

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
RESIDENT ENGINEERING INSPECTION SERVICES

BOROUGH: City Wide / All Five Boroughs

FMS NUMBER: [HWCQRQ06S/ HWCQRQ06M/ HWCQRQ06L]

**REGISTRATION
NUMBER:** _____

PIN NUMBER: _____

E-PIN: _____

ENGINEER: _____

Telephone: _____

Email: _____

Standard Requirements Contract
Resident Engineering Inspection Services – City Funded Only
June 2024

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

WITNESSETH:

WHEREAS, the City desires to have resident engineering inspection services performed on a requirements basis for various City-funded infrastructure construction projects, and

WHEREAS, the Engineer 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" means the various documents that constitute the contract between the Engineer and the City, including (1) Request for Proposals for the Contract, (2) Engineer's Proposal for the Contract, (3) Request for Proposals for the Project, (4) Engineer's Proposal for the Project, (5) Task Orders issued to the Engineer, and (6) the Exhibits set forth below. In the event of any conflict between the Request for Proposals and the Engineer's Proposal, the Request for Proposals shall prevail.

Exhibit A	Contract Information
Exhibit B	Subconsultants and Key Personnel
Exhibit C	Staffing Requirements: Titles and Maximum Allowable Direct Salary Rates
Exhibit D	Minimum Requirements
Exhibit E	Requirements for Record As-Built Drawings
Exhibit F	DDC Safety Requirements
Exhibit G	Schedule B: M/WBE Participation Requirements
Exhibit H	Hiring and Employment Rider: HireNYC and Reporting Requirements
Exhibit I	Appendix A: General Provisions Governing Contracts for Consultants, Professional, Technical, Human and Client Services

1.2 "Agency" means 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" 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.

1.4 "City" means the City of New York.

1.5 "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.

1.6 "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.

1.7 "Commissioner's Representative" means the Project Manager designated by the Commissioner or any successor or alternate representative designated by the Commissioner.

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

1.9 "Contract" or "Contract Documents" means the Agreement referred to in Paragraph 1.1 of this Article.

1.10 "Contractor" or "Engineer" means the entity entering into this Agreement with the Department.

- 1.11 "Department" or "DDC" means 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.
- 1.12 "Days" means calendar days unless otherwise specifically noted to mean business days.
- 1.13 "Drawings" means all graphic or written illustrations, descriptions, explanations, directions, requirements and standards of performance applied to the construction work.
- 1.14 "Engineer" means the entity entering into this Agreement with the Department.
- 1.15 "Final Acceptance" means the final written acceptance of all required construction work for the Project, as determined by the Commissioner.
- 1.16 "Government Entity" means the United States, the State and City of New York, and any and every agency, department, court, commission, or other instrumentality or political subdivision of government of any kind whatsoever, now existing or hereafter created.
- 1.17 "Law" or "Laws" 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.
- 1.18 "Mayor" means the Mayor of the City of New York, his/her successors or duly authorized representatives.
- 1.19 "Modification" means any written amendment of this Agreement signed by both the Department and the Engineer.
- 1.20 "Notice of Contract Start Date" means the written notice issued by the ACCO notifying the Engineer of the Contract start date.
- 1.21 "Notice to Proceed" means the written notice issued by the Commissioner specifying the time for commencement of the work.
- 1.22 "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 which have broad application throughout the City.
- 1.23 "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.
- 1.24 "Project" means the infrastructure construction Project, or portion thereof, for which resident engineering inspection services are required, as specified by the Commissioner on a Task Order basis. Infrastructure construction Projects shall include without limitation Projects involving highways, sewers and/or water mains.
- 1.25 "Safety Standards" means 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).
- 1.26 "Shop Drawing" means 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.
- 1.27 "Site(s)" means 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.
- 1.28 "Specifications" means all of the directions, requirements and standards of performance applied to the construction work.
- 1.29 "State" means the State of New York.

1.30 "Subcontractor" or "Subconsultant" means any person, firm, or corporation, other than employees of the Engineer, who or which contracts with the Engineer or the Engineer's 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.

1.31 "Substantial Completion" means 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 Engineer 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 HireNYC Program applies to Task Orders with a value of one million dollars (\$1,000,000) or more. The Engineer must comply with the HireNYC Program for every Task Order with a value of one million dollars (\$1,000,000) or more. The HireNYC Rider is included as an Exhibit to the Contract.

ARTICLE 3 - Agreement to Serve

3.1 The City hereby retains the Engineer to provide resident engineering inspection ("REI") services on a requirements basis for various infrastructure construction Projects, or portions thereof, as specified by the Commissioner on a Task Order basis. The services the Engineer may be required to provide for the specified Projects are set forth in Article 6. The Engineer agrees to provide such services in accordance with all terms and conditions set forth in this Contract. The Engineer hereby certifies that it has the necessary experience, expertise, staff, and resources to fulfill its obligations under this Contract competently and efficiently. The Engineer agrees to use its best efforts to complete the various projects assigned to it hereunder as soon as possible and at the lowest possible cost to the City.

ARTICLE 4 - Task Order Process

4.1 General: The Engineer shall provide, to the satisfaction of the Commissioner, REI services in accordance with the Task Order process outlined below. The Engineer's services shall be provided with respect to the Project, or portion thereof specified in the Task Order. The services to be provided by the Engineer shall include without limitation the services set forth in Article 6, or as otherwise specified in the Task Order. The Project for which services are required may be located in any of the five boroughs. The Engineer shall not perform services pursuant to this Contract until the Commissioner has issued a Task Order.

4.2 Selection Procedure: The selection of the Engineer to perform services for a Project pursuant to this Contract shall be in accordance with the procedure set forth below. This selection procedure shall be conducted prior to issuance of a Task Order.

4.3 Determination: The Commissioner shall determine whether the Project is a complex Project or a non-complex Project. In making such determination, the Commissioner shall consider all relevant factors, including, without limitation, the factors set forth below:

- 4.3.1 The Project involves unusual technical requirements, operational requirements, programmatic considerations and/or site conditions,
- 4.3.2 The Project involves multiple phases, or
- 4.3.3 The Project requires specialty expertise to address unique conditions or requirements.

4.4 Non-Complex Projects: In the event the Commissioner determines that the Project is a non-complex Project, the process set forth below shall apply.

- 4.4.1 Rotation: The selection of an engineer for a non-complex Project shall be on a rotational basis. The order of rotation for the purpose of selection shall be established by the Commissioner and shall be based upon the original technical rating received by each engineer that has been awarded a requirements contract for REI services for the type of projects set forth in Exhibit A.
- 4.4.2 Bypass: In the event the Engineer is selected for a Project through the rotational process, the Commissioner reserves the right to bypass the Engineer for that Project and select the next engineer on the list, if:

- (a) the Engineer's Contract has reached 100% of its Not to Exceed amount; or
- (b) the Commissioner, in the Commissioner's sole discretion, determines that the Engineer may be unable to provide the required services in a satisfactory and timely fashion. In such event, the Commissioner will issue written determination to the Engineer requiring the Engineer to submit a Corrective Action Plan ("CAP") for Commissioner's consideration and approval. The Engineer shall retain its position on the rotational list but shall not be eligible for selection for the next non-complex Project until an approved CAP is in place.

4.5 Complex Projects: In the event the Commissioner determines that the Project is a complex Project, the process set forth below shall apply.

- 4.5.1 Request for Proposals for the Project: As the need for services arises, the Commissioner shall issue a Request for Proposals ("RFP") for the Project to those firms that have been awarded requirements contracts for REI services. The RFP for the Project shall include the following: (1) information concerning the Project for which services are required, (2) a description of the Proposal for the Project to be submitted by the Engineer, and (3) Schedule B: M/WBE Utilization Plan (if applicable).
- 4.5.2 Response to Solicitation: The Engineer shall be required to respond to every solicitation for a Project for which it is solicited. If the Engineer determines that it is not able to propose for any particular solicitation, a written explanation must be provided, pursuant to PPB Rule 3-03(j)(2). The Engineer may be terminated for cause if it fails to respond without an adequate explanation.
- 4.5.3 No Compensation: The Engineer shall not be entitled to any compensation for costs incurred in connection with the following: preparation of Proposals for specific Projects, and/or attendance at pre-proposal meetings.
- 4.5.4 Evaluation: An evaluation committee will review, evaluate and score all Proposals, based upon the technical evaluation criteria set forth in the RFP for the Project. The RFP may require the Engineer to attend Proposal evaluation interview(s). This evaluation and scoring will determine the Engineer's Technical Rating. The Engineer with the highest Technical Rating will be selected for the Project.
- 4.5.5 Non-Issuance: The Commissioner reserves the right not to issue a RFP for the Project to the Engineer, if:
 - (a) the Engineer's Contract has reached 100 % of its Not to Exceed amount; or
 - (b) the Commissioner, in the Commissioner's sole opinion, determines that the Engineer may be unable to provide the required services in a satisfactory and timely fashion. In such event, the Commissioner will issue written determination to the Engineer requiring the Engineer to submit a Corrective Action Plan ("CAP") for Commissioner's consideration and approval. The Engineer will not be issued an RFP for any additional projects until an approved CAP is in place.

4.6 Task Orders: The Commissioner shall issue a Task Order to the Engineer selected for the Project. The Commissioner may issue separate and/or supplementary Task Orders to the Engineer for the performance of services for different phases or portions of the Project. Each Task Order issued hereunder shall include the items set forth below:

- 4.6.1 Description of the Project, or portion thereof, for which services are required
- 4.6.2 Services to be performed by the Engineer
- 4.6.3 Time frame for completion of the Project
- 4.6.4 Any requirements for scheduling and/or phasing of the services
- 4.6.5 Staffing Plan
- 4.6.6 Schedule B: M/WBE Utilization Plan (if applicable)
- 4.6.7 Overall Not to Exceed amount for the required services. Such overall Not to Exceed amount shall be broken down into the following: (1) Allowance for Staffing Expenses, (2) Allowance for Record Drawings, and, if applicable, (3) Allowance for Reimbursable Services. The Allowance for Staffing Expenses shall be further broken down into an amount for each of the following phases: Construction and Post Construction.

4.7 Miscellaneous Provisions: The provision set forth below shall apply to Task Orders issued hereunder.

- 4.7.1 Supplementary Task Orders: In the event of any changes to the Task Order, the Commissioner shall issue a Supplementary Task Order to the Engineer. The Engineer shall be bound by the terms and conditions of any

such Supplementary Task Order issued by the Commissioner.

- 4.7.2 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 Supplementary Task Order to the Engineer, reallocate such specific allowance amounts.
- 4.7.3 Conflicts: In the event of any conflict between a Task Order issued hereunder and any provision of this Contract, the Contract shall take precedence; except that with respect to the scope of services to be performed, the provisions of the Task Order shall take precedence over Article 6 of this Contract.
- 4.7.4 No Right to Reject: The Engineer shall have no right: (a) to decline to respond to an RFP, or to reject its selection for a project pursuant to an RFP, without an adequate explanation, pursuant to PPB Rule 3-03(j)(2), (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 shall be grounds for termination for cause.
- 4.7.5 Work by Others: In the event there is a need for REI 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 consultant(s), or by City employees, if the Commissioner, in the Commissioner's sole opinion, determines that it would be in the best interest of the City to do so.
- 4.7.6 Cancellation: The Commissioner reserves the right to cancel at any time a Task Order issued to the Engineer in accordance with Article 10 of Appendix A. The Engineer will be paid for services performed on such Task Order to date.

ARTICLE 5 – Personnel for REI Services

5.1 Provision of Personnel: The Engineer agrees, throughout the term of the Contract, to provide personnel for the performance of all required REI services for the Project, in accordance with Task Orders issued by the Commissioner. The Engineer specifically agrees that its employees, agents and consultants shall possess the experience, knowledge and character necessary to qualify them individually for the particular duties they perform.

- 5.1.1 Subcontracting: Subcontracting is only permitted as set forth in Exhibit A. Provisions regarding subcontracting are set forth in Article 5.4.

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 Engineer shall be required to provide, (2) minimum requirements per title, and (3) Maximum Allowable Direct Salary Rate per hour per title. If any additional titles of personnel are required for the Project, the Task Order will specify: (1) additional required title(s), (2) minimum requirements per title, and (3) Maximum Allowable Direct Salary Rate per hour per title.

- 5.2.1 Minimum Requirements: Personnel provided by the Engineer must satisfy the minimum requirements for the title in question, as set forth in Exhibit D. The Engineer shall 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 their sole and absolute discretion, may modify the minimum requirements per title.
- 5.2.2 Key Personnel: Individuals who will serve as Key Personnel will be identified by the Engineer in its Proposal for the Project. Key Personnel to be identified include, but are not limited to, individuals for the following titles: Project Executive, Resident Engineer, Assistant Resident Engineer, Office Engineer, and any such other titles as the Commissioner may deem necessary on a Task Order basis. The Project Executive and the Resident Engineer must be employees of the Engineer.
- (a) Project Executive: The Project Executive will serve as the Engineer's principal representative with respect to its obligations under the Contract. The Project Executive will be responsible for providing, on as needed basis, executive or management expertise and oversight with respect to the Projects. The Project Executive must be an employee, officer, or principal of the Engineer. All compensation for services provided by the Project Executive(s) is deemed included in the Multiplier.

- (b) Agreement to Assign: The Engineer specifically agrees to assign to the Project for its entire duration, the individuals identified as Key Personnel in its Proposal for the Project. Failure by the Engineer to provide any individual identified as Key Personnel in its Proposal for the Project shall be considered a material breach of the Contract and grounds for termination for cause. Replacement of such individual will only be permitted in the following circumstances: (1) if the designated individual is no longer employed by the Engineer, or (2) if the commencement date (i.e., the date on which the Engineer is directed to commence work on the Project) is more than six (6) months after the date on which the Engineer submitted its Proposal for the Project. In the event replacement of any individual identified as Key Personnel is permitted, the proposed replacement must meet the minimum requirements set forth in Exhibit D.

5.3 Staffing Plan: The Engineer shall provide personnel in accordance with the Staffing Plan approved by the Commissioner and included in the Task Order. Prior to finalization, the Staffing Plan is subject to approval by the Commissioner in accordance with the process set forth below.

5.3.1 Contents of Staffing Plan: The Staffing Plan shall include the items set forth below. For each Project for which the Engineer is directed to provide services, DDC shall specify the required titles per phase and the total estimated hours per title per phase.

- (a) Key Personnel: Required titles of Key Personnel and specific individual for each title identified by the Engineer in its Proposal for the Project.
- (b) Other Engineering Personnel: Required titles per Phase (Construction and Post Construction) and specific individual for each title.
- (c) Direct Salary Rate per hour for each specified individual (except Project Executive), as determined by the Commissioner. The Direct Salary Rate per hour shall be the **LESSER** of (1) the individual's actual annual direct salary, computed on an hourly basis in accordance with Article 7, or (2) the Maximum Allowable Direct Salary Rate per hour for the specified title set forth in Exhibit C.
- (d) Total estimated hours per title per Phase (Construction and Post Construction)
- (e) Total estimated amounts per title per Phase (Construction and Post Construction)
- (f) Total estimated amount for all required titles

5.3.2 Limitations on Payment: Limitations on payment for staffing expenses are set forth in Article 7.

5.3.3 Proposed Staffing Plan: Within five (5) business days of a written request from the Commissioner, the Engineer shall submit a proposed Staffing Plan for the Project. Such Staffing Plan shall include the items listed above. With respect to each proposed individual, the Engineer shall provide: (1) the individual's resume, as well as any other information detailing their technical qualifications and expertise, including a current Water Main Inspection Certification card, which is required for projects involving water main work, (2) the title in Exhibit C for which the individual meets the minimum requirements, and (3) direct salary information, including the individual's current actual annual direct salary, as defined in Article 7, and direct salary history for the past three years.

5.3.4 Review and Approval of Staffing Plan: The Commissioner shall review the Engineer's proposed Staffing Plan and shall direct revisions to the same if necessary prior to final approval thereof. As part of the Commissioner's review, the Commissioner shall determine the following: (1) whether the Staffing Plan includes the individuals identified by the Engineer as Key Personnel in its Proposal for the Project, (2) whether each specific individual meets the minimum requirements for the applicable title, and (3) the direct salary rate per hour to be paid for each specific individual, in accordance with Article 7. The Engineer shall revise the proposed Staffing Plan as directed, until such plan is approved in writing by the Commissioner.

5.3.5 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 shall be permitted unless the proposed replacement has received the prior written approval of the Commissioner. Replacement personnel must: (1) meet the minimum requirements, and (2) possess qualifications substantially similar to those of the personnel being replaced. Replacement of an individual identified as Key Personnel will only be permitted under the circumstances set forth in Article 5.2.2.

- (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 REI services. The Engineer shall 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 Engineer shall remove any personnel and substitute another employee or Subconsultant of the Engineer 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 Engineer, the Commissioner shall, in writing, direct revisions to the Staffing Plan to decrease the level of staffing to be maintained throughout the delay. The Engineer shall be paid for the cost of the staffing it is directed by the Commissioner to maintain. Upon termination of the delay, the Engineer shall restore the level of staffing as directed by the Commissioner.

5.3.6 Night Differential / Overtime: The Engineer shall provide a statement describing its company policy with respect to payment of a premium for services performed during other than regular business hours (i.e., premium for Night Differential and/or Overtime). The Engineer's statement describing its policy shall indicate the following: (1) whether the policy is consistently applied to all clients; (2) the designated class(s) of employees to whom such policy applies, and (3) the premium or rate of increase to be paid to employees for such services. For the purpose of payment, the Engineer's policy regarding payment of a premium for services performed during other than regular business hours is subject to approval by the Commissioner. Approval shall only be given if the policy is reasonable, consistently applied to all clients and in accordance with standard practice in the industry. Payment of a premium for services performed during other than regular business hours is subject to the limitations set forth in Article 7.

- (a) Night Differential and Overtime premiums will not be paid simultaneously. Overtime work performed during a night shift will be paid as Overtime without the Night Differential.

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

- 5.4.1 Subconsultants Identified in Proposal: The Engineer shall engage the Subconsultant(s) identified in its Proposal for the Contract and set forth in Exhibit B, unless otherwise approved by the Commissioner. Failure by the Engineer to provide the Subconsultant(s) set forth in Exhibit B shall be grounds for termination for cause. The Engineer shall 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.
- 5.4.2 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.
- 5.4.3 Replacement Subconsultants: No substitution for any Subconsultant shall 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 Engineer shall remove any Subconsultant and substitute another Subconsultant reasonably satisfactory to the Commissioner. The Commissioner may request such substitution at any time, if, in the Commissioner's sole opinion, the Subconsultant may be unable to satisfactorily provide the required services in a timely fashion.
- 5.4.4 Payment: Expenses incurred by the Engineer in connection with furnishing Subconsultants for the performance of required services hereunder are deemed included in the payments by the City to the Engineer, as set forth in Article 7. The Engineer shall pay its Subconsultant(s) the full amount due them from their proportionate share of the requisition, as paid by the City. The Engineer shall make such payment no later than seven (7) calendar days after receipt of payment from the City.

ARTICLE 6 - Engineering Services

6.1 General: The Engineer shall provide, to the satisfaction of the Commissioner, the services set forth below.

6.1.1 Resident Engineering Inspection (REI) Services: The Engineer shall 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 REI services to be provided by the Engineer shall include without limitation the services set forth in this Article 6.

- (a) The Engineer's services shall be provided from the date the construction contractor(s) is directed to commence work until the completion of all construction operations and the final acceptance of the completed work by the Commissioner.
- (b) The Engineer shall serve as the representative of DDC at the site and, subject to review by the Commissioner, shall be responsible for the inspection, management and administration of the construction work, as set forth in the article of the construction contract entitled "The Resident Engineer".
- (c) The Engineer shall ascertain the standard practices of the City prior to the performance of services required by this Contract, and all such services shall be performed in accordance with these standard practices. In addition, the Engineer shall be familiar with the construction contract documents.
- (d) The Commissioner or the Commissioner's duly authorized representative(s) shall have the right at all times to inspect the work of the Engineer and contractors.
- (e) The Commissioner shall advise the Engineer in writing of any special or particular requirements applicable to the performance of services hereunder and/or the construction work.
- (f) The Engineer's services shall include the management, supervision and coordination of any Reimbursable Services required for the Project.

6.1.2 Reimbursable Services: The Engineer may be directed in writing by the Commissioner to provide Reimbursable Services. Reimbursable Services are described in Article 6.4.

6.1.3 Non-Reimbursable Services: Throughout the Contract, the Engineer shall 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 Multiplier.

- (a) Overnight Delivery: Upon request, the Engineer shall 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 Engineer shall 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 6.4), (2) expenses for time spent by personnel commuting or traveling, and (3) expenses for parking and tolls. Engineers and/or Subconsultants that are not located in New York City or its vicinity shall not be entitled to reimbursement for transportation expenses.
- (c) Equipment: The Engineer shall provide the items set forth below for all personnel performing services, including any Project Executive(s).

- (1) All computer hardware and software necessary to perform the required services, including but not limited to, mobile tablets (latest release iPad Pro, Surface Pro, or equivalent), CADD equipment and software, BIM equipment and software, computer and internet usage time and monthly costs thereof.
- (2) A construction management software, such as Procore, Autodesk, or Kahua, or equivalent, to facilitate the performance of the services set forth in this Agreement and the Task Order.
- (3) All necessary office supplies and/or tools.
- (4) Communications equipment and service, including without limitation cellular telephones for all personnel assigned to the Project and mobile tablets for all field staff (Resident Engineer, Assistant Resident Engineer, Senior Inspector, and Inspector). The cellular telephones must be email capable. The telephone numbers of all personnel assigned to the Project and the email addresses for the Resident Engineer and Community Construction Liaison shall be submitted to the Commissioner.
- (5) Hard hats, safety vests, and all other necessary and required Personal Protective Equipment

(P.P.E.).

- (d) If the Engineer is located outside New York City, it shall obtain a New York City telephone number (such as 212, 332, 347, 646, 718, 917, or 929) and submit such number to the Commissioner.

6.1.4 Commissioner's Representative: The Assistant Commissioner, acting on behalf of the Commissioner, shall, in writing, designate a City employed engineer to serve as the Commissioner's Representative with respect to this Contract. Such Commissioner's Representative shall be authorized to review the performance of the Engineer. The Commissioner's Representative shall be the senior authority in the field and shall be authorized to review the performance of the Engineer. The Engineer shall be responsible to the Commissioner's Representative.

6.2 REI Services During Construction Phase: The services to be provided by the Engineer during the Construction Phase shall include without limitation the services set forth below, including services performed prior to the commencement of construction work.

- 6.2.1 Become familiar with and comply with all DDC policies and procedures related to oversights of Infrastructure projects, including, without limitation, quality assurance, safety management, risk management, document management, communication, and payments.
- 6.2.2 Thoroughly review the construction contract, contract plans and specifications, and perform site visit(s) as necessary.
- 6.2.3 Prepare a Pre-Construction Report for the Commissioner within 60 days of issuance of Notice to Proceed for the Project and before the construction contractors commence construction work. The Pre-Construction Report must be accompanied by a letter signed by a Professional Engineer, and must include, without limitation, all suggestions and recommendations for design changes, sketches, comments about completion of the project within stipulated time limit upon review and approval of contractor's progress schedule, and the impact of utility interferences and relocation issues on the Project schedule.
- 6.2.4 Prior to the commencement of the construction 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.
- 6.2.5 Prepare correspondence or other communications in order to advance the Project.
- 6.2.6 Make recommendations to the Commissioner regarding the approval of proposed subcontractors and material vendors.
- 6.2.7 Coordinate with utilities as necessary in order to verify the constructability suitable to field conditions.
- 6.2.8 Perform minor design services for the Project. Minor design services shall 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 shall comply with the Americans with Disabilities Act (ADA), Public Right-Of-Way Accessibility Guidelines (PROWAG), 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

6.2.9 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. Such procedures shall be in accordance with DDC guidelines.
- (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.

6.2.10 Undertake the following responsibilities with respect to the inspection of the work:

- (a) Provide technical inspection, management and administration of the work on the Project until final completion and acceptance of the Work by the Commissioner, verifying that the materials furnished and work performed are in accordance with the requirements of the construction contract(s) and that work on the Project is progressing on schedule.
- (b) Provide offsite plant inspection of fabricated and/or raw materials to be used on the Project, as directed by the Commissioner, to insure conformance with the material specifications of the construction contract(s).
- (c) Take appropriate action to prevent the installation of work, or the furnishing of material or equipment, which has not been properly approved or otherwise fails to conform to the requirements of the construction contract(s), and inform the Commissioner promptly of such action and the reasons for and outcome of such action.
- (d) Supervise the performance of all detailed inspection and field-testing of materials and items of work, quality control tests, or any other tests required by the construction contract(s), to ensure that such tests are performed in a satisfactory and timely fashion. Such tests shall include without limitation slump test, air-entrainment test, material temperature test and density tests. If directed by the Commissioner in writing, the Engineer shall retain the services of a qualified laboratory to provide any required testing. Compensation for such laboratory services will be provided to the Engineer pursuant to the Allowance for Reimbursable Services.
- (e) Inspect the Project in conjunction with the Commissioner's Representative on a periodic basis and prior to Substantial Completion or Final Acceptance, as described below. The Engineer shall furnish a detailed report to the Commissioner setting forth any discrepancies or deficiencies in the finished work.
- (f) Inspect the Project and provide a report prior to the expiration of the guarantee period set forth in the construction contract(s), as described in Article 6.2.27 below.

6.2.11 Undertake the following responsibilities with respect to the Progress Schedule:

- (a) Review and analyze proposed Progress Schedule, and any updates thereto, submitted by the contractor(s), using Primavera 6, or as otherwise directed by the Commissioner, and direct revisions to the Progress Schedule as required by the Commissioner.
- (b) Make recommendations to the Commissioner regarding approval or disapproval of the Progress Schedule, including recommendations about work productivity and delays.
- (c) Monitor compliance with the Progress Schedule by the contractor(s).
- (d) Review the adequacy of the personnel and equipment of the contractor(s) and the availability of necessary materials and supplies to ensure compliance with the Progress Schedule.
- (e) Notify the Commissioner of any anticipated delays in fabrication, erection or construction.
- (f) If performance of the work by the contractor(s) falls behind the Progress Schedule, advise the Commissioner of the same and make recommendations as to what methods should be adopted to make up for lost time.
- (g) Render assistance when required to minimize delays to the Project caused by labor disputes during construction.

6.2.12 Review and evaluate the means and methods of construction proposed by the contractor(s) and advise the

Commissioner in the event the Engineer reasonably believes that such proposed means and methods of construction will constitute or create a hazard to the work, or persons or property, or will not produce finished work in accordance with the construction contract(s).

6.2.13 Undertake the following responsibilities with respect to the safety of the site:

- (a) Perform all Resident Engineer (“RE”) responsibilities set forth in the DDC Safety Requirements as amended (Exhibit F).
- (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 Engineer shall perform a daily inspection of the Project site(s) at the beginning and end of each day (“Dawn and Dusk Patrol”) and shall 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 Engineer 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 Engineer’s diary. Review and evaluate contractor proposals regarding pedestrian and vehicular traffic operations and make recommendations to the Commissioner. The Engineer’s personnel assigned this responsibility shall be trained in this area, and approved by the Commissioner for this work. This employee shall 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 Engineer shall immediately notify the Commissioner of any such emergency condition.

6.2.14 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 Engineer shall use such records to prepare the Contract Cost Summary/Close Out Report set forth in Article 6.3.
- (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 Engineer shall 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 as described in Exhibit E.
- (g) Prepare and maintain fixed asset inventory forms for all required contract components.
- (h) Maintain all Project records in accordance with DDC requirements, as set forth in the DDC manual entitled “DDC Standard Records”, a copy of which will be provided to the Engineer.
- (i) All Project records, including without limitation those specified above, shall be available to the Commissioner at all times immediately upon request, and the Commissioner shall have the right to remove such Project records and make copies thereof. The Engineer will ensure that such records are promptly and contemporaneously made available and maintained in appropriate digital format.

6.2.15 Monitor compliance by the contractor(s) with the following requirements applicable to the construction work:

- (1) New York State Labor Law; (2) Americans with Disabilities Act (ADA) and Public Right-Of-Way Accessibility Guidelines (PROWAG); (3) requirements for the participation of LBEs, and (4) requirements for the participation of M/WBEs.
- 6.2.16 Prepare correspondence or other communications to the contractor(s) as required in order to advance the Project, including without limitation letters for the signature of the Commissioner or the Commissioner's Representative.
- 6.2.17 Undertake the following responsibilities with respect to contractor payments:
- (a) Review all requisitions for payments submitted by the contractor(s), including without limitation partial payments, payments for extra work, substantial completion and final payments.
 - (b) Make recommendations to the Commissioner for approval or disapproval of all contractor requisitions for payment in accordance with City procedures.
 - (c) Verify all estimates for payments of work performed, computations, as well as field measurements and sketches necessary for payment purposes.
 - (d) With respect to each requisition for payments submitted by the contractor(s), determine the amount of liquidated damages, back charges or other deductions to be assessed.
 - (e) Submit to the Commissioner the requisition for final payment within one (1) month after the date of final inspection of the Project.
 - (f) Maintain all accounts and records with respect to payments in accordance with the State Comptroller's Manual and good accounting practices.
 - (g) Track the construction contractor's actual M/WBE and DBE utilization and goal compliance, local hiring, or any other programs as directed by the Commissioner.
- 6.2.18 Review applications for extensions of time submitted by the contractor(s). Make recommendations to the Commissioner for approval or disapproval thereof in accordance with the City's procedures.
- 6.2.19 Undertake the responsibilities set forth below with respect to questions raised and/or disputes submitted by the contractor(s).
- (a) Interpret the Drawings and Specifications and add explanatory information consistent with the construction contract(s). In the event the contractor(s) disagrees with the Engineer's interpretation of the meaning and intent of the Drawings and Specifications, the Engineer shall prepare a report to the Commissioner setting forth the contractor's interpretation and that by the Engineer. Such report shall be in sufficient detail so that the Commissioner may, from it, make a determination as described in the article of the construction contract entitled "Resolution of Disputes".
 - (b) Review, evaluate and prepare a recommended determination with respect to disputes submitted by the contractor(s) in accordance with the article of the construction contract entitled "Resolution of Disputes". The Engineer's recommendation shall be in writing, and shall contain a clearly stated, reasoned explanation for the determination based upon the information and evidence presented by the contractor, as well as the requirements of the Drawings, the Specifications and the construction contract.
 - (c) Keep DDC advised of potential disputes, with analysis and recommendations regarding actions to be taken.
- 6.2.20 Review all requests for change orders from the contractor(s) and obtain cost proposals from the contractor(s). Prepare a report to the Commissioner recommending approval or disapproval thereof in accordance with City procedures. Such report shall include the Engineer's review and evaluation of the change order request and the cost proposal submitted by the contractor(s), as well as any recommendations the Engineer may have concerning the quantities of labor, equipment and materials relative to the proposed change order. The Engineer must be prepared to substantiate the information contained in its report to the Commissioner, the Engineering Audit Officer, the Comptroller and any other agency having jurisdiction in this area. The Commissioner will make all final determinations regarding change orders, modifications and additions to the construction contract(s). If directed by the Commissioner, the Engineer shall negotiate a price, i.e., lump sum or unit price, for the performance of the proposed change order work and submit the same to the Commissioner for approval. If directed by the Commissioner, the Engineer shall provide cost estimates for the proposed change order.

- 6.2.21 Schedule and conduct job meetings with the contractor(s), representatives of the Commissioner, interested city agencies, regulatory agencies and any other entities or individuals involved with the Project to discuss procedures, performance, progress, problems, scheduling and related issues. If required, the Engineer shall prepare minutes of such meetings in a format authorized by the Commissioner and shall distribute such minutes to all attendees.
- 6.2.22 Undertake the following responsibilities with respect to Project reports:
- (a) Submit written progress reports to the Commissioner on a monthly basis, unless otherwise directed, including without limitation (1) information concerning the work of the contractor(s); (2) the percentage of completion of the work; (3) the number and amount of change orders, (4) construction contractor's current monthly and cumulative M/WBE or DBE utilization for the Project, and (5) an update of the budget for the Project, including a comparison of the original budget with current disbursements and the estimated cost to complete.
 - (b) Prepare reports regarding the work as directed by the Commissioner, incorporating such information, interpretation, detail or back-up material as may be required by the Commissioner.
 - (c) Prepare reports in a form suitable for transmission to the Comptroller and the Law Department on claims made during the course of the work and within one year after completion and final acceptance of the work.
- 6.2.23 Determine the need for and recommend to the Commissioner the commencement of default proceeding against the contractor(s) or the assessment of liquidated damages. Assist the Commissioner in selecting an alternate contractor(s) to perform the work and assist in evaluating back charges or other deductions to be assessed.
- 6.2.24 Undertake the following responsibilities with respect to Substantial Completion of the Project:
- (a) Inspect the Project in conjunction with the Commissioner's Representative at the time of Substantial Completion.
 - (b) Furnish a detailed report to the Commissioner setting forth any discrepancies or deficiencies in the finished work.
 - (c) Make recommendations to the Commissioner regarding a determination of Substantial Completion.
 - (d) Prepare and finalize all necessary punch lists, including completion dates for all items and expedite execution of the same by the contractor(s).
 - (e) Prepare and deliver to the Commissioner record ("as built") drawings as described in Article 6.3.4.
 - (f) Perform the above duties in the event the City is to take over, use, operate or occupy any part or all of the Project.
- 6.2.25 Undertake the following responsibilities with respect to Final Acceptance of the Project:
- (a) Inspect the Project in conjunction with the Commissioner's Representative at the time of Final Acceptance.
 - (b) Furnish a detailed report to the Commissioner setting forth any discrepancies or deficiencies in the finished work.
 - (c) Make recommendations to the Commissioner regarding a determination of Final Acceptance.
- 6.2.26 Collect guarantees from the manufacturer, maintenance and operations manuals, keying schedules and other data required of the contractor(s), and maintain photographic records, material and equipment delivery records, visual aids, charts and graphs.
- 6.2.27 Prior to the expiration of the guarantee period set forth in the construction contract(s), inspect the Project and furnish a report to the Commissioner describing in detail any finished construction work in which defects of materials or workmanship may have appeared or to which damage may have occurred because of such defects, during the applicable guarantee period.
- 6.2.28 Provide progress photographs on a regular basis as directed by the Commissioner.
- 6.2.29 Provide or cause to be provided all temporary facilities and utilities as necessary for the performance of the

construction work.

- 6.2.30 Prepare and submit DDC's construction contractor(s) performance evaluation form. Such performance evaluation shall be completed when fifty (50%) of the contract amount has been vouchered and at substantial completion of the Project, but not less frequently than annually. The form shall be submitted to DDC no later than fifteen (15) calendar days after each of these events has occurred.
- 6.2.31 In the event any claim is made or any action brought in any way relating to the design or construction of the Project, the Engineer shall diligently render to the City all assistance which the City may require. Such services shall be rendered by the Engineer without additional fee or other compensation, except for the costs and expense of personnel who were assigned to the Project as job-site or management staff, or comparable personnel if those who were assigned to the Project are no longer employed by the Engineer.
- 6.2.32 Check the erection of structures necessary to protect the public during the construction operations.
- 6.2.33 Spot check, for accuracy, Survey and Stake-out performed by the contractor(s).
- 6.2.34 Check the construction contractor's layout and concrete form work for correctness, including line and grade. Check the placement of concrete, structural concrete and asphalt pavements.
- 6.2.35 Check the removal, installation and reinstallation of all signs, including the fastening of chains from sign structures.
- 6.2.36 Check layout of conduits, pipes, gas mains, water mains, electrical conduit and lighting equipment, and other miscellaneous structures.
- 6.2.37 Check all electrical wiring, permanent or temporary, for compliance with the plans and specifications.
- 6.2.38 Check the performance of excavation, and compliance with safety standards for sheeting, and prepare necessary trench certifications and backfill certifications.
- 6.2.39 Substantiate the quality and check the placement of all pre-cast pre-stressed structural elements when they are to be used on the Project.
- 6.2.40 Check and approve if applicable the contractor's pile layout, condition of piles, treatment of piles, pile driving equipment and method of pile driving; certify pile records, locations and lengths.
- 6.2.41 If applicable, prepare and certify, on a monthly basis, sidewalk assessment data for all sidewalks constructed. Sidewalk Assessment data may be transmitted by lists or other methods as specified by the Commissioner. Assessment data must be prepared in accordance with Design Directive 33, a copy of which will be provided to the Engineer upon request.
- 6.2.42 If the Project involves the installation of traffic signals and street lighting, check all components of the installation, including without limitation, (1) the installation of conduit for type, depth, quantity, manner of installation, drag line observations; (2) the installation of foundations to insure proper location, size, type, anchor rod assemblies, mats, quality of concrete, number of bends, sidewalk finish; (3) the installation of pull boxes for proper types, locations, drainage, orientation, covers, sidewalk restoration; (4) the installation of cable for proper type, method of installation, conductors, fuses, tagging; (5) the operations, size, testing procedures, amplification systems, luminaries, photoelectric cells; (6) the installation of traffic posts for proper type, mats, cleats, orientations, grounding, installation of appurtenant fixtures on the post such as push buttons, signs, street light arms, luminaries; (7) the installation of all signal and lighting assemblies for proper orientation, grounding, wiring, installation; (8) the installation of all control boxes and controllers for proper mechanical and electrical installation, timing operations, phasing, (9) the installation and operation of all temporary signals, lighting overhead cable, and (10) any other work or components identified and specified by the Commissioner.
- 6.2.43 If the Project involves the installation of water mains, provide the following services: (1) review and approve pipe laying schedules, where required; (2) prepare pipe geometry, as required; (3) perform record search and

field investigation to taps, connections and data on existing mains; (4) prepare, control and record the necessary requisitions for material from the Department of Environmental Protection's pipe yards; (5) plan and control, under Bureau of Water Supply guidance, necessary shutdowns of water mains to permit prosecution of the work; (6) under the guidance and subject to approval of the Bureau of Water Supply Personnel, recommend field changes in pipe, recommend resolution of utility and other interference problems, test and report on cleanliness of new mains, make final inspection and punch list, (7) prepare all necessary change orders, extensions of time and correspondence, (8) prepare In-Service Sheets, Field Cards, Tap Cards, Trunk Main Drawings (if applicable), and (9) any other work or components identified and specified by the Commissioner.

6.2.44 If the Project involves the installation of fire alarm communication systems, the Engineer shall furnish all services required in this contract; however, final inspection of this work will be performed by the New York City Fire Department.

6.2.45 Undertake the following responsibilities with respect to the coordination of utility work:

(a) Provide a dedicated "utility coordinator" who shall perform the following tasks:

- (1) Interpret and apply specifications and contract documents especially with regard to utility items and accommodation work.
- (2) Communicate daily with utility representative to reconcile items and quantities for work performed at various locations. This must be done at a time that is mutually agreed upon.
- (3) Sign daily reconciliation sheets and verify that the quantities actually installed become part of the payment to the contractor for utility work.
- (4) Verify that there are no discrepancies between quantities installed and quantities reflected on application for payment for utility work.
- (5) Become familiar with all DOT and DEP regulations.
- (6) Coordinate meetings with resident engineer, City representatives, and utility personnel to resolve any conflicts that may develop.
- (7) Be responsible to facilitate all resolution discussions.
- (8) Prepare reports that identify payments to date which includes all utility involvement.

(b) Check the relocation, replacement, support and protection of utility facilities for Con Edison, New York Telephone and Empire City Subway, Ltd. where a utility agreement is part of the construction contract. For such agreements each utility company shall provide inspectors at the work site to inspect work methods and verify quantities of work.

(c) Ensure that all utility work is coordinated with reference to Industrial Code Rule 53 of the New York State Department of Labor.

6.2.46 Community Construction Liaison: The Engineer shall, if directed by the Commissioner, as part of its personnel for the Project, provide a Community Construction Liaison ("CCL"), who shall 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 Engineer shall provide the following: (1) resumes and any other information, and (2) a writing sample. The Engineer shall provide its CCL with PHOTO IDENTIFICATION, clearly indicating the Project Name/Number, EIC name/number, field office, phone/fax, and validation dates, which shall correspond with the anticipated contract duration plus three (3) months. The Engineer shall also provide the CCL with business cards, which shall include the same Project information. The construction contractor shall provide a personal computer with a designated email address for use by the CCL.

The Engineer shall, as directed by DDC, print necessary community notification materials (e.g., kiosk posters, brochures, buttons, newsletters) as developed in conjunction with DDC Office of Community Outreach Notification ("DDC OCON") staff. Materials may be printed in 4-colour as required by design; the Engineer shall also pay for any related installation costs for Kiosk Posters. Reimbursement for these items shall be paid for through the Allowance for Reimbursable Services.

(a) Produce and widely distribute within the community a monthly Reconstruction Newsletter, using Microsoft Word Template provided by the DDC OCON.

- (b) Immediately after commencement of this Contract, the CCL shall participate in a program of Orientation and Training conducted by the DDC OCON. The following topics shall 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.
- (c) Immediately after commencement of this Contract, the CCL shall review the plans and specifications for the construction contract(s). Within five (5) business days of completing the contract review, the CCL shall organize and arrange for a walk through of the Project to assess its impact on the community. Notification of the walk through shall be given to the District Manager of the Community Board, other interested community representatives, and representatives of DDC.
- (d) 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 shall conduct a door-to-door survey of each commercial/residential property within the area of influence of water service interruption. The CCL shall notify the Resident Engineer and keep them 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 shall secure from DDC translations of notices/flyers for use on specific projects within targeted communities where and when indicated.
- (e) The CCL shall develop, maintain and keep a current calendar of significant community events, including, without limitation, Cultural/Religious Festivals, Street Fairs, Marathons, Parades, Play Street Closing and Block Parties/Celebrations.
- (f) Community Notification Network/Record Keeping: With input and information provided from sources including the DDC OCON, the Community Board, and elected officials, the CCL shall develop a Community Notification Network, identifying key community institutions and organizations by name, association and address. The CCL shall keep field office records regarding community interaction, including without limitation, complaints received and all correspondence, meetings, and task force minutes.
- (g) Construction Notification Email Requirements – The Engineer shall, provide an email notification system with the following minimum specifications:
 - i. Must support multiple formats (plain text, rich text, and HTML) and accept attachments of 25MB minimum and any file type (e.g., Word, Publisher, Excel, Adobe Acrobat, etc.)
 - ii. Must be a 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.
 - iii. Must be platform independent (accessible through Windows, Linux or Mac, etc.).
 - iv. There must be a dedicated email list for each construction project (i.e.,update@wallstreet.com, update@madisonave.com, HWP2000M@gmail.com)
 - v. There must be a dedicated and secure database for email list subscriptions. E-mail lists cannot be sold or distributed under any circumstances.
 - vi. Ease of end users subscription modification. Must provide the options to subscribe and unsubscribe to email lists via web and e-mail.
 - vii. CCL must act as the email list moderator. The moderator is responsible for the preparation and dissemination of email updates. The moderator will be required to validate its email address with the server prior to sending out any notifications to the list which provides an additional anti-spamming measure.
 - viii. Requires Double Opt-In process for both subscription and removal from the list.
 - ix. List Server must be incorporated into a website that is capable of being linked to the DDC or other NYC agency websites.
 - x. Must be easily expandable. Lists for new construction must be able to be added within 12 hours of notification by the city.
 - xi. There must be an event calendar with message forum integration, such as:
 - 1) Supports multiple private and public calendars
 - 2) Viewable public and private events
 - 3) Weekly, monthly and yearly views
 - 4) Jump to Today option
 - 5) Add single, ranged or recurring events
 - 6) Add all day events
 - 7) Option to show calendar event on forum home page
 - 8) Show events to specific user groups

- 9) Calendar Moderation
- 10) Private events reminder
- 11) Ability to add custom fields

6.2.47 Construction Monitor / Restoration Specialist: The Engineer shall, if directed by the Commissioner, as part of its personnel for the Project, provide a Construction Monitor / Restoration Specialist ("CMRS"), who shall perform the services set forth below. The Engineer will only be directed to provide a CMRS if the Project involves storm water Best Management Practices ("BMP") or stormwater elements required by a Post-Construction Stormwater Management Plan ("PCSMP") work.

(a) The CMRS shall monitor and ensure the following:

- (1) That all work within the project is in strict conformance with all conditions of the State Department of Environmental Conservation ("NYSDEC") and the United States Army Corps of Engineers ("USACE") wetland permits and construction contract specifications,
 - (2) That the contractor is following the NYSDEC required Storm Water Pollution Prevention Plan (SWPPP), and
 - (3) 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 Engineer, the CMRS shall submit reports to the Engineer 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 shall be included in the reports along with color digital photographs.
- (c) The CMRS shall prepare all paper work and drawings necessary for the agency to apply for necessary permit modifications and shall follow up with NYSDEC on the status of the permit. Any drawings shall be reviewed and approved by the Engineer.
- (d) The CMRS shall prepare supplemental field sketches for use by the Engineer in preparing non-structural design modifications due to field conditions. Sketches shall be reviewed and approved by the Engineer.
- (e) The CMRS shall keep a digital photograph log of the BMP and BMP-related portion of the project. The photo log shall follow the progress of the project in a clear and understandable progression and shall incorporate before, in-progress, and completed photographs of BMP's and natural area restorations within the project. The CMRS shall 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 shall be used for photo-documentation purposes. The CMRS shall assemble the completed photo log and submit it to the Engineer. The photo log must be submitted in the format as required by the Commissioner (such as, CD, USB drive, or cloud server share).
- (f) The CMRS shall review for accuracy the as-built drawings regarding the BMP work prepared by the Engineer. The CMRS shall ensure that the as-built drawings regarding the BMP work are in accordance with Section 7.414 of the standard BMP specifications included with the construction contract(s).
- (g) Monitoring Reports: The CMRS shall prepare and submit a Monitoring Report to DDC following the completion of all planting and associated restoration activities. On an annual basis, the CMRS shall prepare and submit a Monitoring Report until the guarantee period(s) for the plant material has expired, as directed by DDC.

The CMRS shall examine, monitor and report on the various components of the restoration and shall incorporate color photographs, color photocopies, graphs, etc., as appropriate. All information shall be reported in a concise format. The Monitoring Report shall include the items set forth below:

- (1) Report on all construction activities related to BMP and streambank stabilization,
- (2) Report the conditions of the vegetation planted within this Contract,
- (3) Quantify survival and cover rates and compare to permit requirements,
- (4) Recommend replacement species,
- (5) Report observed impacts to existing vegetation,
- (6) Report success rates in controlling erosion and sedimentation,

- (7) Report voluntary recruitment,
- (8) Present recommendations, and
- (9) Give general commentary for increasing the success of future Bluebelt restoration projects.

6.2.48 If required by the Commissioner, the Engineer will perform the following services in connection with the Envision™ Rating System:

- (1) The Engineer must, as part of its personnel for the Project, provide an Envision Sustainability Professional (“ENVSP”) without additional fee or other compensation.
- (2) The Engineer will assign its certified 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.
- (3) 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.
- (4) 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.
- (5) 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.

6.2.49 Perform such other Project related services as may from time to time be directed by the Commissioner.

6.3 REI Services During Post Construction Phase: The services to be provided by the Engineer during the Post-Construction Phase shall include without limitation the services set forth below. All post construction services set forth below must be completed by the Engineer within ninety (90) days after Substantial Completion of the construction work for the Project, unless otherwise authorized by the Commissioner.

6.3.1 Final Payment Package: The final payment package shall be submitted to the Commissioner within one (1) month after the date of final inspection of the construction contract.

6.3.2 Contract Cost Summary/Close-out Report: During the performance of the work, the Engineer shall keep labor, equipment and material use (“Time & Material” or “T&M”) records to be used to report on the T&M used for every major facet of the work. The items of work shall 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, the Engineer shall submit to the Commissioner four (4) printed copies of a contract T&M summary/close-out report summarizing these construction activities. In addition, the Engineer shall 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 shall include without limitation the items set forth below:

- (a) Summary of the average time per unit quantity expended to perform such work and shall 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 shall 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.

- 6.3.3 The Engineer must file a timely “Notice of Termination” with DDC Office of Environmental and Geotechnical Services (OEGS) after completion of all Project work and upon stabilization of all measures.
- 6.3.4 Record “As-Built” Drawings: The Engineer shall prepare and submit all record “as-built” drawings for the Project. The record drawings shall accurately show all items and components of the work installed pursuant to the construction contract(s). Such record drawings shall be signed, stamped and sealed by a Professional Engineer. Such record drawings shall be in accordance with DDC standards and requirements, as set forth in Exhibit E.
- 6.3.5 Project Records: Upon completion of the required construction work for the Project, the Engineer shall 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; (5) if applicable, final sketches, white cards, yellow cards, assessment card, as required by the Commissioner and in accordance with standard DDC procedures; (6) all records with respect to payment, including monthly and final estimates of quantities; (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) Upon completion of the Project, the Engineer must produce all Project records and files in an electronic format, accessible and viewable to the Commissioner. The Project records and files must be organized following the industry best practice, and as directed by the Commissioner.

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

- 6.4.1 No Reimbursable Services shall be provided by the Engineer, or reimbursed hereunder, unless expressly authorized in a written directive from the Commissioner. For Reimbursable Services in excess of \$150, such written authorization must be provided in advance of the expenditure.
- 6.4.2 The Engineer shall utilize the method of procurement directed by the Commissioner. If so directed, the Engineer shall conduct a competitive bid and/or proposal process for the specified Reimbursable Service. In general, such competitive process will be required if the cost of the specified Reimbursable Service exceeds \$20,000.
- 6.4.3 The Engineer shall utilize the form of payment directed by the Commissioner. Payment for Reimbursable Services shall be in accordance with one of the following methods: (a) lump sum; (b) unit price, or (c) actual cost; except for long distance travel, as set forth in Article 7.
- 6.4.4 Reimbursable Services shall be such services determined by the Commissioner to be necessary for the Project, and may include, without limitation, the services set forth below.
- (a) Printing of contract documents
 - (b) Express mail postage, except as otherwise provided in Article 6.1.3 and excluding mail from the Engineer’s main or home office to the Field Office
 - (c) Laboratory services for detailed testing of materials and items of work
 - (d) Purchase of long lead items for the construction work
 - (e) Long distance travel. In the event the Engineer is directed in advance in writing by the Commissioner to provide services which require long distance travel, the Engineer shall be reimbursed for expenses incurred in connection with such long distance travel. Long distance travel means travel which is in excess of 75 miles from whichever of the following is closer to the destination: (1) Columbus Circle, or (2) the Engineer’s home office. Reimbursement for long distance travel expenses shall be as set forth in Article 7. Long distance travel shall not include travel expenses for the Engineer and/or any Subconsultants that are not located in New York City or its vicinity.
 - (f) Services of Corrosion Control Specialist for water main projects.
 - (g) Fees in connection with obtaining Envision™ certification for the Project.

(h) Any other services, determined by the Commissioner to be necessary for the Project.

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

6.5 Communications in Writing:

- 6.5.1 All recommendations and communications by the Engineer to the Commissioner that will affect the scheduled substantial completion and/or cost of the Project shall be made or confirmed by it in writing. The Commissioner may also require other recommendations and communications by the Engineer 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) shall be made directly to the Commissioner, unless otherwise directed by the Commissioner. After approval by the Commissioner, the Engineer shall issue instructions directly to the contractor(s).
- 6.5.2 The Engineer will institute written policies and procedures to ensure that Project decisions and directions on administrative matters that arise routinely throughout the Project, between the Engineer and the City and between the Engineer and construction contractor(s), are captured and contemporaneously recorded by the Engineer. 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 Engineer will maintain such memoranda as Project records and will ensure that such documents are saved electronically in searchable form, appropriately labeled, dated, and tagged.

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

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

6.7 Patented and Proprietary Items: The Engineer shall 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.

6.8 Construction Management Software:

- 6.8.1 The Engineer must procure, activate, and maintain for the Project a construction management software ("CMS") system, such as Procore, Kahua, or Autodesk, as directed by the Commissioner. The Engineer must secure CMS licenses necessary to accommodate the DDC Project team, construction contractors, and any additional parties as directed by the Commissioner. The subscription to the CMS system must be active from the issuance of notice to proceed for the construction work through Final Acceptance of the Project. The Engineer must ensure continuous operation and accessibility of the CMS for all authorized users. All costs associated with the procurement, maintenance, and support of the CMS license(s) are non-reimbursable as set forth in Article 6.1.3.

6.8.2 Technology Requirements for CMS:

(a) Hosting:

1. If DDC has its own instance/domain for the CMS, the CMS must be hosted exclusively within DDC's instance/domain. The Engineer must ensure that any data or system components associated with the CMS remain within the confines of the DDC's domain, thereby ensuring data security, privacy, and compliance with organizational policies and regulations.
2. If DDC does not have its own instance/domain of the selected CMS, the Engineer must host the CMS within a dedicated instance/domain exclusive to the Project. All data and system components associated with the CMS must remain within this specific domain. The Engineer is required to regularly, including upon Project Substantial Completion and Final Acceptance, extract and upload all Project documents to DDC's cloud database, adhering to DDC's standards. Upon Commissioner's request, the Engineer must transfer the Project instance/domain to DDC.

(b) Operations and Security of the CMS:

1. The Engineer must maintain CMS's smooth operation, address system issues quickly, provide necessary support, and enforce stringent security measures for data confidentiality, user authentication, and strict password policies.

6.8.3 CMS Configuration and Administration:

- (a) The Engineer must configure the CMS to align with Project and DDC requirements, which include initializing and customizing aspects, such as modules and functionalities. Furthermore, the Engineer must provide orientation to all Project team members on the effective use of the CMS.
- (b) The Engineer must offer technical support, leveraging its CMS expertise to ensure optimal operation aligned with DDC's interests, from initiation to Project close-out.

6.8.4 Workflow Management and Team Collaboration:

- (a) The Engineer is responsible for establishing and managing construction workflows in the CMS, including approval processes and task management, while also aiding DDC teams in leveraging the CMS for construction management.

6.8.5 Data Ownership:

- (a) In accordance with Article 6.6, all Project data, including but not limited to documents, drawings, specifications, schedules, reports, and any other information generated or collected through the use of the CMS, are the exclusive property of the City.

ARTICLE 7 - Payment Terms and Conditions

7.1 Total Payments

- 7.1.1 Total Payments: Total payments for all services performed and all expenses incurred pursuant to this Agreement shall not exceed the amount set forth in Exhibit A.
- 7.1.2 Task Orders: The Task Order shall specify an overall Not to Exceed amount for the services to be performed. Such overall Not to Exceed amount shall be broken down into the following: (1) Allowance for Staffing Expenses, (2) Allowance for Record Drawings, and, if applicable, (3) Allowance for Reimbursable Services. The Allowance for Staffing Expenses shall be further broken down into an amount for each of the following phases: Construction and Post Construction.
- 7.1.3 Allowance Amounts: 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. Notwithstanding the specific

amounts allocated for allowances, as set forth in Task Orders issued hereunder, the Commissioner may, by issuance of a Supplementary Task Order to the Engineer, reallocate such specific allowance amounts.

- 7.1.4 **Guaranteed Minimum:** In the event the Engineer is not issued any Task Orders hereunder and the Engineer has, throughout the term of the Contract, submitted reasonable Proposals for specific Projects, the City agrees to pay, and the Engineer agrees to accept, a fee of \$2,500, payable at the termination of the Contract. The Engineer 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 shall be deemed executory only to the extent of the moneys appropriated and available for the purpose of the Agreement and no liability or account thereof shall be incurred beyond the amount of such moneys. It is therefore understood that neither this Agreement nor any representation by any public employee or officer creates any legal or moral obligation to request, appropriate or make available moneys for the purpose of this Agreement.

7.2 **Staffing Expenses**

- 7.2.1 **General:** The Task Order shall specify an Allowance for Staffing Expenses. Such allowance is provided for payment of the Engineer's staffing expenses for those individuals who have been assigned to the Project and are identified in the Staffing Plan approved by the Commissioner pursuant to Article 5 (the "Assigned Personnel"). Such allowance shall be broken down into amounts for the following phases: Construction and Post Construction.
- 7.2.2 **Limitations on Payment:** Payment for staffing expenses is subject to the limitations set forth below.
- (a) **Inclusion in Staffing Plan:** The Engineer shall not be entitled to payment for any individual not included in the approved Staffing Plan. Each specific individual identified in the approved Staffing Plan shall be considered an "Assigned Personnel" for the purpose of the Engineer's entitlement to payment for services performed by such individual.
 - (b) **Project Executive:** The Engineer shall not be entitled to payment for the services of the Project Executive. All compensation for the Project Executive is deemed included in the Multiplier.
 - (c) **Principal:** The Engineer shall not be entitled to payment for a principal's time performing oversight or management duties. This prohibition on payment for a principal's time shall not apply if the following criteria are met: (1) such principal is qualified to perform services in accordance with one of the titles set forth in Exhibit C, and (2) such principal is included in the approved Staffing Plan for such title.
- 7.2.3 **Payment:** For any week during which an Assigned Personnel performs REI services for the Project, payment to the Engineer for such employee's services for that week shall be calculated as follows: Multiply the amount set forth in paragraph (a) by the number set forth in paragraph (b), and then multiply the result by the Multiplier for Overhead and Profit set forth in Exhibit A; provided, however, the Multiplier shall **NOT** apply to any increase in the Assigned Personnel's Direct Salary Rate per hour for services performed during other than regular business hours.
- (a) Assigned Personnel's Direct Salary Rate per hour, determined and approved in writing by the Commissioner in accordance with the provisions set forth below. In the event the Engineer receives written authorization from the Commissioner to have an Assigned Personnel perform services during other than regular business hours, the employee's Direct Salary Rate per hour may be subject to an increase, as provided below.
 - (b) Total number of hours set forth on time sheets completed by the Assigned Personnel for the week(s) in question during which the Assigned Personnel actually performed services for this Project. This total number of hours shall **NOT** include the following: (1) any hours the Assigned Personnel spent commuting and/or traveling; (2) any non-billable hours, as defined below; (3) any hours during which the Assigned Personnel performed services for any other project; (4) any hours the Assigned Personnel spent performing services for this Project for which the Engineer is not entitled to compensation, and (5) any non-regular business hours, unless otherwise authorized in advance, in writing by the Commissioner.
 - (c) Non-billable hours shall be defined as any hours set forth on time sheets completed by the Assigned Personnel which have been allocated to any category or function other than services performed for the

Project. Non-billable hours shall include without limitation: (1) compensated absence time, including without limitation vacation time, sick time, personal time and holidays; (2) performance of administrative tasks, or (3) any other time keeping category consistent with standard accounting practices.

7.2.4 Equitable Reduction: The amount of payment to the Engineer for services performed for the Project by an Assigned Personnel, calculated as set forth above, shall be subject to an equitable reduction if, for the week during which an Assigned Personnel performed services for the Project, the total number of hours for which the Assigned Personnel was actually paid by the Engineer for that week, less any non-billable hours, is less than the total number of hours actually billed by the Engineer to all entities for the Assigned Personnel's services for that week, including the number of hours billed for the Project. In such event, the amount of payment to the Engineer for services performed by an Assigned Personnel for the week in question, calculated as set forth above, shall be reduced by multiplying such amount by the following: the fractional number resulting from the division of the number set forth in paragraph (a) below by the number set forth in paragraph (b).

- (a) Total number of hours for which the Assigned Personnel was actually paid by the Engineer for the week in question, less any non-billable hours, as defined above.
- (b) Total number of hours actually billed by the Engineer to all entities for the Assigned Personnel's services for the week in question, including the number of hours billed for the Project.

7.2.5 Direct Salary Rates: Direct Salary Rates per hour for each Assigned Personnel shall be determined and approved in writing by the Commissioner in accordance with the terms and conditions set forth below.

- (a) For each Assigned Personnel, the Engineer shall submit such personnel's actual annual direct salary, as defined below. In addition, the Engineer shall submit any records or documentation requested by the Commissioner to verify the Assigned Personnel's actual annual direct salary, including without limitation, the Engineer's payroll register for the past twelve (12) months.
 - (1) An Assigned Personnel's actual annual direct salary shall be the salary amount directly payable to such personnel on an annual basis and shall **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.
 - (2) To compute an Assigned Personnel's actual annual direct salary on an hourly basis, the Assigned Personnel's actual annual direct salary, as defined in subparagraph (1) above, shall be divided by 2080.
- (b) For each Assigned Personnel, the Commissioner shall determine and approve in writing the Direct Salary Rate per hour to be paid for such personnel. Unless otherwise authorized in writing by the Commissioner, an Assigned Personnel's Direct Salary Rate per hour shall be the **LESSER** of (1) the Assigned Personnel's actual annual direct salary, computed on an hourly basis in accordance with paragraph (a) (2) above, or (2) the Maximum Allowable Direct Salary Rate per hour for the Assigned Personnel's title set forth in Exhibit C.
- (c) Once determined and approved by the Commissioner in accordance with paragraph (b) above, the Assigned Personnel's Direct Salary Rate per hour shall not be eligible for any increase whatsoever, except for the increase described in Article 7.2.6 below. Any such increase must be approved in writing by the Commissioner.
- (d) The Direct Salary Rate per hour for an Assigned Personnel, determined and approved in accordance with this section, may be adjusted in accordance with Article 7.2.7 below, in the event the Engineer receives written authorization from the Commissioner in the particular instance to have the Assigned Personnel perform services during other than regular business hours.

7.2.6 Increases in Direct Salary Rates: An Assigned Personnel's Direct Salary Rate per hour, determined and approved by the Commissioner, shall be subject to increases on a yearly basis, subject to the limitations set

forth below. The first such increase shall be made one (1) year after the Assigned Personnel began working on the Project under the Task Order, following DDC approval of the addition of that Assigned Personnel to the Staffing Plan ("Start Date"). Thereafter, for the remaining duration of the Task Order, increases in the Direct Salary Rate(s) for each Assigned Personnel shall be made on a yearly basis, on the anniversary date of that Assigned Personnel's Start Date.

- (a) Any increase in the Direct Salary Rate(s) shall be based on whatever increase may have occurred for the prior year only in the Employment Cost Index for Professional, Scientific, and Technical Services, published by the U.S. Department of Labor, Bureau of Labor Statistics (the "Index"), as determined by the Engineering Audit Office ("EAO"). If for the prior year, EAO determines that the Index showed an increase, the Direct Salary Rate(s) shall be increased. If, for the prior year, EAO determines that the Index declined or showed no increase, the Direct Salary Rate(s) shall remain unchanged. Any increase in the Direct Salary Rate(s) shall be applied on a prospective basis only. An exception is provided for the title of Junior Engineer, as set forth in subparagraph (e) below.
- (b) Throughout the base term of the Contract, as set forth in Exhibit A, increase(s) to an Assigned Personnel's Direct Salary Rate per hour shall only be permitted to the extent such increase(s) do not result in a Direct Salary Rate per hour that exceeds the Maximum Allowable Direct Salary Rate per hour for the personnel's title, as set forth in Exhibit C, unless otherwise authorized by the Commissioner in writing. Increase(s) to an Assigned Personnel's Direct Salary Rate per hour shall not be permitted if such increase(s) would result in a Direct Salary Rate per hour that exceeds the Maximum Allowable Direct Salary Rate per hour for the employee's title, as set forth in Exhibit C, unless otherwise authorized by the Commissioner in writing.
- (c) The Maximum Allowable Direct Salary Rates per hour set forth in Exhibit C shall apply to the four - year base term of the Contract. If the base term of the Contract is extended and/or renewed, the City may issue a change order to the Engineer revising the Maximum Allowable Direct Salary Rates per hour. If no such change order is issued, the Maximum Allowable Direct Salary Rates per hour applicable to the base term shall remain in effect throughout the extension and/or renewal term.
- (d) The Engineer shall not be entitled to payment of any increase in an Assigned Personnel's Direct Salary Rate per hour unless the total amount of such increase is actually paid in full by the Engineer to the Assigned Personnel, as determined by the Commissioner. The Engineer shall submit its payroll register to verify the amount actually paid by the Engineer to the Assigned Personnel.
- (e) Notwithstanding anything to the contrary set forth above, for the title of Junior Engineer only, the increase in the Assigned Personnel's Direct Salary Rate per hour that occurs one (1) year after the Start Date may be an increase of up to 25%; provided, however, such increase shall only be permitted to the extent that it does not result in a Direct Salary Rate per hour that exceeds the Maximum Allowable Direct Salary Rate per hour for the title of Junior Engineer, as set forth in Exhibit C, unless otherwise authorized by the Commissioner in writing. In addition, such increase shall be subject to the conditions set forth in subparagraph (d) above. Any subsequent increases shall be in accordance with the Index, as set forth above.

7.2.7 Night Differential / Overtime: The Commissioner may authorize the Engineer in advance in writing to have an Assigned Personnel perform services during other than regular business hours. In the event of such authorization, the Engineer shall be entitled to payment of a premium or increase in the Assigned Personnel's Direct Salary Rate per hour for such services, subject to the limitations set forth below:

- (a) The Engineer's policy is subject to approval by the Commissioner in accordance with Article 5.
- (b) The premium for Night Differential shall not exceed ten (10%) percent of the Assigned Personnel's Direct Salary Rate per hour, and the premium for Overtime shall not exceed fifty (50%) percent of such Direct Salary Rate.
- (c) The Engineer shall not be entitled to payment of any premium unless the total amount of such premium is actually paid in full by the Engineer to the Assigned Personnel, as evidenced by the Engineer's payroll register.
- (d) The premium payment shall not be subject to any multiplier whatsoever.

7.2.8 Representations: With respect to staffing expenses, the Engineer covenants and represents the following: (1) it shall 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 shall ensure that staffing expenses do not exceed the Allowance for Staffing Expenses. 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 **Multiplier:** The Multiplier for Overhead and Profit is set forth in Exhibit A. Such Multiplier shall be deemed to include the items listed below:

7.3.1 Profit

7.3.2 Overhead: Overhead shall include all costs and expenses incurred by the Engineer in connection with providing services for the Project, including expenses for management and administration. The Engineer agrees to make no claim for overhead expenses in excess of the Multiplier provided for herein. Overhead shall include, without limitation, the items set forth below:

- (a) All expenses for compensation paid to personnel of the Engineer (other than personnel identified in the approved Staffing Plan). Such other personnel of the Engineer shall include without limitation all officers, principals, employees and personnel of the Engineer, serving in whatever capacity, including any Project Executive(s). Compensation for such other personnel is deemed included in the Multiplier. Compensation shall include without limitation: (1) wages and/or salaries; (2) all payments mandated by law, including without limitation, Social Security and Medicare taxes, insurance (Worker's Compensation, Employers Liability, Unemployment); (3) employer contributions, if any, to retirement plans, including without limitation pension and/or deferred compensation plans; (4) all payments for compensated absence time, including without limitation vacation time, sick time, personal time and holidays, and (5) costs for any and all other fringe and/or supplemental benefits.
- (b) All expenses for compensation paid to engineering personnel identified in the approved Staffing Plan that are in excess of compensation for such personnel payable hereunder. Compensation for such personnel shall include without limitation the items listed in item (a) above.
- (c) All expenses in connection with the performance of services, including without limitation: (1) expenses for non-reimbursable services, as set forth in Article 6, (2) meals, and (3) lodging.
- (d) All expenses for home office general facilities, including, but not limited to, rental cost or depreciation factor, light, heat and water, telephone charges, including all charges for calls to the job site and DDC (except for long distance calls to other locations as specifically required by the Commissioner), sales, accounting fees and bookkeeping expenses, electronic data processing services, including programming and rental equipment, dues and subscriptions, stationery, printing, copying, postage, and any other office expenses or overhead costs, except as otherwise expressly provided in this Agreement.
- (e) All expenses for applicable taxes of any kind whatsoever, including without limitation, federal, state and local income tax and any franchise or other business taxes.
- (f) All expenses for insurance coverage determined by the Engineer to be necessary for the performance of all required services hereunder, including without limitation: (1) all insurance required by this Contract; (2) all insurance required by law, and (3) all other insurance maintained by the Engineer, including without limitation, burglary and theft, general fidelity and payroll insurance.
- (g) All expenses in connection with losses due to theft or robbery sustained by Engineer.
- (h) All expenses in connection with fixed capital or moneys borrowed, including interest.
- (i) All expenses incurred by the Engineer with respect to routine legal services for the firm.
- (j) All management, administrative or overhead expenses of any kind whatsoever, including such expenses in connection with providing Reimbursable Services.

7.4 **Record Drawings**

7.4.1 **General:** The Task Order shall specify an Allowance for Record Drawings. Such allowance is established for payment for the final record drawings for the Project.

7.4.2. **Limitations on Payment:** Payment for the final record drawings will be a on lump sum basis, and is subject to the limitations set forth below and in Exhibit E.

- (a) **Timing of Payment:** Payment shall be made when the final record drawings are approved ad accepted by the Commissioner. No partial payments will be made.
- (b) **Prevailing Wages:** The Engineer must comply with the prevailing wage requirement as set forth in Article 8.1

7.5 Reimbursable Services

- 7.5.1 General: In the event the Commissioner directs the Engineer to provide Reimbursable Services, the provisions set forth below shall apply. In such case, the Task Order shall 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 Engineer shall comply with all terms and conditions set forth in Article 6, including utilization of the method of procurement and form of payment directed by the Commissioner. If so directed, the Engineer shall conduct a competitive bid and/or proposal process for the specified Reimbursable Service. In general, such competitive process will be required if the cost of the specified Reimbursable Service exceeds \$20,000.
- 7.5.2 Payment: Payment for Reimbursable Services (except for long distance travel) shall be as set forth below.
- (a) If payment is on a lump sum basis, payment shall be based upon the percentage of completion.
 - (b) If payment is on a unit price basis, payment shall be based upon the number of completed units.
 - (c) If payment is based on actual cost, payment shall be the actual and reasonable cost, as indicated by receipted bills or any other data required by the Commissioner.
- 7.5.3 Long Distance Travel: Payment for long distance travel, as set forth in Article 6, shall be in accordance with the normal travel allowances of the City of New York for its own employees as provided in Comptroller's "Directive #6, Travel, Meals, Lodging and Miscellaneous Agency Expenses."
- 7.5.4 No Mark Up: The Engineer shall 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 Multiplier.
- 7.5.5 In the event the Commissioner directs the Engineer to provide Reimbursable Services and such Reimbursable Services require the Engineer, through its personnel, to provide technical or professional services, the Engineer shall be paid for staffing expenses for its personnel through the Allowance for Staffing Expenses.

7.6 Requisitions for Payment

- 7.6.1 Requisitions for payment may be submitted as the work progresses, but not more often than once a month. Requisitions shall be in the authorized form and shall set forth the services performed by the Engineer and the total amount of partial payment requested. The total amount of partial payment requested shall be broken down into the following categories: (1) Staffing Expenses, and, if applicable, (2) Reimbursable Services. The Engineer shall submit one original and three (3) copies of each requisition for payment.
- 7.6.2 Requisitions for payment shall be accompanied by the following:
- (a) Project Progress Report: The Engineer shall submit a statement indicating the percentage of completion of all required work for the Project.
 - (b) Staffing Expenses: For any period for which the Engineer is requesting payment for staffing expenses for an Assigned Personnel, the Engineer shall 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) Assigned Personnel's Direct Salary Rate per hour determined and approved by the Commissioner and included in the Staffing Plan.
 - (4) Multiplier for Overhead and Profit set forth in Exhibit A.
 - (5) Number of hours worked each day by the Assigned Personnel for the week(s) in question. The number of hours per day shall be broken down to indicate the number of regular business hours and the number of non-regular business hours. The Multiplier shall not apply to any increase in the Assigned Personnel's Direct Salary Rate per hour for authorized services performed during other than regular business hours.
 - (6) Detailed time sheets completed by the Assigned Personnel for the week(s) in question. Such detailed time sheets shall reflect all hours of service 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 Engineer is not entitled to compensation, and (5) non-regular business hours, if any.

- (7) Copy of the Engineer's payroll register for the week(s) in question reflecting the amount actually paid by the Engineer to the Assigned Personnel for that week.
- (8) Applicable only if services were performed during other than regular business hours: (i) copy of authorization by Commissioner for such services, and (ii) copy of Commissioner's approval of the Engineer's policy regarding payment of a premium for services performed during other than regular business hours.

- (c) Record Drawings: For payment for final record drawings, the Engineer shall submit the documentation set forth below:

- (1) Letter of Acceptance from the Commissioner accepting the final record drawings for the Project.

- (d) Reimbursable Services: For any period for which the Engineer is requesting payment for Reimbursable Services, the Engineer shall submit the documentation set forth below:

- (1) Description of the Reimbursable Service the Engineer 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, receipted bills or any other data required by the Commissioner.

7.6.3 All payments hereunder are contingent upon the Engineer's satisfactory performance of the required services. The Engineer shall not be entitled to any compensation for services or reimbursement for costs or expenses with respect to any such obligations not properly performed by it hereunder. The Commissioner is authorized to make deductions for any services performed hereunder which the Commissioner determines to be unsatisfactory.

ARTICLE 8 - Labor Law Requirements

8.1 The Engineer 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.

8.1.1 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.

ARTICLE 9 - Time Provisions

9.1 Term of the Contract: The Contract shall commence on the date set forth in the Notice of Contract Start Date issued upon registration of the Agreement, and shall remain in effect for the period set forth in Exhibit A. The Commissioner may, for good and sufficient cause, extend the term of this Contract for a cumulative period not to exceed one year from the date of expiration.

9.2 Task Order for the Project: The Task Order for the Project shall commence as of the date of issuance and shall remain in effect until (1) Final Acceptance by the Commissioner of all required construction work for the Project, and (2) completion of all required services for the Project. The time frame for completion of all required construction work and all required services for the Project shall be set forth in the Task Order.

9.3 Responsibility for Delay: In the event the Project is not completed within the timeframe set forth in the Task Order, the Commissioner shall prepare a report analyzing the causes of the delay and determining responsibility for the same.

9.3.1 If the report indicates that the Engineer, as a result of its actions or inactions, is responsible for the delay, or any portion thereof, the Commissioner shall deduct, from any amount due and owing to the Engineer under this Contract, the total amount of staffing expenses paid to the Engineer for the period of the delay, or any portion thereof, for which the Commissioner determines the Engineer is responsible. For the purpose of this deduction, staffing expenses means the Direct Salary Rates for all Assigned Personnel times the Multiplier for Overhead and Profit. If the amount due and owing to the Engineer under this Contract is less than the total amount of the deduction described herein, the Engineer shall be liable for and agrees to pay the difference upon demand by the Commissioner.

9.3.2 If the Engineer files a dispute regarding its responsibility for the delay, or any portion thereof, the Engineer 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.

9.3.4 The following shall have no relevance to a determination by the Commissioner that the Engineer 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 timeframe for completion. Any such approval(s) by the Commissioner shall not be referred to or offered in evidence by the Engineer or its attorneys in any dispute or proceeding regarding the Engineer's responsibility for the delay.

9.4 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 shall remain in effect for purposes of such Task Order through the time frame for completion of the Project, as set forth in the Task Order or any Supplementary Task Order required to complete the Project. For the purpose of this provision, the term of the Contract means whichever of the following is the latest and actual final period of the Contract: (1) the term of the Contract, (2) the renewal term of the Contract (if any), or (3) the extended term of the Contract.

9.5 Impact on Multiplier: In the event the term of the Contract is extended or renewed, the Multiplier set forth in Exhibit A shall remain in full force and effect during such extension or renewal of the contract term.

ARTICLE 10 - Services Furnished by the City

10.1 The City, through the personnel of DDC, or by retaining the services of an architect or consultant, or through provisions in the construction contract(s), shall furnish for the use of the Engineer pile driving inspection, topographic surveys, inspection of concrete materials at mix plant and at job-site and such other services as the Commissioner, in the Commissioner's sole discretion, deems appropriate.

10.2 At the request of the Engineer, the City shall furnish, at its own expense, off-site inspections and tests of steel, cement asphalt aggregates, concrete sewer and drainage pipe, and such other materials.

10.3 The Engineer shall be entitled to the use and occupancy of the contractor's Field Office with associated services as provided for in the standard DDC specifications during the progress of the construction contract(s) and to the completion and acceptance of the work by the Commissioner.

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

ARTICLE 11 - Participation by Minority-Owned and Women-Owned Business Enterprises in City Procurement

ARTICLE I. M/WBE PROGRAM

Section 6-129 of the Administrative Code of the City of New York ("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.

References to MBEs or WBEs shall also include such businesses certified pursuant to the executive law where credit is required by section 311 of the New York City Charter or other provision of law.

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 1 to this Contract (see Page 1, Line 1 Total Participation Goals) or will be set forth on Schedule B, Part 1 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 DSBS 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 2 (see Pages 1-2) 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; (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; as well as the name, addresses, and telephone numbers of the M/WBE subcontractors if required by the solicitation; and (d) the prospective contractor's required certification and affirmations. 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 Individually Registered Task Orders, Part 2 (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 2 (see Pages 1-2) 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; (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; as well as the name, addresses, and telephone numbers of the M/WBE subcontractors if required by the solicitation; and (d) the prospective contractor's required certification and affirmations. 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 2). A SCHEDULE B SUBMITTED BY THE BIDDER/PROPOSER WHICH DOES NOT INCLUDE THE VENDOR CERTIFICATION AND REQUIRED AFFIRMATIONS WILL BE DEEMED TO BE NON-RESPONSIVE, UNLESS A FULL WAIVER OF THE PARTICIPATION GOALS IS GRANTED (SCHEDULE B, PART 3). 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 multi-year 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 city-certified 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) 513-6451, or by visiting or writing DSBS at One Liberty Plaza, New York, New York, 10006, 11th 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 3 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 by email at MWBEModification@ddc.nyc.gov. Full or partial waiver requests that are received later than seven (7) calendar days prior to the date and time the bids, proposals, or Task Orders are due may be rejected as untimely.** Bidders, proposers, or contractors, as applicable, who have submitted timely 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 the Contractor was required to identify in its bid or proposal the MBEs and/or WBEs they intended to use in connection with the performance of the Contract or Task Order, substitutions to the identified firms may only be made with the approval of the Agency, which shall only be given when the Contractor has proposed to use a firm that would satisfy the Participation Goals to the same extent as the firm previously identified, unless the Agency determines that the Contractor has established, with appropriate documentary and other evidence, that it made reasonable, good faith efforts. In making such

determination, the Agency shall require evidence of the efforts listed in Section 11(a) above, as applicable, along with any other relevant factors.

13. 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.

14. 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.

15. 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

The Contractor shall take notice that, if this solicitation requires the establishment of a 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.

1. Pursuant to DSBS rules, construction contracts that include a requirement for a 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.

2. 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

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

4. 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 PASSPort as caution data.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

EXHIBIT A – Type S
(FOR USE BY FIRMS DESIGNATED AS “Type S” ONLY)

CONTRACT INFORMATION

- Division: Division of Infrastructure

- Projects: City-Funded Infrastructure construction projects, including without limitation projects involving highways, sewers and/or water mains.
Estimated REI Staffing Amount (excluding the Multiplier): \$[to be inserted from the RFP]

- Boroughs: City Wide – All Five Boroughs

- Total Amount: Not to Exceed: \$[to be inserted from the RFP]

- Contract Time Frame:
 - Contract Term: [to be inserted from the RFP] consecutive calendar days (“ccds”)
 - Renewal of Contract Term: [to be inserted from the RFP] consecutive calendar days
Increase up to \$[to be inserted from the RFP]

- Insurance Requirements: General Provisions governing the Contract, including insurance coverage the Engineer and its Subconsultants are required to provide, are set forth in Appendix A. The amounts of insurance, subject to Article 7 of Appendix A, are set forth below in Schedule A. The City reserves the right to increase or change the insurance requirements for individual Task Orders.

- Subcontracting: Subcontracting is only permitted as set forth below. Provisions regarding subcontracting, including provisions requiring the approval of subcontractors, are set forth in Appendix A. Appendix A is included as an Exhibit to the Contract.
 - Key Personnel: The Engineer is permitted to enter into any subcontract(s) for the services of Key Personnel, except with respect to the Project Executive and the Resident Engineer. The Project Executive and the Resident Engineer must be employees of the Engineer
 - Non-Key Personnel: The Engineer is permitted to enter into subcontracts for the services of non-Key Personnel.
 - Reimbursable Services: The Engineer is permitted to enter into subcontracts for Reimbursable Services

- Multiplier: _____

EXHIBIT A – Type M
(FOR USE BY FIRMS DESIGNATED AS “Type M” ONLY)

CONTRACT INFORMATION

- Division: Division of Infrastructure
- Projects: City-Funded Infrastructure construction projects, including without limitation projects involving highways, sewers and/or water mains.
Estimated REI Staffing Amount (excluding the Multiplier): \$[to be inserted from the RFP]
- Boroughs: City Wide – All Five Boroughs
- Total Amount: Not to Exceed: [to be inserted from the RFP]
- Contract Time Frame:
 - Contract Term: [to be inserted from the RFP] consecutive calendar days (“ccds”)
 - Renewal of Contract Term: [to be inserted from the RFP] consecutive calendar days
Increase up to \$[to be inserted from the RFP]
- Insurance Requirements: General Provisions governing the Contract, including insurance coverage the Engineer and its Subconsultants are required to provide, are set forth in Appendix A. The amounts of insurance, subject to Article 7 of Appendix A, are set forth below in Schedule A. The City reserves the right to increase or change the insurance requirements for individual Task Orders.
- Subcontracting: Subcontracting is only permitted as set forth below. Provisions regarding subcontracting, including provisions requiring the approval of subcontractors, are set forth in Appendix A. Appendix A is included as an Exhibit to the Contract.
 - Key Personnel: The Engineer is permitted to enter into any subcontract(s) for the services of Key Personnel, except with respect to the Project Executive and the Resident Engineer. The Project Executive and the Resident Engineer must be employees of the Engineer.
 - Non-Key Personnel: The Engineer is permitted to enter into subcontracts for the services of non-Key Personnel.
 - Reimbursable Services: The Engineer is permitted to enter into subcontracts for Reimbursable Services
- Multiplier: _____

EXHIBIT A – Type L
(FOR USE BY FIRMS DESIGNATED AS “Type L” ONLY)

CONTRACT INFORMATION

- Division: Division of Infrastructure
- Projects: City-Funded Infrastructure construction projects, including without limitation projects involving highways, sewers and/or water mains.
Estimated REI Staffing Amount (excluding the Multiplier): \$[to be inserted from the RFP]
- Boroughs: City Wide – All Five Boroughs
- Total Amount: Not to Exceed: \$[to be inserted from the RFP]
- Contract Time Frame:
 - Contract Term: [to be inserted from the RFP] consecutive calendar days (“ccds”)
 - Renewal of Contract Term: [to be inserted from the RFP] consecutive calendar days
Increase up to \$[to be inserted from the RFP]
- Insurance Requirements: General Provisions governing the Contract, including insurance coverage the Engineer and its Subconsultants are required to provide, are set forth in Appendix A. The amounts of insurance, subject to Article 7 of Appendix A, are set forth below in Schedule A. The City reserves the right to increase or change the insurance requirements for individual Task Orders.
- Subcontracting: Subcontracting is only permitted as set forth below. Provisions regarding subcontracting, including provisions requiring the approval of subcontractors, are set forth in Appendix A. Appendix A is included as an Exhibit to the Contract.
- Key Personnel: The Engineer
 - is permitted to enter into any subcontract(s) for the services of Key Personnel, except with respect to the Project Executive and the Resident Engineer. The Project Executive and the Resident Engineer must be employees of the Engineer.
 - Non-Key Personnel: The Engineer is permitted to enter into subcontracts for the services of non-Key Personnel.
 - Reimbursable Services: The Engineer is permitted to enter into subcontracts for Reimbursable Services
- Multiplier: _____

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
<input checked="" type="checkbox"/> Workers' Compensation §7.02 <input checked="" type="checkbox"/> Disability Benefits Insurance §7.02 <input checked="" type="checkbox"/> Employers' Liability §7.02	Statutory amounts.
<input checked="" type="checkbox"/> Commercial General Liability §7.03(A)	<u>\$1,000,000.00</u> per occurrence <u>\$1,000,000.00</u> personal & advertising injury (unless waived in writing by the Department) <u>\$2,000,000.00</u> aggregate <u>\$0</u> products/completed operations Additional Insureds: 1. City of New York, including its officials and employees, and 2. _____ 3. _____
<input checked="" type="checkbox"/> Commercial Auto Liability §7.03(B) If vehicles are used in the provision of services under this Agreement, then the Engineer will maintain Commercial Automobile Liability insurance in the amount specified.	<u>\$1,000,000.00</u> per accident combined single limit If vehicles are used for transporting hazardous materials, the Engineer will provide pollution liability broadened coverage for covered vehicles (endorsement CA 99 48) as well as proof of MCS 90
<input checked="" type="checkbox"/> Professional Liability/Errors & Omissions §7.03(C)	Minimum for the Engineer: <u>\$1,000,000.00</u> per claim
<input type="checkbox"/> Crime Insurance §7.03(D)	\$_____ Employee Theft/Dishonesty \$_____ Computer Fraud

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

	\$_____ Funds Transfer Fraud \$_____ Client Coverage \$_____ Forgery or Alteration \$_____ Inside the Premises (theft of money and securities) \$_____ Inside the Premises (robbery or safe burglary of other property) \$_____ Outside the Premises \$_____ Money Orders and Counterfeit Money City of New York is a loss payee as its interests may appear
<input type="checkbox"/> Cyber Liability Insurance §7.03(E)	<i>Reserved</i>
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 	\$100 per day
Section 14.04 – Notice	
Department’s Mailing Address for Notices	Agency Head 30-30 Thomson Avenue Long Island City, Queens 11101
Engineer’s Mailing Address and Email Address for Notices	

EXHIBIT B: SUBCONSULTANTS AND KEY PERSONNEL

(A) **SUBCONSULTANTS:** The Subconsultants listed below were identified by Engineer in its Proposal for the Contract. No substitution of any Subconsultant shall be permitted unless approved by the Commissioner.

(B) **KEY PERSONNEL:** In its Proposal for the Contract, the Engineer identified various individuals who will provide services for the titles of Key Personnel listed below. The individuals identified by the Engineer, as well as their titles and qualifications, are set forth below. For any specific Project for which the Engineer is selected pursuant to this Contract, the Engineer expressly agrees to assign to such Project for its entire duration, for each title of Key Personnel required for the Project, one of the individuals identified below, unless otherwise approved in writing by the Commissioner.

Title	Name	Qualifications	
		NYS Professional License or Certification	Years of Experience
Project Executive:	<hr/>	<hr/>	<hr/>
	<hr/>	<hr/>	<hr/>
	<hr/>	<hr/>	<hr/>
Resident Engineer:	<hr/>	<hr/>	<hr/>
	<hr/>	<hr/>	<hr/>
	<hr/>	<hr/>	<hr/>
Assistant Resident Engineer:	<hr/>	<hr/>	<hr/>
	<hr/>	<hr/>	<hr/>
	<hr/>	<hr/>	<hr/>
Office Engineer:	<hr/>	<hr/>	<hr/>
	<hr/>	<hr/>	<hr/>
	<hr/>	<hr/>	<hr/>

EXHIBIT C

STAFFING REQUIREMENTS: TITLES AND MAXIMUM ALLOWABLE DIRECT SALARY RATES

STAFFING REQUIREMENTS: Staffing requirements are set forth below. Such staffing requirements specify the titles of personnel which the Engineer shall be required to provide, through its own employees and/or through its Subconsultants.

[TO BE INSERTED FROM THE PROPOSAL/RFP]

EXHIBIT D: MINIMUM REQUIREMENTS PER TITLE

- **Key Personnel:** The titles marked with an asterisk (*) are titles of Key Personnel. The names of various individuals identified for titles of Key Personnel, as well as their qualifications, are set forth in Exhibit B. For any title of Key Personnel, the minimum requirements per title shall 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 Exhibit B, or (2) the minimum requirements per title set forth below.
- **Other Personnel:** For all other titles of personnel, the minimum requirements per title are set forth below.

[TO BE INSERTED FROM THE RFP]

EXHIBIT E

RECORD “AS-BUILT” DRAWINGS

Revised May 2024

(A) **Record “As-Built” Drawings:** The Engineer must prepare and submit a complete set of record “as-built” drawings (hereinafter referred to as the “record drawings”) including final measurements. The record drawings must accurately show all items and components of the work installed pursuant to the construction contract(s), including without limitation:

- (1) highways, including pedestrian ramps, sidewalks, school safety, pedestrian safety, retaining walls, and pedestrian bridges,
- (2) water mains, including in-service sheets, field cards, tap cards and Trunk Main drawings,
- (3) seawalls, earthen embankments, interim and permanent flood protection measures,
- (4) sanitary and storm sewers (newly constructed, replaced or rehabilitated) including catch basins, seepage basins and trench restorations, house connections/reconnections, and pile details,
- (5) new structures,
- (6) utilities,
- (7) underground facilities, and construction that differs from that of the contract drawings.

Such record drawings must be signed, stamped and sealed by a Professional Engineer, and must be in accordance with the standards and requirements set forth in this Exhibit.

(B) **Time Frame for Preparation and Submission:**

- (1) Preliminary Record Drawings: The Engineer must complete and submit to DDC preliminary record drawings for review every three (3) months, upon construction work commencement, for projects with an anticipated duration of fewer than two (2) years. The Engineer must complete and submit to DDC preliminary record drawings for review every six (6) months, upon construction work commencement, for projects with an anticipated duration of two (2) or more years. A monthly report must be submitted to DDC showing the status of all preliminary record drawings.
- (2) Final Record Drawings: The initial submission of the final record drawings must be made within sixty (60) Days of Substantial Completion of the construction contract(s) for projects with a duration of fewer than two (2) years, and within ninety (90) Days for projects with a duration of two (2) or more years.

(C) **Payment:** Payment for the preparation of the record drawings will be on a lump sum basis. The lump sum payment includes all labor and expenses required to complete the record drawings, as described in this Exhibit E. No separate payment will be made for performing this work. The Lump Sum Amount will be as follows:

Construction Contract Award Price	Lump Sum Amount
\$5,000,000 or less	4% of Construction Contract Amount
\$5,000,001 to \$15,000,000	3% of Construction Contract Amount
\$15,000,001 to \$30,000,000	2% of Construction Contract Amount
\$30,000,000 or more	1% of Construction Contract Amount

The Lump Sum Amount will be paid when the final record drawings are approved and accepted by the Commissioner. No partial payments will be made on the Lump Sum Amount. In the Commissioner’s sole discretion, the Lump Sum Amount may be decreased or increased by the Commissioner to account for changes in the construction contract price.

The Engineer must comply with the prevailing wage requirements set forth in Article 8.1. Compliance with the prevailing wage requirements, including the provision of any and all necessary certified payrolls or other reports, is included in the Lump Sum Amount.

In the event the Commissioner directs the Engineer to provide additional copies of the record drawings in addition to the requirements set forth in Paragraph (D)(1) below, the Engineer will 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, pedestrian ramps, sidewalks, pedestrian/school safety, sewers, water mains, retaining walls and seawalls.

- (1) The Engineer must submit to DDC one complete set of record drawings on Mylar and a duplicate set on CD/DVD/USB(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, daily reporting with sketches, as well as the gathering of information necessary to prepare the preliminary record drawings and the final record drawings, must be completed contemporaneously and continuously throughout the progress of the construction 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. Surveys must be completed by licensed/authorized surveyors.
- (2) The record drawing must 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 for reference.
- (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 Engineer upon request. The Engineer must scan all sheets of the final approved record drawings (with all signatures) and save the cleaned images on CD/DVD/USB. The Engineer will 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 must be scanned to a separate folder titled as As-built. All drawings must be titled by drawing name. All pages of the record drawings must be stamped "As-Built". All record drawings files must be named according to the following naming convention:

Sample File name:
Project ID
Project Name
Drawing Number

SEQ001234_FlaggPl_001of100.dwg
(Project ID_Contract_Sheet###of###.dwg)

- (4) DVD/CD/USB: Two-(2) copies of the original DVD/CD/USB will be required per project. The CD/DVD/USB must 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 Engineer/Contractor Name.
 - (5) The Engineer will provide a printed Document Index and the electronic file of the same, including an abstract of the document content for the central project file.
 - (e) Reports and other primarily text documents (i.e., not drawings) must be submitted in an electronic document format (PDF) and must be text recognized/text searchable.
- (5) The title sheet for the record drawings must 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 preliminary record drawings must show in red, and final record drawings must show in bold line, 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 will apply to all record drawings for projects involving highways.
- (1) Record drawings and cut sheets must show all as-built grades, and slopes, including those which differ from grades/coordinates shown on the contract drawings for street improvement/widening, complex pedestrian ramp/sidewalks, school safety and pedestrian safety projects with contract drawings. Information regarding grades, coordinates, and any changes therein must be based upon a final survey prepared by the Engineer in reference to permanent bench marks.
 - (i) The Engineer must also complete and submit as-built drawing for street lights and traffic signals and Fire Department facilities work from the construction contractor(s) (or the contractor(s)' New York City Department of Transportation (DOT) approved subcontractor(s)). Such record drawings must be reviewed and co-signed by the Engineer's Professional Engineer and must be included with the final record drawing for the Project.
 - (2) For "when and where" pedestrian ramp, and school/pedestrian safety projects without contract drawings, the Engineer must prepare record drawings with required details; i.e. slopes showing compliance with the Americans with Disabilities Act (ADA) and the Public Right-Of-Way Accessibility Guidelines (PROWAG), drainage slopes in street, transition details, and elevations/coordinates if required by the Commissioner.
 - (3) Record drawings must conform to DOT Design Directive #83-S-5, except as modified herein. DDC will provide a copy of such directive and other requirements to the Engineer upon request.

- (4) There will be no erasures on the original record drawings. If revisions are necessary, the Engineer will 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.
- (5) Upon approval of the record drawings by DDC, two (2) complete sets of duplicate originals and two (2) sets of CD/DVD/USB(s) must 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 will apply to all record drawings for projects involving sewers. Sewer record drawings must 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. Information regarding grades of sewer and any changes therein will be based upon a final survey prepared by the Engineer in reference to permanent bench marks.

- (1) The record drawings must 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, (iv) pile detail profile; (v) lined/grout repairs; and (vi) 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 will not be shown on the record drawings. Any existing sewers or appurtenances that were abandoned and left in place must be so indicated on the record drawings.
- (3) For every sewer run between two manholes, the record drawings must 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 must show the following: (i) all house connections for both new and reconnections, including house numbers; (ii) locations of connections; (iii) risers, including height, (iv) spurs, measured from the nearest downstream manhole; and (v) details showing exact cover of connections below top of curb/edge of street and locations with two offset distances.
- (5) The record drawings must include catch basin inventory information with locations/measurements and private property storm sewer connection details with cover and location with two offset distances, 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 Engineer will also provide as-built drawing for street lights and traffic signal and Fire Department facilities work associated with sewer Projects from the construction contractor(s) (or contractor(s)' DOT-approved subcontractors(s)). Such record drawings must be reviewed and co-signed by the Engineer's Professional Engineer and must be included with the final record drawing for the Project.
- (7) For lining or guniting contracts, the record drawings will indicate type/method of lining, material used for lining/guniting with locations with MH numbers with any changes proposed by the construction contractor in method/material of lining and accepted by the Department.
- (8) The record drawings must 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 must obtain and utilize necessary data (i.e., previous as-built drawings, etc.) from the respective New York City Department of Environmental Protection (DEP) borough office.
- (9) Upon approval of the record drawings by DDC, one complete set of duplicate originals must 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/USB(s) for each project.
- (10) All sewer record drawings must include a separate title sheet which will be created or modified as needed to conform to format set by the Department. The sewer title page must 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 will apply to all record drawings for projects involving water mains.

- (1) The record drawings must show the following: (i) all new and existing distribution left in place, abandoned mains and trunk mains with geometry details; (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 and wet connection details. The record drawings must 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 must be made from curb lines or from the edge of the street or building line in case of a street without curb line. 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 must be made from final grades.
- (4) The Engineers must prepare in-service sheets and submit them to DEP on a monthly basis, tap cards and field cards as the project progresses. The Engineer will request from DEP current sample field cards.
- (5) The record drawings must indicate the type/size and location of valves and wet connections installed with two permanent offset distances.
- (6) In preparing the record drawings, the Engineer will 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 must be transmitted to DEP.

(H) Requirements for Record Drawings for Seawall, Flood Protection, Retaining Wall/Pedestrian Bridges, Resiliency, Park Projects: In addition to the general requirements set forth in Paragraph (D) above, the requirements set forth below will apply to all record drawings for projects involving sea walls, flood protection measures, retaining walls/pedestrian bridges, resiliency and Department of Parks and Recreation.

- (1) For sea wall, earthen embankment, resiliency, flood protection measures projects, the record drawing will show location, size, subsurface details, material used in different layers with compaction details, stabilization details, elevations in reference to permanent benchmark and will also indicate building/permanent facilities in the vicinity.
- (2) For retaining walls/pedestrian bridges projects, the record drawing will indicate all details as to size, locations elevations in reference to permanent benchmark and will also indicate subsurface/foundation details, support system and any changes in field.
- (3) For Department of Park and Recreation projects, the record drawings will show all sewers/lined and repaired sewers with catch basin details, dredging of lakes, outfall details with elevations in reference to permanent bench mark, curb/sidewalk/ramp restored details, median details, surface stabilization, trees planted with locations, size and species etc.

(I) 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 Engineer will obtain all required signatures and seals, then submit the required Mylar; paper prints copies and electronic copy on CD(s) or DVD(s) or USB(s) to CSU. CSU will forward the record drawings to all applicable Agencies.

- (1) For projects involving highways, the Engineer must submit a complete set of duplicate original Mylar record drawings for DOT, Records Management Office. Specifically, the Engineer will submit two (2) Mylars of a complete set of original record drawings and two (2) sets of unique project CD(s) or DVD(s) or USB.
- (2) For projects involving sewers, the Engineer must 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) or USB for distribution to DDC and DEP.
- (3) For projects involving water mains, the engineer must submit a complete set of duplicate original record drawings to the DEP. In addition, an electronic copy on CD(s) or DVD(s) or USB(s) should be submitted to CSU.
- (4) For projects involving sea walls/embankment, flood protection measures, retaining wall, pedestrian bridges, or Department of Parks and Recreation projects, the Engineer must submit a complete set of duplicate original record drawings to the respective City agencies. In addition, an electronic copy on CD(s) or DVD(s) or USB(s) should be submitted to CSU.

EXHIBIT F

CITY OF NEW YORK
DEPARTMENT OF DESIGN AND CONSTRUCTION
SAFETY REQUIREMENTS
(Separate Attachment)

CITY OF NEW YORK
DEPARTMENT OF DESIGN AND CONSTRUCTION
SAFETY REQUIREMENTS FOR CONSTRUCTION
CONTRACTS

January 2020

THE DDC SAFETY REQUIREMENTS FOR CONSTRUCTION CONTRACTS INCLUDE THE FOLLOWING SECTIONS:

- I. POLICY ON SITE SAFETY**
- II. PURPOSE**
- III. DEFINITIONS**
- IV. RESPONSIBILITIES**
- V. SAFETY QUESTIONNAIRE**
- VI. 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 contracts must, at a minimum, comply with the most current versions of all applicable federal, state and city laws, rules, and regulations, including without limitation:

- ❑ Code of Federal Regulations, Title 29, Part 1926 (29 CFR 1926) and applicable Sub-parts of Part 1910 – U.S. Occupational Safety and Health Administration (OSHA);
- ❑ Federal Highway Administration – Manual on Uniform Traffic Control Devices (MUTCD);
- ❑ New York Codes, Rules and Regulations (NYCRR), Title 12, Part 23 – Protection in Construction, Demolition and Excavation Operations;
- ❑ New York Codes, Rules and Regulations (NYCRR), Title 16, Part 753 – Protection of Underground Facilities;
- ❑ New York City Administrative Code, Title 28 – New York City Construction Codes;
- ❑ Rules of the City of New York, Title 15, Chapter 13 – Rules Pertaining To the Prevention of the Emission of Dust from Construction Related Activities;
- ❑ Rules of the City of New York, Title 15, Chapter 28 – Citywide Construction Noise Mitigation;
- ❑ Rules of the City of New York, Title 34 Chapter 2 – NYCDOT Highway Rules.

The Contractor will be required to comply with all new and/or revised federal, state and city laws, rules, and regulations, issued during the course of the project, at the expense of the Contractor without any additional costs to the DDC.

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 will mean the person delegated authority by the Commissioner to organize and supervise the procurement activity of subordinate Agency staff in conjunction with the City Chief Procurement Officer (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. This individual will have completed, at a minimum an authorized 30-hour OSHA Construction Safety Course. The Contractor may be required to provide more than one competent person due to construction operations and based on the number of active work sites.

Construction Safety Auditor: A representative of the Office of Construction Safety 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 audits, reviewing safety plans, reviewing construction permits, drawings, verifying Contractor's compliance with applicable federal, state and city laws, rules, regulations, and DDC Contract Safety Requirements, etc. and rendering technical advice and assistance to DDC Resident Engineers and Project Managers.

Office of Construction Safety: A unit of DDC Safety and Site Support that assesses contractor's safety on DDC jobsites and advises responsible parties of needed corrective actions.

Registered Construction Superintendent: For certain projects, as defined in New York City Construction Codes – Title 28, the contractor will provide a Construction Superintendent registered with the NYC Department of Buildings and responsible for all duties as defined in Chapter 33 of Title 1 of the Rules of the City of New York.

Contractor: For purposes of these Safety Requirements, the term “Contractor” will mean any person or entity that enters into a contract for the performance of construction work on a DDC project. The term “Contractor” will 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 briefings, given to all jobsite personnel at project site by the Contractor before work begins and/or if hazards or potential hazards are discovered while working, with the purpose of discussing the scheduled activities for the day, the hazards related to these activities, activity specific safety procedures, and Job Hazard Analysis associated with the scheduled construction work. Daily jobsite briefings will be documented, available at the jobsite, and will include at a minimum, topics, name and signature of the person conducting the briefing session, names and signatures of attendants, name of the designated competent person, contractor's name, DDC Project ID, date, time, and location.

Director – Office of Construction Safety: Responsible for the operations of the Office of Construction Safety and the DDC Site Safety management programs.

Job Hazard Analysis (JHA): A process of identifying the major job tasks and any potential site-specific hazards that may be present during construction and establishing the means and methods to eliminate or control those hazards. A JHA will be documented, available at the jobsite and will include at a minimum work tasks, being performed, identified hazards, control methods for the identified hazards, contractor's name, DDC Project ID, location, date, name and signature of certifying person. A JHA is a living document that will be re-evaluated and revised to address new hazards and tasks that may develop and will be present at the worksite and produced upon request.

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, but without limit, to fall protection, scaffold design, maintenance and protection of traffic, and excavation protective system, 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 will have at a minimum an OSHA 30-hour Construction Safety Course and other safety training applicable to Contractor's/subcontractor's project work. This individual will be responsible to oversee safety performance of the required construction work, conduct documented daily safety inspections, and implement corrective actions to maintain a safe work site. The Project Safety Representative must have sufficient experience and skills necessary to thoroughly understand the health and safety hazards and controls and must have authority to undertake corrective actions. A dedicated full-time Project Safety Representative may be required on large projects and projects deemed by DDC to be particularly high risk. DDC reserves the right to request a dedicated full-time Project Safety Representative for any reason at any time during the course of the project at the expense of the Contractor without any additional costs to the DDC. The full-time Project Safety Representative will be present at the site during all work activities.

Resident Engineer (“RE”): Representative of the Commissioner duly designated by the Commissioner to be his/her representative at the site of the work. The RE may be a consultant retained by DDC, including a Construction Management (CM) or Resident Engineer Inspection (REI) firm. If DDC has retained a CM, REI or other consultant firm to perform management and oversight for the Project (e.g., CM-Builder, CM-Design-Builder, Project Manager, Program Manager), that CM, REI or other consultant is the Resident Engineer for purposes of these Safety Requirements.

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 New York City Construction Codes – Title 28, the Contractor will provide a Site Safety Manager with a Site Safety Manager License issued by the New York City Department of Building.

Site Safety Plan: A site-specific safety plan developed by the Contractor for a DDC project. The Site Safety Plan will identify the project work scope, identify hazards associated with the project work and include project specific safety procedures and training appropriate and necessary to complete the work. The Site Safety Plan will be submitted within 30 days from the Award Date or as otherwise directed and is subject to review and acceptance by the Office of Construction Safety prior to the commencement of work at the site.

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 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. Weekly safety meetings will be documented and will include at a minimum, topics, name and signature of the person conducting the meeting, names and signatures of attendees, contractor's name, DDC Project ID, date, and location.

Work: The construction required by the Contractor's 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. For the purposes of these Safety Requirements, the term "Work" includes all Utility Interference work (commonly referred to as "Section U", "EP-7", and "Joint Bid" work) performed in association with this Contract.

IV. RESPONSIBILITIES

All persons who manage, perform, and provide support for construction projects will 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. Resident Engineer

1. Review and facilitate Contractor(s) Site Safety Plan submittals to DDC for acceptability.
2. Notify the Office of Construction Safety of the commencement of construction work.
3. Develop and implement a training verification process to ensure that all CM/REI, consultant, Contractor, and subcontractor employees are properly trained. Maintain all applicable initial and refresher training records and assures documentation availability on site.
4. Maintain documentation of and attend weekly safety meetings and daily safety job briefings.
5. Assure that Contractor(s) JHA's are current to reflect the work tasks being performed, hazards, and control methods to mitigate the identified hazards. Verify that all employees at the job site are trained on the JHAs and maintain supporting documentation on site.
6. Assure adequate planning for all critical construction activities (crane operation, excavation, confined space entry, etc.) including coordination between Contractor(s) /DDC/ other Agencies as required.
7. Maintain custody of all construction related permits, plans, approvals, drawings, etc., related to the project and assure their availability on site.
8. Recognize, minimize, or eliminate jobsite and public hazards, through required planning, inspection, verification, and corrective action process.
9. Monitor the conditions at the site for conformance with the Contractor's Site Safety Plan, DDC policies, permits, and all applicable regulations and documentation that pertain to construction safety.
10. Notify the Contractor and DDC immediately upon determination of any condition or activity existing which 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. Direct the Contractor to provide such labor, materials, equipment, and supervision to remedy such conditions.

11. Notify the Office of Construction Safety and the ACCO's Insurance and Risk Management Unit of project-related accidents, incidents, and near misses as per DDC's Construction Safety Emergency and Accident Notification and Response Procedure within two (2) hours.
12. In case of an accident, incident, or near miss, RE is responsible to protect the integrity of the accident site including but not limited to: the safeguarding of all evidence, documentation of all personnel on site at the time of the accident, gather facts related to all accidents, incidents, or near miss, and prepare required DDC Construction Accident Report as per DDC's Construction Safety Emergency and Accident Notification and Response Procedure. Maintain all records pertaining to accidents, incidents, and near miss and have them available upon request.
13. Notify the Office of Construction Safety within two (2) hours of the start of an inspection by any outside/regulatory agency personnel, including NYS, OSHA, NYC DOB or any other City/State/Federal oversight entity and forward a copy of the inspection report within one business day of its receipt.
14. Escort and assist Construction Safety Auditors during all field and record audits.
15. Report any emergency conditions to the Office of Construction Safety immediately.

Note: In addition to the responsibilities listed above, if the Resident Engineer is a CM/REI or other non-City party hired by the City to manage the Project, the Resident Engineer is also required to do the following:

16. Provide personnel who are certified and or trained appropriately for the requirements of the project.
17. Perform an investigation for any project-related accidents, incidents, and near misses. Within 24-hours of the time of the accident, incident, or near miss, the CM/REI will submit an investigation report to the Office of Construction Safety. Such report will include proposed remedial measures and implementation of corrective actions to prevent recurrence.

DDC reserves the right to request that the CM/REI replace any CM/REI personnel for any reason at any time during the project.

B. Construction Contractors

Note: For CM-Build and CM-Design-Build Projects, the CM will meet all requirements listed in this section, as well as the Resident Engineer section above.

1. Submit a completed Safety Questionnaire and other safety performance related documentation with its bid or as part of a pre-qualification package.
2. Submit a Site Safety Plan within 30 days from the Award Date or as otherwise directed. The Site Safety Plan is subject to review and acceptance by the Office of Construction Safety prior to the commencement of work at the site. The Site Safety Plan will be revised and updated as necessary during the course of the project. If requested by the Office of Construction Safety, the Site Safety Plan must be developed and submitted for approval using a web-based system, the Site Safety Plan Application (SSP App).
3. Designate and identify a Project Safety Representative in the Site Safety Plan. The Contractor will immediately notify the Office of Construction Safety, in a form and manner acceptable to the Office of Construction Safety, of any permanent change to the designated Project Safety Representative. In the event the primary designated Project Safety Representative is temporary unable to perform his or her duties, an alternate Project Safety Representative will be provided. Resumes, outlining the qualification and experience for the Project Safety Representative (s) will be included in the Site Safety Plan and available upon request. DDC reserves the right to request the Contractor to replace a Project Safety Representative for any reason at any time during the course of the project.
4. Designate and identify a Competent Person(s) in the Site Safety Plan. Contractor/subcontractor may be required to provide more than one competent person due to construction operations and based on a number of work tasks/areas. DDC reserves the right to request the Contractor to replace a Competent Person or provide additional Competent Person(s) for any reason at any time during the course of the project. The Competent Person will be present at the site during all work activities.
5. For certain projects, as defined in New York City Construction Codes – Title 28, designate and identify the Licensed Site Safety Manager or Registered Construction Superintendent. Resumes, outlining the qualification and experience for the Licensed Site Safety Manager or Registered Construction Superintendent will be included in the Site Safety Plan and available upon request. The Contractor will immediately notify the Office

of Construction Safety, in a form and manner acceptable to the Office of Construction Safety, of any permanent change to the designated Site Safety Manager and/or Construction Superintendent. In the event the primary designated Site Safety Manager or Construction Superintendent is temporarily unable to perform his or her duties, an alternate Licensed Site Safety Manager and/or Registered Construction Superintendent will be provided. The Office of Construction Safety must be informed of such change. DDC reserves the right to request the Contractor to replace Site Safety Manager or Construction Superintendent for any reason at any time during the course of the project.

6. Develop a written Job Hazard Analysis (JHA) that identifies safety hazards and control methods for project specific work tasks. A preliminary JHA will be included in the Site Safety Plan submitted by the Contractor. A JHA is a living document that will be re-evaluated and revised to address new hazards and tasks that may develop during the course of the project and will be present at the worksite and produced upon request.
7. Develop project specific safety procedures to protect employees, general public, and property during all construction activities for the duration of the project.
8. 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 new employee and site-specific safety orientation for all Contractor and subcontractor 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 will conduct this training prior to mobilization and if necessary during the course of the project. Documentation will be provided to the RE.
9. Prior to performing any work on DDC projects all Contractor's and subcontractor's employees will, at a minimum, have successfully completed, within the previous five calendar years, an OSHA 10-hour construction safety course.

All training records (OSHA 10-hour, flagger, scaffold, fall protection, confined space, etc.) will be provided to the RE prior to mobilization, included in the Site Safety Plan, kept current during the course of the project, and available for review.

10. Conduct and document weekly safety meetings and daily job briefing sessions for the duration of the project. Attendance at weekly safety meetings and daily job briefing sessions is mandatory. A written record of weekly safety meetings will be available upon request and job briefing sessions will be available at the worksite.
11. As part of the Site Safety Plan, prepare site specific procedures, such as maintenance and protection of traffic plan, steel erection plan, confined space program, fall protection plan, demolition plan, site specific emergency evacuation plan, etc. (if not otherwise provided in the contract documents) and comply with all of its provisions.
12. Have immediately available for review at the project site where actual construction activities are being performed all applicable documentation, including but not limited to: JHAs for work tasks being performed, all required training records, MPT plan (where applicable), Noise and Dust Mitigation Plans, excavation protective system drawings (where applicable), Emergency Evacuation plan, fall protection program (where applicable), confined space program (where applicable), all required permits, daily job briefing records, all required documentation for crane operation (where applicable), daily inspection checklist, scaffold and sidewalk drawings (when applicable), safety data sheets for chemicals in use.
13. Comply with all federal, state and local safety and health rules, laws, and regulations.
14. Comply with all provisions of the Site Safety Plan.
15. 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.). The project specific MPT plan will be developed, implemented, and reviewed during the course of the project.
16. The Project Safety Representative will conduct daily safety inspections, document the inspection results, implement corrective actions for the identified hazards. Maintain the inspection records and have them available upon request.
17. **Report unsafe or unhealthy conditions to the RE as soon as practical, but no more than 24 hours after discovery, and take prompt actions to remove or abate such conditions. Should an imminent dangerous condition be discovered, Contractor will stop all work in the area of danger until corrections are made.**
18. Report all accidents, incidents and near misses involving injuries to workers or the general public, as well as property damage, to the RE within one (1) hour.
19. Following an accident or incident, unless otherwise directed, the Contractor will not remove or alter any equipment, structure, material, or evidence related to the accident or incident. 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. Take

additional measures as necessary to secure the accident or incident site and to protect against any further injury or property damage.

20. The Contractor will perform an investigation into the root cause of the accident, incident, or near miss. Within 24 hours of an accident, incident, or near miss, the Contractor will prepare and submit to the RE a written investigation report detailing findings, corrective actions, and hazard mitigation implementation to prevent recurrence.
21. Notify the RE within two (2) hours of the start of an inspection by any outside regulatory agency personnel, including OSHA, NYC DOB, or others.
22. Maintain all records pertaining to all required safety compliance documents, accidents and incidents reports. DDC reserves the right to request copy of any records pertaining to the safety of the project and required by DDC and other federal, state, and city agencies, including but not limited to permits, training records, safety inspection records, drawings, equipment records, etc.
23. Cooperate with DDC Office of Construction Safety/ RE and address DDC recommendations on safety, which will 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 will 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 will 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 site safety plan submittals; etc.)
- Criteria 6: OSHA violation history for the last three (3) years;
- Criteria 7: Contractor will 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 Office of Construction Safety may request, through the ACCO, 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. SITE SAFETY PLAN

Within thirty (30) days from the Award Date or as otherwise directed, the Contractor will submit the Site Safety Plan. The Site Safety Plan will 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 Site Safety Plan is subject to review and acceptance by the Office of Construction Safety prior to the commencement of work at the site. Due to the project work scope and project duration, the Office of Construction Safety may grant a conditional acceptance for a Site Safety Plan without all sections being complete. In a case of a "Conditional Acceptance" of a Site Safety Plan,

the Contractor will provide the remaining sections previously incomplete and/or not submitted for review and acceptance by the Office of Construction Safety prior to the commencement of the construction activities. The Office of Construction Safety reserves the right to withdraw the initial “Conditional Acceptance” if the Contractor fails to provide the remaining sections of a Site Safety Plan. Failure by the Contractor to submit an acceptable Site Safety Plan will be grounds for default.

Site Safety Plan requirements: The Site Safety Plan will be a written document and will apply to all project specific Contractor and subcontractor operations, and will have at a minimum, the following elements with each 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). All Site Safety Plan sections will be numbered in the order listed below. For sections, which are not applicable for the type of the work being performed by the Contractor on DDC project, the Contractor will in writing indicate “Not applicable based on the project work scope.” The Site Safety Plan will include Contractor’s name, DDC project ID, project location (s), and development and revision dates. The Site Safety Plan will include the sections, attachments, and appendixes provided in the Site Safety Plan. All pages of the Site Safety Plan will be numbered. If requested by the Office of Construction Safety, the Site Safety Plan must be developed and submitted for approval using a web-based system, the Site Safety Plan Application (SSP App).

1. Project Work Scope – Detailed information regarding work tasks that will be performed by Contractor and subcontractors under the project.
2. Responsibility and Organization – Contractor’s organization chart with responsible personnel for the project, including titles, names, contact information, roles, and responsibilities. All Contractor’s personnel required by the DDC Safety Requirements will be identified.
3. 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.
4. Job Hazard Analysis (JHA) – Project specific Job Hazard Analysis including work tasks, identified hazards, hazard control methods (administrative, engineering, PPE) to protect workers, property and general public, Contractor’s name, project id, location, name and signature of a certifying person, hazard assessment date.
5. Protection of Public – Project specific procedures covering safety of the general public during all project construction activities.
6. Hazard Corrective Actions - Procedures for hazard identification, including responsible person(s), frequency of safety inspections, implementation of corrective actions, safety inspection checklist.
7. Accident/Exposure Investigation – Project specific procedures for accident/incident/near miss investigation and implementation of corrective actions. Accident/incident/near miss notification procedure of DDC project staff (timer frame and responsible personnel).
8. Recording and Reporting Injuries – Procedures to meet 29 CFR 1904 requirements.
9. First Aid and Medical Attention – Responsible staff, location and inspection of First Aid kit, directions to local hospitals; emergency telephone numbers.
10. Project Specific Fire Protection and Prevention Program – Project specific procedures, including responsible staff, fire alarm system/methods, hot work procedures, etc.
11. Housekeeping Procedure.
12. Project Specific Illumination Procedure.
13. Project Specific Sanitation Procedure.
14. Personal Protective Equipment (PPE), including Respiratory Protection Program and Hearing Conservation Program, if required.
15. Hazard Communication Program – Contractor’s Hazard Communication Program, responsible staff; training; SDS records, project specific list of chemicals; location of the program and SDS records.
16. 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.
17. Employee Emergency Action Plan – Project specific: responsible staff, emergency alarm system/devices, evacuation procedure, procedure to account for employees after evacuation, etc.
18. Evacuation Plan – Project specific evacuation plan (drawing/scheme) with exists and evacuation routes.
19. Ionizing/Nonionizing Radiation – Competent person, license and qualification requirements, type of radiation, employee’s exposure and protection, safety procedures, etc.

20. Material Handling, Storage, Use and Disposal – Project specific information regarding material storage, disposal, and handling: procedures, plan/drawings, etc.
21. Signs, Signals, and Barricades – Use of danger/warning signs, safety instruction signs, sidewalk closure and pedestrian fencing and barricades (if not included in the MPT plan), etc.
22. Tools – Hand and Power – Safety procedures for the type of tools to be used.
23. Scaffold – Project specific scaffold types, procedures, training requirements, scaffold drawings, designed, sealed, and signed by NYS Licensed Professional Engineer, or as otherwise directed; competent person, criteria for project specific scaffold, falling object protection, procedures for aerial lifts/scissor lifts.
24. 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 (if not covered by Contractor's Fire Prevention and Protection program, FDNY certificate requirements).
25. Electrical Safety – Project specific procedures, including lock out-tag out.
26. Fall Protection – Project specific information regarding selected fall protection systems, fall protection plan, responsible staff.
27. 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.
28. Excavation Safety – Competent person; excavation procedures; project specific protective system, including drawings, designed, sealed, and signed by NYS Licensed Professional Engineer, or as otherwise directed.
29. Protection of Underground Facilities and Utilities Procedure, including responsible staff and responsibilities.
30. Concrete and Masonry Construction Procedures
31. Maintenance and Protection of Traffic Plan – Project specific MPT plan, designed, sealed, and signed by NYS Licensed Professional Engineer, or as otherwise directed; flagmen training, public safety, etc.
32. Steel Erection – Site specific erection plan, requirements for applicable written notifications, competent person, fall protection plan, training requirements, etc.
33. 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.
34. Blasting and the Use of Explosives – Project specific safety procedures, warning signs, training/qualification, transportation, storage and use of explosives, inspection.
35. Stairways and Ladders – Types of stairs and ladders, safety procedures, training requirements.
36. Alcohol and Drug Abuse Policy
37. Rodents and Vermin Controls
38. Toxic and Hazardous Substances – Safety procedures for substances that Contractor's and subcontractor's employees can be exposed on project.
39. Noise Mitigation Plan – Completed project specific Noise Mitigation Plan, and noise mitigation procedures.
40. Confined Space Program – Project specific Confined Space Program, responsible staff, training records, equipment information, rescue procedure, list of project specific confined spaces, forms.
41. Construction Vehicles/Heavy Equipment – Type of construction vehicles/heavy equipment to be used on site, procedures
42. Dust Mitigation Plan – Completed project specific Dust Mitigation Plan, and dust mitigation procedures.
43. Working Over and Near Water. Diving Operations – safety procedures including personal protective equipment, fall protection, rescue services, etc.

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 will conduct a site and task assessment to identify the tasks 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 will be communicated to all Contractor/subcontractor personnel on site. The JHA will include safety hazard identification and controls to protect employees, general public, and property.

The initial JHA will be included in the Contractor's Site Safety Plan and the current JHA form will be available at the construction site for reference. A JHA is a living document that will be re-evaluated and revised to address new hazards and tasks that may develop and will be present at the worksite and produced upon request.

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

Prior to the start of construction activities on all DDC projects, RE will invite the Office of Construction Safety to the construction kick-off meeting. The Office of Construction Safety representative(s) will participate in this meeting with the Contractor and RE for the purpose of:

- A. Reviewing DDC Contract Safety Requirements
- B. Reviewing site-specific safety issues based on a project work scope, location, and any other factors which may impact safety of workers and general public.
- C. Reviewing the Site Safety Plan and JHA requirements.
- D. Reviewing Accident/Incident reporting and investigation procedures.
- E. Reviewing designated safety contacts, roles, and responsibilities.
- F. Discussing planned inspections and audits of the site by the Office of Construction Safety 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 Office of Construction Safety (or other designated DDC representative) and the RE during regular inspections and comprehensive audits of the job site. Field Exit Conferences will be held with the RE and Contractor Project Safety Representatives.
- B. The RE will continually monitor the safety and environmental performance of the Contractor's employees and work methods. Deficiencies will be brought to the attention of the Contractor's Project Safety Representative on site for immediate correction. The RE will maintain a written record of these deficiencies and have these records available upon request. Any critical deficiencies will be immediately reported to the Office of Construction Safety via telephone (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 – Office of Construction Safety, or his/her designee will meet with the Contractor's Project Safety Representative and other representatives, the RE, and the DDC Environmental Specialist (if environmental issues are involved). The purpose of this meeting is to 1) determine the level of non-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, the Commissioner may, without limitation, declare the Contractor in default.
- E. The Contractor will within 1 hour inform the RE of all accidents/incidents/near misses 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 will notify the Office of Construction Safety as per DDC's Construction Safety Emergency and Accident Notification and Response Procedure and will maintain a record of all Contractor accidents/incidents for the project.
- F. The Contractor and the RE will notify the Office of Construction Safety 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 will be a reason to rate a Contractor unsatisfactory which may be reflected in the City's PASSPort system and will be considered for future procurement actions as set forth in the City's Procurement Policy Board Rules.

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 Engineer as part of its proposal for the Contract.

EXHIBIT H

**HIRING AND EMPLOYMENT RIDER:
HIRENYC AND REPORTING REQUIREMENTS**

(SEPARATE ATTACHMENT)

HIRING AND EMPLOYMENT RIDER:
HIRENYC AND REPORTING REQUIREMENTS

Introduction

This Rider shall 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 shall 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 this contract and located in New York City, and to agree to interview qualified candidates from HireNYC for those opportunities.

HireNYC Requirements

A. Enrollment

The Contractor shall 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 shall 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 and 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 shall 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 a candidate referred by HireNYC, the Contractor must provide feedback via the portal within twenty (20) business days to indicate which candidates were interviewed and hired, if any. In addition, the Contractor shall 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 shall be required to provide an annual update to HireNYC to that effect. For this purpose, the reporting year shall 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 shall be interpreted so as to require the Contractor to employ any particular worker.

In addition, the provisions of this Rider shall not apply to positions that the Contractor intends to fill with employees employed pursuant to the job retention provision of Section 22-505 of the Administrative Code of the City of New York. The Contractor shall not be required to report such openings with HireNYC. However, the Contractor shall 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 requirements 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 shall 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 shall permit an inspection within seven (7) business days of the request.

Other Reporting Requirements

The Contractor shall 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 shall 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 shall reasonably cooperate with SBS and the City on specific outreach events, including Hire on the Spot events, for the hiring of trades workers for the work of this contract.

Further, this contract shall be subject to a project labor agreement if so required elsewhere in this contract.

Federal Hiring Requirements

The Contractor shall 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 I

APPENDIX A

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

CITY OF NEW YORK
ADDENDUM
TO
APPENDIX A JANUARY 2018 FINAL

This Addendum modifies Appendix A January 2018 Final, General Provisions Governing Contracts for Consultants, Professional, Technical, Human, and Client Services ("Appendix A"), as set forth below.

Subsection B of Section 5.08 (Confidentiality) of Appendix A is deleted in its entirety and replaced with the following:

Section 5.08 Confidentiality

* * *

B. Where in connection with the services under this Agreement the Contractor, or its employees, subcontractors, or agents, will have access to, acquire, disclose, or use any data that includes private information (as defined in Admin. Code § 10-501(b)), the Contractor shall provide written notice to the Department within three days of the earlier of discovery by the Contractor or notification to Contractor of any breach of security (as defined in Admin. Code § 10-501(c)). Such notice shall inform the Department of the nature and scope of the breach of security.

1. Upon such discovery or notification of such breach of security, the Contractor shall take reasonable steps to determine the cause(s) of such breach and to remediate the cause(s) of such breach, shall provide written notice to the Department of such steps, and shall cooperate with any investigation conducted by the City of such breach. Such cooperation includes, but is not limited to, promptly responding to the City's reasonable inquiries and providing prompt access to in human and machine readable format all evidentiary artifacts associated with such breach of security, such as relevant records, logs, files, data reporting, and other materials.
2. In the event of such breach of security, the Contractor shall cooperate and coordinate with the City regarding any notifications determined by the City to be made to individuals affected by such breach.
3. 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 such notifications to individuals affected by the breach of security and/or other actions mandated by any Law, or administrative or judicial order, to address such breach of security, and to cover the costs of any fines or disallowances imposed by the State or federal government as a result of such breach. 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 identity theft monitoring services for individuals affected by such 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 preventive 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.

NYC EARNED SAFE AND SICK TIME ACT CONTRACT RIDER

(To supersede Section 4.06 of the January 2018 Appendix A and Section 35.5 of the March 2017 Standard Construction Contract and to be attached to other City contracts and solicitations)

A. Introduction and General Provisions.

1. The Earned Safe and Sick Time Act (“ESSTA”), codified at Title 20, Chapter 8 of the New York City Administrative Code, also known as the “Paid Safe and Sick Leave Law,” requires covered employees (as defined in Admin. Code § 20-912) in New York City (“City”) to be provided with paid safe and sick time. Contractors of the City or of other governmental entities may be required to provide safe and sick time pursuant to the ESSTA. The ESSTA is enforced by the City’s Department of Consumer and Worker Protection (“DCWP”), which has promulgated 6 RCNY §§ 7-101 and 201 *et seq.* (“DCWP Rules”).

2. The Contractor agrees to comply in all respects with the ESSTA and the DCWP 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 ESSTA in performance of this agreement may result in its termination.

3. The Contractor must notify (with a copy to DCWP at ComplianceMonitoring@dcwp.nyc.gov) the Agency Chief Contracting Officer of the City Agency or other entity with whom it is contracting in writing within 10 days of receipt of a complaint (whether oral or written) or notice of investigation regarding the ESSTA involving the performance of this agreement. Additionally, the Contractor must cooperate with DCWP’s guidance and must comply with DCWP’s subpoenas, requests for information, and other document demands as set forth in the ESSTA and the DCWP Rules. More information is available at <https://www1.nyc.gov/site/dca/about/paid-sick-leave-what-employers-need-to-know.page>.

4. Upon conclusion of a DCWP investigation, Contractor will receive a findings letter detailing any employee relief and civil penalties owed. Pursuant to the findings, Contractor will have the opportunity to settle any violations and cure the breach of this agreement caused by failure to comply with the ESSTA either i) without a trial by entering into a consent order or ii) appearing before an impartial judge at the City’s administrative tribunal. In addition to and notwithstanding any other rights and remedies available to the City, non-payment of relief and penalties owed pursuant to a consent order or final adjudication within 30 days of such consent order or final adjudication may result in the termination of this agreement without further opportunity to settle or cure the violations.

5. The ESSTA is briefly summarized below for the convenience of the Contractor. The Contractor is advised to review the ESSTA and the DCWP Rules in their entirety. The Contractor may go to www.nyc.gov/PaidSickLeave for 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 ESSTA and the DCWP Rules. The Contractor acknowledges that it is responsible for compliance with the ESSTA and the DCWP Rules notwithstanding any inconsistent language contained herein.

B. *Pursuant to the ESSTA and DCWP Rules: Applicability, Accrual, and Use.*

1. An employee who works within the City must be provided paid safe and sick time.¹ Employers with one hundred or more employees are required to provide 56 hours of safe and sick time for an employee each calendar year. Employers with fewer than one hundred employees are required to provide 40 hours of sick leave each calendar year. Employers must provide a minimum of one hour of safe and sick time for every 30 hours worked by an employee and compensation for such safe and sick time must be provided at the greater of the employee's regular hourly rate or the minimum wage at the time the paid safe or sick time is taken. Employers are not discouraged or prohibited from providing more generous safe and sick time policies than what the ESSTA requires.

2. Employees have the right to determine how much safe and sick time they will use, provided that an employer may set a reasonable minimum increment for the use of safe and sick time not to exceed four hours per day. For the use of safe time or sick time beyond the set minimum increment, an employer may set fixed periods of up to thirty minutes beyond the minimum increment. In addition, an employee may carry over up to 40 or 56 hours of unused safe and sick time to the following calendar year, provided that no employer is required to carry over unused paid safe and sick time if the employee is paid for such unused safe and sick time and the employer provides the employee with at least the legally required amount of paid safe and sick time for such employee for the immediately subsequent calendar year on the first day of such calendar year.

3. An employee entitled to safe and sick time pursuant to the ESSTA may use safe and 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, the child or parent of an employee's spouse or domestic partner, any other individual related by blood to the employee, and any other individual whose close association with the employee is the equivalent of a family relationship) who has a mental illness, physical illness, injury or health condition or who has a need for medical diagnosis or preventive medical care;

¹ Pursuant to the ESSTA, if fewer than five employees work for the same employer, and the employer had a net income of less than one million dollars during the previous tax year, such employer has the option of providing such employees uncompensated safe and sick time.

c. closure of such employee's place of business by order of a public official due to a public health emergency;

d. such employee's need to care for a child whose school or childcare provider has been closed due to a public health emergency; or

e. when the employee or a family member has been the victim of a family offense matter, sexual offense, stalking, or human trafficking:

1. to obtain services from a domestic violence shelter, rape crisis center, or other shelter or services program for relief from a family offense matter, sexual offense, stalking, or human trafficking;
2. to participate in safety planning, temporarily or permanently relocate, or take other actions to increase the safety of the employee or employee's family members from future family offense matters, sexual offenses, stalking, or human trafficking;
3. to meet with a civil attorney or other social service provider to obtain information and advice on, and prepare for or participate in any criminal or civil proceeding, including but not limited to, matters related to a family offense matter, sexual offense, stalking, human trafficking, custody, visitation, matrimonial issues, orders of protection, immigration, housing, discrimination in employment, housing or consumer credit;
4. to file a complaint or domestic incident report with law enforcement;
5. to meet with a district attorney's office;
6. to enroll children in a new school; or
7. to take other actions necessary to maintain, improve, or restore the physical, psychological, or economic, health or safety of the employee or the employee's family member or to protect those who associate or work with the employee.

4. An employer must not require an employee, as a condition of taking safe and sick time, to search for a replacement. However, where the employee's need for safe and sick time is foreseeable, an employer may require an employee to provide reasonable notice of the need to use safe and sick time. For an absence of more than three consecutive work days, an employer may require reasonable documentation that the use of safe and sick time was needed for a reason listed in Admin. Code § 20-914; and/or written confirmation that an employee used safe and sick time pursuant to the ESSTA. However, an employer may not require documentation specifying the nature of a medical condition, require disclosure of the details of a medical condition, or require disclosure of the details of a family offense matter, sexual offense, stalking, or human trafficking, as a condition of providing safe and sick time. Health information and information concerning family offenses, sexual offenses, stalking or human trafficking obtained solely due to an

employee's use of safe and sick time pursuant to the ESSTA must be treated by the employer as confidential. An employer must reimburse an employee for all reasonable costs or expenses incurred in obtaining such documentation for the employer.

5. An employer must provide to all employees a written policy explaining its method of calculating sick time, policies regarding the use of safe and sick time (including any permissible discretionary conditions on use), and policies regarding carry-over of unused time at the end of the year, among other topics. It must provide the policy to employees 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 safe and sick time to an employee because of non-compliance with such a policy.

6. An employer must provide a pay statement or other form of written documentation that informs the employee of the amount of safe/sick time accrued and used during the relevant pay period and the total balance of the employee's accrued safe/sick time available for use.

7. Safe and 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 safe and sick time was used.

C. *Exemptions and Exceptions.* Notwithstanding the above, the ESSTA 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, if the provisions of the ESSTA are expressly waived in such agreement and such agreement provides a benefit comparable to that provided by the ESSTA for such employee;

3. 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 their own schedule, has the ability to reject or accept any assignment referred to them, and is paid an average hourly wage that is at least four times the federal minimum wage;

4. an employee in a work study program under Section 2753 of Chapter 42 of the United States Code;

5. 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

6. a participant in a Work Experience Program (WEP) under N.Y. Social Services Law § 336-c.

D. *Retaliation Prohibited.* An employer shall not take any adverse action against an employee that penalizes the employee for, or is reasonably likely to deter the employee from or interfere with the employee exercising or attempting in good faith to exercise any right provided by the ESSTA. In addition, an employer shall not interfere with any investigation, proceeding, or hearing pursuant to the ESSTA.

E. *Notice of Rights.*

1. An employer must provide its employees with written notice of their rights pursuant to the ESSTA. Such notice must be in English and the primary language spoken by an employee, provided that DCWP has made available a translation into such language. Downloadable notices are available on DCWP's website at <https://www1.nyc.gov/site/dca/about/Paid-Safe-Sick-Leave-Notice-of-Employee-Rights.page>. The notice must be provided to the employees by a method that reasonably ensures personal receipt by the employee.

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 ESSTA for a period of at least three years, and must allow DCWP to access such records in furtherance of an investigation related to an alleged violation of the ESSTA.

G. *Enforcement and Penalties.*

1. Upon receiving a complaint alleging a violation of the ESSTA, DCWP must investigate such complaint. DCWP may also open an investigation to determine compliance with the ESSTA on its own initiative. Upon notification of a complaint or an investigation by DCWP, the employer must provide DCWP with a written response and any such other information as DCWP may request. If DCWP believes that a violation of the ESSTA has occurred, it has the right to issue a notice of violation to the employer .

2. DCWP 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, but is not limited to, treble damages for the wages that should have been paid; statutory damages for unlawful retaliation; and damages, including statutory damages, full compensation for wages and benefits lost, and reinstatement, for unlawful discharge. In addition, DCWP may impose on an employer found to have violated the ESSTA 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. When an employer has a policy or practice of not providing or refusing to allow the use of safe and sick time to its employees, DCWP may seek penalties and relief on a per employee basis.

3. Pursuant to Admin. Code § 20-924.2, (a) where reasonable cause exists to believe that an employer is engaged in a pattern or practice of violations of the ESSTA, the Corporation Counsel may commence a civil action on behalf of the City in a court of competent jurisdiction by filing a complaint setting forth facts relating to such pattern or practice and requesting relief, which may include injunctive relief, civil penalties and any other appropriate relief. Nothing in § 20-924.2 prohibits DCWP from exercising its authority under section 20-924 or the Charter, provided that a civil action pursuant to § 20-924.2 shall not have previously been commenced.

H. *More Generous Policies and Other Legal Requirements.* Nothing in the ESSTA is intended to discourage, prohibit, diminish, or impair the adoption or retention of a more generous safe and 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 safe and sick time. The ESSTA provides minimum requirements pertaining to safe and 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 safe and sick leave or time, whether paid or unpaid, or that extends other protections to employees. The ESSTA may not be construed as creating or imposing any requirement in conflict with any federal or state law, rule or regulation.

APPENDIX A

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

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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;

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.

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 PSLL 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 PSLL 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 PSLL 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 PSLL. In addition, an employer may not interfere with any investigation, proceeding, or hearing pursuant to the PSLL.

E. *Notice of Rights.*

1. An employer must provide its employees with written notice of their rights pursuant to the PSLL. 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.

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.

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