subgrants of amounts in excess of \$ 100,000)
 13. Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).
- O.** The Contractor will not be reimbursed for sub-granted funds unless all expenditures by a sub-Contractor are listed on detailed itemization forms or a form deemed acceptable to DHSES. Backup documentation for such expenditures must be made available to DHSES upon request. All expenditures must be programmatically consistent with the goals and objectives of this Contract and with the Budget set forth in Attachment B.
- P.** Space rental provided by this Contract must be supported by a written lease, maintained on file and made available by the Contractor upon request.
- Q. Equipment and Property:**
- 1) Any equipment, furniture or supplies or other property purchased pursuant to this Contract is deemed to be the property of DHSES, except as may otherwise be governed by federal or State laws, rules or regulations or the terms of this Contract.
 - 2) Equipment means tangible, nonexpendable, personal property having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit. A Contractor may use its own definition of equipment provided that such definition would at least include all equipment defined above. A copy of the property record(s) or equipment inventory report(s) with relevant purchasing and supporting documentation must be made available to DHSES upon request. Property records or equipment inventory reports must be maintained, by award, that include a description of the property, a serial number or other identification number, the source of property, who holds title, the acquisition date, and cost of the property, percentage of federal participation in the cost of the property, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property. The Contractor must document receipt of all applicable equipment purchased with grant funds. A physical inventory of the property must be taken and the results reconciled with the property records at least once every two (2) years.
 - 3) Upon completion of all contractual requirements by the Contractor, DHSES will consider a request for continued use and possession of the equipment purchased with grant funds provided the equipment continues to be used in connection with a public security program. When disposing of equipment purchased with homeland security grant funding, a State agency

must dispose of equipment in accordance with State Laws and procedures. All other Contractors shall dispose of equipment as follows:

- a) Items of equipment with a current per unit market value of less than \$5,000 may be retained, sold or otherwise disposed of with no further obligation to the awarding agency.
 - b) Items of equipment with a current per unit fair market value of \$5,000 or more may be retained or sold. If sold, the awarding agency shall have a right to an amount calculated by multiplying the proceeds from the sale by the awarding agency's share of the equipment. If retained, the current market value is to be used in the calculation. To remit payments, award recipients should contact DHSES at 1-866-837-9133 for guidance.
- R. Upon completion of all contractual requirements by the Contractor under this Contract, DHSES shall accept a request for continued use and possession of the equipment purchased with grant funds providing the equipment continues to be used in accordance with the contracted activities and guidelines in this Contract.
- S. The Contractor must conduct a physical inventory of property records at least once every two years to verify the existence, current utilization and continued need for the property. In the event the property is no longer required by the Contractor, this fact should be reported to DHSES as soon as possible and appropriate guidelines followed, as specified in this Attachment.
- T. **FOR ALL GRANTS: IRAN DIVESTMENT ACT.** By entering into this Agreement, Contractor certifies in accordance with State Finance Law §165-a that it is not on the "Entities Determined to be Non-Responsive Bidders/Offerers pursuant to the New York State Iran Divestment Act of 2012" ("Prohibited Entities List") posted at: <http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf>.

Contractor further certifies that it will not utilize on this Contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this Contract, it must provide the same certification at the time the Contract is renewed or extended. Contractor also agrees that any proposed Assignee of this Contract will be required to certify that it is not on the Prohibited Entities List before the contract assignment will be approved by the State.

During the term of the Contract, should DHSES receive information that a person (as defined in State Finance Law §165-a) is in violation of the above-referenced certifications, DHSES will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then DHSES shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

DHSES reserves the right to reject any bid, request for assignment, renewal or extension for an entity that appears on the Prohibited Entities List prior to the award, assignment, renewal or extension of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the Prohibited Entities list after contract award.

Contract #C000733

ATTACHMENT A-2

DIVISION OF HOMELAND SECURITY AND EMERGENCY SERVICES Grant Assurances and Certifications for Federally-Funded Grants

The certifications herein shall be treated as a material representation of fact upon which reliance will be placed when the State of New York and/or the Federal Emergency Management Agency (FEMA) determines to award the covered transaction, grant, or cooperative agreement.

As the duly authorized representative of the applicant, I certify that the applicant agrees to comply with the following:

1. The administrative, cost principles, and audit requirements that apply to these funds originate from 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, as adopted by DHS at 2 CFR Part 3002.
2. Lobbying. As required by 31 USC §1352, and implemented at 44 CFR Part 18, for persons entering into a grant or cooperative agreement over \$100,000, as defined at 44 CFR Part 18, the applicant certifies that:
 - a) 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 an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant 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 grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, 'Disclosure of Lobbying Activities,' in accordance with its instructions;
 - c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all sub-recipients shall

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

3. Debarment, Suspension and other Responsibility Matters (Direct Recipient). Applicant agrees that it will not make any award or permit any award (subgrant or contract) to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549 and 12689, "Debarment and Suspension". As required by Executive Order 12549, Debarment and Suspension, and implemented at 44 CFR Part 17, for prospective participants in primary covered transactions, the applicant certifies that it and its principals:

- a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, sentenced to a denial of Federal benefits by a State or Federal court, or voluntarily excluded from covered transactions by any Federal department or agency;
- b) Have not within a three-year period preceding this application 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;
- c) 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 (1)(b) of this certification; and have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and
- d) Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

4. Drug-Free Workplace (Grantees other than Individuals). Recipients are required to comply with the Drug-Free Workplace Act of 1988 (41 USC §701 et seq.), adopted at 2 CFR Part 3001, which requires that all organizations receiving grants from any Federal agency agree to maintain a drug-free workplace. DHS has adopted the Act's implementing regulations at 2 CFR Part 3001.

5. Applicant agrees that it will comply with all applicable Federal statutes, regulations, policies, guidelines, and requirements, including 2 CFR Part 200, Office of Management and Budget (OMB) Circular A-102, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments (also known as the "A-102 Common Rule"), found under FEMA regulations at Title 44, Code of Federal Regulations (CFR) Part 13, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments." - OMB Circular A-110, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations, relocated to 2 CFR Part 215. The requirements for allowable costs/cost principles are contained in the A-102 Common Rule, OMB Circular A-110 (2 CFR § 215.27), DHS program legislation, Federal awarding agency regulations, and the terms and conditions of the award. The four costs principles circulars are as follows: - OMB Circular A-21, Cost Principles for Educational Institutions, relocated to 2 CFR Part 220. - OMB Circular A-87, Cost Principles for State, Local, and Indian Tribal Governments, relocated to 2 CFR Part 225. - OMB Circular A-122, Cost Principles for Non-Profit Organizations, relocated to 2 CFR Part 230. – OMB Circular A-133, Audits of States, Local Governments and Non-Profit Organizations.

6. Applicant agrees that it has the legal authority to apply for federal assistance and the institutional, managerial, and financial capability (including funds sufficient to pay any required non-federal share of project cost) to ensure proper planning, management, and completion of the project described in this application.

7. Applicant agrees that planned expenditures utilizing grant funds are consistent with needs as identified in the State Homeland Security Strategy and will be deployed in conformance with that Strategy.

All recipients who receive awards made under programs that prohibit supplanting by law must ensure that Federal funds do not replace (supplant) funds that have been budgeted for the same purpose through non-Federal sources. Where federal statutes for a particular program prohibits supplanting, applicants or recipients may be required to demonstrate and document that a reduction in non-Federal resources occurred for reasons other than the receipt of expected receipt of Federal funds.

8. Applicant agrees that it will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain for themselves or others, particularly those with whom they have family, business or other ties.

9. All recipients who collect Personally Identifiable Information (PII) are required to have a publicly-available privacy policy that describes what PII they collect, how they use PII, whether

they share PII with third parties, and how individuals may have their PII corrected where appropriate. Award recipients may also find as useful resources the DHS Privacy Impact Assessments: visit www.dhs.gov/policy.

10. Unless otherwise provided by law, recipients are subject to the Bayh-Dole Act, Pub. L. No. 96-517, as amended, and codified in 35 U.S.C. § 200 et seq. All recipients are subject to the specific requirements governing the development, reporting, and disposition of rights to inventions and patents resulting from financial assistance awards are in 37 C.F.R. Part 401 and the standard patent rights clause in 37 C.F.R. § 401.14.

11. Any cost allowable to a particular Federal award provided for in 2 CFR Part 200, Subpart E may not be charged to other Federal awards to overcome fund deficiencies, to avoid restrictions imposed by federal statutes, regulations or terms and conditions of the Federal awards or for other reasons. However, this prohibition would not preclude the non-Federal entity from shifting costs that are allowable under two or more Federal awards in accordance with existing Federal statutes, regulations or the terms and conditions of the Federal awards.

12. All recipients must comply with the requirements of 42 USC §6201 which contain policies relating to energy efficient that are defined in the state energy conservation plan issues in compliance with this Act.

13. All recipients must report each action that obligations \$25,000 or more in Federal funds that does not include Recovery Funds (as defined in §1512(a)(2) of the American Recovery and Reinvestment Act of 2009, Pub. L 111-5) for a subaward to an entity, unless provided in paragraph D as required by 2 CFR part 170, "Reporting Subaward and Executive Compensation Information" and the Federal Funding Accountability and Transparency Act 2006 (FFATA). Recipients must register at www.sam.gov and report information about each obligating action in accordance with the submission instructions posted at www.fsr.gov.

14. All recipients must maintain the currency of the information in the SAM until submission of the final financial report required under the award or receive final payment, whichever is later, as required by 2 C.F.R. Part 25.

15. All recipients must comply with the requirements of 31 USC §3729 which set forth that no recipient of federal payments shall submit a false claim for payment. See also 38 USC §3801-3812 which details the administrative remedy for false claims and statements made.

16. All recipients are required to be non-delinquent in their repayment of any Federal debt. Examples of relevant debt include delinquent payroll and other taxes, audit disallowance and

benefit overpayments. See OMB Circular A-129 and form SF-424B, item number 17 for additional information and guidance.

17. All recipients must comply with Preference for U.S. Flag Air Carriers: (air carriers holding certificates under 49 USC §41102) for international air transportation of people and property to the extent that such service is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974 (49 USC §40118) and the interpretative guidelines issued by the Comptroller General of the United States in the March 31, 1981 amendment to the Comptroller General Decision B-138942.

18. In accordance with Section 6 of the Hotel and Motel Fire Safety Act of 1990, 15 USC §2225a, all recipients must ensure that all conference, meeting, convention, or training space funded in whole or in part with Federal funds complies with the fire prevention and control guidelines of the Federal Fire Prevention and Control Act of 1974, as amended, 15 USC §2225.

19. All recipients must comply with Title VI of the *Civil Rights Act of 1964* (42 U.S.C. § 2000d *et seq.*), which provides that no person in the United States will, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. Implementing regulations for the Act are found at 6 C.F.R. Part 21 and 44 C.F.R. Part 7.

20. All recipients must comply with the *Title VI of the Civil Rights Act of 1964* (Title VI) prohibition against discrimination on the basis of national origin, which requires that recipients of federal financial assistance take reasonable steps to provide meaningful access to persons with limited English proficiency (LEP) to their programs and services. Providing meaningful access for persons with LEP may entail providing language assistance services, including oral interpretation and written translation. In order to facilitate compliance with Title VI, recipients are encouraged to consider the need for language services for LEP persons served or encountered in developing program budgets. Executive Order 13166, *Improving Access to Services for Persons with Limited English Proficiency* (August 11, 2000), requires federal agencies to issue guidance to recipients, assisting such organizations and entities in understanding their language access obligations. DHS published the required recipient guidance in April 2011, *DHS Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons*, 76 Fed. Reg. 21755-21768, (April 18, 2011). The Guidance provides helpful information such as how a recipient can determine the extent of its obligation to provide language services; selecting language services; and elements of an effective plan on language assistance for LEP persons. For additional assistance and information regarding language access obligations, please refer to the DHS Recipient Guidance <https://www.dhs.gov/guidance-published-help-department-supported-organizations-provide-meaningful-access-people-limited> and additional resources on <http://www.lep.gov>.

21. All recipients 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 C.F.R. 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 by 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.

22. Applicant agrees that it will give the awarding agency, the Comptroller General of the United States and the State, through any authorized representative, access to and the right to examine all paper or electronic records related to the financial assistance; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

23. Applicant agrees that it will initiate and complete the work within the applicable time frame after receipt of approval from the awarding agency.

24. Applicant agrees that it will comply with all provisions of 48 CFR §31.2, Federal Acquisition Regulations (FAR), Contracts with Commercial Organizations.

25. All recipients who have contracts exceeding the acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by Civilian Agency Acquisition Council and the Defense Acquisition Regulation Council as authorized by 41 U.S.C. §1908, must address administrative, contractual, or legal remedies in instance where contractors violate or breach contract terms and provide for such sanctions and penalties as appropriate.

26. All recipients that have contracts exceeding \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.

27. Applicant agrees that it will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. Section 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statues or regulations specified in OPM's Standards for a Merit System of Personnel Administration) 5 CFR Part 900, Subpart F.

28. Applicant agrees that it will comply with all lawful requirements imposed by the awarding agency, specifically including any applicable regulations, such as 28 C.F.R. pts. 18, 22, 23, 30, 35, 38, 42, 61, and 63.

29. Applicant agrees that it will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.

30. All recipients who receive awards made under programs that provide emergency communication equipment and its related activities must comply with the SAFECOM Guidance for Emergency Communication Grants, including provisions on technical standards that ensure and enhance interoperable communications.

31. All recipients must comply with U.S. Executive Order 13224 and U.S. law that prohibit transactions with, and the provisions of resources and support to, individuals and organizations associated with terrorism. It is the legal responsibility of recipients to ensure compliance with the E.O. and laws.

32. Applicant agrees that it will comply with requirements that publications or other exercise of copyright for any work first produced under Federal financial assistance awards hereto related unless the work includes any information that is otherwise controlled by the Government (e.g., classified information or other information subject to national security or export control laws or regulations). For any scientific, technical, or other copyright work based on or containing data first produced under this award, including those works published in academic, technical or professional journals, symposia proceedings, or similar works, the recipient grants the Government a royalty-free, nonexclusive and irrevocable license to reproduce, display, distribute copies, perform, disseminate, or prepare derivative works, and to authorize others to do so, for Government purposes in all such copyrighted works. The recipient shall affix the applicable copyright notices of 17 U.S.C. §§401 or 402 and an acknowledgement of Government sponsorship (including award number) to any work first produced under an award.

33. Applicant agrees that it will comply with the requirements of the assistance awarding agency with regard to the drafting, review and approval of construction plans and specifications.

34. Applicant agrees that it will provide and maintain competent and adequate engineering supervision at the construction site to ensure that the complete work conforms to the approved plans and specifications and will furnish progress reports and such other information as may be required by such other information as may be required by the assistance awarding agency or state.

35. Applicant agrees that it will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. Section 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

36. Applicant agrees that it will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. Section 1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. Section 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

37. Applicant agrees that it will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. Section 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

38. Applicant agrees that it will assist the awarding agency (if necessary) in assuring compliance with section 106 of the National Historic Preservation Act of 1966 (16 U.S.C. § 470), Ex. Order 11593 (identification and protection of historic properties), the Archeological and Historical Preservation Act of 1974 (16 U.S.C. § 469 a-1 et seq.), and the National Environmental Policy Act of 1969 (42 U.S.C. § 4321).

39. Applicant agrees that it will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin (implementing regulations are found at 6 CFR Part 21 and 44 CFR Part 7); (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. Sections 1681-1683, and 1685-1686; Implementing regulations are codified at 6 C.F.R. Part 17 and 44 C.F.R. Part 19), which prohibits discrimination on the basis of sex from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving Federal financial assistance; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. Section 794, as amended), which provides that no otherwise qualified handicapped individual in the United States will, solely by reason of the handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial

assistance (these requirements pertain to the provision of benefits or services as well as to employment) ; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §6101 *et seq.*)), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) Sections 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290-dd-3 and 290-ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Acts of 1968 (42 U.S.C. § 3601 *et seq.*), as amended, which prohibits discrimination in the sale, rental or financing of housing on the basis of race, color, national origin, religion, disability, familial status and sex (implementing regulations are found at 24 CFR Part 100. The prohibition on disability discrimination includes the requirement that new multifamily housing with four or more dwelling units – i.e., the public and common use areas and individual apartment units (all units in building with elevators and ground-floor units in buildings without elevators_ - be designed and constructed with certain accessible features (see 24 CFR §100.201); (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

40. All recipients must comply with the requirements of the government-wide award term which implements Section 106(g) of the *Trafficking Victims Protection Act (TVPA) of 2000*, as amended (22 U.S.C. § 7104). This is implemented in accordance with OMB Interim Final Guidance, *Federal Register*, Volume 72, No. 218, November 13, 2007. Full text of the award term is located at 2 CFR § 175.15.

41. All recipients must comply with the requirements of Titles I, II, and III of the Americans with Disabilities Act, which prohibits recipients from discriminating on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 USC §§12101-12213).

42. Applicant agrees that it will comply with the minimum wage and maximum hours provisions of the Federal Fair Labor Standards Act (29 U.S.C. 201), as they apply to employees of institutions of higher education, hospitals, and other non-profit organizations.

43. Applicant agrees that it will comply with the provisions of the Hatch Act (5 U.S.C. Sections 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

44. Applicant agrees that it will comply with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601 et seq. [P.L. 91-646]) which provides for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or Federally assisted programs. These requirements apply to all interested in real property acquired for project purposes regardless of Federal participation in purchases.

45. Applicant agrees that will comply with Title 44 CFR, Part 25, Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-assisted programs.

46. Applicant agrees that it will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. Section 276a to 276a-7), the Copeland Act (40 U.S.C. Section 276c and 18 U.S.C. Sections 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. Sections 327-333), regarding labor standards for Federally-assisted construction sub-agreements.

47. Applicant agrees that, to the extent contractors or subcontractors are utilized, will use small, minority-owned, women-owned, or disadvantaged business concerns and contractors or subcontractors to the extent practicable.

48. Applicant agrees that it will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996, and OMB Circular no A-133, "Audits of States, Local Governments, and Non-Profit Organizations."

49. Applicant agrees that it will obtain approval by the appropriate Federal agency of the final working drawings and specifications before the project is advertised or placed on the market for bidding; that it will construct the project, or cause it to be constructed, to final completion in accordance with the application and approved plans and specifications; that it will submit to the appropriate Federal agency for prior approval, changes that alter the cost of the project, use of space, or functional layout, that it will not enter into a construction contract(s) for the project or undertake other activities until the conditions of the construction grant program(s) have been met.

50. DHS Specific Acknowledgements and Assurances. All recipients must acknowledge and agree—and require any sub-recipients, contractors, successors, transferees, and assignees acknowledge and agree—to comply with applicable provisions governing DHS access to records, accounts, documents, information, facilities, and staff:

- Recipients must cooperate with any compliance review or complaint investigation conducted by DHS.

- Recipients must give DHS access to and the right to examine and copy records, accounts, and other documents and sources of information related to the grant and permit access to facilities, personnel, and other individuals and information as may be necessary, as required by DHS regulations *and* other applicable laws or program guidance.
- Recipients must submit timely, complete, and accurate reports to the appropriate DHS officials and maintain appropriate backup documentation to support the reports.
- Recipients must comply with all other special reporting, data collection, and evaluation requirements, as prescribed by law or detailed in program guidance.
- If, during the past three years, the recipient has been accused of discrimination on the grounds of race, color, national origin (including limited English proficiency), sex, age, disability, religion, or familial status, the recipient must provide a list of all such proceedings, pending or completed, including outcome and copies of settlement agreements to the DHS awarding office and the DHS Office of Civil Rights and Civil Liberties. In the event any court or administrative agency makes a finding of discrimination on grounds of race, color, national origin (including limited English proficiency), sex, age, disability, religion, or familial status against the recipient, or the recipient settles a case or matter alleging such discrimination, recipients must forward a copy of the complaint and findings to the DHS Component and/or awarding office.
- The United States has the right to seek judicial enforcement of these obligations.

51. Applicant agrees that it will operate and maintain the facility in accordance with the minimum standards as may be required or prescribed by the applicable Federal, State, and local agencies for the maintenance and operation of such facilities.

52. Applicant agrees that it will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

53. Applicant agrees that it will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

54. Applicant agrees that it will comply with the requirements of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA PATRIOT Act), which amends 18 U.S.C. §§ 175-175c. Among other things, it prescribes criminal

penalties for possession of any biological agent, toxin, or delivery system of a type or in a quantity that is not reasonably justified by a prophylactic, protective, bona fide research, or other peaceful purpose.

55. All recipients must comply with the statutory requirements for whistleblower protections (if applicable) at 10 U.S.C §2409, 41 U.S.C. 4712, and 10 U.S.C. § 2324, 41 U.S.C. §§ 4304 and 4310.

56. Applicant agrees that it will require the facility to be designed to comply with the "American Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped," Number A117. - 1961, as modified (41 CFR 101-17.703). The applicant will be responsible for conducting inspections to ensure compliance with these specifications by the contractor.

57. Applicant agrees that if any real property or structure thereon is provided or improved with the aid of Federal financial assistance extended to the applicant, this assurance shall obligate the applicant, or in the case of any transfer of such property, any transfer, for the period during which the real property or structure is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.

58. Any cost allocable to a particular Federal award provided for in 2 C.F.R. Part 200, Subpart E may not be charged to other Federal awards to overcome fund deficiencies, to avoid restrictions imposed by Federal statutes, regulations, or terms and conditions of the Federal awards, or for other reasons. However, this prohibition would not preclude the non-Federal entity from shifting costs that are allowable under two or more Federal awards in accordance with existing Federal statutes, regulations, or the terms and conditions of the Federal awards.

59. Applicant agrees that it will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

60. All recipients must acknowledge their use of federal funding when issuing statements, press releases, and requests for proposals, bid invitations and other documents describing projects or programs funded in whole or in part with Federal funds.

61. All recipients must obtain DHS's approval prior to using the DHS seal(s), logos, crests or reproductions of flags or likenesses of DHS agency officials, including use of the United States Coast Guard seal, logo, crests or reproductions of flags or likenesses of Coast Guard officials.

62. All recipients must ensure that project activities carried on outside the United States are coordinated as necessary with appropriate government authorities and that appropriate licenses, permits or approvals are obtained.

63. Applicant agrees that in making subgrants with nonprofit institutions under this Comprehensive Cooperative Agreement, it agrees that such grants will be subject to OMB Circular A-122, "Cost Principles for Non-profit Organizations" included in Vol. 49, Federal Register, pages 18260 through 18277 (April 27, 1984).

EXHIBIT O

EAST SIDE COASTAL RESILIENCY STAFFING PROPOSAL AND SUBCONTRACTORS

[Inserted after award]

EXHIBIT P

OTHER PM STAFF INCLUDED WITH PM'S PROPOSAL

[Inserted after award]